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Staff:	Randall Stemler
Staff Report:	November 21, 2002
Hearing Date:	December 13, 2002
Commission Action:	

STAFF REPORT: APPEALSUBSTANTIAL ISSUE & DE NOVO

APPEAL NO.:	A-1-MEN-02-148
APPLICANT:	Robert & Donna Auguste
AGENT:	Richard Seale
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	At 28200 South Highway One, south of Point Arena, Mendocino County (APN 027-433-04 and 027-433-05).
PROJECT DESCRIPTION:	Coastal Development Minor Subdivision creating two (2) parcels of 5.88 and 6.48 acres.
APPELLANT:	Friends of Schooner Gulch
SUBSTANTIVE FILE: DOCUMENTS	1) Mendocino County CDMS 22-2001; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

1. Summary of Staff Recommendation: Substantial Issue

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellant has raised a substantial issue with the local government's action and its consistency with the certified LCP.

The development, as approved by the County, consists of a subdivision of a legal split-zoned parcel straddling Highway One, approximately 3 ½ miles south of Point Arena, just north of the intersection of Highway One and Schooner Gulch Road. The subdivision would divide the property along the centerline of Highway One. The approved 5.88-acre parcel would be located on the seaward side of Highway One, in an area zoned Rural Residential with a 5-acre minimum: Development Limitation (RR-5:DL). The approved 6.48-acre parcel would be located on the inland side of Highway One in an area zoned Rangeland—160-acre minimum (RL-160). The portion seaward of Highway One is improved with a single-family residence.

The appellant contends that the approved project raises a substantial issue of conformance with the County's LCP policies requiring a minimum parcel size of 160 acres for property zoned as Rangeland. The 6.48-acre portion of the property in the area zoned as Rangeland is clearly less than 160 acres. Therefore, the project as approved by the County raises a substantial issue of conformance with this Coastal Zoning Code requirement.

The appellant also contends that the project as approved by the County is inconsistent with LUP Policy 3.2-13, which requires that new parcels created adjacent to an Agriculture Preserve shall be limited to a ten (10) acre minimum. The new parcel approved by the County adjacent to the Agriculture Preserve is only 6.48 acres. Therefore, the project as approved by the County raises a substantial issue of conformance with LUP Policy 3.2-13.

The appellant further contends that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.2-15 requiring land divisions of prime agriculture lands designated RL to require an approved master plan. No master plan was produced or submitted. Therefore, the project as approved by the County raises a substantial issue of conformance with LUP Policy 3.2-15.

Staff recommends that the Commission find that the project as approved by the County, raises a substantial issue of conformance with the certified LCP policies, with respect to all of the contentions raised.

The motion to adopt the staff recommendation of Substantial Issue is found on page 5.

2. Summary of Staff Recommendation *De Novo*: Denial

The staff recommends that the Commission deny the coastal development permit for the proposed project on the basis that, the project is inconsistent with the County's certified LCP.

The proposed project is inconsistent with the rangeland protection provisions of the certified LCP and there are no conditions that could be imposed by the Commission in the *de novo* process that could make the proposed project consistent with the certified LCP. The proposed subdivision of land into a 5.88-acre parcel and a 6.48-acre parcel cannot conform to the minimum 160-acre lot size requirement for property zoned as Rangeland. Also, the proposed subdivision of land into a 5.88 acre parcel and a 6.48 acre parcel cannot conform to the low-density zoning requirement for a 10-acre minimum lot size adjacent to lands under Agriculture Preserve (Williamson Act) contract. Therefore, staff recommends that the Commission deny the proposed subdivision.

The Motion to adopt the Staff Recommendation of Denial is found on page 15.

STAFF NOTES

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether

approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because: (1) a portion of the approved development is located between the sea and the first public road paralleling the sea; (2) a portion of the approved development is located within three hundred feet of the mean high tide line or the top of the seaward face of a coastal bluff; (3) the approved land division is not a principally permitted use; and (4) the approved development is located within a sensitive coastal resource area. With regard to the appealability of the approved development based on its location in a sensitive coastal resource area, Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "highly scenic areas." The approved development is located within an area designated in the LCP on the certified land use map as a "highly scenic area," and, as such, is appealable to the Commission.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellant filed an appeal (Exhibit 6) to the Commission in a timely manner on October 17, 2002 within 10 working days of receipt by the Commission on October 4, 2002 of the County's Notice of Final Action.

3. Hearing Opened and Continued.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The 49th day after the October 17, 2002 appeal filing date is December 5, 2002. In accordance with section 13112 of the California Code of Regulations, on October 18, 2002, after receiving the subject appeal, staff requested all relevant documents and materials regarding the subject permit from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. These materials were received on October 28, 2002, after the mailing of staff reports to the Commission and interested parties for the November meeting. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question for the Commission's November meeting agenda. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, staff prepared a staff report recommending that the Commission open and continue the hearing during the October Commission meeting. The Commission opened and continued the appeal hearing on November 7, 2002.

PART ONE—SUBSTANTIAL ISSUE

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION

I move that the Commission determine that Appeal No. A-1-MEN-02-148 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution To Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-02-148 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to approve the subdivision from Peter Reimuller on behalf of Friends of Schooner Gulch. The project, as approved by the County, consists of a subdivision creating two (2) parcels of 5.88 and 6.48 acres. The appellant's contentions are summarized below, and the full text of the contentions is included in the copy of the appeal attached as Exhibit No. 6.

The appeal raises three (3) contentions involving inconsistency of the approved subdivision with the County's LCP policies regarding the protection of agricultural lands. The appellant asserts that: "The Planning Commission erred in approving a new 6+ acre parcel in the RL-160 zone" in violation of Coastal Zoning Code Section 20.368.020. This section requires a minimum parcel size of 160 acres for new parcels created within areas zoned as Rangeland. The 6.48-acre portion of the property in the area zoned as Rangeland is clearly less than 160 acres.

The appellant also contends that the proposed project as approved by the County is inconsistent with LUP Policy 3.2-13, which requires that new parcels created adjacent to an Agricultural Preserve shall be limited to a ten (10) acre minimum. The new parcel approved by the County adjacent to the Agricultural Preserve is only 6.48 acres.

The appellant further contends that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.2-15 requiring that an agricultural master plan be prepared, submitted, and approved prior to approval of a land division of prime agriculture lands designated RL. No agricultural master plan was submitted or approved.

B. LOCAL GOVERNMENT ACTION

The County Planning staff recommended denial of the land division request due to failure of the project to comply with LUP Policy 3.2-13 requiring a 10-acre minimum, as a low-

density standard for parcels adjacent to an Agriculture Preserve; and inconsistency with LUP Policy 3.2-15 regulating use of prime agricultural land.

On September 19, 2002 the Mendocino County Planning Commission approved Coastal Development Minor Subdivision #22/2001. The County attached to its coastal permit a number of special conditions. These conditions relevant to the contentions of the appeal are summarized below, and included in their entirety in Exhibit 5.

A special condition was included to provide notation on the Unilateral Agreement that the property is adjacent to an Agricultural Preserve, a wastewater disposal site, and a private airport, and may be subject to inconvenience or discomfort from dust, noise, smoke and odors arising from those operations. Another special condition requires delineation of a building envelope for the 6.48-acre portion of the property that would be a minimum of 75 feet from Highway One, in an effort to protect the visual resources of the highly scenic area as seen from the road; and placement of the building envelope a minimum of 700 feet from the northerly property boundary, in an effort to comply with an agricultural buffer setback and PG and E power line easement. A third special condition was attached to the permit to require notation on the Unilateral Agreement stating that building envelopes require future development to be in conformance with criteria for development in "highly scenic areas" per development standards stated in Chapter 20 of the Mendocino County Zoning Code Chapter 20.504; and recognizing that the proposed remainder parcel is adjacent to lands within an Agricultural Preserve, such that no new dwellings shall be sited within 200 feet of lands designated Agricultural Preserve.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on October 4, 2002 (Exhibit 5). The project was appealed to the Commission in a timely manner on October 17, 2002, within 10 working days after receipt by the Commission of the Notice of Final Local Action. The local action by the Planning Commission need not be appealed to the Board of Supervisors before it is appealed directly to the Commission because the County charges a fee for local appeals.

C. PROJECT AND SITE DESCRIPTION

The subject property is a 12.36-acre parcel that would be divided into two parcels consisting of 5.88 and 6.48 acres. The property is located approximately 3 ½ miles south of Point Arena, lying on both sides of Highway One, just north of its intersection with Schooner Gulch Road and south of Bill Owens Road (see Exhibits 1-2). The Assessor's map (Exhibit 3) shows two parcel numbers assigned to this property for tax assessment purposes: 027-433-04 (6.48 acres), and 027-433-05 (5.88 acres).

Currently, the parcel is split-zoned. The 6.48-acre portion of the property lies inland or northeast of Highway One (the designated remainder parcel) and is zoned Rangeland – 160-acre minimum (RL-160). The 5.88-acre portion of the property, lies seaward or southwest of Highway One, and is zoned Rural Residential – 5 acre minimum (RR-5).

The portion of the property inland of Highway One has no structures on it and is predominantly vegetated with conifers, as well as hardwoods and brush. Even though this portion of the property is zoned as rangeland, and is essentially surrounded by extensive rangeland operations, the applicant indicates it has never been used for agriculture. Principal permitted uses of RL-zoned property include grazing and forage for livestock, raising of crops, wildlife habitat improvement, harvesting of firewood for personal use, home occupations, and allowance of one single-family dwelling per legally created parcel. There are several widely scattered residences that exist on other parcels in the Rangeland-designated area inland of Highway One in the vicinity of the 6.48-acre portion of the property.

The 5.88-acre portion of the property zoned rural residential located on the seaward or southeast side of Highway One is developed with the single-family residence of the applicant. Other existing improvements on this parcel include a garage, an on-site septic system, a water system, and various accessory structures. Access to the residence is from an existing driveway directly off of the highway. Principal permitted uses of RR-zoned land include residential and associated utilities, light agriculture, and home occupation.

