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Staff:	Randall Stemler
Staff Report:	October 23, 2003
Hearing Date:	November 6, 2003
Commission Action:	

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE & DE NOVO

APPEAL NO.:	A-1-MEN-03-003
APPLICANT:	Arthur B. & Linda J. Cody
AGENT:	Jim Barrett
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	North side of Riverside Drive-Eureka Hill Road, immediately east of its intersection with Windy Hollow Road, Point Arena, Mendocino County (APN Nos. 027-221-01(x), 027-092-26(x), and 027-092-27.
PROJECT DESCRIPTION:	Coastal Development Minor Subdivision of an approximately 103-acre parcel creating two parcels: Parcel 1 containing 43+- acres situated within the city limits of Point Arena and Parcel 2 containing 60+- acres situated within the County of Mendocino.
APPELLANTS:	Commissioners Mike Reilly and John Woolley

The appellants further contend that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.2-16, which prohibits division of agricultural lands designated RL unless: (1) continued or renewed agricultural use is not feasible, (2) such conversion would preserve prime agricultural land, or (3) such division would concentrate development consistent with Section 30250 of the Coastal Act. The County's approval of Coastal Development Minor Subdivision No. 8-2002 contains no findings demonstrating that any of the three exceptions to the prohibition on division of RL lands contained in LUP Policy 3.2-16 are present or why the approved division is otherwise consistent with LUP Policy 3.2-16. In fact, the County's adopted findings, contrary to exception No. 1, state that the division will protect continued agricultural use and contribute to agricultural viability. Aerial photographs indicate that the property is currently, and has been under agricultural use. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicant's agent Mr. Jim Barrett, serves as grazing pasture for the applicant's horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to preserving prime agricultural land, the sub-division would facilitate development of a home in prime agricultural-zoned lands, thereby reducing the size of the portion of the parcel that would be viable for continued agricultural use. In addition, the portions of the parcel currently within the City's jurisdiction, are designated Agricultural Exclusive, and would also be made less viable for agricultural use by being severed from the rest of the parcel. With regard to exception No. 3, the sub-division would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with the intent of Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of this land designated RL under the County LCP have been demonstrated to exist, the approved minor subdivision raises a substantial issue of conformance with LUP Policy 3.2-16.

Finally, the appellants contend that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.8-7 and CZC Section 20.516.015 requiring a subdivision creating new parcels to be approved only where a satisfactory site for a sewage system exists. The County approval of the minor subdivision raises a substantial issue of conformance with LUP Policy 3.8-7 and CZC Section 20.516.015 because no evidence was provided at the time of County approval of the coastal development permit showing that a satisfactory site for a sewage system exists.

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

The Motion to adopt the Staff Recommendation of Denial is found on page 20.

STAFF NOTES

1. Appeal Process

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

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

Furthermore, developments approved by counties (but not cities) may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development approved by the County is appealable to the Commission because the approved land division is not designated the principally permitted use.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. It takes a majority of Commissioners present to find that no substantial issue is raised. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. If the Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the *de novo* public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants and persons who made their views known to the

Staff Recommendation:

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

Resolution To Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-03-003 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to approve the subdivision from Commission Chairman Mike Reilly and Commissioner John Woolley. The project, as approved by the County, consists of a subdivision creating two parcels of approximately 43 and approximately 60 acres. The appellants' contentions are summarized below, and the full text of the contentions is included in the copy of the appeal attached as Exhibit No. 8.

The appeal raises four contentions involving inconsistencies of the approved subdivision with the County's LCP policies. First, the appellants assert that the Mendocino County Planning Commission approved the subdivision inconsistent with Coastal Zoning Code Section 20.368.020. This section requires a minimum parcel size of 160 acres for new parcels created within areas zoned as Rangeland. The 60-acre parcel that would be created in the County area zoned as Rangeland is clearly less than 160 acres. Second, the appellants contend that the approved project is inconsistent with LUP Policy 3.2-15 requiring that an agricultural master plan be prepared, submitted, and approved prior to approval of a land division of prime agriculture lands designated RL. The property subject to the land division contains prime agricultural land and yet no agricultural master plan was submitted or approved by the County. Third, the appellants contend that the project is inconsistent with the requirements of LUP Policy 3.2-16 prohibiting subdivision of agricultural lands designated RL unless: (1) continued or renewed

20.544.020(F) prior to Commission action. County staff has indicated to Commission staff in a letter received on October 20, 2003, that the Board of Supervisors declined to review the appeal (Exhibit No. 11).

C. PROJECT AND SITE DESCRIPTION

The subject property is an approximately 103-acre parcel that would be divided along the City of Point Arena / Mendocino County boundary line into two parcels, including an approximately 43-acre parcel within the City, and an approximately 60-acre parcel located within the County. The property is located along the north side of Riverside Drive-Eureka Hill Road, immediately east of its intersection with Windy Hollow Road (Exhibit Nos. 1, 2 and 3). Three different Assessor's Parcel Numbers are assigned to this property for tax assessment purposes: 027-221-01 (60 acres), 027-092-26 (42 ½ acres), and 027-092-27 (½ acre).

The subject parcel approved for division was recognized by a previously approved certificate of compliance granted by the County (Exhibit No. 5). Certificate of Compliance No. CC-21-93 was approved on May 19, 1994, recognizing five parcels, four of which are situated within the City of Point Arena, with the remaining parcel situated within both the City and County. While approval of Certificate of Compliance No. CC-21-93 is not a conditional certificate requiring a CDP, it does note that the requirements of the Public Health Department, Building Inspection Department, and County zoning regulations must be complied with prior to the issuance of any building permits. A previously proposed Coastal Development Boundary Line Adjustment, CDB 88-94, involved two of the parcels recognized by CC 21-93, and was denied by the Mendocino County Coastal Permit Administrator on May 23, 1995 because the proposed boundary line adjustment would have created an additional non-conforming parcel by allowing one of the parcels to be only 20 acres within the 160-acre minimum Rangeland-zoned district. A subsequent Coastal Development Boundary Line Adjustment, CDB 77-2000, was approved reconfiguring the two parcels recognized by CC 21-93, resulting in the present configuration of the property.

Currently, the property is split-zoned. The approximately 60-acre (Parcel 2) portion of the property that lies within the County of Mendocino is zoned Rangeland – 160-acre minimum (RL-160) under the Mendocino County certified LCP. The approximately 43-acre (Parcel 1) portion of the property that lies within the city limits of Point Arena is itself split-zoned with 2½ acres zoned Suburban Residential (SR) and the remaining portion zoned Agriculture Exclusive (AE) under the City of Point Arena certified LCP. Parcel 1 is developed with a historic residence, detached garage, and several accessory structures (Exhibit No. 6).

