

**CALIFORNIA COASTAL COMMISSION**

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| Staff:                 | Randall Stemler    |
| Staff Report:          | September 25, 2003 |
| Hearing Date:          | October 8, 2003    |
| Commission Action:     |                    |

**STAFF REPORT: PERMIT AMENDMENT**

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|--|--|
| APPLICATION NO.:                               | <b>1-89-148-A3</b>   |
| APPLICANT:                                     | <b>ARTHUR CIANCUTTI</b>  |
| APPLICANT'S AGENT:                             | Ed Powers  |
| PROJECT LOCATION:                              | 9401 North Highway One, near Brewery Gulch<br>approximately one mile south of the town of<br>Mendocino, and east of Mendocino Bay,<br>Mendocino County (APN 119-320-11).   |
| DESCRIPTION OF PROJECT<br>PREVIOUSLY APPROVED: | Ten-unit inn with auxiliary buildings<br>(meeting/recreation, water tower, laundry/storage),<br>and expansion of an existing, off-site septic system<br>and construction of a water system. The permit was<br>subsequently amended two times: 1) to authorize<br>drilling of a test well; and modify special conditions<br>for "prior to issuance" to "prior to occupancy" for<br>submittal of a water appropriation permit and<br>recordation of easements to transfer groundwater<br>from one parcel to another; and 2) to convert a test<br>well to a production well |

DESCRIPTION OF

AMENDMENT REQUEST:

Creation of two, small, lined ponds including 1) a 60-foot-long by 15 to 25-foot-wide by 2 ½-foot-deep, shallow "water garden" pond for growing native and edible plants; and 2) a 40-foot long by 30-foot-wide by 4-foot-deep landscaping/fire suppression pond; and installation of a well and pipelines to serve as a water source for the two ponds.

GENERAL PLAN DESIGNATION:

Rural Residential, 5-acre, \*1C

ZONING DESIGNATION:

Rural Residential, 5-acre, \*1C

LOCAL APPROVALS RECEIVED:

Mendocino County Use Permit #36-88

SUBSTANTIVE FILE DOCUMENTS:

Mendocino County Local Coastal Program CDP#s 1-89-148, 1-89-148-A, and 1-89-148-A2 (Ciancutti); CDP# 1-90-66 (Ciancutti)

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission approve, with conditions, the requested amendment to the coastal development permit previously granted for construction of a ten-unit inn with auxiliary buildings (meeting/recreation, water tower, laundry/storage), the expansion of an existing, off-site septic system and the construction of a water system, located at 9401 North Highway One, near Brewery Gulch approximately one mile south of the town of Mendocino and east of Mendocino Bay, in Mendocino County.

The amendment request seeks authorization for 1) creation of a shallow "water garden," pond approximately 60 feet long by 15-25 feet wide by 2 ½ feet deep with a pond liner for growing native and edible plants; 2) creation of a landscape/fire suppression pond and improvement to expand the pond to be 40 feet long by 30 feet wide by 4 feet deep with a pond liner; and 3) installation of a well and a pipeline and authorization for additional portions of pipeline to serve as a water source for the two ponds. The application seeks after-the-fact authorization for a portion of the landscape/fire suppression pond, the well, and a portion of the pipeline.

Staff is recommending two special conditions to ensure that the development as amended is consistent with the certified LCP. The previous permit as amended imposed seven special conditions, which remain in effect. Special Condition No.8 would require the applicant to submit, prior to the issuance of the permit, final construction plans prepared by a licensed

landscape architect in consultation with the California Department of Parks and Recreation demonstrating that the appropriate sedimentation and erosion control measures are incorporated into the project and that no invasive non-native plants are grown in the proposed water garden pond. These requirements would ensure that the development does not cause significant adverse effects on nearby environmentally sensitive wetland habitat. Special Condition No. 9 would require compliance with Special Condition No. 8 within 180 days to ensure timely authorization of the un-permitted development that occurred on the site.

As conditioned, staff has determined that the proposed development as amended would be consistent with the certified Mendocino County LCP.

**STAFF NOTES:**

**1. Procedure and Background:**

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and procured before the permit was granted.

Coastal Development Permit No. 1-89-148 (Ciancutti) was approved for construction of a ten-unit inn with auxiliary buildings (meeting/recreation, water tower, laundry/storage), the expansion of an existing, off-site septic system and the construction of a water system (Exhibit No. 5). The Commission granted authorization for this development on June 13, 1990 with five (5) special conditions. Special Condition No. 1 required submittal of a landscape plan for management of the forest surrounding the site of the ten-unit inn as well as annual monitoring reports to Commission staff, with the goal of protecting visual resources. Special Condition No. 2 required submittal of (1) an appropriation permit from the State Water Resources Control Board for the proposed withdrawal of water to serve the development from nearby Barton Creek, and (2) a streambed alteration agreement from the Department of Fish and Game for this proposed water diversion. Special Condition No. 3 required the recordation of deeded easements for groundwater supply and septic disposal. Special Condition No. 4 involved the recordation of a deed restriction requiring all future development on the property to secure an amendment to CDP No. 1-89-148. Special Condition No. 5 required the abandonment of the four-unit inn on the southern parcel as a visitor-serving use within 30 days of completion of the ten-unit inn. All of the special conditions were eventually met and/or remain in effect after several permit extensions and two permit amendments. The coastal development permit was issued on August 24, 1993. Amendment No. 1-49-148-A was approved in 1991 for drilling a test water well and modifying Special Condition Nos. 2 and 3 from "prior to issuance" to "prior to occupancy" requirements (Exhibit No. 5). Amendment No. 1-49-148-A2 was approved in 1999 for converting an existing on-site water well drilled as a test well to a production well for use as the primary water source for the inn (Exhibit No. 5).

The current amendment seeks authorization to construct two small, lined, ponds for the purposes of providing a "water garden" as well as a landscape/fire suppression reservoir fed by piped water from a nearby well drilled for that purpose. The proposed development would not be located in an area identified as forestland previously intended for providing visual screening of the inn consistent with provisions imposed by Special Condition No. 1 of the original coastal development permit. In addition, development of the proposed ponds and well are functionally unrelated to Special Condition Nos. 2 and 3 of the original permit requiring a water appropriation permit, streambed alteration permit, and recordation of deeded easements for groundwater supply as the new well would create a water source for the proposed ponds that is completely separate from the water source that serves the inn itself. Furthermore, submittal of the amendment request is consistent with Special Condition No. 4 of the original CDP requiring all future development on the property to secure an amendment to CDP No. 1-89-148. No other findings or special conditions of the original permit as amended conflict with the proposed amendment.

Since this amendment request would not result in a lessening or avoidance of the intent of the originally approved permit, the Executive Director accepted the amendment request for processing.

## **2. Standard of Review**

The original permit was approved by the Commission in 1990 prior to certification of the Mendocino County LCP. The standard of review for the project at that time was the policies of Chapter 3 of the Coastal Act. The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective certification of a certified LCP, the standard of review for all coastal permits and permit amendments for developments not located between the first public road and the sea is the certified LCP.

## **3. Scope**

This staff report addresses only the additional coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources and achieve consistency with the certified LCP, and provides findings for conditional approval of the amended development. All other analysis, findings, and conditions related to the originally permitted project and amendments 1-89-148-A and 1-89-148-A2, except as specifically affected by the proposed permit amendment and addressed herein, remain as adopted by the Commission on June 13, 1989, July 17, 1991, and November 1999, respectively (Exhibit No. 5).

## **4. Permit Streamlining Act**

The Commission must act on the coastal development permit application at the October 2003 hearing to meet Streamlining Permit Act requirements.

**I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-89-148-A3 pursuant to the staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT AMENDMENT:**

The Commission hereby approves the coastal development permit amendment and adopts the findings set forth below on grounds that the development as amended and subject to conditions will be in conformity with the policies of the certified Mendocino County Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

**II. STANDARD CONDITIONS: (See Attached Appendix)**

**III. SPECIAL CONDITIONS:**

**NOTE:** Special Condition Nos. 8 and 9 are new conditions attached to the permit amendment. The original CDP No. 1-89-148 contained five (5) special conditions. CDP No. 1-89-148-A contained an additional two (2) special conditions. All seven (7) of these previously imposed special conditions remain in effect (Exhibit No. 5).

**8. Final Pond Design and Construction Plans**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, final design and construction plans for the development of the two small ponds that will be supplied by piped well water. The plans submitted by the applicant shall be prepared by a licensed landscape architect in consultation with the California Department of Parks and Recreation.

1. The plans shall demonstrate that:
  - (a) the pond construction will be performed pursuant to a detailed final landscaping plan,
  - (b) no invasive exotic vegetation will be planted on the site,
  - (c) a silt fence will be correctly installed along the northwestern edge of the existing wetland to avoid siltation during project construction activities and protect the delineated wetlands from significant adverse effects of the proposed development,
  - (d) no fill material or construction equipment shall be allowed to enter the existing wetland.
2. The plans shall include, at a minimum, the following components:
  - (a) design and implementation specifications including a narrative project description, complete set of drawings depicting all elements of the proposed project including but not limited to the precise configuration of the ponds, the location of all plant materials that will be planted on the project site, and details of the required silt fencing including how it will be secured, a complete materials and equipment list, and a thorough description of procedures to be implemented,
  - (b) a detailed plant list specifying the exact species of plants to be planted in the ponds and as part of any other landscaping performed for the pond development,
  - (c) a construction and landscaping schedule for performance.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**9. Condition Compliance**

- A. **WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION,** or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with

this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS FOR APPROVAL**

The Commission hereby finds and declares:

##### **1. Site Description & Project Description**

The subject property is an approximately 2.88-acre forested parcel situated on two uplifted marine terraces and the 25-40% slope between them. The property is located east of Mendocino Bay and approximately 150-200 feet east of Highway One about one mile south of the town of Mendocino. A 10-unit inn approved by the Commission under the original permit in 1990 is developed on the flat portion of the upper terrace (Exhibit Nos. 1, 2, and 3).

The property is bounded on the west and north by Miss Muffett Drive, a frontage road that runs along the east side of Highway One, and is located on State Park property that provides access to park land to the north and northeast of the subject parcel (Exhibit No. 3). The subject parcel is bounded on the east and south by a private parcel, approximately seven acres in size, currently owned by the applicant. Barton Creek flows from north to south along the eastern edge of this adjoining parcel, within 200-500 feet from the subject property. An upland swale topographically linked to Barton Creek is the site of the proposed project. Adjacent to Miss Muffett Drive, and at the base of the slope leading up to the inn, the applicant drilled a 360-foot-deep well to provide water for developing a landscape/fire suppression pond. Water was piped to a pre-existing, dry basin to form a pond, and the edges of the basin were built up with a shovel to better contain the water. Even though development of the well itself was approved by a Department of Environmental Health permit obtained in 2001 from the County, no CDP was obtained. The applicant is, in part, requesting after-the-fact authorization for development of the well, piping, and the partially completed construction of the pond that would serve as a landscape and fire suppression pond.