The portion of the property located west of Highway One is designated highly scenic. The portion of the property located east of Highway One is designated “conditional” highly scenic, with only those areas within view of the highway limited by the highly scenic provisions of the LCP. The property contains no known environmentally sensitive habitat areas.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

“The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.”

All three of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project’s inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. In all three cases, the Commission finds that a substantial issue is raised.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations below, a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP.

Allegations Raising Substantial Issue

The appellant contends that the project as approved is not consistent with certain policies and standards of the certified LCP. The appellant specifically cites inconsistencies with (1) Coastal Zoning Code (CZC) Section 20.368.020, (2) LUP Policy 3.2-13, and (3) LUP Policy 3.2-15. The appellant states that the "Planning Commission erred in approving a new 6+ acre parcel in the RL-160 zone (20.368.020), and next to an Agricultural Preserve (Coastal Element Policies 3.2-13 & 15)."

1. Minimum 160-acre Lot Area Required for Property Zoned RL.

The appellant contends that the approved project is inconsistent with the County's LCP policies requiring a minimum parcel size of 160 acres for property zoned as Rangeland. The 6.48-acre portion of the property in the area zoned as Rangeland is clearly less than 160 acres.

LCP Policies:

Coastal Zoning Code Section 20.368.020 states:

Minimum Lot Area for RL Districts.

One hundred sixty (160) acres.

Discussion:

As discussed above, the subject property is currently split-zoned with different Assessor's Parcel Numbers (APN). That portion lying seaward or southwest of Highway One, APN 027-433-05, contains 5.88 acres and is zoned Rural Residential – 5 acre minimum. Because the size of this portion of the property is larger than 5 acres, the land division is consistent with the County zoning requirement of a 5-acre minimum lot size for new parcels. However, that portion of the property lying inland or northeast of Highway One, APN 027-433-04, designated as the "remainder parcel," is zoned Rangeland – 160 acre minimum (RL-160) and consists of 6.48 acres. Pursuant to Coastal Zoning Code Section 20.368.020, the minimum lot size for new parcels in the RL-160 zone is 160 acres. Since the 6.48-acre size of the proposed remainder parcel is significantly less than 160 acres, the County approval of the land division raises a substantial issue of conformance with the Mendocino County certified CZC Section 20.368.020.

As described above, the property is split-zoned with the 6.48-acre Rangeland-zoned portion located on the northeast inland side of Highway One. The County staff recognized that "it could be concluded that the project would not be consistent with the Land Use Maps" because the parcel is less than the required 160 acres, but County staff went on to state that:

"a long standing policy of the County has been to permit division of split zoned property provided that the parcel size is consistent on at least one side of the division line. In this case, the area southwest of the highway, Parcel 1 (5.88 acres), is consistent with the RR-5 Land Use designation. While staff does certainly acknowledge merit to alternative interpretations of this policy, at this time staff does not recommend changing the policy for an individual project. Rather, merits of the policy should be reviewed on a broader basis."

Although the County may consider this common practice a "policy," it is not a certified policy of the Local Coastal Program. Therefore, the County's in-house, informal policy is not a part of the standard of review for the project and does not provide a basis for approval of a land division creating a parcel less than 160 acres in the RL-160 zone.

The Commission finds that the degree of factual and legal support for the County's action is low, given that (1) CZC Section 20.368.020 sets a minimal parcel size of 160 acres for new parcels created in the RL-160 zone and the approved land division includes a new 6.48-acre parcel, and (2) the County cited an informal policy not contained in the certified LCP as a basis for over-riding the 160-acre minimum parcel size requirement of CZC Section 20.368.020. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the requirements of CZC Section 20.368.020 that the minimum parcel size of new parcels created in the RL-160 zone be 160 acres.

2. New Parcels Adjacent to Agricultural Preserves Limited to 10-Acre Minimum.

The appellant contends that the project as approved by the County does not conform to LUP Policy 3.2-13, which requires that new parcels created adjacent to an Agricultural Preserve shall be limited to a ten (10) acre minimum. The new parcel approved by the County is adjacent to an Agricultural Preserve and is only 6.48 acres.

LCP Policies:

LUP Policy 3.2-13 states:

Limit residential uses and subdivisions adjacent to Type II Ag Preserve to a low density standard to provide a buffer to minimize the conflicts between agricultural operations and residential land uses. New parcels created adjacent to an Ag Preserve shall be limited to a ten (10) acre minimum. For parcels beyond the 10-acre minimum buffer (parcels which would be separated from the Ag Preserve by the buffer), the minimum parcel size would be dictated by the land use classification and applicable policies of the Coastal Element.

If parcels adjacent to Type II Ag Preserve are designated Clustering (:CL) or Planned Development (:PD), the density will be dictated by the General Plan Land Use classification provided that the residential development is located not closer than 200 feet from the property line(s) of the protected agricultural resource or at the farthest feasible point from said property line(s). For residential development within 200 feet of the agricultural parcel(s), density shall not exceed one dwelling unit per 10 acres. (There shall be a minimum of 10 acres of lot area for each dwelling unit located within the 200-foot limit). Approval of any land divisions shall be consistent with Policy 3.9-2 and only

when the creation of new parcels at the proposed acreages will not adversely affect the long term productivity of agricultural lands.

Discussion:

LUP Policy 3.2-13 requires that new parcels created adjacent to a Type II Agriculture Preserve shall be limited to a ten (10) acre minimum. The County-approved, 6.48-acre remainder parcel, shares a common corner with property under a Type II Agricultural Preserve (Williamson Act) contract at the northwest corner of the subject property. This neighboring property is the H-Bar-H Ranch owned by William and Karen Hay. The 6.48-acre Rangeland parcel approved by the County falls short of the required 10-acre minimum parcel size for lots adjacent to a Type II Agriculture Preserve.

The Hays submitted a letter to the County during the County's consideration of the proposed land division stating that they feel that this land division adjacent to their ranch with historical agricultural land use is not appropriate. The letter suggests that conflicts would arise between their surrounding agricultural uses and the approved residential use of the 6.48-acre portion of the property inland of the highway that would be accommodated by the approved subdivision, thereby adversely affecting agricultural productivity. In their letter they refer to 30-50 years of agricultural use of their property for grazing cows, sheep, and horses; disking planting and harvesting of crops that can cause dust; septic surface dumping with spreading and disking that can cause dust and odors; and use of an airstrip with the subject property located in the take-off and landing pattern of planes (Exhibit 7).

The Commission finds that the degree of factual and legal support for the County's action is low given that LUP Policy 3.2-13 requires that new parcels created adjacent to a Type II Agriculture Reserve be at least 10 acres in size, one of the approved parcels is adjacent to such a preserve, and the approved parcel would be only 6.48 acres in size, less than the required 10 acres. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the requirements of LUP Policy 3.2-13 that new parcels created adjacent to agricultural preserves to be limited to a 10-acre minimum.

3. Land Divisions of Prime Agriculture Lands Designated RL Require an Approved Master Plan.

The appellant contends that the project as approved is inconsistent with LUP Policy 3.2-15 requiring land divisions of prime agriculture lands designated RL to require an approved master plan. No such plan was prepared or submitted as required.

LCP Policies:

LUP Policy 3.2-15 states:

All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel.

Discussion:

More than half of the 6.48-acre RL-160-zoned portion of the property northeast of Highway One is designated on the County's certified Land Use Maps as prime agricultural land. The approved land division will have the effect of creating a future home site within these prime agricultural lands. LUP Policy 3.2-15 states that all land divisions of prime agriculture lands designated AG or RL require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. Policy 3.2-5 requires that findings shall be made after preparation of the master plan and County review, and before approval of the land division that: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; and (4) the division will not contribute to development conflicts with natural resource habitat and visual resource policies. An agricultural master plan would have facilitated a review of how the approved subdivision would affect the viability of agricultural operations. However, no master plan was prepared, submitted, or reviewed by the County as required. The County's approval did include findings (findings 6-9 of the County staff report attached to this report as part of Exhibit 5) concluding that the approved subdivision would meet each of the findings that Policy 3.2-5 requires to be made after preparation and review of the master plan. However, without the master plan having been prepared first, little basis exists for the conclusions that were made in the County's findings.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the required master plan was not prepared, submitted, nor reviewed by the County prior to approval of the proposed land division as required. In addition, with the thousands of acres of Agricultural and Rangeland designated land in the Mendocino coastal zone and with rising residential land values creating pressure to create new home sites in the coastal zone, the precedential value of the County's action not requiring an agricultural master plan is relatively high with respect to future actions on subdivisions of

prime agricultural lands. Therefore, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the provisions of LUP Policy 3.2-15 requiring that all land divisions of prime agriculture lands designated AG or RL be preceded by the preparation, submittal, and review of an approved master plan.

Conclusion of Part One: Substantial Issue

The Commission finds that, as discussed above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP regarding: (1) minimum lot sizes for new parcels created in the RL-160 zone, (2) minimum lot sizes for parcels adjacent to Agricultural Preserves, and (3) requirements for the preparation, submittal, and review of agricultural master plans for any proposed land division of prime agricultural lands.

PART TWO—*DE NOVO* ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program and the

public access policies of the Coastal Act and deny the permit. The proper motion is:

MOTION: I move that the Commission approve Coastal Development Permit No. A-1-MEN-02-148 for the development proposed by the applicant.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP and the public access policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS FOR DENIAL

The Commission hereby finds and declares:

A. PROJECT AND SITE DESCRIPTION

Finding C of the Substantial Issue portion of this report regarding the project and site description is hereby incorporated by reference.

B. ANALYSIS OF LCP CONSISTENCY

As discussed below, the Commission is denying the proposed land division because it would be inconsistent with certified LCP provisions intended to protect agricultural rangeland. The project as proposed is, however, consistent with certain other LCP provisions, including those development policies concerning the availability of water and visual resource protection.

1. Protection of Agricultural Lands

LCP Policies

Coastal Zoning Code Section 20.368.020 specifies a minimum lot size standard for rangeland as follows:

Minimum Lot Area for RL Districts.

One hundred sixty (160) acres.