The Parcel 2 portion of the property within the County's jurisdiction that is the subject of this appeal is zoned RL-160 and has no structures on it. The parcel is predominantly vegetated by grassland with herbaceous species. Hardwoods and conifers grow in the

Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

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

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

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

Allegations Raising Substantial Issue

The appellants contend that the project as approved is not consistent with certain policies and standards of the certified LCP. The appellants specifically cite inconsistencies with (1) Coastal Zoning Code (CZC) Section 20.368.020 requiring 160-acre minimum lot area for property zoned rangeland; (2) LUP Policy 3.2-15 requiring that all land divisions of prime agriculture lands designated AG or RL be preceded by the preparation, submittal, and review of an approved master plan; (3) LUP Policy 3.2-16 prohibiting division or conversion to non agricultural use unless findings are made that continued or renewed agricultural use is not feasible, such conversion would preserve prime agricultural land, or division would concentrate development consistent with Section 30250 of the Coastal Act; and (4) LUP Policy 3.8-7, and CZC Section 20.516.015 requiring that a subdivision creating new parcels be approved only when it has been demonstrated that a satisfactory site for a sewage system exists.

02-148 (Augusts). The Coastal Commission found that Appeal No. A-1-MEN-02-148 raised a substantial issue and denied the project *de novo* at the Commission meeting of December 13, 2002. In the County staff report for that project, the County staff recognized that "it could be concluded that the project would not be consistent with the Land Use Maps" because the parcel is less than the required 160 acres, but County staff then went on to state that:

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

Although the County may consider this common practice a "policy," the Commission found in its action taken on Appeal No. A-1-MEN-02-148 that it is not a certified policy of the Local Coastal Program. Therefore, the County's in-house, informal policy is not a part of the standard of review for subdivision projects and does not provide a basis for approval of a land division creating a parcel less than 160 acres in the RL-160 zone.

The Commission finds that the degree of factual and legal support for the County's action is low, given that (1) CZC Section 20.368.020 sets a minimal parcel size of 160 acres for new parcels created in the RL-160 zone and the approved land division within the County includes a new approximately 60-acre parcel, and (2) the County cited an informal policy not contained in the certified LCP as a basis for over-riding the 160-acre minimum parcel size requirement of CZC Section 20.368.020. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the requirements of CZC Section 20.368.020 that the minimum parcel size of new parcels created in the RL-160 zone be 160 acres.

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

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

LCP Policy:

LUP Policy 3.2-15 states:

All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use

the County prior to approval of the proposed land division as required. In addition, with the thousands of acres of Agricultural and Rangeland designated land in the Mendocino coastal zone and with rising residential land values creating pressure to create new home sites in the coastal zone, the precedential value of the County's action not requiring an agricultural master plan is relatively high with respect to future actions on subdivisions of prime agricultural lands. Therefore, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the provisions of LUP Policy 3.2-15 requiring that all land divisions of prime agriculture lands designated AG or RL be preceded by the preparation, submittal, and review of an approved master plan.

3. Limits on Division of Agricultural Lands.

The appellants contend that the project as approved is inconsistent with LUP Policy 3.2-16, which prohibits division of lands designated RL unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) the division would concentrate development consistent with Section 30250. No findings demonstrating that any of these three exceptions to the prohibition on division of RL lands were made.

LCP Policy:

LUP Policy 3.2-16 states:

All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.

"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:

- 1. An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
- 2. An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan (emphasis added).

4. Proof of Adequate Utilities.

The appellants contend that the project as approved is inconsistent with LUP Policy 3.8-7 requiring land divisions and subdivisions creating new parcels to be approved only where a satisfactory site for a sewage system exists. The County action to approve Coastal Development Minor Subdivision No. 8-2002 contained no findings that any evidence was provided prior to approval demonstrating that "a satisfactory site for a sewage system exists."

LCP Policies:

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979 (emphasis added).

Coastal Zoning Code Section 20.516.015—General Criteria, dealing with utilities states:

New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.

(A) Septage and Leach Field.

(1) Subdivisions or boundary line adjustments creating new parcels or additional residential, commercial or industrial building sites shall only be approved where the application is consistent with all provisions of this division and where:

(a) A community sewage disposal system with available capacity exists and is obligated to provide service; or a satisfactory site for an individual sewage system exists.

(b) Leach field approval shall require the satisfactory completion of a site evaluation on the site of each proposed septic system to be performed by a qualified hydrologist/soils engineer pursuant to techniques described in the

Policy 3.8-7 and Coastal Zoning Code Section 20.516.015 require evidence be provided demonstrating existence of a satisfactory site for a sewage system prior to County approval of a subdivision creating new parcels. No evidence demonstrating the existence of a satisfactory site for a sewage system on the approximately 60-acre portion of the approximately 103-acre subdivision was provided prior to the County's approval of the division. Therefore the County's approval of the project still raises a substantial issue of conformance with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, which require that a subdivision creating new parcels be approved only when it has been demonstrated that a satisfactory site for a sewage system exists. Therefore, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the LCP policies and standards cited above requiring sewage disposal capacity adequate to serve new development.

Conclusion of Part One: Substantial Issue

The Commission finds that, as discussed above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with the policies and standards of the LCP regarding: (1) the 160-acre minimum parcel size in the Rangeland Zoning District, (2) requirements for submittal of an agricultural master plan necessary for approval of subdividing agricultural lands containing prime agricultural lands, (3) limits on subdivision of RL-zoned agricultural land, and (4) proof of adequate utilities to serve future development that would be accommodated by a subdivision at the time the subdivision is approved.

PART TWO—*DE NOVO* ACTION ON APPEAL

Staff Notes:

1. Procedure

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

provisions, including provision of adequate utilities requiring demonstration of an adequate site for on-site sewage treatment and the availability of water.

1. **Protection of Agricultural Lands**

LCP Policies

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

Minimum Lot Area for RL Districts.

One hundred sixty (160) acres.

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

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

LUP Policy 3.2-16 states:

All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.

"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:

3. *An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
4. *An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

division will not conflict with continued agricultural use of the subject property and overall operation; (3) the [land] division is only for purposes allowed in AG or RL designations; and (4) the [land] division will not contribute to development conflicts with natural resource habitat and visual resource policies. Without an approved agricultural master plan, there is little basis for determining that the proposed land division meets the findings that are required pursuant to LUP Policy 3.2-15.

Finally, the proposed land division is inconsistent with the certified LCP provisions of LUP Policy 3.2-16 prohibiting division of RL designated lands unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act. With regard to Exception No. 1, aerial photographs indicate that the property continues to be under agricultural use. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicant's agent Mr. Jim Barrett, serves as grazing pasture for the applicant's horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to preserving prime agricultural land, the sub-division would facilitate the development of a home in the agricultural-zoned lands, thereby reducing the parcel's viability of the portion of the parcel that would be viable for continued agricultural use. In addition, the portions of the parcel currently within the City's jurisdiction are designated Agricultural Exclusive and would be made less viable for agricultural use by being severed from the rest of the parcel. With regard to exception No. 3, the sub-division would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with the intent of Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of RL designated land have been demonstrated to exist, the approved minor subdivision is inconsistent with LUP Policy 3.2-16.