Several plant communities are represented on the parcel: 1) North Coast Bishop Pine Forest; 2) Coastal Terrace Prairie; and 3) Northern (Franciscan) Bluff Scrub. Stands of Bishop pine are surrounded by shrubs and grass openings. The site of the pond development is within the Coastal Terrace Prairie plant community. The only environmentally sensitive habitat existing in proximity to the proposed development is a wetland ESHA associated with the upland swale leading to Barton Creek. The wetlands were delineated and mapped in a wetland study submitted with the applications and attached as Exhibit No 4. The subject property is in an area designated as highly scenic under the certified Mendocino County LCP.

The proposed amendment requests approval for the previously un-permitted development described above, and additional development to complete the landscape/fire suppression pond by enlarging the existing un-permitted pond to a size 40 feet long by 30 feet wide by 4 feet deep and installing a pond liner to help retain the water piped from the well. Construction of an additional

pond is proposed that would be developed adjacent to the delineated wetland downhill from the landscape/fire suppression pond that would serve as a shallow "water garden" pond approximately 60 feet long by 15-25 feet wide by 2-½ feet deep for growing native and edible plants (page 2 of Exhibit No. 3).

## 2. Visual Resources

Section 30251 of the Coastal Act has been specifically incorporated into Land Use Plan (LUP) Policy 3.5-1 of the Mendocino Local Coastal Program (LCP). LUP Policy 3.5-1 states in applicable part:

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.*

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 Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

...

**NOTE 1:** LUP Map No. 17 designates everything within view east of Highway One between Big River and Little River as highly scenic.

**NOTE 2:** Coastal Zoning Ordinance 20.504.015(A)(2) reiterates that this section of coastline is designated as "highly scenic."

Coastal Zoning Code Section 20.504.015(A) and (A)(2) state:

*(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:*

...

*(2) Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

Coastal Zoning Code Section 20.504.015(C)(1) in applicable part states:

*(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.*

#### Discussion

The subject site is on a parcel located on the east side of Highway One in an area designated highly scenic in the Mendocino County LUP. The proposed development as amended would create two small ponds served by water piped from a drilled well.

The above listed visual resource protection policies set forth three basic criteria that development at the site must meet to be approved. First, LUP Policy 3.5-1 and Coastal Zoning Code (CZC) Section 20.504.010 require that development be sited and designed to protect views to and along the ocean and scenic coastal areas. Second, LUP Policy 3.5-1 requires that new development minimize the alteration of natural land forms. Finally, LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting.

As the development is located east of Highway One and is not within view of any other public vantage point, the proposed development as amended would not block any view of the ocean, consistent with the requirements of LUP Policy 3.5-1 and CZC Section 20.504.015(C)(1).

The changes proposed by the amendment would not involve any significant alteration of topographic features as the ponds would be small in size and excavated within an existing swale. Therefore, the proposed project as amended is consistent with the provisions of LUP 3.5-1 that require that permitted development minimize the alteration of natural landforms.

Because 1) intervening topography partially obscures views from Highway One; 2) the location of the proposed project would not be visible from any other public vantage points; and 3) the proposed project as amended would not authorize any new buildings or other visible development except for the ponds and well which would be constructed below ground level, the

proposed development as amended would remain subordinate to the character of its setting consistent with LUP Policy 3.5-1.

Therefore, the Commission finds that the proposed development as amended will protect views to and along the coast, minimize the alteration of natural land forms, and be subordinate to the character of its setting consistent with the visual resource protection policies of the certified LCP.

### **3. Environmentally Sensitive Habitat Areas**

#### **LCP Provisions**

LUP Policy 3.1-4 states:

*As required by the Coastal Act, development within wetland areas shall be limited to:*

- 1. Port facility construction or expansion, Section 30233(a)(1).*
- 2. Energy facility construction or expansion, Section 30233(a)(1).*
- 3. Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, section 30233 (a) (1).*
- 4. Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.*
- 5. In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).*
- 6. Incidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- 7. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- 8. Nature study purposes and salmon restoration projects.*
- 9. Aquaculture, or similar resource dependent activities excluding ocean ranching.*

*In any of the above instances, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes, shall be permitted in accordance with all other applicable provisions of this plan. Such requirements shall include a finding that there is no feasible less environmentally damaging alternative and shall include mitigation measures required to minimize adverse environmental effects, in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act [emphasis added].*

LUP Policy 3.1-7 in applicable part states:

*"A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution [emphasis added].*

Section 20.496.010 of the Coastal Zoning Ordinance states in applicable part:

*"Purpose.*

*The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.*

*Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals [emphasis added]."*

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

*"ESHA- Development Criteria*

- (A) *Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(1) *Width.*

*The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. ...Standards for determining the appropriate width of the buffer area are as follows:*

(a) *Biological Significance of Adjacent Lands*

...

(b) *Sensitivity of Species to Disturbance*

...

(c) *Susceptibility of Parcel to Erosion*

...

(d) *Use of Natural Topographic Features to Locate Development*

...

(e) *Use of Existing Cultural Features to Locate Buffer Zones*

...

(f) *Lot Configuration and Location of Existing Development*

...

(g) *Type and Scale of Development Proposed*

...

(2) *Configuration*

...

- (4) *Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*

(b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

- (c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.
- (d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.
- (e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.
- (f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.
- (g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.
- (h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.
- (i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.
- (j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable

*vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

- (k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats [emphasis added].*

Section 20.308.130 of the Coastal Zoning Ordinance states in applicable part:

- (E) *"Wetlands" means lands covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for water fowl, shore birds and wading birds, as well as a few rare and endangered species such as the peregrine falcon.*

#### Discussion

The project area is located in an upland swale area leading to Barton Creek. The vegetation in this area is part of a Coastal Terrace Prairie plant community. As noted above, the only environmentally sensitive habitat existing in the proximity to the proposed development is a wetland ESHA. The development site does not include Barton Creek itself and its associated riparian habitat, as the creek does not begin for another several hundred feet to the south of the project site in a location not a part of the subject property.

The applicant retained Wetlands Research Associates, Inc. (WRA) to investigate and delineate the presence of any wetlands at the project site. In their report entitled Jurisdictional Wetland Delineation, Buffer Zone Analysis, And Wetland Enhancement Under The Mendocino County Local Coastal Program and dated November 2002, WRA concluded that one wetland totaling approximately 436 square feet exists in the study area (Exhibit No. 4). This wetland is located adjacent to the proposed "water garden" pond, but none of the development for which the applicant is seeking authorization is located or proposed within the wetland. Consistent with the definition of wetlands contained in section 20.308.130(e) of the certified LCP, the area delineated by WRA constitutes wetland because it exhibits "hydrophytic vegetation and positive indicators of wetland hydrology and hydric soils." WRA went on to discuss in their report the applicant's proposed project to create new additional wetlands (two ponds fed by a well) in upland areas adjacent to the existing wetland.

*There will be no changes in downstream flow (downstream of the Study Area) from that which currently exists. If the mitigation measures (below) are implemented, the proposed wetland creation would not negatively impact the existing wetland, and would, by contrast, enhance the wetland functions and values of the Study Area by: (1) expanding the wetland acreage on the Study Area; (2) providing wetlands with perennial hydrology which would increase the potential for wildlife habitat and native wildlife species diversity; (3) decreasing the abundance of non-native plant species and increasing the diversity and abundance of native wetland species... In order to avoid impacts to the existing wetland on the Study Area, the following mitigation measures shall be implemented:*

- (1) Silt fencing shall be placed along the western edge of the existing wetland to avoid siltation during construction activities that will create the new wetland.*
- (2) No fill material or construction equipment shall be allowed to enter the existing wetland.*

WRA summarizes their wetland analysis of the subject property in relation to the proposed pond development project by saying that if the proposed mitigation measures are implemented, wetland creation activities on the existing uplands as proposed would have no significant adverse impact on the existing wetland. In fact, expanding wetland acreage at the project site would increase the natural habitat value of the subject property.

LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 state that a buffer area shall be established adjacent to all environmentally sensitive habitat area (ESHA) to protect the ESHA from significant degradation resulting from proposed development. These LCP policies state that the buffer area shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the California Department of Fish and Game that one hundred feet is not necessary to protect the resources of the particular habitat area from possible significant disruption caused by the proposed development. To be approved, any reduced buffer must be analyzed for conformance with certain standards contained in CZC Section 20.496.020. In this case, all of the proposed pond, well, and pipeline development is located within 100 feet of the delineated wetland. No evidence has been submitted that the California Department of Fish and Game has agreed to or even been consulted about reducing the 100-foot minimum buffer. Furthermore, no analysis has been presented that demonstrates that a reduced buffer of the narrow width needed to fit between the locations of the proposed pond, well, and pipeline development and the wetland ESHA would meet the buffer width standards of CZC Section 20.496.020. Therefore, because the proposed development cannot satisfy the standards for a reduced buffer, in order for the proposed pond, well, and pipeline development to be approved, the development must conform with the LCP policies and standards that would allow development within an ESHA buffer.

LUP Policy 3.1-7 and CZC Section 20.496.020 require developments permitted within a buffer area to (1) generally be the same as those uses permitted in the adjacent ESHA, (2) be sited and

designed to prevent impacts which would significantly degrade such areas, (3) be compatible with the continuance of the habitat, and (4) be allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development.

1) Uses Generally the Same as Permitted in ESHA

The applicant is seeking authorization for two kinds of uses, both of which must generally be the same as allowable uses in wetlands under LUP Policy 3.1-4 and therefore allowable uses within a wetland buffer area pursuant to LUP Policy 3.1-7. In this case, the applicant is seeking after-the-fact authorization for both the partial development of a landscape/fire suppression pond and the development of a well including appurtenant pipelines to serve it. In addition the applicant wishes to complete the development of this pond by enlarging it to a size 40 feet long by 30 feet wide by 4 feet deep and installing a pond liner to help retain the water piped from the well during dry months. As shown on the site plan maps in Exhibit 3, this pond would be located close to Miss Muffett Drive, which is a short frontage road along Highway One. If the need ever arises, this proposed pond could provide an accessible reservoir for fire trucks to draft water thereby helping meet emergency fire suppression needs in the neighborhood.

One of the allowable uses within a wetland buffer pursuant to LUP Policy 3.1-7 is development that would generally constitute an incidental public service purposes. To determine if the proposed development is for an incidental public service purpose, the Commission must first determine that the proposed development is for a public service purpose. Since the fire suppression pond and the well and pipelines that would provide the pond with water would be constructed to improve public safety and would be used primarily by a public fire safety agency for fighting fires that could affect not just the private inn but adjoining public lands, the Commission finds that the fire suppression pond and the related well and pipeline serve a public service purpose consistent with LUP Policy 3.1-4(6).

The Commission must next determine if the development is "incidental." The Commission finds that the fire suppression pond and the related well and pipeline is incidental to "something else as primary," that is, the visitor serving use provided by the existing Brewery Gulch Inn. The expressed purpose and need for the project is to facilitate suppression of wildfires that would threaten the inn. There would be no increase in the use of the inn. The project is needed to maintain and protect an existing inn with a higher degree of safety for inn guests and the public.

Therefore, the Commission finds that for the reasons discussed above, the proposed use of the wetland buffer for the proposed fire suppression pond and the related well and pipeline generally constitutes an incidental public service pursuant to LUP Policy 3.1-4(6) and is thus an allowable use in a wetland buffer pursuant to LUP Policy 3.1-7.