Policy 3.2-13 requiring an Agricultural Preserve buffer states:

Limit residential uses and subdivisions adjacent to Type II Ag Preserve to a low density standard to provide a buffer to minimize the conflicts between agricultural operations and residential land uses. New parcels created adjacent to an Ag Preserve shall be limited to a ten (10) acre minimum. For parcels beyond the 10-acre minimum buffer (parcels which would be separated from the Ag Preserve by the buffer), the minimum parcel size would be dictated by the land use classification and applicable policies of the Coastal Element.

If parcels adjacent to Type II Ag Preserve are designated Clustering (:CL) or Planned Development (:PD), the density will be dictated by the General Plan Land Use classification provided that the residential development is located not closer than 200 feet from the property line(s) of the protected agricultural resource or at the farthest feasible point from said property line(s). For residential development within 200 feet of the agricultural parcel(s), density shall not exceed one dwelling unit per 10 acres. (There shall be a minimum of 10 acres of lot area for each dwelling unit located within the 200-foot limit). Approval of any land divisions shall be consistent with Policy 3.9-2 and only when the creation of new parcels at the proposed acreages will not adversely affect the long term productivity of agricultural lands.

Policy 3.2-15 related to use of prime agriculture land states:

All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel.

Discussion

As described above, the project proposal would subdivide a 12.36-acre, split-zoned parcel into two parcels consisting of a 6.48-acre parcel, located on the inland or northeast side of Highway One, and a 5.88-acre parcel located on the seaward or southwest side of

Highway One. Half of the acreage of the 6.48-acre parcel zoned RL-160 is mapped as Prime Agriculture land on the certified LCP land Use Maps. The RL rangeland zoning classification is intended to be applied to lands which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. The RL rangeland zoning classification includes land eligible for incorporation into Type II Agricultural Preserves, other lands generally in range use, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of rangelands.

The 6.48-acre portion of the subject property is a part of a much larger area east of the highway that is zoned for agricultural purposes. This Rangeland-zoned property used mainly for grazing and some timber harvesting covers more than 3,000 contiguous acres located primarily to the north and east of the subject property. The proposed subdivision would sever the 6.48-acre portion of the existing parcel located within this expansive area of agricultural use into a new separate parcel with the effect that a new single-family residence could be established on the site in the future.

The certified LCP provisions of CZC Section 20.368.020 for Mendocino County require minimum lot sizes of 160 acres for parcels created within rangeland RL-zoned property. The size of the proposed parcel inland of Highway One would be 6.48 acres, clearly less than the required 160 acres, and therefore, clearly inconsistent with CZC Section 20.368.020.

The proposed land division is also inconsistent with the certified LCP provisions of LUP Policy 3.2-13 requiring that new parcels created adjacent to an Agriculture Preserve be limited to a ten (10) acre minimum. The 6.48-acre parcel adjacent to the Agriculture Preserve is not of sufficient size to provide the buffer intended by the low density standard. Therefore, the proposed land division is inconsistent with LUP Policy 3.2-13.

Finally, the proposed land division is inconsistent with the certified LCP provisions of LUP Policy 3.2-15 requiring an approved master plan for new parcels that are created containing prime agriculture designations within RL-zoned property. No master plan was prepared and submitted for County analysis of agricultural use on the subject property and overall operation as required. The County is required to make findings during the master plan review and before approving land divisions that: (1) the [land] division will protect continued agricultural use and contribute to agricultural viability; (2) the [land] division will not conflict with continued agricultural use of the subject property and overall operation; (3) the [land] division is only for purposes allowed in AG or RL designations; and (4) the [land] division will not contribute to development conflicts with natural resource habitat and visual resource policies. Without an approved agricultural master plan, there is little basis for determining that the proposed land division meets the findings required to be made pursuant to LUP Policy 3.2-15.

The requirements of the above-cited certified LCP policies specifying large minimum lot sizes and the preparation of agricultural master plans are designed to minimize potential conflicts between agricultural operations and residential land uses. Sections 20.458.005 and 20.458.010 of the Coastal Zoning Code limit the number of residences to one unit per parcel in the coastal zone. Therefore, approval of the proposed land division would allow for future construction of a residence on the newly created 6.48-acre parcel. The applicants already have a house on the southwest 5.88-acre portion of the property that is their principal residence. Without approval of the proposed land division, no home could be built in the agriculture-zoned portions of the property because the existing undivided parcel already has one residence, the maximum allowable pursuant to CZC Sections 20.458 and 20.458.010. While placement of an additional single-family residence on the applicant's property would be consistent with RL-zoned principally permitted uses, construction of another house would diminish the viability of the primary-zoned purpose as rangeland. The 6.48-acre portion of the existing parcel is already rather small for agricultural use, and the presence of a single-family house and attendant residential use would further limit its capacity to be used for grazing, whether for an agricultural operation conducted by the owners themselves or through a lease to another rancher who could utilize the land in combination with other grazing lands in nearby areas. Use of the existing legal parcel for another single family residence would also displace area on the property that could be used for other agricultural purposes including raising agricultural crops, or conducting firewood operations, which are other principally permitted uses in the RL district. Conditional uses that would be allowed on the RL-zoned subject property include harvesting of hardwood, and cutting and milling of lumber. The applicant's property might be particularly well suited for a woodlot, or hardwood and conifer harvesting and milling due to the wooded nature of the property.

The fact that the land division would enable another residence to be established on the existing legal parcel in the RL-zoned portion of the property that otherwise could not be established would hamper agricultural activities on adjoining properties. The owners of the adjacent H-Bar-H Ranch owned by William and Karen Hay under a Williamson Act contract have submitted a letter to the County, dated August 7, 2002, stating: "A 'new' division should be compatible with existing land uses. We feel that this division next to our historical agriculture use is not appropriate." The letter included a list of the multiple agricultural uses of their property citing 30 years of grazing by cows, sheep, and horses, as well as disking, planting, and harvesting of crops. They make the point that these uses can cause dust in the air. The letter goes on to report use of the ranch for septic surface dumping, spreading, and disking that can cause both dust and odors. Finally, the letter points to use of a private landing strip with take-off and landing occurring directly adjacent to the subject property. The incompatible nature of the existing agricultural operations with use of the applicant's proposed new parcel for a second residence could eventually place pressure on the adjoining ranchers to curtail and reduce their agricultural operations, contrary to LUP policies intended to protect agricultural uses in the coastal zone. Highway One currently provides a logical boundary between rural residential uses and rangeland uses. The proposed land division would compromise this buffer by

allowing for the future establishment of a solely residential use within this large expanse of agricultural lands unrelated to and in conflict with the agricultural uses around it.

In summary, approval of the proposed land division would create two legal parcels from the current 12.36-acre parcel, and result in an inconsistency with the certified LCP provisions of CZC Section 20.368.020, as well as with LUP Policies 3.2-13 and 3.2-15. CZC Section 20.368.020 requires a minimum lot area for RL districts of 160 acres. The portion of the subject property that would become a parcel within the RL-160 zoning classification is only 6.48 acres, far below the minimum required. LUP Policy 3.2-13 requires new parcels created adjacent to Williamson Act Agricultural Preserves to be a minimum of 10 acres in size. The portion of the subject property that would be created into a new parcel located adjacent to property under Williamson Act Agriculture Preserve status would only consist of 6.48 acres, less than the required minimum of 10 acres. LUP Policy 3.2-15 requires all land divisions of prime agriculture lands designated RL to require an approved master plan showing how the proposed division would affect agricultural use on the subject property prior to making required findings that the land division would protect continued agricultural use and contribute to agricultural viability. No master plan has been produced to provide a basis for making required findings. Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.2-13 and 3.2-15 and CZC Section 20.368.020 and must be denied.

2. Availability of Water

LCP Policies

LUP Policy 3.8-9 states:

"Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use."

Mendocino County Coastal Groundwater Study—June 1982 states:

"Areas designated MWR (Marginal Water Resources) shall have a minimum lot size of 5 ac; 'proof of water' not required. All lots less than 5 ac shall be required to demonstrate 'proof of water'.

Discussion

LCP Policy 3.8-9 states that approval of all new parcels shall be contingent upon an adequate water supply during dry summer months that will accommodate the proposed parcels. The existing residence on the parcel to be created seaward of Highway One is served by an existing well. The parcel proposed to be created inland of Highway One currently does not have a well or other developed water supply.

In the early 1980's the Department of Water Resources performed a study of the geology, ground water hydrology, and the availability of water from marine terrace and alluvial deposits and bedrock formations of the Mendocino County coastal area. The findings of the study were presented in a report entitled *Mendocino County Coastal Ground Water Study*, dated June 1982. A map of ground water availability contained in that report indicates that the subject parcel is located in an area mapped as an area of Marginal Water Resources (MWR) where ground water is moderately developed or of limited availability.

Mendocino County certified LCP Policy 3.8-9 states that *"Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982..."* The *Mendocino County Coastal Ground Water Study* states: "The determination of availability of water for a specific development requires professional judgment and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability.... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated MWR (Marginal Water Resources) shall have a minimum lot size of 5 ac; 'proof of water' not required. All lots less than 5 ac shall be required to demonstrate 'proof of water.'" Because the subject parcel that would be created inland of Highway One by the proposed land division would be in excess of 5 acres, demonstration of proof of water is not required to find conformance with LUP Policy 3.8-9.

The Commission finds the proposed land division could be found to be consistent with provisions of LUP Policy 3.8-9 concerning proof of availability of water for new parcels created by land divisions. However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain other LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including policies establishing minimum sizes for new parcels to be created in the RL-160 zone and adjacent to Type II Agricultural Reserves, as well as policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands. Therefore, the proposed development must be denied.

3. Visual Resource Protection

LCP Policies.

LUP Policy 3.5-3 in applicable part states:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-4 as applicable states:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area.

Coastal Zoning Ordinance Section 20.504.015 states, in applicable part:

(C) *Development Criteria.*

- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*
- ...
- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials shall be selected to blend in hue and brightness with their surroundings...*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area.*

...