The requirements of the above-cited certified LCP policies specifying large minimum lot sizes, requiring the preparation of agricultural master plans, and prohibiting division of RL designated lands except under very limited circumstances, are designed to minimize potential conflicts between agricultural operations and residential land uses. Sections 20.458.005 and 20.458.010 of the Coastal Zoning Code limit the number of residences to one unit per parcel in the coastal zone. Therefore, approval of the proposed land division would allow for future construction of a residence on the newly created 60-acre parcel. The applicants already have a house on the approximately 43-acre portion of the property. Without approval of the proposed land division, no home could be built in the RL-zoned portions of the property because the existing undivided parcel already has one residence, the maximum allowable pursuant to CZC Sections 20.458 and 20.458.010. While placement of an additional single-family residence on the RL property that meets the minimum lot size requirements would be consistent with RL-zoned principally permitted uses, construction of another house on the subject lot would diminish the

approved master plan showing how the proposed division would affect agricultural use on the subject property prior to making required findings that the land division would protect continued agricultural use and contribute to agricultural viability. No master plan has been produced to provide a basis for making required findings. LUP Policy 3.2-16 prohibits division of lands designated RL unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act. None of these findings can be made as the parcel continues to be used for agriculture, the subdivision would facilitate non agricultural development within prime agricultural lands, and the division would not concentrate development with the urban area of Point Arena but instead facilitate creation of another home in the rural area. Therefore, the proposed subdivision is inconsistent with LUP Policy 3.2-16.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.2-15 and 3.2-16 and CZC Section 20.368.020 and must be denied.

2. Suitable Site for Septic Systems

LCP Policies

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

Coastal Zoning Code Section 20.516.015—General Criteria, dealing with utilities states:

New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.

(A) *Septage and Leach Field.*

- (1) *Subdivisions or boundary line adjustments creating new parcels or additional residential, commercial or industrial building sites shall only be approved where the application is consistent with all provisions of this division and where:*

On June 2nd 2003, for purposes of the Commission's *de novo* review, the applicant provided evidence demonstrating the existence of a satisfactory site for a sewage system with adequate capacity to serve the approximately 60-acre portion of the approximately 103-acre subdivision (Exhibit No. 10, page 7). In a cover letter transmitting the information, the applicants state:

“After receiving the appeal (A-1-MEN-03-003) and discovering that one alleged basis for appeal is inconsistency with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, we asked for a waiver of the 49 day rule to allow time to complete soils work that would be consistent with what appears to be a new or different interpretation of codes. A certified professional soils scientist, Carl Rittiman, was retained; completed an on-site investigation; prepared a report of findings; designed systems and submitted it to the County Dept. of Environmental Health for review and approval. The County Health Dept. approved the work and gave final approval to the land division on April 7, 2003.”

The submitted evidence included a letter from Scott Miller of Mendocino County Department of Environmental Health stating that the soils investigation and septic system design meet County requirements.

Therefore, as the evidence submitted by the applicant for purposes of the Commission's *de novo* review demonstrates that an adequate site to develop an on-site sewage disposal system exists, the Commission finds the proposed land division is consistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015.

However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain other LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including 1) policies establishing minimum sizes for new parcels to be created in the RL-160 zone; 2) policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands, and 3) policies prohibiting division of lands designated RL unless continued or renewed agricultural use is not feasible; or such conversion would preserve prime agricultural land; or if the division would concentrate development consistent with Section 3025 of the Coastal Act. Therefore, the proposed development must be denied.

3. Availability of Water

LCP Policies

LUP Policy 3.8-9 states:

“Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas.

development is compatible with the limitations of the local water supply. Water well testing guidelines for proof of water require that water wells be tested "during dry season conditions, which is defined to be the period of August 20th to October 31st." The hydrological study guidelines in the document set forth requirements for studies to be performed for certain types of development and land divisions in order to determine the adequacy of on-site groundwater supply for a proposed development and to document any adverse impacts on local water users and the aquifer as a whole.

Mendocino County certified LCP Policy 3.8-9 states that "*Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982 as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised (Appendix 6).*" The *Mendocino County Coastal Ground Water Study* states: "The determination of availability of water for a specific development requires professional judgment and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability.... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated MWR (Marginal Water Resources) shall have a minimum lot size of 5 ac; 'proof of water' not required. All lots less than 5 ac shall be required to demonstrate 'proof of water.'" Because the subject parcel that would be created in the County portion of the land division would be in excess of 5 acres, demonstration of proof of water is not required to find conformance with LUP Policy 3.8-9.

The Commission finds the proposed land division is consistent with provisions of LUP Policy 3.8-9 concerning proof of availability of water for new parcels created by land divisions. However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain other LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including 1) policies establishing minimum sizes for new parcels to be created in the RL-160 zone; 2) policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands, and 3) policies prohibiting division of lands designated RL unless continued or renewed agricultural use is not feasible; or such conversion would preserve prime agricultural land; or if the division would concentrate development consistent with Section 3025 of the Coastal Act. Therefore, the proposed development must be denied.

4. Alternatives

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

substantially lessen any significant adverse impact that 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 project is not consistent with the policies of the certified LCP regarding divisions of land in areas designated and zoned for agricultural use, including policies establishing minimum sizes for new parcels to be created in the RL-160 zone; as well as policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands; and policies requiring findings showing that (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act.

As also discussed above in the findings addressing project alternatives, there are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Detail Local Vicinity
4. Site Plan
5. Certificate of Compliance
6. Aerial Photo and Site Photos
7. Notice of Final Action & Staff Report
8. Appeal
9. City Final Action
10. Applicants' Correspondence
11. County Letter