The applicant is also seeking authorization for the development of a shallow, lined, "water garden" pond, that would also be served by the well and appurtenant pipelines necessary to serve it, and would be approximately 60 feet long by 15-25 feet wide by 2 ½ feet deep. The pond

would be used for growing native and edible plants in the upland location identified on the site plans of Exhibit No. 3. As described by the applicant, this pond would add a missing component to his already established organic native gardens on the property, by providing a "water garden" that could grow native and edible food for his guests at the inn. In addition, the "water garden" would provide an opportunity to educate his guests about the importance of wetlands and the benefits they provide by using interpretive signs placed at the pond edge for nature study. The Commission finds that the development of a "water garden" pond as proposed is a resource dependent use similar to aquaculture, as it includes the propagation, cultivation, maintenance and harvesting of aquatic plants in freshwater.

Therefore, the Commission finds that for the reasons discussed above, the proposed use of the wetland buffer for the proposed "water garden" pond and the related well and pipeline generally constitute a resource dependent use similar to aquaculture pursuant to LUP Policy 3.1-4(9) and are thus an allowable use in a wetland buffer pursuant to LUP Policy 3.1-7.

2) Siting and Design to Prevent Significantly Degrading Impacts

Because the proposed landscape/fire suppression pond, the "garden pond," and the well and appurtenant pipelines to serve the two ponds would be developed in the wetland ESHA buffer, the developments must be sited and designed to prevent impacts which would significantly degrade adjacent ESHA. The principal impacts the proposed development as amended could have on the adjacent wetlands would be to cause sedimentation or filling of the wetland from pond and pipeline excavation activities and to introduce invasive exotic plants into the wetland. To prevent these impacts, the Commission attaches Special Condition No. 8, which requires final construction plans prepared in consultation with the Department of Parks and Recreation to be submitted for the review and approval of the Executive Director that demonstrate that appropriate sedimentation and erosion control measures are incorporated into the project, and that no invasive non-native plants are grown in the proposed "water garden" pond. Therefore, the proposed development as amended and conditioned is consistent with LUP Policy 3.1-7 and Section 20.496.020 of the certified coastal ordinance.

3) Compatible with Continuance of Habitat

To be allowed within the ESHA buffer, the proposed landscape/fire suppression pond, the "garden pond," and the well and appurtenant pipelines to serve the two ponds must be sited and designed to be compatible with the continuance of wetland ESHA habitat. As discussed above, the requirements of Special Condition No. 8 will ensure that development and use of the ponds will prevent impacts to the adjacent wetland habitat. The special condition requires that no fill material or construction equipment be allowed to enter the existing wetland, that a silt fence be installed wrapping the northwestern edge of the existing delineated wetland with mitigating protection to avoid significant adverse siltation during project construction activities, and that no non-native invasive plants would be allowed to be planted as a part of the landscaping that takes place as a part of the proposed project. Furthermore, the proposed development of the two ponds fed by pipelines from the well would enhance the existing wetland by expanding the area

coverage of wetland conditions in the vicinity of the delineated wetland, thereby increasing the potential for wildlife habitat and native wildlife species and wetland species diversity, while at the same time decreasing the abundance of non-native plant species. Therefore, the proposed development as amended and conditioned is consistent with LUP Policy 3.1-7 and Section 20.496.020 of the certified coastal ordinance.

4) No Other Feasible Site Available, and Mitigation Provided

To be allowed in the ESHA buffer, there must be no other feasible sites available on the parcel for the proposed use. The site selection for the proposed landscape/fire suppression pond, the "garden pond," and the well and appurtenant pipelines to serve the two ponds was governed partly by the topography of the applicant's property. As discussed in the project description, the property is generally a heavily forested parcel, with steep slopes between flats, and developed with an existing visitor serving inn. The forested portions of the property provide important visual screening required to be maintained pursuant to a previously imposed special condition in full force and effect. Locating the ponds in open areas as proposed is consistent with this special condition. The nature of the desired development, i.e., the creation of ponds, necessitates placement in low-lying portions of the property. While it might be possible to dig out a pond on a steep slope such as exists on the property, it would not be the least environmentally damaging alternative, and might very well cause serious erosion. Additionally, the best location for the landscape/fire suppression pond is in a location where a proven water source exists. The well and appurtenant pipelines are required to deliver water to the landscape/fire suppression pond located in an upland site entirely dependent on an external water source. Furthermore, locating the proposed fire suppression reservoir near Miss Muffett Drive is critical for quick, easy, and safe access by fire trucks during emergencies. No other location on the property would be as suitable as the proposed location for the landscape/fire suppression pond. With regard to the "water garden" pond, the siting of this pond as a newly created wetland would be most beneficial situated adjacent to the existing wetland as discussed above. The well as a proven water source and the appurtenant pipelines must be located within the buffer area where they can serve the proposed ponds. Therefore, the proposed development as amended and conditioned is consistent with LUP Policy 3.1-7 and Section 20.496.020 of the certified coastal ordinance.

Conclusion

As the proposed uses of the pond development as a fire suppression pond and a "water garden" pond are generally for: (1) an incidental public service purpose consistent with LUP Policy 3.1-4(6) and (2) a resource dependent use similar to aquaculture consistent with LUP Policy 3.1-4(9), the Commission finds that the proposed development within the required ESHA buffer is for uses generally the same as those uses permitted in the adjacent wetland ESHA and are thus allowable uses in a wetland buffer pursuant to LUP Policy 3.1-7. In addition, as conditioned to (1) require the use of silt fencing to prevent the excavation work associated with the proposed development from causing siltation impacts to the wetland ESHA, (2) prohibit the discharge of fill from the excavation work into the wetland ESHA, and (3) prohibit invasive exotic species from being planted within the proposed "water garden" pond or elsewhere at the development

site, the Commission finds that the project as proposed and conditioned will prevent impacts that would significantly degrade the adjacent wetland ESHA consistent with LUP Policy 3.1-7(1) and CZC Section 20.496.020(4)(c). Furthermore, as the project will be implemented in a manner that will prevent impacts that would significantly degrade the adjacent wetland ESHA, will expand the wetland acreage, provide the wetlands with a perennial water source which would increase the potential for wildlife habitat and native wildlife species diversity, and will include planting of native wetland plants which will directly increase the diversity and abundance of native wetland species, the Commission finds that the project as proposed and conditioned will be compatible with the continuance of the habitat consistent with LUP Policy 3.1-7(2) and CZC Section 20.496.020(4)(d). Moreover, given the need to (1) locate the ponds in open, low areas of the site that do not contain slopes and forest and which are readily accessible to fire fighting equipment, (2) locate the well where groundwater has been discovered, and (3) install the pipeline in a location where it can connect the ponds to the water source, the Commission finds that there are no other feasible sites available on the parcel to locate the proposed development. The location of the development within an area that would normally be required as wetland ESHA buffer is consistent with LUP Policy 3.1-7(3) and CZC Section 20.496.020(4)(e). The Commission further finds that the proposed development as amended and conditioned will protect the wetland ESHA on the property consistent with LUP Policies 3.1-7 and with Coastal Zoning Code Sections 20.496.010 and 20.496.020.

#### **4. Alleged Violation**

As noted above, portions of the proposed project have been developed without benefit of a coastal development permit. The applicant drilled a well to provide water for developing a landscape/fire suppression pond. Water was piped to a pre-existing, dry basin to form a pond, and the edges of the basin were built up with a shovel to better contain the water. Even though development of the well itself was approved by a Department of Environmental Health permit obtained in 2001 from the County, no Coastal Development Permit (CDP) was obtained, and no CDP was obtained for the development of a landscape/fire suppression pond.

Consideration of this application by the Commission has been based solely upon the policies of the Mendocino County LCP. Review of this permit does not constitute a waiver of any legal action with regard to any alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### **5. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). 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 effect which the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed development as amended has been conditioned to be found consistent with the County of Mendocino LCP and the access and recreation policies of the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project with the proposed amendment can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**Exhibits:**