Discussion:

LUP Policy 3.5-3 indicates that certain mapped areas located between the City of Point Arena and the Gualala River, such as the subject property, are designated as "highly scenic." Portions of the subject property are marked on Land Use Plan Resource Map No. 28 as highly scenic, including all parts of the property seaward of Highway One and those portions of the property inland of the highway that are within view from Highway One. LUP Policy 3.5-3 states that all proposed land divisions within "highly scenic areas" shall be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of the resulting parcel(s) could not be consistent with visual policies. The principal future development that would be accommodated by the proposed land division is the development of a residence on the proposed 6.48-acre parcel to be created northeast of Highway One. As discussed previously, the LCP limits the number of residences to one unit per parcel, and the proposed parcel to be created southwest of Highway One is already developed with a single family residence.

Pursuant to LUP Policy 3.5-3, development within highly scenic areas must be subordinate to the character of its setting and provide for the protection of ocean and coastal views from public areas including, but not limited to, highways. In addition, the proposed 6.48-acre parcel inland of the highway is located on a coastal terrace. LUP Policy 3.5-4 states that the visual impacts of development on terraces shall be minimized

by such means as avoiding development in large open areas and minimizing the number of structures and clustering them near existing vegetation. The proposed 6.48-acre parcel is vegetated with a mature pine forest, which would provide opportunity to locate a future house site behind trees that would effectively screen a future building site from view of Highway One and other public vantage points, particularly if the building site is set back 75 feet or more from Highway One.

Therefore, the Commission finds that the proposed land division could be found to be consistent with the provisions of LUP Policies 3.5-3, 3.5-4, and 3.5-9, and Coastal Zoning Code 20.504.015 concerning development within designated highly scenic areas. However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including policies establishing minimum sizes for new parcels to be created in the RL-160 zone and adjacent to Type II Agricultural Reserves, as well as policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands. Thus, the proposed development must be denied.

4. Alternatives

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. Denial of this amendment request to divide the parcel into two separate parcels would still leave the applicant available alternatives to use the property in a manner that would be consistent with the policies of the LCP.

The applicant currently has a bluff-top home as a primary residence of the 12.36-acre parcel. In addition, the applicant can use the RL-160 zoned portion of the parcel located northeast of the highway for a number of agricultural uses specified as principal permitted uses in the zone including grazing and forage for livestock, raising of crops, and harvesting of firewood for personal use. Viable grazing use of the land may be feasible after thinning hardwoods and conifers from the forested areas and leasing the property to a neighboring rancher for utilization as part of a bigger more economical operation. After securing a coastal development use permit from the County, the applicant could also utilize this portion of the property for any relevant conditionally permitted agricultural use including hardwood and conifer lumber milling, or recreational uses related to and compatible with ranching. All of the above-referenced uses allow the owner economic use of the subject property without developing the proposed new parcel for residential use.

Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

Conclusion of Part II: Denial

The Commission finds that as discussed above, the project as proposed is inconsistent with the Mendocino County certified LCP because (1) the proposed land division would create a 6.48-acre parcel that is less than the 160-acres required by CZC Section 20.368.020 for new parcels created within RL-160 zoning districts, (2) the proposed 6.48-acre parcel is less than the 10 acres required by LUP Policy 3.2-13 for new parcels created adjacent to Williamson Act Agriculture Preserves, and (3) no agricultural master plan has been prepared, submitted, and approved for the proposed land division of prime agricultural lands, inconsistent with the requirements of LUP Policy 3.2-15. The Commission finds that there are no conditions that could be applied that could make the proposed land division consistent with the minimum lot size standards of CZC Section 20.368.020 and LUP Policy 3.2-13. Therefore, the Commission finds that the permit must be denied.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

The proposed project is not consistent with the policies of the certified LCP regarding divisions of land in areas designated and zoned for agricultural use, including policies establishing minimum sizes for new parcels to be created in the RL-160 zone and adjacent to Type II Agricultural Reserves, as well as policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands. There are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Assessor's Map
4. Site Plan
5. Notice of Final Action & Staff Report
6. Appeal
7. H-Bar-H Letter

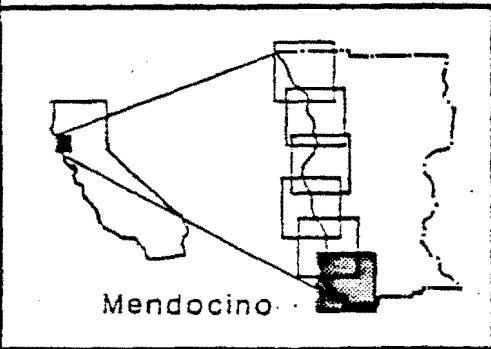
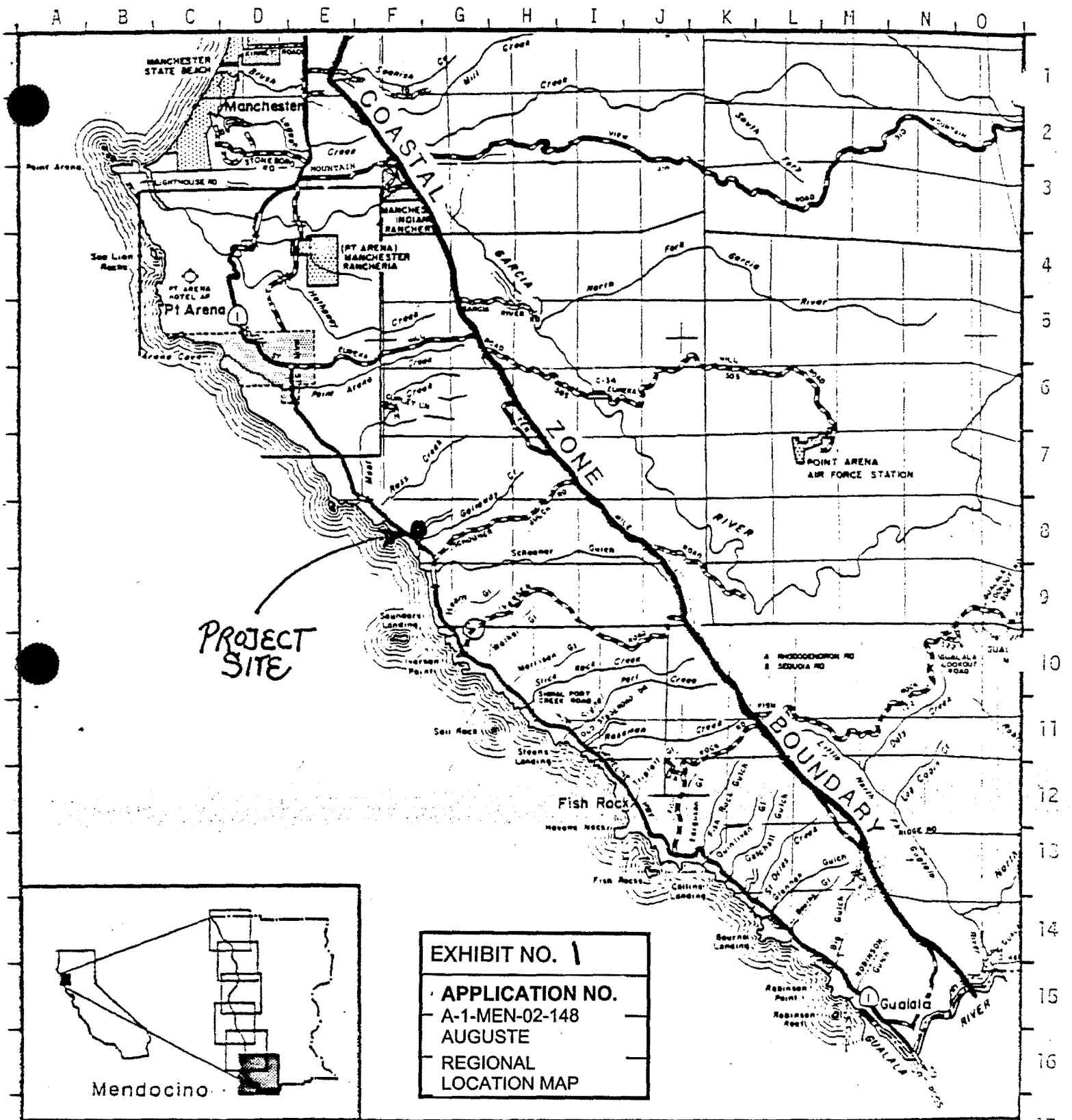
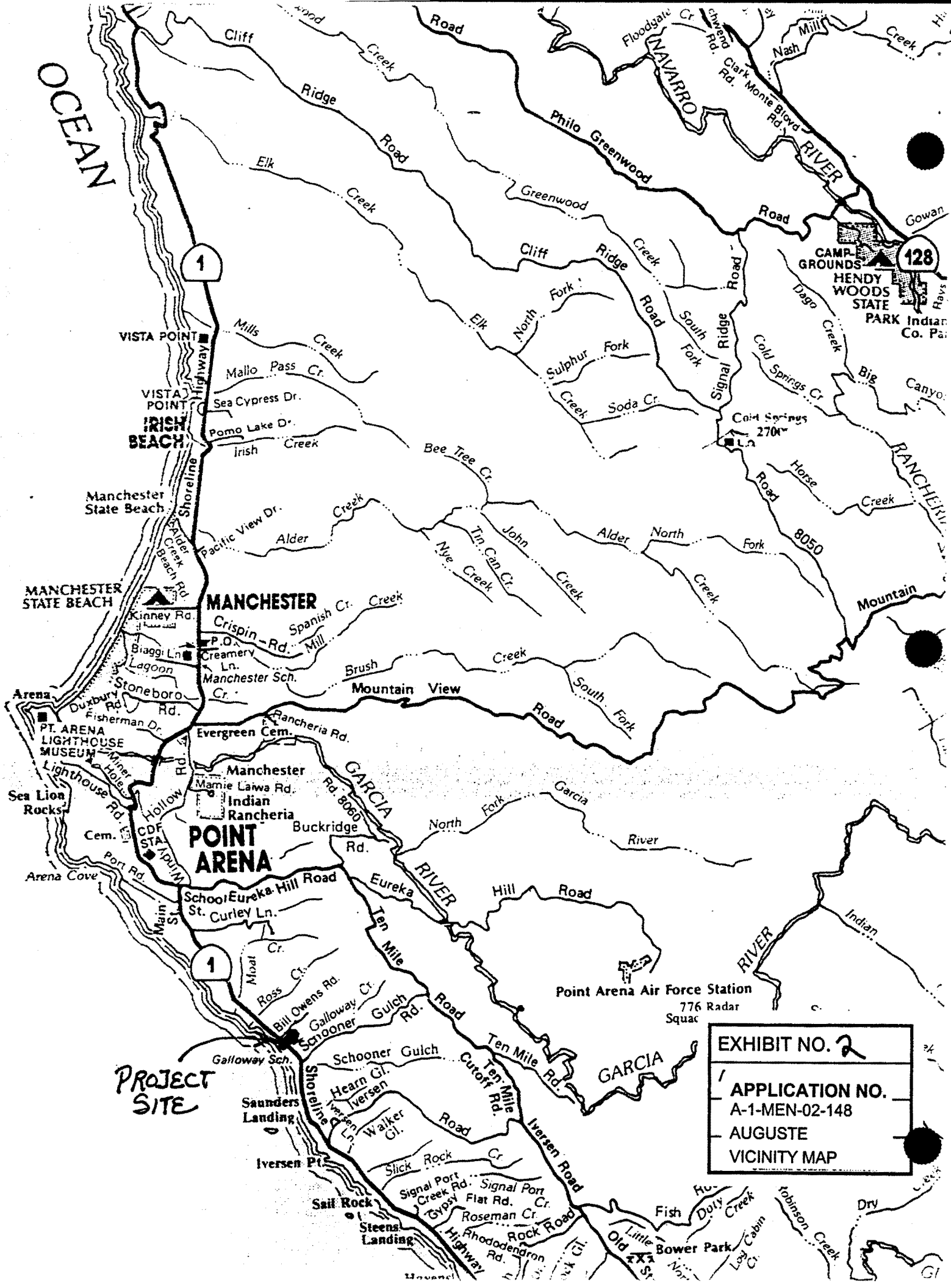