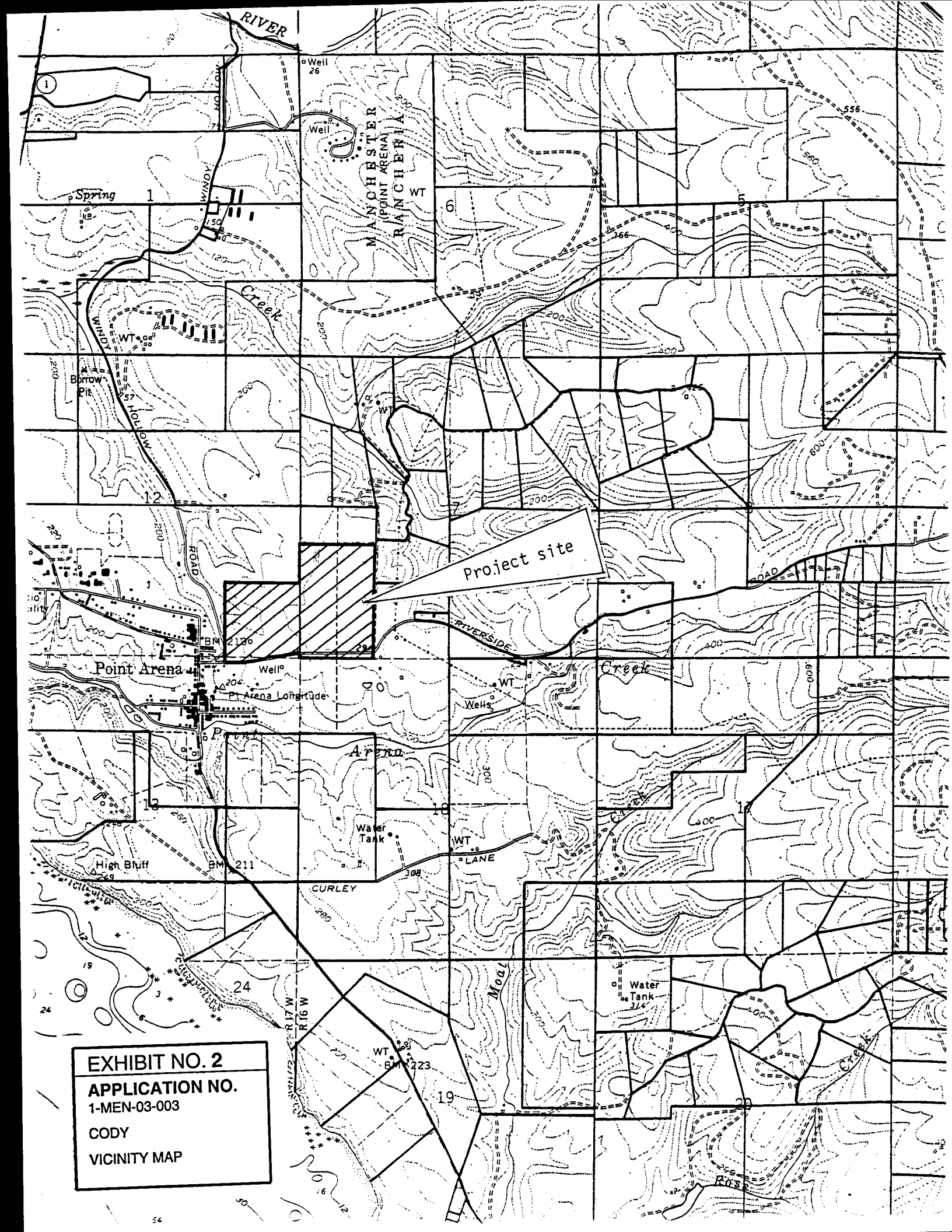
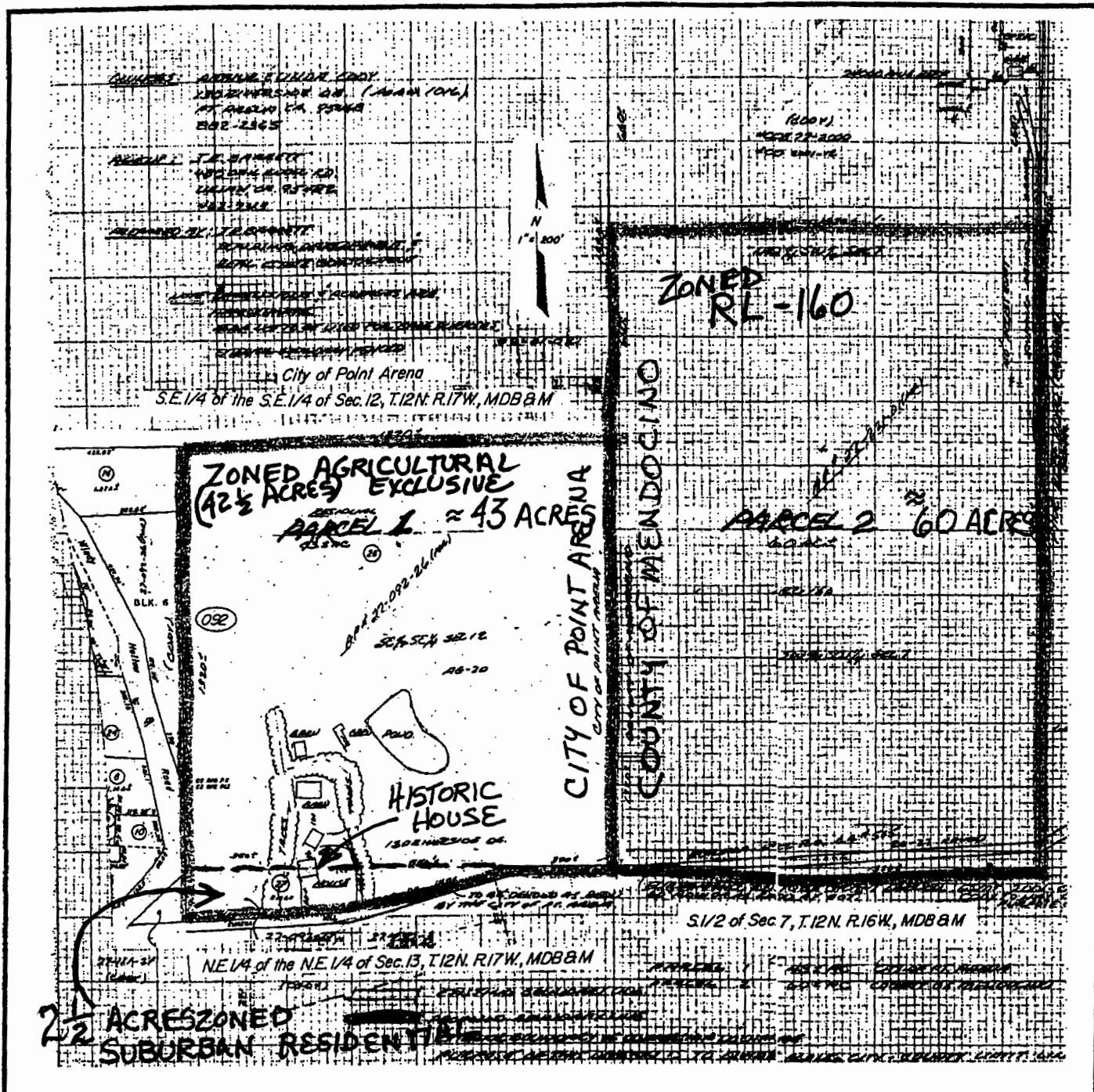


EXHIBIT NO. 2
APPLICATION NO.
1-MEN-03-003
CODY
VICINITY MAP



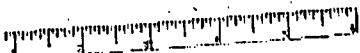
	OWNER/APPLICANT: Arthur and Linda Cody	AGENT: J. R. Barrett
APN: 027-221-01(x) 027-092-26(x), 027-092-27	Site Map	NORTH ↑ Not to Scale

EXHIBIT NO. 4
APPLICATION NO.
 1-MEN-03-003
 CODY
 SITE PLAN

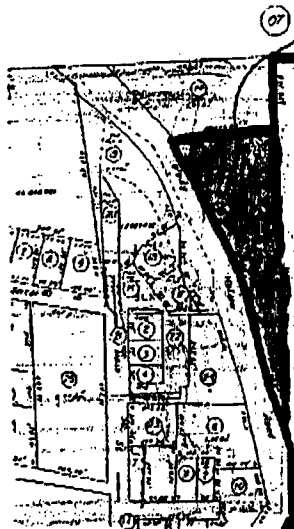
TOWNSHIP 12 NORTH

- CC#1
- CC#2
- CC#3
- CC#4
- CC#5

RANGE 16W
RANGE 16W



Blks. 6 & 7, par. Blks. 2 & 4 of the City of Point Arena
S.E. 1/4 of the S.E. 1/4 of Sec. 12, T.12N. R.12W, MDB&M
PSP