1. Regional Location Map
2. Vicinity Map
3. Site Plans
4. Wetland Delineation Report
5. Original Approval as Amended

ATTACHMENT

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



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*PROJECT SITE*

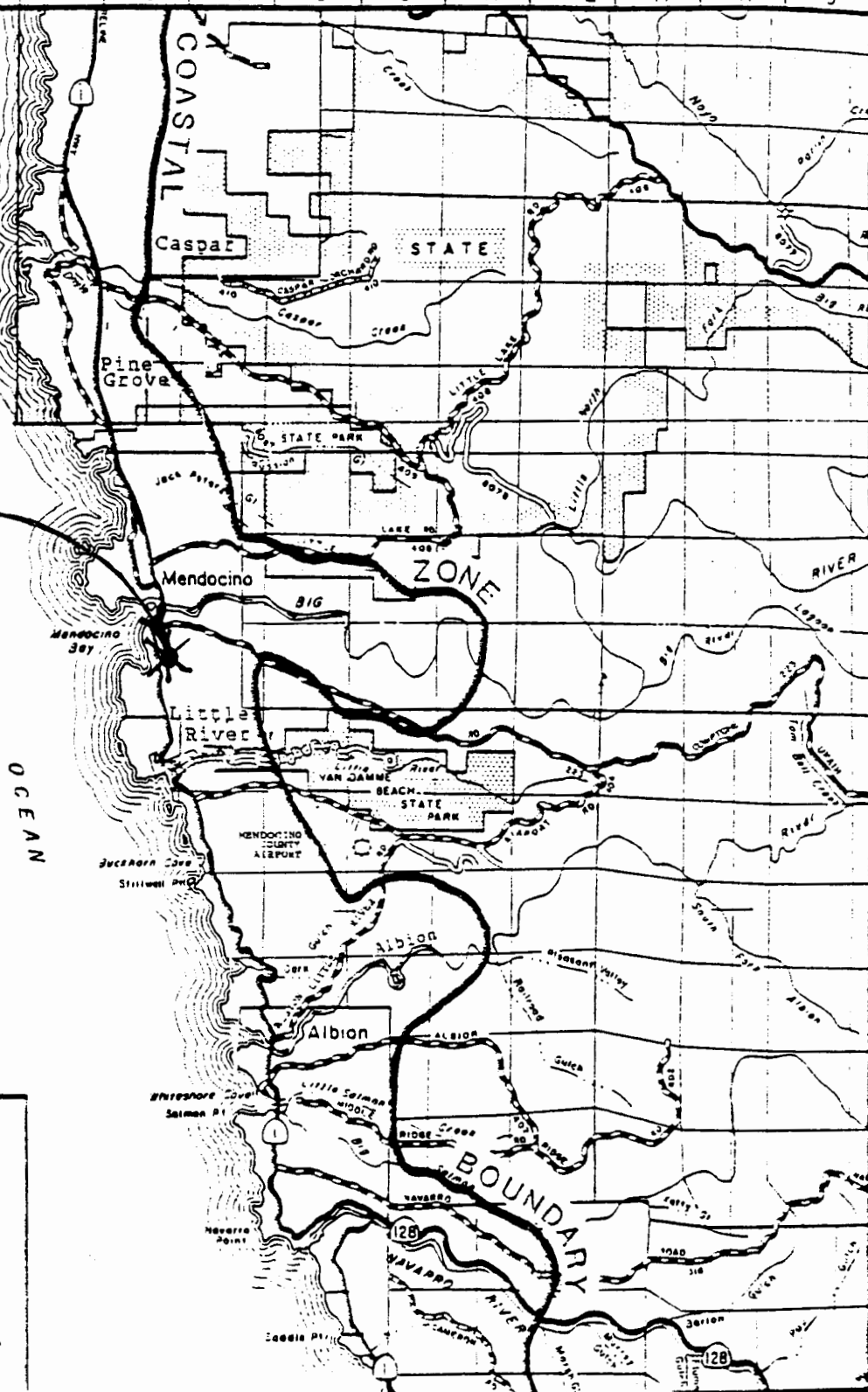
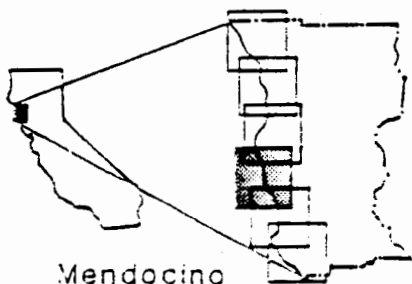
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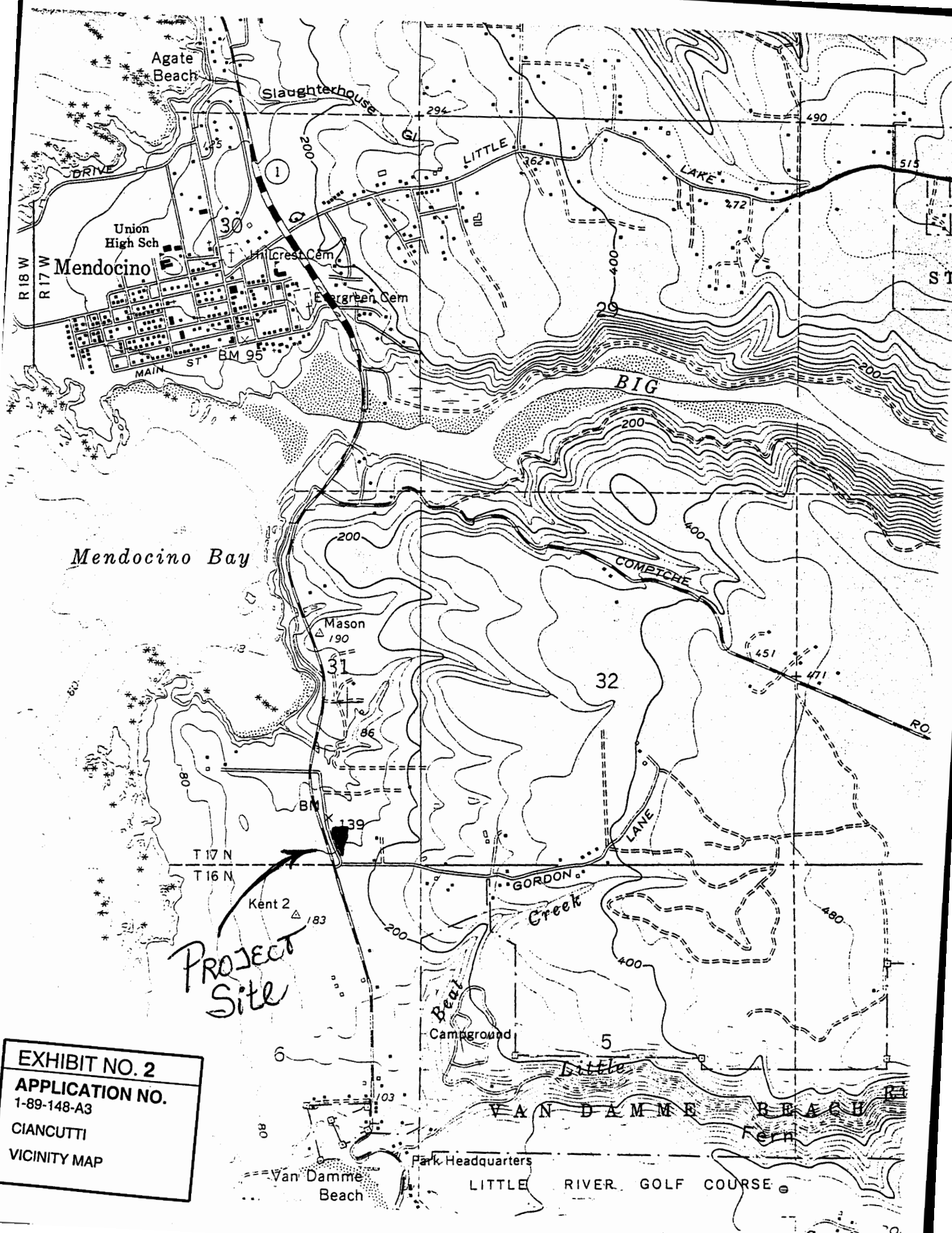
**APPLICATION NO.**

1-89-148-A3

CIANCUTTI

REGIONAL LOCATION  
MAP





PROJECT Site

EXHIBIT NO. 2  
APPLICATION NO.  
1-89-148-A3  
CIANCUTTI  
VICINITY MAP

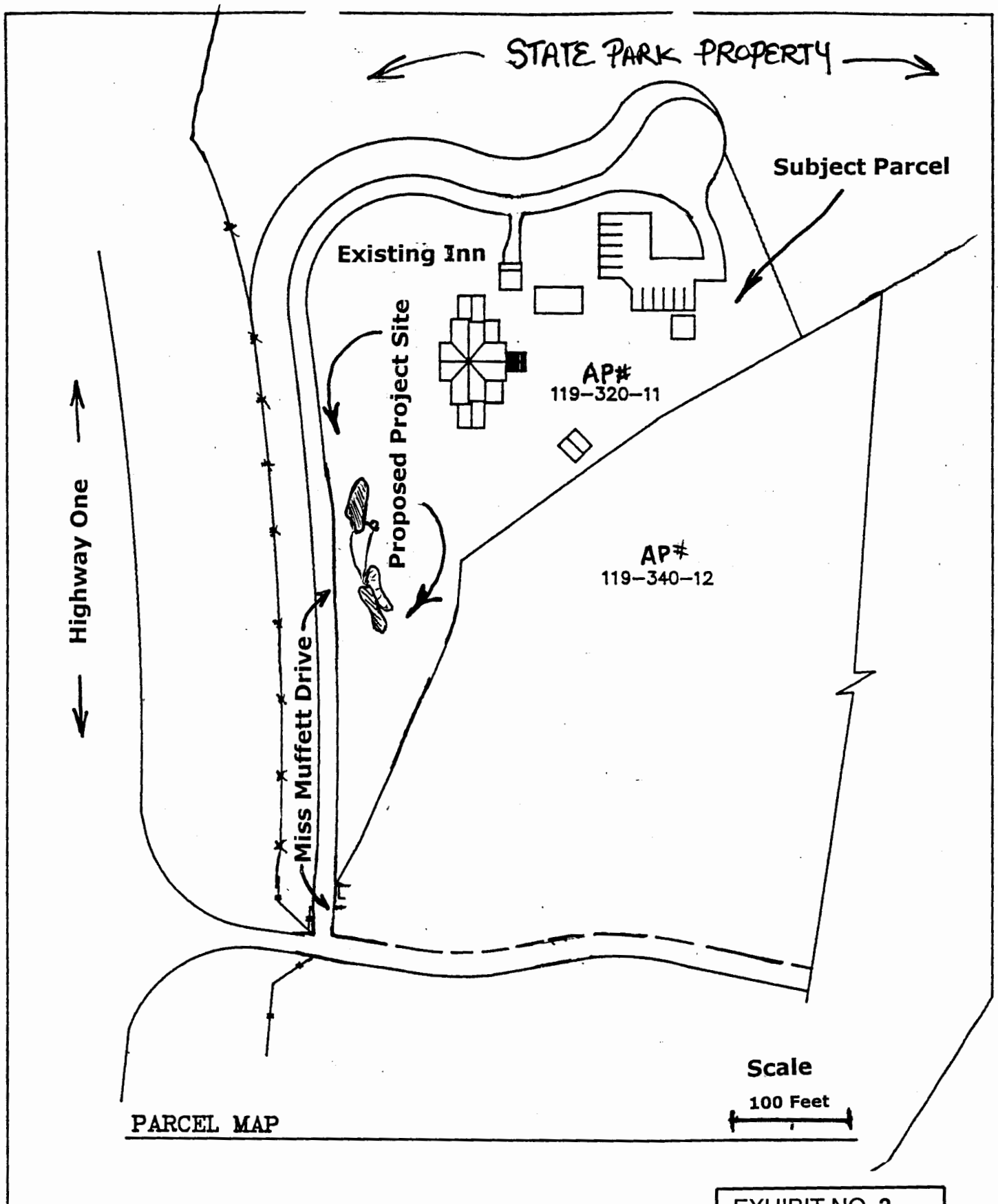


EXHIBIT NO. 3

APPLICATION NO.

1-89-148-A3

CIANCUTTI

SITE PLANS

(1 of 2)

RECEIVED

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CALIFORNIA  
COASTAL COMMISSION

JURISDICTIONAL WETLAND DELINEATION, BUFFER  
ZONE ANALYSIS, AND WETLAND ENHANCEMENT  
UNDER THE MENDOCINO COUNTY  
LOCAL COASTAL PROGRAM

BREWERY GULCH INN PROJECT SITE  
MENDOCINO COUNTY, CALIFORNIA

Prepared for:

Arky Ciancutti  
Brewery Gulch Inn  
9401 Coast Highway One North  
Mendocino, CA 95460

Prepared by:

Wetlands Research Associates, Inc.  
2169 East Francisco Blvd., Suite G  
San Rafael, CA 94901  
Contact: Doug Spicher or Tom Mahony  
(415) 454-8868

November 2002

EXHIBIT NO. 4

APPLICATION NO.

1-89-148-A3

CIANCUTTI

WETLAND DELINEATION  
REPORT (1 of 13)

## 1.0 INTRODUCTION

Wetlands Research Associates, Inc. (WRA) conducted a wetlands delineation study on a portion of the Brewery Gulch in property ("Study Area") to determine potential areas meeting the definition of wetlands described in the Mendocino County Local Coastal Program (LCP), which implements the California Coastal Act. The Study Area is located at 9401 Coast Highway One North in Mendocino, California (Figure 1) and is within the Coastal Zone.

### 1.1 COASTAL ACT WETLAND DEFINITION

The Coastal Act defines wetlands as:

*"Wetland means land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens"* (Statewide Interpretive Guideline 1981).

The Coastal Act defines the upland limit of wetlands as:

*(1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or (3) in the case of wetlands without vegetation or soil, the boundary between land that is flooded or saturated at some time each year and land that is not."*

## 2.0 METHODS

Delineation methodology followed the wetland definition as stated in the Coastal Act and the Mendocino County LCP. Rather than utilizing a three parameter approach (presence of hydrophytic vegetation, wetland hydrology, and hydric soils) used at the federal level by the U.S. Army Corps of Engineers, the Coastal Act uses a broader definition. Although the California Coastal Commission determined that the presence of water (wetland hydrology) was absolutely required, only one other wetland parameter (either hydric soil or hydrophytic vegetation) was needed to make a wetland determination (Statewide Interpretive Guideline 1981). Therefore, this delineation study utilized a two parameter (wetland hydrology *and* either hydrophytic vegetation *or* hydric soils) approach to determining the presence of Coastal Act/LCP wetlands.