EXHIBIT NO. 1

APPLICATION NO.
A-1-MEN-02-148
AUGUSTE
REGIONAL
LOCATION MAP



PROJECT
SITE

EXHIBIT NO. 2
APPLICATION NO.
A-1-MEN-02-148
AUGUSTE
VICINITY MAP

52-011
52-012

52-011 52-012 42

CE DRI P15
CE DIS P10
CE DIT P11
CE DZI P15

Water's Edge of Old Road

11.63 A[±]

8.0 A[±]

3.25 A[±]

52-011
52-012

5.88 A[±]

390'

17.80 A[±]

1.56 A[±]

52-012
52-011

51

433

44

52-012
52-011

CE DRI P16
Schooner

CE DE P69

Golfway School Lot

Highway

PACIFIC OCEAN

Project Site

NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map
County of Mendocino, Calif.
March, 1974

SEP 08 1998

EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-02-148

AUGUSTE

ASSESSOR'S MAP

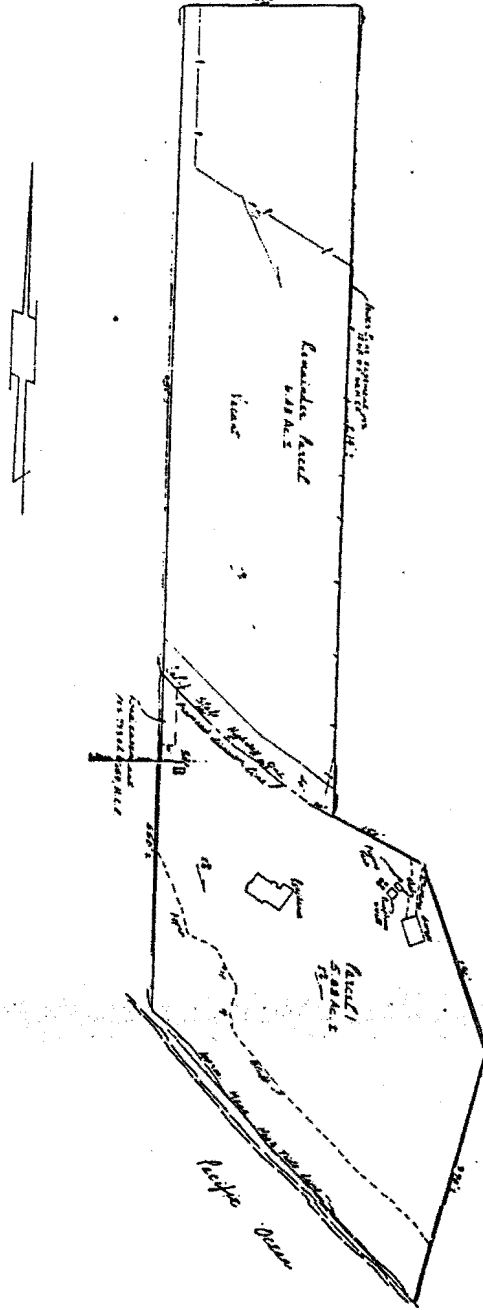


EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-02-148
AUGUSTE
SITE PLAN

CASE NUMBER:	OWNER/APPLICANT: Auguste, Robert & Donna	AGENT: Richard A. Seale
APN: 27-433-04,05	Site Map	NORTH ↑ Not to Scale



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

October 2, 2002

RECEIVED

OCT 28 2002

CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDMS 22-2001

DATE FILED: 10/25/2001

OWNER: ROBERT & DONNA AUGUSTE

AGENT: RICHARD SEALE

REQUEST: Coastal Development Minor Subdivision creating two (2) parcels of 5.88 and 6.48 acres.

LOCATION: Within the Coastal Zone, approximately 3 1/2 miles south of Point Arena, lying on both sides of Highway 1, just north of its intersection with Schooner Gulch Road (CR# 504) and south of Bill Owens Road (Private), located at 28200 and 28155 Highway 1; AP# 027-433-04 and 027-433-05.

PROJECT COORDINATOR: Mary Lynn Hunt

ACTION TAKEN:

The Planning Commission, on September 19, 2002, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: ROBERT & DONNA AUGUSTE
RICHARD SEALE
COASTAL COMMISSION
ASSESSOR

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-02-148
AUGUSTE
NOTICE OF FINAL
ACTION & STAFF
REPORT (1 of 17)

**MENDOCINO COUNTY PLANNING COMMISSION
DRAFT MINUTES
SEPTEMBER 19, 2002**

4D. CDMS 22-2001 – AUGUSTE – South of Point Arena

Request: Coastal Development Minor Subdivision creating two (2) parcels of 5.88 and 6.48 acres.

Mr. Lynch reviewed the staff report and correspondence. He stated that the Air Quality Management District, has advised that they had no issues with the project, and therefore, recommend deletion of Condition Number 1.

Mr. Richard Seale, agent for the application, stated that they have no problem with the conditions of approval. He noted that the owners are trying to get an easement for access off of Bill Owens Road to the Remainder Parcel. He noted if they obtain access from Bill Owens Road, Condition Number 3 should not be required. He handed out aerial photographs and a land use map. He noted that the property has never been used for agriculture. He felt that the owner would maintain a 50 foot buffer from Highway 1 for the highly scenic area. He noted that the property would maintain the native vegetation or be landscaped. He noted that the property is undersized for rangeland and that a portion of the property is heavily wooded.

In response to Commissioner Barth, Mr. Seale noted that the flight pattern from the airstrip, west of the property, is not over the existing house.

The public hearing was declared open and subsequently closed when no one came forward to address the Commission.

In response to Commissioner Calvert, Mr. Lynch noted that the Commission could include a disclosure statement that the property is adjacent to a private landing strip and a wastewater disposal area.

In response to Commissioner Nelson, Mr. Lynch noted that the property could not be further subdivided.

In response to Chairman McCowen, Mr. Seale indicated that the buffer from Highway 1 could be increased to 75 feet.

Commissioner Lipmanson questioned if Coastal Land Division Finding Number 6 could be substantiated. Commissioners noted that the finding could be met due to the buffer and conditions of approval.

RECESS: 11:34 – 11:40 a.m.

Upon motion by Commissioner Lipmanson, seconded by Commissioner Calvert and carried by the following roll call vote, IT IS ORDERED that the Planning Commission adopts a Negative Declaration and approves #CDMS 22-2001 making the following findings and subject to the following conditions of approval:

Environmental Findings: The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project, therefore, a Negative Declaration is adopted.

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General Plan Findings: Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan.

Department of Fish and Game Findings: Because this subdivision would create additional density and intensity of land use and would contribute to the overall reduction in wildlife populations and habitat from a cumulative standpoint, the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents contain information and conditions sufficient to establish, as required by the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The proposed use is compatible with the long-term protection of resource lands.

Coastal Land Division Findings: As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and

3917

5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.
6. The division will protect continued agricultural use and contribute to agricultural viability.
7. The division will not conflict with continued agricultural use of the subject property and the overall operation.
8. The division is only for purposes allowed in AG or RL designations.
9. The division will not contribute to development conflicts with natural resource habitats and visual resource policies.

Project Findings: The Planning Commission, making the above findings, approves #CDMS 22-2001, subject to the following conditions of approval as recommended within the staff report, further finding:

The proposed minor subdivision complies generally with all requirements of the Subdivision Map Act and of the Mendocino County Code, specifically with respect to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Further, finding that the project design is necessitated by topography or other physical conditions.