27-092-25 (+)

27-22

27-221-01

39.41 ac

PAT 109

27-092-26 (+)
20

27-131

15 PAT 291
27-131-04

Lot 1 of Block B
27-110-21 (+)

52-003

2-001

27-131-05

city limits

PATENTS AND SEPARATE DEED

2092

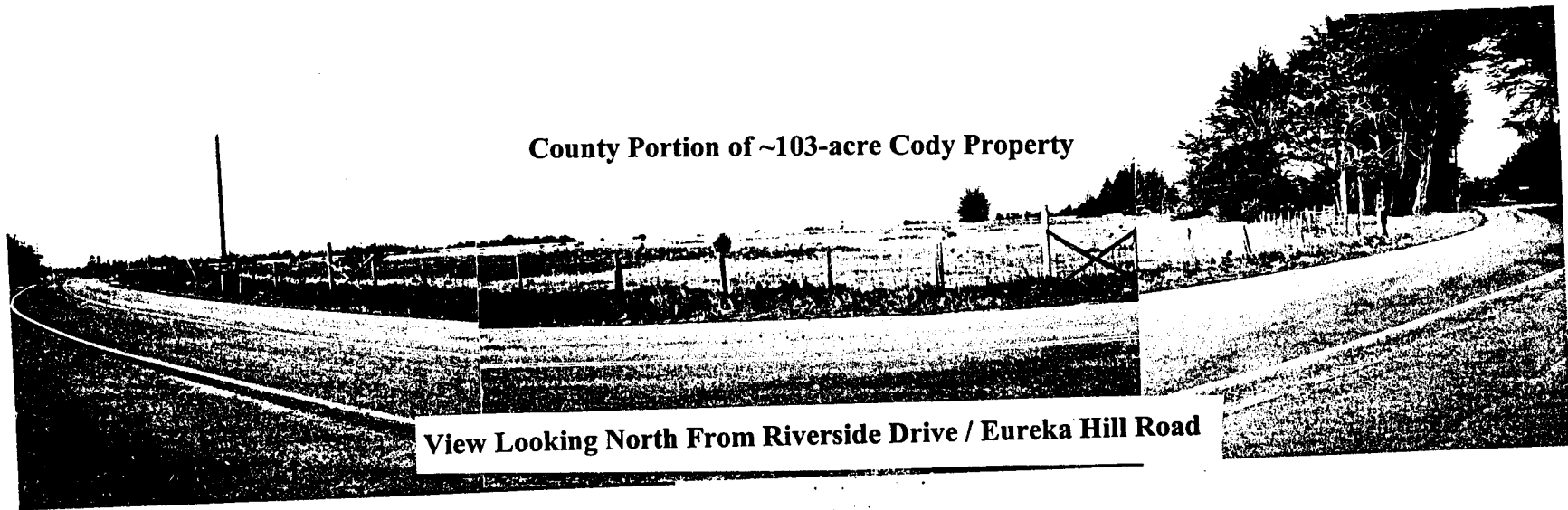
City of Point Arena portion of ~103-acre Cody Property

Historic "Gus Miller" House



2093

County Portion of ~103-acre Cody Property



View Looking North From Riverside Drive / Eureka Hill Road



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

RECEIVED

December 31, 2002

JAN 02 2003

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDMS 8-2002

DATE FILED: 3/25/2002

OWNER: ARTHUR B. & LINDA J. CODY

APPLICANT: ARTHUR B. CODY

AGENT: J.R. BARRETT

REQUEST: Coastal Development Minor Subdivision of a 103+- acre parcel to create two parcels; Parcel 1 containing 43+- acres being situated with the City Limits of Point Arena and Parcel 2 containing 60+- acres being situated within the County of Mendocino boundary.

LOCATION: In the Coastal Zone, within the City of Point Arena and the County of Mendocino boundaries, lying on the north side of Riverside Drive-Eureka Hill Road (CR# 505), immediately east of its intersection with Windy Hollow Road (CR# 508); AP# 027-221-01 (ptn), 027-092-26 (ptn) and 027-092-27.

PROJECT COORDINATOR: Dennis Chaty

ACTION TAKEN:

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

The above project was not appealed at the local level.

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

Attachments

cc: ARTHUR & LINDA CODY
J.R. BARRETT
FRIENDS OF SCHOONER GULCH
COASTAL COMMISSION
ASSESSOR

EXHIBIT NO. 7
APPLICATION NO. 1-MEN-03-003 CODY NOTICE OF FINAL ACTION & STAFF REPORT (1 of 16)

In response to Commissioner Little, Mr. Lynch noted that the owner probably receives two separate tax bills because the parcel has two assessor's parcel numbers which constitute one legal parcel.

Upon motion by Commissioner Barth, seconded by Commissioner Berry and carried by the following roll call vote, IT IS ORDERED that the Planning Commission adopts a Negative Declaration and approves #CDMS 8-2002 making the following findings and subject to the following conditions of approval:

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

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

Department of Fish and Game Findings: The Planning Commission has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing development on the subject parcel and surrounding parcels, the project will not have any adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Commission has rebutted the presumption set forth in subdivision (d) of Section 753.5.

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

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents, including Resolution No. 2002-07-PC (Resolution of the Planning Commission of the City of Point Arena granting permit No. 2002-07 for a Coastal Development Permit for a minor subdivision), contain information and conditions sufficient to establish, as required by the Coastal Zoning Code, that:

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

3 of 16

the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

2. There shall be dedicated by Parcel Map (or granted by Grant Deed if a Unilateral Agreement is filed) a thirty (30) foot half width along both sides of Eureka Hill Road (CR# 505) to provide for the ultimate improvement of the county road. This width shall be measured from the existing centerline.
3. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
4. The subdivider shall comply with those recommendations in the Department of Forestry letter of May 24, 2002 and Redwood Fire Protection District letter of May 18, 2002 or other alternatives as acceptable to the Department of Forestry (CDF# 202-02). Written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
5. Submit to the Division of Environmental Health an acceptable site evaluation report (DEH Form Number 42.04) for Parcel 2 to be completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's "Basin Plan Policy for On-site Waste Treatment and Disposal" and Mendocino County Division of Environmental Health's "Land Division Requirements" (DEH Form Number 26.09). The report shall also include identifying replacement areas for existing on-site sewage disposal systems which may exist on the project site.
6. A notation shall be placed on the Unilateral Agreement stating that Parcel 1 within the City limits of Point Arena contains structures listed on the Office of Historical Preservation Historical Properties Directory. Future modification of the structures may require assessment and/or permits by the Office of Historic Preservation and/or the City of Point Arena.
7. In the event that archaeological resources are encountered during construction on the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

SPECIAL CONDITIONS OF APPROVAL:

1. Applicant will comply with all requirements of the Redwood Coast Fire Protection District as specified in the letter by Steve Wells dated May 18, 2002.
2. Applicant will comply with all requirements of the City of Point Arena's Engineer.
3. Applicant shall offer to dedicate a 50 foot wide public roadway along Riverside Drive.
4. Applicant shall submit to the City of Point Arena evidence that all appropriate permits and clearances have been obtained for this project by the County of Mendocino, particularly as they relate to the conditions of approval attached to Permit No. CDMS 8-2002.