Prior to conducting field studies, available reference materials were reviewed, including the

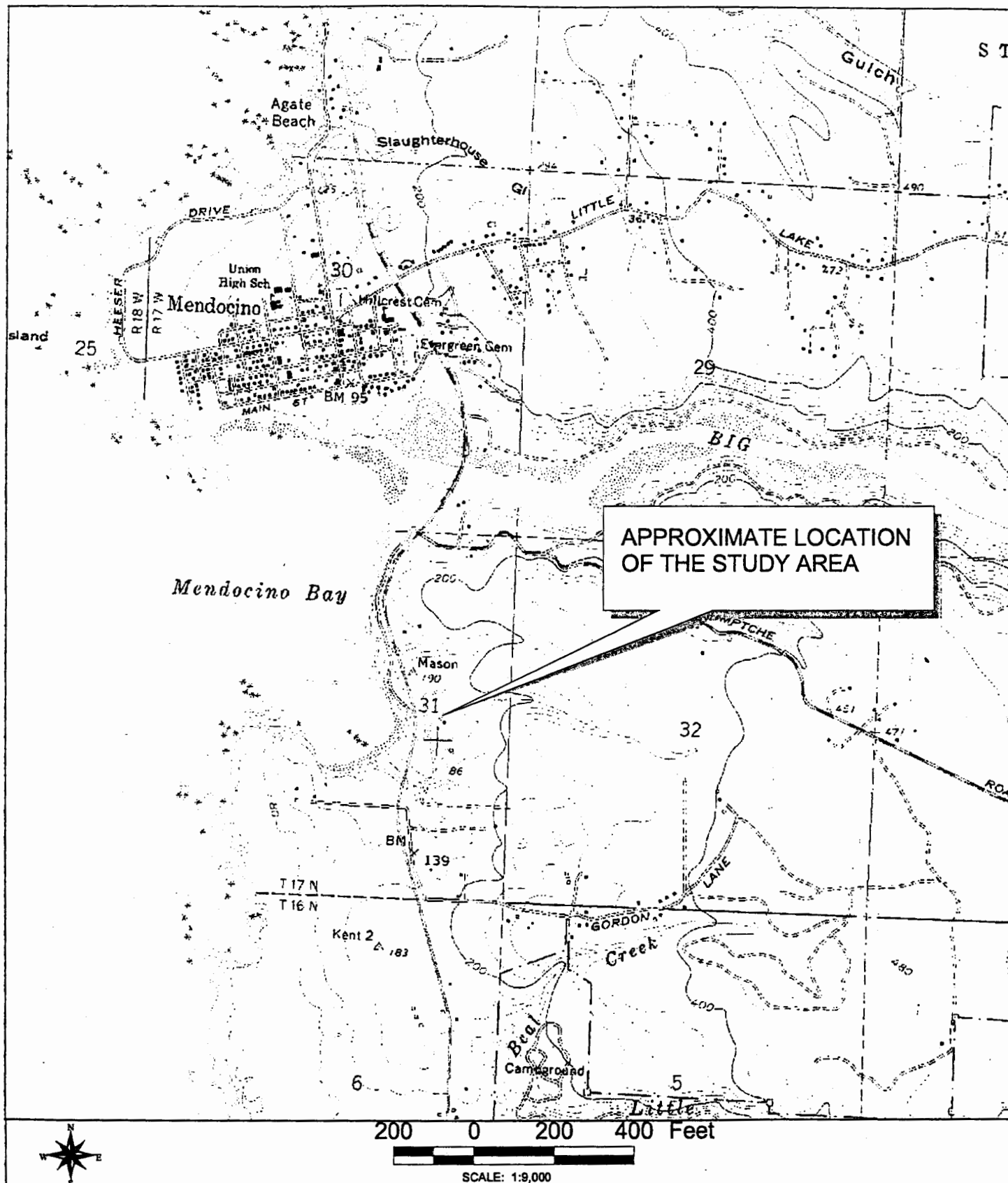


Figure 1. Study Area Location Map



Wetlands Research Associates, Inc.

3913

Mendocino County Soil Survey, Western Part (USDA 2001) and the Mendocino USGS 7.5' quadrangle. The Study Area was field inspected on September 17, 2002, for areas that had the potential to meet the Coastal Act/LCP wetland definition.

Plant species were assigned a wetland status according to the U.S. Fish and Wildlife Service list of plant species that occur in wetlands (Reed 1988). This wetland plant classification system is based on the expected frequency of occurrence of plants in wetlands. The classification system has the following categories which determine frequency plants occur in wetlands:

|        |   |                 |
|--------|---|-----------------|
| OBL    | Obligate, always found in wetlands                | > 99% frequency |
| FACW   | Facultative wetland, usually found in wetlands    | 67-99%          |
| FAC    | Facultative, equal in wetland or non-wetlands     | 34-66%          |
| FACU   | Facultative upland, usually found in non-wetlands | 1-33%           |
| UPL/NL | Not found in local wetlands                       | <1%             |
| NI     | Wetland preference unknown                        |                 |

The Study Area was searched for indicators of wetland hydrology. Positive indicators of wetland hydrology can include direct evidence (primary indicators), such as visible inundation or saturation, surface sediment deposits, and drift lines, or indirect indicators (secondary indicators), such as oxidized root channels and algal mats. Depressions, seeps, and topographic low areas were examined for these hydrological indicators.

Soil profiles were described to include horizon depths, color, redoximorphic features, and texture. Soil color was determined using a Munsell soil color chart (GretagMacbeth 2000). Soils formed under wetland (anaerobic) conditions generally have a characteristic low chroma matrix color, designated 0, 1, or 2, used to identify them as hydric soils. Soils with a chroma of 0 or 1 are usually considered hydric; soils with a chroma of 2 are required to contain mottles or other redoximorphic features to be considered hydric.

### 3.0 STUDY AREA DESCRIPTION

The approximately 0.5-acre Study Area is located east of Highway One near the town of Mendocino. The Study Area is located at approximately 150 feet elevation. The surrounding land is generally undeveloped or low density residential.

#### 3.1 PLANT COMMUNITIES

The Study Area has two different plant communities: Seasonal Wetland and Non-native Grassland. Seasonal Wetland occurs in a concave area fed by a roadside drainage ditch that leads onto the Study Area through a culvert under the paved access road to the Brewery Gulch Inn. The wetland is a man-made feature resulting from water delivered to this location from a man-made drainage ditch and is dominated by a mixture of native wetland species, such as soft rush (*Juncus effusus*, OBL), and non-native wetland species, such as hyssop loosestrife (*Lythrum hyssopifolium*, FACW). Non-native Grassland is present throughout upland portions of the Study

Area, and is dominated by non-native species such as velvet grass (*Holcus lanatus*, FAC), sweet vernal grass (*Anthoxanthum odoratum*, FACU), thistle (*Cirsium* sp.), wild radish (*Raphanus sativus*, NL), and rough cat's ear (*Hypochaeris radicata*, NL). Coyote brush (*Baccharis pilularis*, NL), grows adjacent to the grassland near the access road in the western portion of the Study Area. Bishop pine (*Pinus muricata*, NL) grows along the eastern Study Area boundary. A ponded depression, fed by a pipe connected to a well, occurs near the northern Study Area boundary. The depression had ponded water but lacked vegetation.

### 3.2 SOILS

The Mendocino County Soil Survey, Western Part, indicates that the Study Area is predominantly underlain by one soil mapping unit:

161—Heeser sandy loam, 2 to 15 percent slopes

The Soil Survey describes this mapping unit as follows:

This very deep, somewhat excessively drained soil is on marine terraces. Typically, the surface layer is very dark grayish brown and dark brown sandy loam about 34 inches thick. The next layer is brown sandy loam about 12 inches thick. The underlying material to a depth of 65 inches or more is dark yellowish brown sandy loam. In some areas the surface layer is very gravelly sandy loam.

Permeability is moderately rapid in the Heeser soil. Available water capacity is moderate. The effective rooting depth is 60 inches or more. Surface runoff is slow or medium, and the hazard of water erosion is slight or moderate if the surface is left bare.

### 3.3 HYDROLOGY

The principal apparent hydrologic sources for the Study Area are direct precipitation and runoff from west and north through the roadside drainage ditch. The ditch ends abruptly near the center of the Study Area, and has caused water to back up during the rainy season and create wetland hydrology in the concave area. Another depression in the northern portion of the Study Area had ponded water at the time of the survey. The depression was excavated in uplands and had ponded water but lacked vegetation at the time of survey.

## 4.0 RESULTS

One potential wetland was found on the Study Area during the September 17, 2002 site visit (Appendix A and B).

The potential wetland is approximately 0.01-acre (436 ft<sup>2</sup>) in size and is a disturbed, man-made feature with only seasonal wetland hydrology. The wetland has formed due to a combination of past disturbance, which has created concave topography and compacted soils, and the man-made

drainage ditch which delivers water to this location during the rainy season, contributing to ponding and soil saturation in the concave area. The wetland is dominated by a mixture of native and non-native wetland classified plant species such as soft rush (OBL), California blackberry (*Rubus ursinus*, FACW), velvet grass (FAC), and hyssop loosestrife (FACW). Adjacent upland areas, outside of the concave area, lack any wetland indicators. Upland areas are dominated by weedy upland and marginally hydrophytic species such as sweet vernal grass (FACU), velvet grass (FAC), wild radish (NL), and rough cat's ear (NL). The potential wetland had positive indicators of wetland hydrology, such as sediment deposits and oxidized root channels. Adjacent upland areas, outside of the concave area, lacked wetland hydrology indicators. The potential wetland had clay loam textured soils with a low chroma (10YR 2/1) and redoximorphic mottles (10YR 5/6) located throughout approximately 5 percent of the soil matrix. The low chroma combined with mottles indicate that these are hydric soils. Adjacent upland areas had soils with similar color and texture, likely due to the grassland vegetation and the fact that these soils formed on marine terraces. Soils formed on marine terraces under grassland vegetation often have a low chroma due to organic matter buildup unrelated to wetland conditions.

The drainage ditch leading to the concave area, while containing wetland indicators, is not considered potentially jurisdictional by either the Army Corps of Engineers or CCC/Mendocino County based on the Clean Water Act and Mendocino County LCP, respectively. Man-made drainage ditches excavated in uplands are exempt from regulation by both agencies.

The depression excavated in uplands in the northern portion of the Study Area, while containing ponded water, is not considered a potential jurisdictional wetland because (1) the depression lacks vegetation, and (2) the hydrology for the depression comes from a pipe which is connected to a well east of the pond. In the absence of this man-made water source, the pond would likely dry up (Appendix B).

## 5.0 CONCLUSION

Wetland vegetation, soils, and hydrology were examined to determine the presence of Coastal Act/LCP defined wetlands on the Study Area. One potential wetland area was found on the Study Area, totaling approximately 0.01-acre (436 ft<sup>2</sup>). While the potential wetland area had hydrophytic vegetation and positive indicators of wetland hydrology and hydric soils, it is a disturbed, man-made feature with a high cover of non-native plants and only seasonal wetland hydrology.