CONDITIONS OF APPROVAL:

For a Minor Subdivision, which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing an Unilateral Agreement.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

- ~~1. Prior to the development phase of the project, the subdivider shall contact the County of Mendocino Air Quality Management District for a determination as to the need for a District Permit to insure that proper dust control methods for asbestos-containing soils are in place. Written verification from Air Quality Management shall be submitted to the Department of Planning and Building Services stating that the project is in compliance with the District's standards.~~
2. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to October 4, 2002. If the project is appealed, the Department of Planning and Building Services will hold the payment until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

4 of 17

3. A Conditional Certificate of Compliance shall be recorded for the Reminder Parcel concurrent with recording of the Unilateral Agreement. The Conditional Certificate of Compliance shall require that the following condition be met prior the future development of the Remainder Parcel.

Should access be developed from Highway 1 that an encroachment permit be obtained from the Department of Transportation (Caltrans). The driveway shall be constructed per Caltrans requirements.

3. ~~Access to the Remainder Parcel will require an encroachment permit to be obtained from Department of Transportation (Caltrans). The driveway shall be constructed per the Caltrans requirements.~~
4. The subdivider shall comply with those recommendations in California Department of Forestry letter #CDF 513-01 of September 18, 2001 and letter #CDF 629-01 of November 27, 2001 or other alternatives as acceptable to the Department of Forestry. Written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
5. Submit to the Division of Environmental Health an acceptable site evaluation report (DEH Form Number 42.04) for the Remainder Parcel to be completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's "Basin Plan Policy for On-site Waste Treatment and Disposal" and Mendocino County Division of Environmental Health's "Land Division Requirements" (DEH Form Number 26.09. The report shall also include identifying replacement areas for existing on-site sewage disposal systems on parcel which may exist on the project site.
6. If cultural resources are encountered in the course of future ground disturbance, work shall immediately cease, the Mendocino County Archaeological Commission notified and a professional archaeologist consulted per Section 22.12.090 Discoveries of the Mendocino County Code.
7. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater

SPECIAL CONDITIONS OF APPROVAL

1. A notation shall appear on the Unilateral Agreement that the property is adjacent to Agricultural Preserve, a wastewater disposal site, and a private airport, and therefore, may be subject to inconvenience or discomfort arising from agricultural practices, the waste disposal operation, or private airplane flight which occasionally generate dust, noise, smoke and odors.
2. An Exhibit Map shall be submitted to the Department of Planning and Building Services, which shall identify a building envelope on the proposed Remainder Parcel that shall be a minimum of 75 feet from Highway 1 and a minimum of 700 feet from the northerly property boundary.
3. A statement shall be included with the Unilateral Agreement which shall advise of Building Envelopes establishing the following criteria:

5917

- a. "Future Development shall be in conformance with the criteria for development in "highly scenic areas" per Development Standards stated in Chapter 20 of the Mendocino County Zoning Code Chapter 20.504.
- b. "The proposed remainder parcel is adjacent to lands within Agriculture Preserve. No new dwellings shall be sited within 200 feet of lands designated Agriculture Preserve.

AYES: Nelson, Barth, Berry, Little, Calvert, Lipmanson, McCowen
NOES: None
ABSENT: None

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**COUNTY OF MENDOCINO
ENVIRONMENTAL REVIEW GUIDELINES
DRAFT NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT.

DATE: August 19, 2002

CASE#: #CDMS 22-2001

DATE FILED: 10/25/2001

OWNER: ROBERT & DONNA AUGUSTE

AGENT: RICHARD SEALE

REQUEST: Coastal Development Minor Subdivision creating two (2) parcels of 5.88 and 6.48 acres.

LOCATION: Within the Coastal Zone, approximately 3 1/2 miles south of Point Arena, lying on both sides of Highway 1, just north of its intersection with Schooner Gulch Road (CR# 504) and south of Bill Owens Road (Private), located at 28200 and 28155 Highway 1; AP# 027-433-04 and 027-433-05.

PROJECT COORDINATOR: Mary Lynn Hunt

II. DETERMINATION.

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a **NEGATIVE DECLARATION** be adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

7917

STAFF REPORT FOR COASTAL DEVELOPMENT MINOR SUBDIVISION

#CDMS 22-2001
SEPTEMBER 19, 2002
PAGE PC-1

OWNER: ROBERT & DONNA AUGUSTE
28200 SOUTH HWY 1
POINT ARENA, CA 95468

AGENT: RICHARD SEALE
420 REDWOOD AVE
FORT BRAGG, CA 95437

REQUEST: Coastal Development Minor Subdivision creating two (2) parcels of 5.88 and 6.48 acres.

LOCATION: Within the Coastal Zone, approximately 3 1/2 miles south of Point Arena, lying on both sides of Highway 1, just north of its intersection with Schooner Gulch Road (CR# 504) and south of Bill Owens Road (Private), located at 28200 and 28155 Highway 1; AP# 027-433-04 and 027-433-05.

TOTAL ACREAGE: 12.36+- acres

ZONING: RL-160 and RR-5:DL

ADJACENT ZONING: North and East: RL-160 and RMR-20
South: Ocean
West: RL-160 and RR-5

GENERAL PLAN: RL-160 and RR-5

SURROUNDING LOT SIZES: North: 5044 to 77.7 acres
East: 17.8 to 86.34 acres
South: Ocean
West: 3.25 to 11.63

EXISTING USES: Residential

SURROUNDING LAND USES: North, East and West: Residential
South: Ocean

SUPERVISORIAL DISTRICT: 5

GOV. CODE 65950 DATE: September 15, 2002

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: None

PROJECT DESCRIPTION: The applicant is requesting a Coastal Development Minor Subdivision creating two parcels lying within the Coastal Zone. The proposed 5.88+- acre parcel which lies south west of Highway 1, is zoned Rural Residential - 5 acre minimum: Development Limitation (RR-5:DL). The proposed 6.48+- acre parcel lying north east of Highway 1, is zoned Rangeland - 160 acre minimum (RL-160). The project site is located approximately 3.5 miles south of Point Arena, just north of the intersection of Highway 1 and Schooner Gulch Road.

That portion lying south west of Highway 1 is improved with a single-family residence, garage, on-site septic and water, and various accessory structures. Access is from an existing driveway directly off the highway.

8917

The proposed parcel lying east of the highway is vacant. Proposed access to this parcel would be directly off of Highway 1.

ENVIRONMENTAL REVIEW:

Air Quality (Item 2A): The Air Quality Management District has reviewed the application and expressed in a memorandum dated November 27, 2001, that the project will add cumulatively to the air pollution in Mendocino County resulting from wood stove and fireplaces, additional traffic generated by the project, grading activities associated with the development phase of the project and increased particulate matter generated by the use of unpaved roads. To insure that air quality regulations are met, it is recommended that prior to the development phase of the project, the subdivider contact the Air Quality Management District for a determination as to the need for a District Permit. Condition Number 1 is recommended to insure that proper air quality measures are established and maintained.

Plant and Wildlife (Items 4A, 4B, 4C, 4D, 5A, 5B, 5C and 5D): Based upon staff's review of the project, the Biological Resource Maps and the Natural Diversity Data Base has been determined that the project does not contain evidence of sensitive wildlife habitat. The Department of Fish and Game has reviewed the project and has offered no response as to potential impacts upon wildlife habitat. However, given the potential for future development on the Remainder Parcel, staff is of the opinion from a cumulative standpoint that the project could result in impacts to wildlife resources. Therefore, the "de minimis" finding cannot be made and the project will be subject to filing fees required by Fish and Game Code Section 711. (See Condition Number 2)

Planning Criteria/Land Use (Item 8A): The following is an assessment of the pertinent policies of the Local Coastal Plan, which relate to this project.

- **Zoning:** The property is split zoned as noted above project description. That portion lying north east of Highway One, the designated Remainder Parcel, is zoned Rangeland - 160 acre minimum (RL-160) and would consist of 6.48+- acres. Due to the size of the proposed Remainder Parcel, it could be concluded that the project would not be consistent with the Land Use Maps. However, a long standing policy of the County has been to permit division of split zoned property provided that the parcel size is consistent on at least one side of the division line. In this case, the area south west of the highway, Parcel 1 (5.88 acres), is consistent with the RR-5 Land Use designation. While staff does certainly acknowledge merit to alternative interpretations of this policy, at this time staff does not recommend changing the policy for an individual project. Rather, merits of the policy should be viewed on a broader basis.
- **Market Area Buildout:** The parcel to be divided lies within the rural portion of the Coastal Zone, and therefore, is subject to the 50 percent build out criteria specified in Policy 3.9-2. This Policy defines market areas for assessment of existing build out of available parcels, and requires that at least 50 percent of the existing usable parcels within the area be developed prior to approval of any new division. The parcel lies within Market Area 4 as defined in the Policy 3.9-2. By staff's most recent count (March 2002), Market Area has a present build out of 53.8 percent. Therefore, the proposed division is consistent with Coastal Element Policy 3.9-2(b) and no mitigation is required.
- **Coastal Access:** The Coastal Element addresses specific planning areas along the coast, specifically noting within the Schooner Gulch/Bowling Ball Beach area the following issues:

Location: 3.3 miles south of Point Arena.

Ownership: Private. Auguste has recorded an offer of dedication for lateral, blufftop access just north of Bowling Ball Beach.

Characteristics: Path from highway turnout leads to sandy beach at Schooner Gulch. Bowling Ball Beach to north is named for 3-foot diameter rocks that have eroded from sandstone bluff and are lined up in shallow crevices below like rows of bowling balls.

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Potential Development: In 1974, Department of Parks and Recreation prepared acquisition plan for about 80 acres, but no action has been taken. The Department of Parks and Recreation development for day use would provide the only pocket beach state park south of Greenwood Creek. The area is suited to heavy use that would be attracted by the "bowling balls".

- Policies: The California State Department of Parks and Recreation shall be requested to place the Schooner Gulch/Bowling Ball Beach site on their high priority acquisition list. The portion of the proposed purchase located east of Highway One should avoid displacing existing residents and should provide an adequate parking area with access off Schooner Gulch Road and linked to the area west of Highway One via the existing undercrossing.
- 4.11-18
- 4.11-19 The offers of dedication for the 10 foot lateral blufftop and one 25 foot vertical access (existing roadway) on the parcel opposite Bowling Ball Beach (Auguste) shall be accepted for a blufftop trail and shall be opened for public use when maintenance and liability for the trail are assumed by an appropriate entity. Offers of dedication for public access shall be obtained on adjacent parcels where the proposed trails are shown on the Land Use Plan Map consistent with Policy 3.6-5. If the Elliot permit is issued, the offers to dedicate easements for public access should be accepted by an appropriate entity.