5 of 16



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
 501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR
 Telephone 707-463-4281
 FAX 707-463-5709
 pbs@co.mendocino.ca.us
 www.co.mendocino.ca.us/planning

November 20, 2002

RECEIVED

NOV 25 2002

**CALIFORNIA
 COASTAL COMMISSION**

Planning - FB
 Department of Transportation
 Environmental Health - FB
 Assessor
 Air Quality Management
 Caltrans

Dept of Forestry
 Dept of Fish and Game
~~Coastal Commission~~
 Redwood Coast Fire District
 City of Point Arena Planning
 Point Arena Joint Union School District

NOTICE OF PUBLIC HEARING AND AVAILABILITY OF DRAFT NEGATIVE
 DECLARATION FOR PUBLIC REVIEW

NOTICE IS HEREBY GIVEN THAT the Mendocino County Planning Commission at its regular meeting on Thursday, December 19, 2002, at 9:00 a.m., to be held in the Board of Supervisors Chambers, 501 Low Gap Road, Ukiah, California, will conduct a public hearing on the following project and the Draft Negative Declaration at the time listed or as soon thereafter as the item may be heard.

CASE#: CDMS 8-2002
DATE FILED: 3/25/2002
OWNER: ARTHUR B. & LINDA J. CODY
APPLICANT: ARTHUR B. CODY
AGENT: J.R. BARRETT
REQUEST: Coastal Development Minor Subdivision of a 103+- acre parcel to create two parcels; Parcel 1 containing 43+- acres being situated with the City Limits of Point Arena and Parcel 2 containing 60+- acres being situated within the County of Mendocino boundary.
LOCATION: In the Coastal Zone, within the City of Point Arena and the County of Mendocino boundaries, lying on the north side of Riverside Drive-Eureka Hill Road (CR# 505), immediately east of its intersection with Windy Hollow Road (CR# 508); AP# 027-221-01 (ptn), 027-092-26 (ptn) and 027-092-27.
PROJECT COORDINATOR: Dennis Chaty
ENVIRONMENTAL DETERMINATION: The Department of Planning and Building Services has prepared a Draft Negative Declaration for the above project (no significant environmental impacts are anticipated which cannot be adequately mitigated). A copy of the Draft Negative Declaration is attached for your review.
RESPONSE DUE DATE: December 18, 2002. If no response is received by this date, we will assume no recommendation or comments are forthcoming and that you are in agreement with the contents of the Draft Negative Declaration.

It should be noted that the decision making body may consider and approve modifications to the requested project(s). Your comments regarding the above project(s) are invited. Written comments should be submitted to the Department of Planning and Building Services, at 501 Low Gap Road, Room 1440, Ukiah, California. Oral comments may be presented to the Planning Commission during the public hearing(s).

The Planning Commission's action shall constitute final action by the County unless appealed to the Board of Supervisors. If appealed, the Board of Supervisors action shall be final except that an approved project may be appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project. To file an appeal of the Planning Commission's decision, a written statement must be filed with the Clerk of the Board with a filing fee within 10 calendar days of the Planning Commission's decision. If you challenge the project in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s) described in this notice, or in written correspondence delivered to the Department of Planning and Building Services or the Planning Commission at, or prior to, the public hearing(s). All persons are invited to appear and present testimony in this matter.

Additional information regarding the above noted item may be obtained by calling the Department of Planning and Building Services at 463-4281, Monday through Friday, 8:00 a.m. through 5:00 p.m. Should you desire notification of the Planning Commission decision you may do so by requesting notification in writing and providing a self-addressed stamped envelope to the Department of Planning and Building Services.

RAYMOND HALL, Secretary to the Planning Commission

70916

STAFF REPORT FOR COASTAL DEVELOPMENT MINOR SUBDIVISION

#CDMS 8-2002
DECEMBER 19, 2002
PAGE PC-1

OWNER: ARTHUR B. & LINDA J. CODY
PO BOX 1016
POINT ARENA, CA 95468

AGENT: J.R. BARRETT
480 OAK KNOLL RD
UKIAH, CA 95482

REQUEST: Coastal Development Minor Subdivision of a 103+- acre parcel to create two parcels; Parcel 1 containing 43+- acres being situated with the City Limits of Point Arena and Parcel 2 containing 60+- acres being situated within the County of Mendocino boundary.

LOCATION: In the Coastal Zone, within the City of Point Arena and the County of Mendocino boundaries, lying on the north side of Riverside Drive-Eureka Hill Road (CR# 505), immediately east of its intersection with Windy Hollow Road (CR# 508); AP# 027-221-01 (ptn), 027-092-26 (ptn) and 027-092-27.

TOTAL ACREAGE: 103+- acres

ZONING: RL-160 and City of Point Arena

ADJACENT ZONING: North: City of Point Arena and RMR-20
East: RMR-20 and RL-160
South: City of Point Arena and RL-160
West: City of Point Arena

GENERAL PLAN: RL-160 and City of Point Arena

SURROUNDING LOT SIZES: North: RMR-20/City of Point Arena
East: RMR-20/RL-160
South: RL-160/City of Point Arena
West: City of Point Arena

EXISTING USES: Vacant/Residential

SURROUNDING LAND USES: North: Residential
East: Residential and Agriculture
South: Mixed use
West: City of Point Arena

SUPERVISORIAL DISTRICT: 5

GOV. CODE 65950 DATE: January 20, 2003

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: Certificate of Compliance #CC 21-93 was approved for five parcels, four of which are situated within the City of Point Arena and the remaining parcel being situated within both the jurisdictional areas of the City of Point Arena and the County of Mendocino. Coastal Development Boundary Line Adjustment #CDB 88-94 involving two of the parcels recognized by #CC 21-93 was denied by the Coastal Permit Administrator on May 23, 1995, finding the adjustment would create additional

9 of 16

Public Services (Item 13A – Fire Protection): The project site lies within both the jurisdiction of the California Department of Forestry and Fire Protection (CDF) and the Redwood Coast Fire Protection District (RCFPD). Both CDF and RCFPD. That portion of the property within CDF jurisdiction has a Moderate Fire Hazard Severity Rating. Both California Department of Forestry and Fire Protection and Redwood Coast Fire Protection District have reviewed the project and have recommended compliance with appropriate fire safe standards. Condition Number 4 and Special Condition 1 are recommended to minimize hazards to and from future residential and related development.

Utilities (Item 15A – Water Availability): Parcel 1, situated within the City of Point Arena is developed with an existing on-site water and sewage disposal system. In reviewing the project, the City of Point Arena has offered no comment with respect to issues relating to potable water and sewage disposal. The Division of Environmental Health reviewed the project for that portion of the property within the County jurisdiction and stated in a memorandum dated April 22, 2002, the water regime is MWR (Marginal Water Resources) as defined in the Mendocino Coastal Ground Water Study and since the parcel is greater than 5 acres no water quantity testing is required. No mitigation required.