The Applicant is proposing to create new additional wetlands on existing uplands in the Study Area for the purpose of aesthetics and ecological enhancement (Appendix A). The created wetland would be planted with California native wetland plants and upland buffer shrubs and trees. There will be no changes in downstream flow (downstream of the Study Area) from that which currently exists. If the mitigation measures (below) are implemented, the proposed wetland creation would not negatively impact the existing wetland, and would, by contrast, enhance the wetland functions and values of the Study Area by: (1) expanding the wetland acreage on the Study Area; (2) providing wetlands with perennial hydrology which would

increase the potential for wildlife habitat and native wildlife species diversity; (3) decreasing the abundance of non-native plant species and increasing the diversity and abundance of native wetland plant species. The wetland hydrology for the existing and created wetlands will come from a combination of direct precipitation, existing runoff through the man-made drainage ditch, and the pipe which is currently providing water to the excavated depression.

Normally, a 100 foot buffer is required around wetlands and other ESHA's in the Coastal Zone (Statewide Interpretive Guideline 1981), unless it can be demonstrated, with California Department of Fish and Game approval, that ESHA can be protected with less than a 100 foot buffer. A buffer analysis was conducted for the Study Area (Table 1).

| Table 1. Buffer Analysis   |  |
|--|--|
| Section 20.496.020 Coastal Zoning Ordinance  |  |
| a. Biological Significance of Adjacent Lands. The degree of significance depends upon the habitat requirements of the species in the habitat area.   | The wetland has seasonal hydrology and surface water is not present for much of the year. No fish or migratory waterfowl use this wetland area. Adjacent lands in the buffer zone are heavily disturbed and dominated by non-native species such as sweet vernal grass, velvet grass, wild radish, and rough cat's ear. Bishop pine ( <i>Pinus muricata</i> ), a native species, is located east of the wetland and may provide some wildlife habitat value. The area of the buffer zone west of the existing wetland is dominated by upland, mostly non-native species and is disturbed by debris from the adjacent road. |
| <i>b. Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development:</i> |  |
| b(i). Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species  | The seasonal nature, small size, and level of disturbance prohibit the use of the existing wetland by most wildlife species. No fish or migratory waterfowl use this wetland area. No wildlife species were observed using the wetland during two separate site visits. The proposed wetland restoration would increase the size and result in wetter conditions which will be provide improved wildlife habitat.  |
| b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance   | No wildlife species were observed using the wetland. Species observed in the Study Area vicinity were mostly common species adapted to human disturbance, such as Steller's jay and common raven.  |
| b(iii) An assessment of the impact and activity levels of the proposed development   | The proposed wetland restoration would increase the size and result in wetter conditions which will be provide improved wildlife habitat. While there may be short term impacts during construction, the long term functions and values of the area will be vastly improved by the proposed project.   |
| c. Susceptibility of Parcel to Erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development  | Silt fences will be installed around existing wetland during construction to prevent siltation. There will be no long term increases in erosion by the proposed restoration.   |

|   |  |
|---|--|
| d. Use of Natural Topographic Features to Locate Development  | The proposed restoration wetlands will be located in existing topographic low points to minimize earthmoving and maximize use of existing hydrologic conditions.   |
| e. Use of existing cultural features to locate buffer zones. Use of roads, dikes, etc to separate development   | The proposed wetland restoration will be located between the access road and the existing wetland, and will serve to further buffer the existing wetland from disturbance from the access road. The location will also allow for easy access by earthmoving equipment from the road without disturbing the wetland.  |
| f. Lot configuration and location of existing development. Where an existing subdivision is present, similar buffer distances as existing may be used. However, mitigation measures shall be provided to provide additional protection. | The proposed project is a wetland restoration and will not result in any permanent structures. Mitigation measures to protect existing wetland resources are provided below.   |
| g. Type and scale of development. Such evaluations will be made on a case-by-case basis depending upon the resources involved and the degree to which adjacent lands have been developed and the type of development in the area.       | The proposed project is a wetland restoration. No permanent structures will be established. The proposed project will increase the wetland functions and values of the area by: (1) expanding the wetland acreage on the Study Area; (2) providing wetlands with perennial hydrology which would increase the potential for wildlife habitat and native wildlife species diversity; (3) decreasing the abundance of non-native plant species and increasing the diversity and abundance of native wetland plant species. |

In order to avoid impacts to the existing wetland on the Study Area, the following mitigation measures shall be implemented:

- (1) Silt fencing shall be placed along the western edge of the existing wetland to avoid siltation during construction activities that will create the new wetland.
- (2) No fill material or construction equipment shall be allowed to enter the existing wetland.

If the proposed mitigation measures are implemented, wetland creation activities on existing uplands in the Study Area will not impact the existing man-made wetland. By contrast, expanding wetland acreage on the Study Area will increase the natural habitat value of the Study Area. Based on the buffer zone analysis (Table 1), the buffer zone surrounding the wetland offers only ruderal, low quality habitat that will be enhanced by the proposed wetland restoration.

## 6.0 REFERENCES

California Coastal Commission. 1981. Statewide interpretive guideline for wetlands and other wet environmentally sensitive habitat areas.

Gretag Macbeth. 2000. Munsell Soil Color Charts. New Windsor, NY.

Reed, P.B., 1988. National list of plant species that occur in wetlands: California (Region 0). U.S. Fish and Wildl. Serv. Biol. Rep. 88(26.10). 135 pp.

USDA Natural Resources Conservation Service. 2001. Mendocino County Soil Survey, Western Part.

APPENDIX A  
MAP OF POTENTIAL WETLANDS ON STUDY AREA

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**Legend**

-  Existing Excavated Pond
-  Existing Drainage Ditch (Non-Jurisdictional)
-  Study Area Boundary
-  LCP Wetland
-  Potential Wetland Restoration Areas
-  Sample Points



0 50 100 150 200 feet

Scale 1"=200  
1 inch= 100 feet

## Appendix A Potential LCP Wetland

Wetlands Research Associates  
2169-G East Francisco Blvd.  
San Rafael, CA 94901  
Phone: (415) 454-8868  
Fax: (415) 454-0129



Wetlands Research Associates, Inc.

DATE: October, 2002  
BASEMAP: USGS Aerial Photo  
MAP BY: Justin Semion  
FILEPATH: L Land Projects 12/03 ArcMap GPS.mxd

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**APPENDIX B**  
**PHOTOGRAPHS OF THE POTENTIAL WETLAND**  
**AND THE MAN-MADE POND ON STUDY AREA**



Existing man-made wetland.



Excavated ponded area in northern part of the Study Area.

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**CALIFORNIA COASTAL COMMISSION**

NORTH COAST AREA  
631 HOWARD STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
(415) 543-8555

Filed: December 20, 1989  
49th Day: Waived  
180th Day: June 20, 1990  
Staff: Saxon Leonard  
Staff Report: June 1, 1990  
Hearing Date: June 13, 1990  
Commission Action: June 13, 1990

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 1-89-148

APPLICANT: ARTHUR CIANCUTTI AGENT: B. Spencer

PROJECT LOCATION: 9350 North Highway One, Mendocino, Mendocino County  
(APN 119-320-11)

PROJECT DESCRIPTION: Ten-unit inn, auxiliary buildings (meeting/recreation, water tower, laundry/storage), expansion of an existing, off-site septic system and construction of a water system (APN 119-320-12).

Lot area: 2.88 acres  
Building coverage: 5,360 square feet  
Pavement coverage: 6,700 square feet  
Landscape coverage: 21,600 square feet  
Parking spaces: Thirteen  
Zoning: Not Certified  
Plan designation: Rural Residential - 5 acres, \*1C  
Project density: Ten units plus manager's quarters on 2.88 acres  
Ht abv fin grade: 32-36 feet

LOCAL APPROVALS RECEIVED: Mendocino County Use Permit #36-88

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Land Use Plan

**STAFF NOTE:** The Commission heard this application at the April, 1990 meeting. Voicing concerns relating to the water diversion and possible visual impacts the Commission voted to continue the item so the applicant could submit additional water-related information. Since the April hearing the applicant submitted additional hydrological information, contacted the Department of Fish and Game (DFG) for input on required stream flows and submitted a tree management program. The department believes a one gallon per minute limitation on the water diversion is adequate to protect the fishery and other stream resources.

**EXHIBIT NO. 5****APPLICATION NO.**

1-89-148-A3

CIANCUTTI

ORIGINAL APPROVAL

AS AMENDED (1 of 16)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve Permit 1-89-148 subject to conditions mitigating possible impacts from the water diversion and visual impacts in a highly scenic area.

I. STAFF RECOMMENDATIONS

A. Staff recommends that the Commission adopt the following resolution for permit 1-89-148:

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. SPECIAL CONDITIONS

1. LANDSCAPING:

PRIOR TO ISSUANCE OF PERMIT 1-89-148 the applicant shall submit a landscaping/tree management plan prepared by a licensed forester to the Executive Director for his review and approval. The plan's goal shall be to maintain the existing tree canopy, recommend a tree maintenance program (e.g. pruning, fertilizing, watering, etc.) and tree replacement program on a one-to-one or greater ratio for the life of the project. The plan shall set forth a full landscaping program, recommending tree screening to be planted in a natural pattern along all boundaries of the property to shield the development from public views and from state parkland. All plantings shall be native species of varied size, large and small, to achieve a natural and diverse mosaic. The plan's success will be monitored annually and results reported by written report and photographs submitted each year on the anniversary date of permit issuance. Any recommendations contained in the yearly monitoring reports which suggest amendments to the approved landscaping plan shall be submitted as an amendment to this permit.

2. PERMITS FROM OTHER AGENCIES:

PRIOR TO ISSUANCE OF PERMIT 1-89-148 the applicant shall submit evidence of an appropriation permit from the State Department of Water Resources allowing withdrawal not to exceed one gallon per minute and a streambed alteration agreement from the Department of Fish and Game.

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3. WATER AND SEPTIC:

PRIOR TO THE ISSUANCE OF PERMIT 1-89-148 the applicant shall submit deeded easements in favor of APN 119-320-11 to take groundwater from APN 119-320-12 and to use the septic field located on APN 119-320-12.

4. FUTURE DEVELOPMENT:

PRIOR TO ISSUANCE OF THE PERMIT 1-89-148 the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the coastal development permit 1-89-148 and that any future additions or other development as defined in Public Resources Code section 30106 will require an amendment to Permit No. 1-89-148 from the California Coastal Commission. The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property.

5. ABANDONMENT OF INN ON APN 119-320-12:

The four-unit inn on APN 119-320-12 shall be abandoned as an inn within 30 days after completion of construction (based on the date of final County building permit inspection). This shall be verified by Commission staff or its agent.

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

1. Project Description:

The applicant requests construction of a two-story, 10-unit inn, and auxiliary buildings, enlargement of an existing off-site septic system, diversion of water from Barton Creek with supplemental off-site groundwater and development of a water system, located at 9350 North Highway One, Mendocino, Mendocino County (permit 1-89-148).