As noted, the applicants under a previous land use application (Coastal Development Permit #A 29-79), recorded an Irrevocable Offer to Dedicate across the bluff face. This offer is proposed to connect with other bluff top properties in the project area to form coastal trail. While, since 1979, the interpretations of law have changed regarding the ability of government to exact such offers, this project would have no impact on the existing easement offer. Further, staff has no knowledge of any pending acquisition of land in the area by the State.

- Agriculture: The proposed Remainder Parcel shares a common corner with a property under a Type II Agricultural Preserve contract at the northwest corner of the property. Coastal Element Policy 3.2-13 states:

"Limit residential uses and subdivisions adjacent to Type II Agricultural Preserve to a low density standard to provide a buffer to minimize the conflicts between agricultural operations and residential land uses. New parcels created adjacent to an Agricultural Preserve shall be limited to a ten (10) acre minimum. For parcels beyond the 10 - acre minimum buffer (parcels which would be separated from the Agricultural Preserve by the buffer), the minimum parcel size would be dictated by the land use classification and applicable policies of the Coastal Element.

If parcels adjacent to Type II Agricultural Preserve are designated Clustering (:CL) or Planned Development (:PD), the density will be dictated by the General Plan Land Use classification provided that the residential development is located not closer than 200 feet from the property line(s) of the protected agricultural resource or at the farthest feasible point from said property line(s). For residential development within 200 feet of the agricultural parcel(s), density shall not exceed one dwelling unit per 10 acres. (There shall be a minimum of 10 acres of lot area for each dwelling unit located within the 200 foot limit). Approval of any land divisions shall be consistent with Policy 3.9-2 and only when the creation of new parcels at the proposed acreages will not adversely affect the long term productivity of agricultural lands."

While recognizing that the points of contact with the agricultural preserve property is theoretically a single point, the lot size created by this division would be in conflict with this policy. The neighboring land within the Williamson Act contract is the H-Bar-H (William and Karen Hay) Ranch, with the particular portion adjacent containing lands used for grazing, septic waste disposal site, and their private landing strip. The area around the property is used for grazing. The subject parcel is a total of 12.36+- acres, which complies with the policy. While it may appear that the "reality" of the property being split zoned and divided by the highway makes this a "natural" split, this policy conflict illustrates that perhaps the existing configuration is justified as the highway provides the buffer separating the residential from the resource land areas.

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The adopted Coastal Land Use Maps indicate that the property contains prime agricultural land. This is defined within the Government Code as essentially lands containing prime agricultural soils, similar to those defined within the County's regulations regarding standards for admission to a Williamson Act (Agricultural Preserve) contract. Coastal Element Policy 3.2-15 states:

"All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel."

Staff has been advised that no current agricultural use of the land is currently being conducted. No "master plan" has been submitted to discuss the potential agricultural use of the property. Per the applicant's agent, the property has been within the applicant's ownership since the late 1970's and there has never been an agricultural use of the land. The property northeast of the highway is fairly well covered by a pine forest, thereby limiting grazing use. While no history of agricultural use on the individual parcel is evident, potential conflict with a more area wide encroachment of non-residential uses may exist. This encroachment may potentially conflict with the policies of the Coastal Element.

Should the necessary findings be made finding that no conflict exists, the Planning Commission will need to support the above findings. Special Conditions Number 1, 2 and 3b would be recommended to mitigate impacts upon neighboring agricultural lands.

Transportation (Items 12A, 12C, and 12F): Proposed Parcel 1 has an existing driveway off of Highway 1. At present, the remainder parcel has no developed access. The property appears to border on Bill Owens Road, a private road extending east from Highway One, however, the property does not have an easement to use this road. Caltrans has offered a "No Comment" on this project. However, staff would recommend Condition Number 3 to mitigate impacts upon traffic circulation and traffic safety from increased residential traffic generated by the project.

Public Services (Item 13A): The project site lies within the jurisdiction of the California Department of Forestry and Fire Protection (CDF) and has a "Moderate" Fire Hazard Severity Rating. CDF has reviewed the project and has recommended fire safe standards be established and maintained. Condition Number 4 is recommended to minimize hazards to and from future residential development of the project site.

Utilities Water Availability (Item 15A): The Mendocino County Coastal Groundwater Study prepared in 1982, by the Department of Water Resources indicated the property to be in an area designated as "Marginal Water Resources" (MWR). The study states that areas designated MWR shall have a minimum lot size of 5 acres; "proof of water" not required. All lots less than 5 acres shall be required to demonstrate "proof of water".

The Division of Environmental Health has stated, "The originating parcel is within MWR water regime area. Therefore, it both new parcel are greater than 5 acres, no water quantity testing is required." No mitigation is required.

Utilities (Item 15B - Sewerage): The Division of Environmental Health has reviewed the project and compliance with recommended Condition Number 5 will mitigate potential adverse impacts upon water quality from the placement of an additional septic systems on the property.

Aesthetics (Item 17A): The project site is within a "conditional" highly scenic area and, therefore, subject to Coastal Element Policies 3.5-3, 3.5-4, 3.5-8 and 3.5-9 which limit development within highly scenic areas. The project site is "conditional" in that only those areas within view from Highway One are subject to the development criteria within the above policies. The standards established by these policies is to insure that development is within scale and character of the surrounding area.

11-9-17

The project site is located on a coastal terrace, which is fairly level. A PG&E power line crosses the Remainder Parcel within the northerly 1/3 of the parcel. The Remainder Parcel is vegetated with a mature pine forest, which would effectively screen a future building site. To comply with any agricultural buffer setback, the building site would have to be sited southerly of the power easement. Staff would recommend that a note be placed on the unilateral agreement disclosing the need to maintain a vegetative buffer between the building site and the highway to minimize visual intrusion into the otherwise rural setting. (See Special Condition 3a)

Archaeological (Items 19A, 19B and 19C): The Mendocino County Archaeological Commission recommended that a survey be prepared. The Commission, at their March 13, 2002 meeting, accepted the Archaeological Survey prepared by Archaeological Services, Inc. The study concluded, "No archaeological resources were discovered within the survey boundaries". Condition Number 6 will mitigate concerns with regards to archaeological resources.

OTHER INFORMATION: Section 17-52(F) of the County Land Division Regulations states:

No lot shall have a depth of greater than three (3) times the average width of the lot; provided, however, that the Planning Commission may approve greater width-depth ratios when necessitated by topography or other physical conditions, or where property is to be used for commercial or industrial purposes.

As the property currently exists, and as proposed, the Remainder Parcel would be, greater than the 3 to 1 average. Given the existing configuration, should the project be approved, staff would not have any specific objection to adoption of the above finding.

GENERAL PLAN CONSISTENCY REVIEW: As discussed above, under the specific environmental study criteria, the proposed project is potentially inconsistent with Coastal Element Policies dealing with agricultural buffers, use of prime agricultural lands, and highly scenic development criteria. Therefore, staff recommends denial of the project.

RECOMMENDED ACTION: Staff recommends denial of #CDMS 22-2001 due to failure of the project to comply with Coastal Element Policy 3.2-13 (agricultural preserve buffer) and 3.2-15 (use of prime agricultural land).

RECOMMENDED MOTION: The Planning Commission finds that the tentative map submitted for #CDMS 22-2001 conflicts with Coastal Element Policy 3.2-13 (agricultural preserve buffer) and 3.2-15 (use of prime agricultural land), and therefore, denies #CDMS 22-2001.

ALTERNATIVE MOTION: Should the Planning Commission find that consistency with the Coastal Element can be achieved, the following alternative motion is offered:

Environmental Findings: The Planning Commission finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project, therefore, a Negative Declaration is adopted.

General Plan Findings: Pursuant to Section 66473.5 of the California Government Code, the Planning Commission finds the proposed subdivision, together with the provisions for its design and improvement is consistent with the applicable goals and policies of the General Plan.

Department of Fish and Game Findings: Because this subdivision would create additional density and intensity of land use and would contribute to the overall reduction in wildlife populations and habitat from a cumulative standpoint, the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents contain information and conditions sufficient to establish, as required by the Coastal Zoning Code, that:

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1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The proposed use is compatible with the long-term protection of resource lands.

Coastal Land Division Findings: As required by Section 20.532.100(C), the Planning Commission further finds that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septic disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.
6. The division will protect continued agricultural use and contribute to agricultural viability.
7. The division will not conflict with continued agricultural use of the subject property and the overall operation.
8. The division is only for purposes allowed in AG or RL designations.
9. The division will not contribute to development conflicts with natural resource habitats and visual resource policies.

Project Findings: The Planning Commission, making the above findings, approves #CDMS 22-2001, subject to the following conditions of approval as recommended within the staff report, further finding:

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The proposed minor subdivision complies generally with all requirements of the Subdivision Map Act and of the Mendocino County Code, specifically with respect to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Further, finding that the project design is necessitated by topography or other physical conditions.

STANDARD CONDITIONS OF APPROVAL:

For a Minor Subdivision, which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing an Unilateral Agreement.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

1. Prior to the development phase of the project, the subdivider shall contact the County of Mendocino Air Quality Management District for a determination as to the need for a District Permit to insure that proper dust control methods for asbestos-containing soils are in place. Written verification from Air Quality Management shall be submitted to the Department of Planning and Building Services stating that the project is in compliance with the District's standards.
2. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to October 4, 2002. If the project is appealed, the Department of Planning and Building Services will hold the payment until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
3. Access to the Remainder Parcel will require an encroachment permit to be obtained from Department of Transportation (Caltrans). The driveway shall be constructed per the Caltrans requirements.
4. The subdivider shall comply with those recommendations in California Department of Forestry letter #CDF 513-01 of September 18, 2001 and letter #CDF 629-01 of November 27, 2001 or other alternatives as acceptable to the Department of Forestry. Written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
5. Submit to the Division of Environmental Health an acceptable site evaluation report (DEH Form Number 42.04) for the Remainder Parcel to be completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's "Basin Plan Policy for On-site Waste Treatment and Disposal" and Mendocino County Division of Environmental Health's "Land Division Requirements" (DEH Form Number 26.09). The report shall also include identifying replacement areas for existing on-site sewage disposal systems on parcel which may exist on the project site.
6. If cultural resources are encountered in the course of future ground disturbance, work shall immediately cease, the Mendocino County Archaeological Commission notified and a professional archaeologist consulted per Section 22.12.090 Discoveries of the Mendocino County Code.