Utilities (Item 15B – Sewerage): Coastal Element Policy 3.8-7 states:

“Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers, and conditional certificates of compliance shall be approved only where a community sewerage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.”

The Division of Environmental Health reviewed the project with respect to on-site sewerage and stated that for Parcel 2, the applicant should submit a site evaluation report by a qualified individual demonstrating compliance with the North Coast Regional quality control board regulations and the Division of Environmental Health's Land Division Requirements. (See Condition Number 5)

Cultural Resources (Items 19A, 19B and 19C): Parcel 1, situated within the City of Point Arena boundary, was reviewed by the Northwest Information Center at Sonoma State University with respect to the structural improvements. The proposed project area (i.e. Parcel 1) contains the Gus Miller House and the Gus Miller Barn, both listed on the Office of Historical Preservation's Historical Properties Directory. Given the status of the structures the Northwest information Center recommends that an architectural historian assess the project's impacts to the historical setting as well as any impact to the building themselves. As the structural improvements are situated within the City of Point Arena's and given that the subject project will create a 43 acre parcel surrounding the improvements, no immediate impact will result from the division. Future modification of the structures or setting would be the responsibility of the City of Point Arena to insure that the integrity of the site and structures are protected. Therefore, staff would recommend that the unilateral agreement recorded for the project provide an advisory note that future alteration or modification of the improvements on the site may require review and/or permits by the State Office of Historic Preservation. (See Condition Number 6)

As for Parcel 2, an Archaeological Survey dated July 11, 2002, prepared by Max A. Neri, Consulting Archaeologist, determined that there were no immediate historical or cultural resource factors limiting future impacts upon the parcel. It is possible, however, that buried resources or obscured resources are present on the property, and careful attention should be paid during future ground disturbing activities. If any are encountered in the course of future ground disturbance, and work should immediately cease, the Mendocino County Archaeological Commission notified and a professional archaeologist consulted. Condition Number 7 is recommended to minimize future impacts upon historical and or cultural resources.

11 of 16

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

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

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

Project Findings: The Planning Commission, making the above findings, approves #CDMS 8-2002, subject to the following conditions of approval as recommended within the staff report, further finding:

Pursuant to California Government Code Section 66445(e) the Planning Commission finds that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.

STANDARD CONDITIONS OF APPROVAL:

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

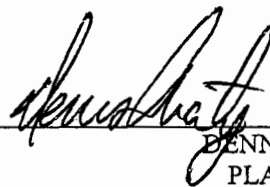
ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to January 3, 2003. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the

13 of 16

11-19-02

DATE



DENNIS CHATY
PLANNER II

DC:sb
11/19/2002

Negative Declaration

Appeal Fee - \$680.00
Appeal Period - 10 days

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

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Planning - Ft Bragg		X	
Department of Transportation			At MSC
Env. Health			At MSC
Building Inspection - Ft Bragg		X	
Coastal Commission	X		
Assessor	X		
Air Quality Management Dist	X		
Arch Commission		X	
Sonoma State University		X	
Caltrans	X		
Dept. of Fish and Game	X		
Dept. of Forestry			X
Redwood Coast Fire District	X		
City of Point Arena Planning			X
Point Arena School Dist.	X		
Addresser		X	

15916

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
 710 E STREET • SUITE 200 P. O. BOX 4908
 EUREKA, CA 95501-1865 EUREKA, CA 95502-4908
 VOICE (707) 445-7833
 FACSIMILE (707) 445-7877



APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing
 This Form.

SECTION I. Appellant(s)

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

Commissioner Mike Reilly	John Woolley
County of Sonoma	Board of Supervisors
575 Administration Drive, Room 100	825 5 th Street
Santa Rosa, CA 95403-2887	Eureka, CA 95501-1153
(707) 565-2241	(707) 476-2393

SECTION II. Decision Being Appealed

1. Name of local/port
 government: County of Mendocino

2. Brief description of development being
 appealed: Subdivision of a 103±-acre parcel to create two parcels; Parcel 1 containing
 43±-acres being situated within the City Limits of Point Arena and Parcel 2 containing 60±-
 acres being situated within the County of Mendocino boundary.

3. Development's location (street address, assessor's parcel
 no., cross-street, etc.): North side of Riverside Drive-Eureka Hill Road (CR
 #505), immediately East of its intersection with Windy Hollow Road (CR #508), Point Arena
 (Mendocino County) (APN(s) 027-221-01, 027-092-26, 027-092-27)

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: CDMS 8-2002
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-03-003DATE FILED: 1/16/03DISTRICT: North Coast

EXHIBIT NO. 8

APPLICATION NO.

1-MEN-03-003

CODY

APPEAL (1 of 10)

RECEIVED

JAN 16 2003

CALIFORNIA
COASTAL COMMISSION

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

See Attachment A

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

SECTION V. Certification

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

Signed: *Anna Ruff*
Appellant or Agent

Date: 1/16/03

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

ATTACHMENT A

Reasons for Appeal

The County of Mendocino approved Coastal Development Minor Subdivision # 8-2002 for subdivision of an approximately 103-acre parcel to create two parcels. Approved Parcel 1 contains approximately 43 acres with an existing residence, is split-zoned with ½-acre zoned Suburban Residential (SR) and the remaining portion zoned Agricultural Exclusive (AE), and is situated entirely within the city limits of the City of Point Arena. Approved Parcel 2 contains approximately 60 acres, is zoned Rangeland (RL-160) and contains land designated Prime Agricultural, is presently undeveloped, and is situated entirely within the County of Mendocino. The effect of creating two legal parcels where there was previously only one, would be to allow the construction of an additional home-site located on the 60-acre (Parcel 2) portion of the property. Without the land division, and because the parcel already has one home located on it, LUP Policy 3.2-1 would preclude the ability to establish one more residence on the property within the County area. The approved Parcel 2 is bordered to the north and east by additional RL designated agricultural parcels. Some land within the City limits that is designated under the Point Arena LCP as Agricultural Exclusive also borders approved Parcel 2. As discussed further below, the approval of this subdivision is inconsistent with several policies and standards of the Mendocino County certified Local Coastal Program (LCP) regarding the 160-acre minimum parcel size in the Rangeland Zoning District, requirements for submittal of an agricultural master plan necessary for approval of subdividing agricultural lands containing prime agricultural lands, and proof of adequate utilities.

I. RANGELAND PROTECTION

The approval of the coastal development minor subdivision permit by Mendocino County encompasses split-zoned property involving rangeland zoned RL-160 requiring a minimum of 160 acres, and is in conflict with rangeland protection policies and standards contained in the Mendocino LCP, including, but not limited to, LUP Chapter 3.2, and Coastal Zoning Code (CZC) Chapters 20.368, and 20.508.

LCP Provisions

LUP Policy 3.2-1 states:

All agricultural land use, as represented within the agriculturally designated boundaries on the land use maps, shall be designated AG 60 or RL 160 for the purpose of determining density.

This will support continued coastal agriculture use. One housing unit will be allowed for each existing parcel. Additional dwellings for resident agricultural workers shall be considered as conditional uses, subject to the provisions of this plan.