The unimproved property, located east of Mendocino Bay in an LUP-designated highly scenic area, was recently the subject of County land use plan amendment #1-88. The amendment allowed the transfer of an \*1C (providing for the conditional use of a 10-unit inn) from the parcel to the south (APN 119-320-12) to the subject parcel (APN 119-320-11). The parcel to the south, presently developed with a four-unit inn, will be required to convert to a single family home, according to the County use permit. The Commission will require the abandonment of the four-unit inn on APN 119-320-12 within 30 days after completion of construction of the inn on APN 119-320-11.

A paved frontage road borders the property on the west and north; Highway One is to the west of the frontage road. The inn would be located in the center of the property, 130-150 feet above Highway One, with Bishop pine trees on the

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west and south mostly growing on lower elevations than the inn would sit. The eastern edge of the inn would be about twenty feet below the top of the slope; the topography slopes down, west of the proposed inn.

To the north and east of the parcel are two undeveloped parcels owned by the State Parks Department on which future public use is anticipated. As proposed, the inn would be visible from state land as the site is almost at the top of the grass-covered slope and is not completely shielded by trees. The inn may also be visible from Highway One and public roadside turnouts.

## 2. Visual Resources:

Section 30251 of the Act protects important coastal scenic resources. Development in scenic areas must be sited and designed to protect public views and be subordinate to the character of its setting. The Mendocino land use plan contains a similar policy and further directs that development on ridges be regulated so structures will not project above the ridgeline, that tree masses remain to shield the visual impact of new construction and that a one-story height limit be imposed.

Coastal Act Section 30253(5) provides that new development protect special communities and neighborhoods, such as the Mendocino area, which are popular visitor destination points for recreation use. Section 30240(b) requires development adjacent to parks and recreation areas be sited and designed to prevent adverse impacts to them. The Commission, in recognition of Mendocino's special community status has protected views from the town. The Commission has also protected views from public parklands. For example, the Commission denied Mendocino County land use plan amendment #2-87 (Cummings), a proposal to convert a parcel on the south side of Mendocino Bay from residential to a 20-unit inn and restaurant. The Commission's denial findings were in part, based on Sections 30253(5) and 30240(b) of the Coastal Act.

The proposed development is a two-story structure, oriented to the west. The main building will be 32 feet tall and 110 feet long; four dormer windows project above the copper roofline an additional four feet. Windows and balconies extend along more than one-half of the 110 foot length of the western elevation. There will be 130 linear feet of western facing windows and glassed doors; sixty linear feet of western facing window pane will be on the second floor as will observation balconies.

Bishop pine trees, which can reach 40-50 feet tall in this region, grow along the site's western slope, however, the inn may be seen projecting above the tree line. This is because the westerly slope falls approximately 90 feet, combined with the fact the inn will be placed almost at the slope's highest point on relatively flat land. The plans do not indicate tree removal but once development is approved there is nothing to prevent either the selective removal of trees or the cutting back or major thinning of vegetation in order to provide improved views.

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Also, as a Bishop pine matures, its foliage becomes thin and the tree becomes "rangy" looking so the visual barrier becomes less and less effective. According to the applicant's agent a forester visited the site and judged that most of the trees are dead or dying. Apparently the applicant has already thinned or removed some of the trees because of their poor condition. It can be surmised that over time the tree mass which presently exists may be eventually eradicated if not prohibited by conditioning this permit.

While the Coastal Act encourages the development of visitor serving facilities and it is recognized that visitors want to enjoy coastal views as inn guests, this development may not be consistent with the scenic resource protection policies of the Coastal Act because it would tower 130-150 feet above highway elevation and may be seen through and above the tree line. Further, even though the applicant proposes to plant a row of Bishop pines along the property line facing state land the proposal may still have significant visual impact to public users of that land.

Because, as proposed, the project is not consistent with section 30251 and 30240(b) of the Coastal Act the Commission conditions the permit to require a tree management plan prepared by a licensed forester. After the April, 1990 meeting the applicant submitted a tree management program. The plan is required as mitigation to maintain the existing tree canopy, to recommend tree maintenance (pruning, fertilizing, watering, etc) and a replacement planting program to ensure that the inn will remain adequately screened from public view.

The plan will also implement a full landscaping program with tree screening to be planted in a natural pattern along all boundaries of the property. The plan will ensure that replacement trees will be natives of varied size, small and large, so the effect is natural and diverse. Although the plan generally addresses the concerns of the Commission the condition remains to ensure that all concerns are addressed. Further, the condition requires the applicant submit to the Commission a landscape/tree monitoring program on a yearly basis for the life of the project, to begin on the anniversary date of permit issuance. As conditioned, the proposal is consistent with sections 30251 and 30240(b) because potential negative visual impacts will be mitigated to the level of insignificance.

The recommended conditions for Permit 1-89-148 will mitigate significant adverse visual impacts so the Commission can find the project consistent with Sections 30251 and 30240(b) of the Coastal Act and the LUP. Without the mitigation measures denial of the permit would be necessary as the inn would not be subordinate to the character of its setting and public views from Highway One, state park land, and possibly from the town of Mendocino would be adversely affected.

### 3. Water Resources:

Section 30231 of the Coastal Act requires the protection of the biological productivity and quality of coastal waters through, among other means,

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preventing depletion of groundwater supplies. Section 30250 of the Act limits new development to areas where it can be accommodated without significant adverse impact to coastal resources. Section 30240(a) protects environmentally sensitive habitat areas and allows only uses dependent on those resources.

The Mendocino County Environmental Health Department required the applicant to conduct a hydrological study for a previous use permit application involving the parcel to the south (APN 119-320-12). The hydrological report was to determine whether there were adequate water supplies to support an upgrade of the four-unit inn to ten units on that parcel. The report did not, however, evaluate the effects of groundwater withdrawal on nearby Barton Creek or its habitat.

The report documented that three wells on the southern parcel were observed to determine yield. Also, three test wells were drilled on the subject parcel to depths of 100-200 feet but were too shallow and were abandoned. The study concluded that the groundwater yield was insufficient for ten units but adequate for the existing four-unit inn. As there was insufficient groundwater the report explored the possibility of surface water diversion from Barton Creek.

The subject application requests surface water diversion, however the applicant has not received an appropriation permit from the State Water Resources Control Board, Division of Water Rights or a streambed alteration agreement from the State Department of Fish and Game. Withdrawal of an unlimited amount of water from Barton Creek may have significant adverse impact on Campanula californica (swamp harebell), a federal candidate plant species and an environmentally sensitive habitat which the Coastal Act protects. The Department of Fish and Game has commented that the swamp harebell is "wetland dependent and could be seriously threatened, if not eradicated, if the wetland characteristics of its micro-environment are altered." (See Attachment 1). The DFG concluded that if the withdrawal of water were limited to one gpm, sufficient bypass flows to reasonably support the downstream riparian vegetation and the swamp harebell would remain.

The DFG also commented on the proposal's potential impact on the fishery (See Attachment 2). DFG stated that Barton Creek and an on-stream reservoir located just east of Highway One support good populations of rainbow trout. Barton Creek also provides freshwater and nutrients for a variety of wildlife species. DFG commented that the project does not identify specific measures for preventing adverse impacts to the existing wetland nor does it offer any protection for fish and wildlife resources. DFG requested that the following conditions be satisfied before any permit is issued relating to this project:

1. A set bypass flow past the point of diversion to maintain the reservoir, wetland, and riparian habitats as well as fish and wildlife species. The Department requested that the bypass flow amount be reviewed by them before implementation.

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2. That a measuring device capable of measuring required bypass flows be installed; that monitoring of designated bypass flows and maintenance of the measuring device be the applicant's responsibility.

DFG's comments indicate that significant environmental damage may occur if appropriate mitigation is not required. The identified impacts would result from the water diversion which will be regulated by the State Water Resources Control Board (See Attachment 2). The DFG recently re-reviewed the project's impact on the fishery and determined that if the diversion is limited to one gallon per minute that no significant impacts to the fishery will result (telephone conversation with Rick Macedo, Department of Fish and Game, May 30, 1990).

SWRCB, Division of Water Rights, will conduct an independent environmental review and may require an EIR, a process that could take up to one year. The SWRCB may also find that a water diversion at any amount may have significant adverse impacts which cannot be mitigated. This project will be conditioned to require the issuance of an appropriation permit (limiting the amount of water appropriated to no more than one gallon per minute, based on the environmental review conducted to date) and a streambed alteration agreement. This condition will ensure consistency with sections 30240 and 30231 of the Coastal Act.

The application also requests the withdrawal of groundwater from off-site wells. The hydrological report verifies there is only enough groundwater for four units and not ten which is why the applicant is proposing to supplement groundwater with surface water. The report did not investigate the impact of groundwater withdrawal on Barton Creek's watershed so possible impacts to Barton Creek were not discussed. After the April, 1990 hearing Commission staff sought to discover how much water actually will be required for the proposed project and the single family home on the adjacent parcel and whether there would be potential impacts to the creek.

The additional hydrological information (see Attachment II) indicates that the inn will require a minimum of 1800 gallons per day, an extra 200 gpd will be required to supply the on-site manager's quarters and landscaping needs. The needs of the single family home on the adjacent parcel were not calculated but the report concludes that the well "is supplied by a water source which is distinct and separate both from the flow of Barton Creek and from that source which supplies a new 100 foot well."

The report indicates that the combination of all water sources will produce approximately 1840 gpd, "(New well: 430 gpd; Barton Creek: 1 gpm/1440 gpd.)". It is opined that the new 100 foot well draws water from an unconfined aquifer and not from the underlying flow of Barton Creek. According to the report there will not be significant adverse impacts to the creek as a result of groundwater withdrawal or surface water diversion. However, potential impacts will be further explored by the State Water Resources Control Board as part of the environmental review for the appropriation permit.

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Because groundwater will be taken from wells on the adjacent parcel and the adjacent parcel's septic field will be used for the proposed development, the applicant will also be required to submit to the Executive Director deeded easements in favor of the subject parcel to the wells (and septic system) located on the adjacent parcel prior to permit issuance. As conditioned the permit will be consistent with sections 30250 of the Act which provides that new development be located in areas able to accommodate it and where it will not have a significant impact on coastal resources.

This approval applies only to the development of an inn and not to a restaurant or any other visitor serving facility. Development of auxiliary facilities may have a significant adverse impact on coastal resources, therefore, the permit shall be conditioned to require the recordation of a future development deed restriction so the Commission will have the opportunity to review any proposed future development.

4. California Environmental Quality Act:

As discussed in the findings above, the project, as originally proposed would not be consistent with the Coastal Act and may have a significant adverse effect on the environment within the meaning of CEQA. Alternatives to the proposal include a reduced project or denial of the project. Mitigation measures have been imposed to reduce the size and impact of the project to a level of insignificance. As mitigated, the project is consistent with Chapter 3 of the Coastal Act.

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ATTACHMENT

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260



Staff: S. Strachan - E  
Staff Report: July 3, 1991  
Hearing Date: July 17, 1991  
Commission Action: Approved with conditions

ADOPTED FINDINGS: PERMIT AMENDMENT

APPLICATION NO.: 1-89-148-A

APPLICANT: ARTHUR CIANCUTTI

PROJECT LOCATION: 9350 North Highway One, Mendocino, Mendocino County  
APNs 119-320-11, 119-320-12

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a ten-unit inn and auxiliary structures (meeting/recreation, laundry/storage); expansion of an existing, off-site septic system; and construction of a water system.