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7. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater

SPECIAL CONDITIONS OF APPROVAL

1. A notation shall appear on the Unilateral Agreement that property adjacent to Agricultural Preserve may be subject to inconvenience or discomfort arising from agricultural practices which occasionally generate dust, noise, smoke and odors.
2. An Exhibit Map shall be submitted to the Department of Planning and Building Services, which shall identify a building envelope on the proposed Remainder Parcel.
3. A statement shall be included with the Unilateral Agreement which shall advise of Building Envelopes establishing the following criteria:
 - a. "Future Development shall be in conformance with the criteria for development in "highly scenic" per Development Standards stated in Chapter 20 of the Mendocino County Zoning Code Chapter 20.504.
 - b. "The proposed remainder parcel is adjacent to lands within Agriculture Preserve. No new dwellings shall be sited within 200 feet of lands designated Agriculture Preserve.

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED PARCEL MAP OR UNILATERAL AGREEMENT IS RECORDED BY THE COUNTY RECORDER.

8-19-02

DATE

Mary Lynn Hunt

MARY LYNN HUNT
PLANNER I

MLH:sb
8/19/2002

Negative Declaration

Appeal Fee - \$600.00
Appeal Period - 10 days

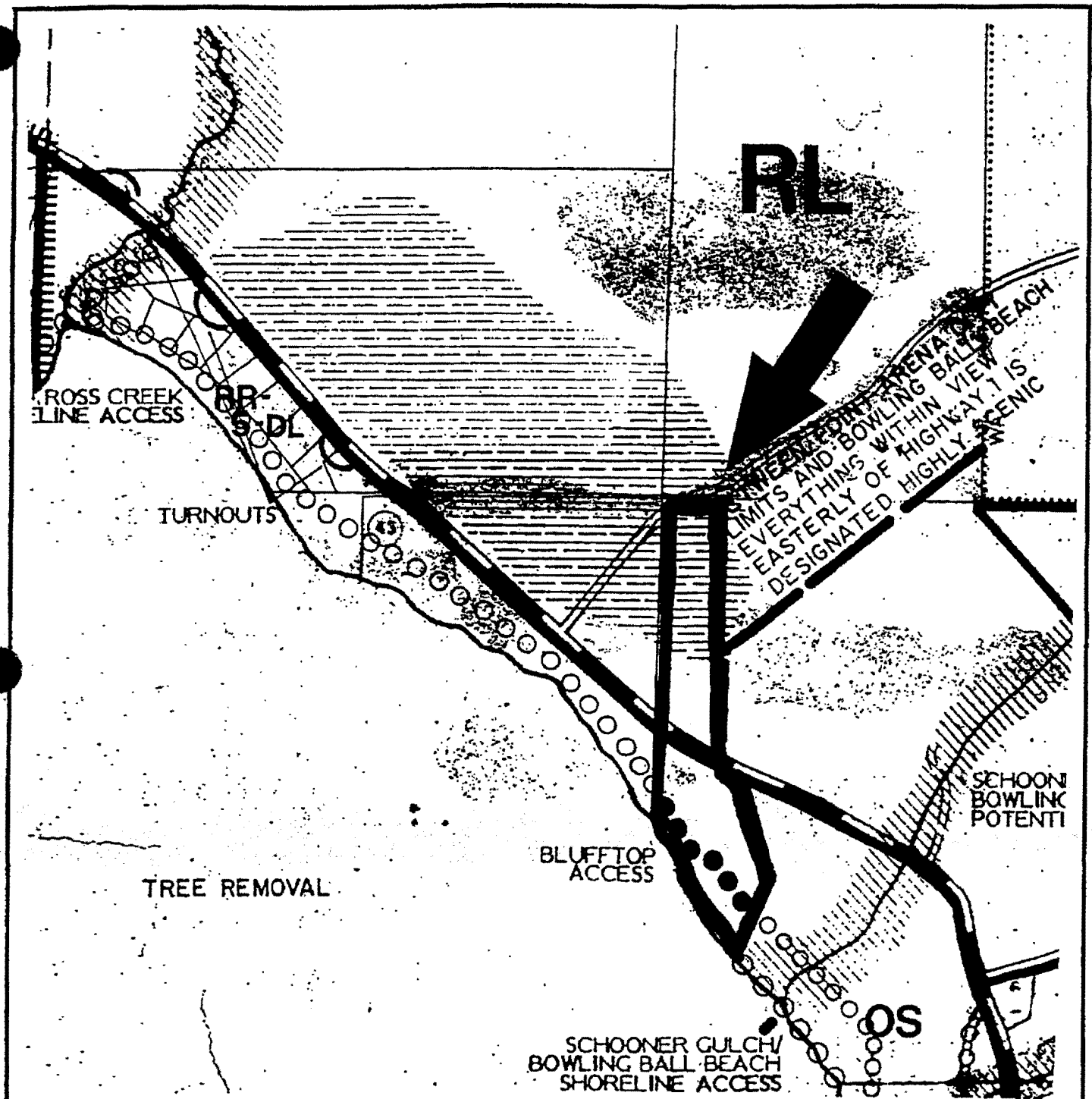
** Indicates conditions relating to Environmental Considerations - deletion of these conditions may effect the issuance of a Negative Declaration.

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REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
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Public Works			At MSC
Env. Health			At MSC
Building Inspection		X	
Air Quality Management			X
Arch Commission			X
Sonoma State University			X
Caltrans		X	
Dept. of Forestry			X
Dept. of Fish & Game	X		
Coastal Commission	X		
Planning - FB (Coastal Access)			X

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CASE NUMBER: # CDMS 22-01	OWNER/APPLICANT: Auguste, Robert & Donna	AGENT: Richard A. Seale
APN: 27-433-04,05	Blayney-Dyett Map #28	NORTH ↑ Not to Scale

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET - SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1965

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECEIVED

OCT 17 2002

CALIFORNIA
COASTAL COMMISSIONAPPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Friends of Schooner Gulch Box 4 Pt Arena95468(707)882-2001

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: Mendocino County2. Brief description of development being
appealed: Minor Sub. CDMs 22-2001 to create 2 parcels,
including 1 6.48 ac. parcel in RL-160 zone.3. Development's location (street address, assessor's parcel
no., cross street, etc.): 28200 & 28155 Hwy 1, AP 027-433-04
& 027-433-05, 1/4 mi. N. of Schooner Gulch Rd.

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: ✓
- c. Denial: _____

Note: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-02-148DATE FILED: 10/17/02DISTRICT: North Coast

H5: 4/88.

EXHIBIT NO. 6

APPLICATION NO. _____

A-1-MEN-02-148

AUGUSTE

APPEAL (1 of 3)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☒ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: SEPT. 19, 2002

7. Local government's file number (if any): CDMS 22-2001

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robt + Donna Auguste, 28200 S. Hwy 1, Pt Arena 95468
RICHARD Seale, 420 Redwood Ave, Ft Bragg Ca 95437

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Mendo-Lake Sierra Club, Roanne Withers,
Box 2330, FT BRAGG CA 95437

(2) ICO, attn, Julie Verran, Box 1200, Gualala Ca
95445

(3) California State Parks, Ron Munson, Box 440,
Mendocino CA 95460

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The Planning Commission erred in approving a
new 6+ acre parcel in the RL-160 zone (20.348.
020), and next to an Agricultural Preserve (Coastal
Element Policies 3.2-13 & 15).

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Pats Reinmuller for
X Friends of Schooner Gulch

Signature of Appellant(s) or
 Authorized Agent

Date X 10/15/02

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Mendo-Lake Sierra Club / Roanne Withers to act as my/our representative and to bind me/us in all matters concerning this appeal.

Pats Reinmuller for Friends of
Schooner Gulch

Signature of Appellant(s)

Date 10/15/02

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Bill & Karen Hay
27201 So. Hwy 1
Gualala, Cal. 95445
Aug. 7, 2002

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-02-148
	AUGUSTE
	H-BAR-H LETTER
	(1 of 2)

County of Mendocino
Dept. of Planning and Building
501 Low Gap Rd.
Rm. 1440
Ukiah, Cal. 95482

Ref: Robert & Donna Auguste
#CDMS 22-01

Dear Frank:

Thank you for faxing the maps to us. Our property, that touches the corner of Bob and Donna, has been used through the years in a variety of ways. We want both the County and Bob and Donna to know about the multiple uses of our land.

Land use:

- 1) Cows, sheep, and horses have grazed on our property for the past 30 yrs.
- 2) In the past 30 yrs. we have disked, planted, and harvested crops off of this property. At times this can cause dust in the air.
- 3) For many years, we have had septic surface dumping, spreading, and disking on this property. This can cause dust in the air and periodic orders. (Separate sheet FAXED)
- 4) Our airport on this land has been used for two generations of our family. Some of Bob & Donna's property is located in the landing and take-off pattern of the planes. The strip has been used both day and night all these years. There is a sound made by planes when landing and taking off.

Comments:

Since the surrounding properties have been agriculture for more than 50 years, great consideration should be given to this project. A "new" division

should be compatible with existing land uses. We feel that this division next to our historical agriculture use is not appropriate.

Does the Coastal Commission allow landowners to divide small acreage down into even smaller parcels now? What about water? The wells in our area do not produce very many gallons per minute. Is there enough water to support other houses?

Thank you,
Bill & Karen Hay

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