DESCRIPTION OF AMENDMENT: Authorize drilling of a test water well and modify special conditions from "prior to issuance" requirements to "prior to occupancy" requirements for (1) the submittal of a water appropriation permit from the Water Resources Control Board, and (2) the recordation of easements for the transfer of groundwater from Parcel 119-320-12 (the southern parcel) to Parcel No. 119-320-11 (the northern parcel)

LOCAL APPROVALS RECEIVED: Mendocino County Use Permit #U36-88  
Mendocino County Dept. of Environmental HealthSUBSTANTIVE FILE DOCUMENTS: Mendocino County LUP  
Coastal Development Permit File 1-89-148  
Mendocino Land Use Plan Amendment File 1-88

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PROCEDURAL NOTE: Pursuant to Section 13166 of the Regulations, the Executive Director determined that this amendment is material and therefore brought it to the Commission for their review.

Section 13166 of the Commission's Administrative Regulations state that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit. Although the applicant requested a change to the timing of two of the required Special Conditions, as explained in Section IV.2., the Commission's intent is still being carried out, as the inn will be provided with an adequate water supply.

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The Commission held a public hearing and then acted on this application at the meeting of July 17, 1991, by adopting the following resolution. The resolution differs slightly from the written staff recommendation dated July 3, 1991, in that the Commission changed all references to the "Department of Water Resources" to the "Water Resources Control Board".

I. Approval with Conditions

The Commission hereby grants a permit for the amended development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached

III. Special Conditions:

1. PRIOR TO OCCUPANCY of the inn, the applicant shall submit evidence of an appropriation permit from the State Division of Water Rights of the Water Resources Control Board allowing withdrawal not to exceed one gallon per minute and a streambed alteration agreement from the Department of Fish and Game.

This condition shall substitute for Special Condition No. 2 of Coastal Development Permit No. 1-89-148.

2. A. PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit a deed easement in favor of APN 119-320-11 to use the septic field located on APN 119-320-12.

B. PRIOR TO OCCUPANCY of the inn, the applicant shall submit a deeded easement in favor of APN 119-320-11 to take groundwater from APN 119-320-12 for use on APN 119-320-12.

This condition shall substitute for Special Condition No. 3 of Coastal Development Permit No. 1-89-148.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

1. Background and Amendment Description

a. Background

The applicant owns two adjacent parcels south of the town of Mendocino at 9350 Highway One; the southernmost parcel is presently occupied by a four-unit inn

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(See Exhibit 2). In 1988, the Commission approved LUP Amendment #1-88 for Mendocino County to transfer the \*1C designation (providing for the conditional use of a 10-unit inn) from the southern parcel (APN 119-320-12) to the subject parcel, APN 119-320-11 (the northern parcel). The applicant intends to transfer the existing four-unit inn use on the southern parcel to the northern parcel, and increase the number of units in the inn to ten.

In 1990, the Commission approved Coastal Development Permit 1-89-148, permitting the construction of a 10-unit inn with auxiliary structures on the northern parcel, the enlargement of a septic system on the southern parcel to serve the new inn, diversion of 1 gpm from Barton Creek to supply the inn, the use of groundwater from the southern parcel to supply the inn, and development of a water system for the inn incorporating the surface and groundwater (See Exhibit 3).

Approval of Coastal Development Permit No. 1-89-148 was subject to five special conditions. Special Conditions 1, 4 and 5 are not proposed to be changed in this amendment. Special Condition No. 1 required submittal of a landscape plan for management of the forest surrounding the site for the ten-unit inn and yearly monitoring reports to Commission staff, in order to protect visual resources. The landscape plan has been submitted, and the first monitoring report is not due until one year after issuance of the permit. Special Condition No. 4 required the recordation of a deed restriction stating that Coastal Development Permit No. 1-89-148 was only for the development described in the permit and that all future development would require an amendment to CDP No. 1-89-148. The deed restriction has been submitted to the Commission's legal division and is currently under review for compliance with Special Condition No. 4. Special Condition No. 5 requires the abandonment of the four-unit inn on the southern parcel as a visitor-serving use within 30 days of completion of the ten-unit inn on the northern parcel.

Special Condition No. 2, proposed for amendment in this application, required the submittal of (1) an appropriation permit from the State Water Resources Control Board (SWRCB) for the 1 gpm withdrawal from Barton Creek and (2) a streambed alteration agreement from the Department of Fish and Game; both were required to be submitted prior to the issuance of the coastal development permit. The applicant has submitted an application to the SWRCB, but has not received a permit. The applicant has not submitted an application to the Department of Fish and Game for a Streambed Alteration Agreement. Special Condition No. 3, proposed for amendment in this application, required the recordation of deeded easements in favor of the northern parcel for groundwater supply and septic disposal on the southern parcel. The applicant has submitted the recorded easement for septic disposal, but the easement that was submitted for groundwater supply has not been recorded.

b. Amendment Description.

Subsequent to Commission approval of the ten-unit inn, the applicant conducted additional groundwater studies on the northern parcel, and discovered

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sufficient groundwater to support a production well on that parcel. This discovery has lessened the concern that there might not be an adequate water supply for the inn, and the applicant wishes to commence construction as soon as possible. The County use permit is effective on the 21st day following approval (Use Permit Condition A.1.), but Mendocino County will not allow construction to commence without a permit from the Coastal Commission (Use Permit Condition A.2.). Therefore, the applicant proposes to change Special Conditions Nos. 2 and 3 of his Coastal Development Permit, to require that the additional government approvals for the surface water diversion, and the easement for water supply for the northern parcel, be required prior to occupancy of the inn, rather than prior to issuance of the permit. The applicant also includes the test well as part of his amendment application.

Use of the well as a production well to supply the inn would require an amendment to both the County Use Permit and to the Coastal Development Permit.

## 2. Locating and Planning New Development.

Section 30250(a) of the Coastal Act states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The subject parcel is located in Mendocino County outside the urban-rural boundary of the town of Mendocino, and in Mendocino County, water supply is of particular concern. In its action on Coastal Development Permit No. 1-89-148, the Commission was extremely concerned about providing an adequate water supply for the proposed inn, while still protecting the riparian resources of Barton Creek. The existing well on the southern parcel produces 430 gpd, which is sufficient for the existing four-unit inn, but not for the proposed ten-unit inn. Therefore, as part of his application for Coastal Development Permit Application No. 1-89-148, the applicant proposed, and was granted authorization, to divert water from Barton Creek at a maximum rate of 1 gpm, for a daily yield of 1,440 gpd. The amount was determined to be adequate for the maximum daily demand of a ten-unit inn with one manager, at 80 gallons/person/day, double occupancy, for the inn (total of 1600 gpd) plus 200 gallons/person/day for the manager. The Department of Fish and Game determined that the diversion of 1 gpm is adequate to maintain the fishery resource of the stream, and to protect the downstream riparian and wetland habitat.

The Commission conditioned the approval to require that the applicant obtain an appropriation permit for the water diversion from SWRCB, as the SWRCB regulates the withdrawal of surface water in California, and conducts the environmental review associated with that activity. The Commission required the appropriation permit prior to issuance of the coastal development permit, in order to ensure that the inn would not be constructed without an adequate supply of water.

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The applicant has since drilled an additional test water well on the northernmost parcel, which produces 1,400 gpd. The applicant's hydrologist has concluded that this is an adequate supply for the ten-unit inn, based on a comparison of average per-capita usage at the four-unit inn plus average usage for the inn manager (See Exhibit 4). The Mendocino County Department of Environmental Health has approved the hydrologic study, based on the assumption that per-capita water usage will not change (See Exhibit 5).

Therefore, it appears that an adequate water supply exists on the northern parcel to supply the ten-unit inn. The applicant is not currently applying to the Commission to utilize the groundwater for the inn water supply, but instead to modify the special conditions concerning water supply to change the timing of the submittal requirements. The change would allow him to begin construction of the inn while he awaits permits to develop one or more of the available water sources. In requiring the prior to issuance submittal, the Commission was ensuring that the inn would not be constructed without an adequate water supply. In modifying the condition as the applicant requests, the Commission would not be lessening the intent of the condition, as a water supply for the inn has been documented on the northern parcel, and thus, should the appropriation permit be denied, the inn will not be constructed without a water supply.

Should the applicant, in the future, wish to utilize the groundwater source on the northern parcel to supply the inn, he will need to amend Coastal Development Permit No. 1-89-148 at that time. The applicant's hydrologist and the Mendocino County Department of Environmental Health have recommended measures to decrease water consumption such that all the water for the inn could be provided on the northern parcel, and the Commission may wish to adopt such measures at the time of the amendment.

Therefore, as adequate services are available to serve the project, the Commission finds that the amendment proposal is consistent with Section 30250(a).

The Commission notes that the approval of the proposed amendment is unusual, in that the timing requirements of special conditions are being modified to accommodate the applicant's construction schedule. However, the inn is a visitor-serving use, a priority use under the Coastal Act, and the provision of additional visitor facilities on the coast warrants special attention. In addition, the change in conditions will match the requirements currently imposed by the County in the use permit for the development. Furthermore, the intent of the conditions will still be carried out as adequate water supplies exist to serve the inn.

### 3. Alleged Violation.

The test well was drilled without a coastal development permit or a coastal development permit waiver. Although development has taken place prior to submission of this permit application, consideration of the application by the

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Commission has been based solely on Chapter 3 policies. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Mendocino County LUP/Prejudice to the LCP.

Policy 3.8-1 of the Mendocino County LUP requires consideration of Highway 1 capacity, availability of water and sewage disposal when considering applications for Coastal Development Permits. Policy 3.8-9 requires proof of an adequate water supply during dry summer months which will accommodate the proposed parcels and will not affect contiguous or surrounding areas. The proposed amendment still ensures that adequate water facilities are available to serve the proposed development, and thus is in conformance with Policies 3.8-1 and 3.8-9 of the Mendocino Land Use Plan.

Section 30604 of the Coastal Act authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, is consistent with Chapter 3 policies of the Coastal Act as discussed above, and thus will not prejudice local government's ability to implement a certifiable LCP.

5. CEQA:

The project, as conditioned, does not have a significant adverse effect on the environment, within the meaning of CEQA. The project has been mitigated as discussed above to assure consistency with the Coastal Act and there will be no significant cumulative adverse impacts to coastal resources.

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## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET, SUITE 200  
EUREKA, CA 95501  
(707) 445-7833

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT**

DATE: November 16, 1999

Permit No: 1-89-148-A2

issued to: Arthur R. Ciancutti

for **Construct 10 unit inn.**

at **9450 North Highway One (approximately 1 mile south of the Town of Mendocino),  
Mendocino (Mendocino County)**

has been amended to include the following changes:

**The amended project will convert an existing on-site water well drilled as test well to a production well for use as the primary water source for the development with retention of off-site well(s) and diversion as a backup source.**

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.

This amendment will become effective upon return of a signed copy of this form to the North Coast District office. Please note that the original permit conditions are still in effect.

Sincerely,  
PETER M. DOUGLAS  
Executive Director

By: ERIC OPPENHEIMER  
Coastal Planner

**ACKNOWLEDGMENT:**

I have read and understand the above amendment and agree to be bound by its conditions and the remaining conditions of Permit No: 1-89-148-A2.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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