5 of 10

Coastal Zoning Code Section 20.368.010—Principal Permitted Uses for RL Districts states:

The following use types are permitted in the Range Lands District:

(A) Coastal Residential Use Types.

*Family Residential: Single-Family;
Vacation Home Rental.*

(B) Coastal Agricultural Use Types.

*General Agriculture;
Light Agriculture;
Row and Field Crops;
Tree Crops.*

(C) Coastal Open Space Use Types.

Passive Recreation.

(D) Coastal Natural Resource Use Types.

Fish and Wildlife Habitat Management.

Coastal Zoning Code Section 20.368.015—Conditional Uses for RL Districts states:

The following are permitted uses upon the issuance of a coastal development use permit:

(A) Coastal Residential Use Types.

*Family Residential: Dwelling Groups;
Family Residential: Cluster Development;
Farm Employee Housing;
Farm Labor Housing.*

(B) Coastal Civic Use Types.

*Alternative Energy Facilities: On-site;
Alternative Energy Facilities: Off-site;
Community Recreation;
Major Impact Utilities;
Minor Impact Utilities.*

(C) Coastal Commercial Use Types.

*Animal Sales and Services: Auctioning;
Animal Sales and Services: Horse Stables;
Animal Sales and Services: Kennels;
Animal Sales and Services: Veterinary (Large Animals);
Commercial Recreation: Outdoor Sports and Recreation;
Cottage Industries.*

7 of 10

B. Agricultural Master Plan

Approved Parcel 2 includes land designated as prime agricultural land. LUP Policy 3.2-15 requires an agricultural master plan to be prepared, submitted, and approved prior to County approval of a land division of prime agricultural land designated RL. No agricultural master plan was submitted or approved prior to the County approval of Coastal Development Minor Subdivision No. 8-2002. Therefore, the project as approved is inconsistent with LUP Policy 3.2-15.

C. Limits on Division of Agricultural Lands

The subject parcel is designated RL by the Mendocino County Land Use Plan. LUP Policy 3.2-16 prohibits division of lands designated RL unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. The County's approval of Coastal Development Minor Subdivision No. 8-2002 contained no findings demonstrating that any of the three exceptions to the prohibition on division of RL lands contained in LUP Policy 3.2-16 are present or why the approved division is otherwise consistent with LUP Policy 3.2-16. In fact, the County adopted findings contrary to exception No. 1, stating that the division will protect continued agricultural use and contribute to agricultural viability. As none of the exceptions under LUP Policy 3.2-16 that would allow for division of this land designated RL under the County LCP has been demonstrated to exist, the approved minor subdivision is inconsistent with LUP Policy 3.2-16.

II. PROOF OF ADEQUATE UTILITIES

LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015 state that a coastal development minor subdivision that would create new parcels shall be approved only where a satisfactory site for a sewage system exists. The approved minor subdivision is inconsistent with these policies and standards because the approval is not supported by evidence that a satisfactory site for a sewerage system exists.

LCP PROVISIONS

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum

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CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

Date: June 26, 2002

The following project is located within the City of Point Arena's coastal zone. A Coastal Development Permit application for the project has been acted upon.

Applicant: Arthur and Linda Cody
Address: P.O. Box 1016
Point Arena, CA 95468
Phone: (707) 882-2365

Application File No.: 2002-07

EXHIBIT NO. 9
APPLICATION NO.
1-MEN-03-003
CODY
CITY FINAL ACTION
(1 of 4)

Filing Date: 03/28/02

Action Date: 05/26/02

Project Description: Permit No. 2002-07 for a coastal development permit to subdivide a 103 +/- acre parcel, located in the City of Point Arena and the County of Mendocino (straddling the jurisdictional boundaries) into two parcels. The parcel in the City will be 43 acres and the parcel in the County will be 60 acres. The property located within the City limits is zoned Suburban Residential one-half acre (SR 1/2) and Agriculture Exclusive (AE). The property located within the County's jurisdiction is Range Land 160 (RL 160). The proposed project requires approvals from the County of Mendocino and the City of Point Arena. In accordance with CEQA Guidelines, the City Council, acting as Planning Commission, adopted a Negative Declaration for the project.

Located at: 130 Riverside Drive, Point Arena, CA
APN's 027-092-26 and 027-092-27 (City) and 027-221-01 (County)

Action: Approved
 Approved with conditions (See Resolution No. 2002-07-PC)
 Denied

Findings: Application No. 2002-07 is found to be in conformance with the City of Point Arena's Local Coastal Plan.

Appealable to the City Council. An aggrieved person may appeal this decision to the City Council by filing a written appeal with the City Clerk within 10 working days after a decision by the Planning Commission.

Not appealable to the Coastal Commission. Actions of the City Council, acting as Planning Commission, are final.

Appealable to the Coastal Commission pursuant to Coastal Action Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the appropriate Coastal Commission district office.


Fred D. Patten, CITY CLERK

RESOLUTION NO. 2002-07-PC

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF POINT ARENA
GRANTING PERMIT NO. 2002-07 FOR A
COASTAL DEVELOPMENT PERMIT FOR A MINOR SUBDIVISION.

WHEREAS, an application has been made for a Coastal Development Permit to subdivide a 103 +/- acre lot into a 43 acre and 60 acre lot; and

WHEREAS, the City Council, acting as Planning Commission, finds that the applicant's project is in conformance with the City's General Plan and Local Coastal.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Point Arena, acting as Planning Commission, adopts a Negative Declaration for the proposed project and approves Application No. 2002-07 subject to the following conditions:

- 1) Applicant will comply with all requirements of the Redwood Coast Fire Protection District as specified in the letter by Steve Wells dated May 18, 2002.
- 2) Applicant will comply with all requirements of the City of Point Arena's Engineer.
- 3) Applicant shall offer to dedicate a 50' wide public roadway along Riverside Drive.
- 4) Applicant shall submit to the City of Point Arena evidence that all appropriate permits and clearances have been obtained for this project by the County of Mendocino, particularly as they relate to the conditions of approval attached to Permit No. CDMS 8-2002.
- 5) A copy of the recorded deeds shall be delivered to the City of Point Arena.


The above and foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Point Arena on the 25TH day of June, 2002, by the following roll call vote:

AYES: Councilmembers Sinnott, Gunning, Tanti, Dahlhoff
NOES: None
ABSENT: Councilmember Gallagher



Leslie Dahlhoff, MAYOR

ATTEST:



Fred D. Patten, CITY CLERK

(SEAL)

3 of 4

J.R. BARRETT
PLANNING, DEVELOPMENT & REAL ESTATE CONSULTANT
480 OAK KNOLL ROAD
UKIAH, CA 95482
(707) 462-7313

State of California
California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, Ca 95501

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CALIFORNIA
COASTAL COMMISSION

RE: Commission Appeal No. A-1-MEN-03-003
May 25, 2003
Attn: Randall Stemler, Coastal Program Analyst

Dear Mr. Stemler:

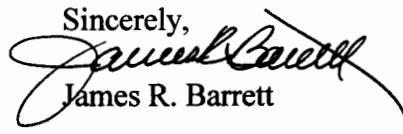
I hereby submit to you our response to Commission Appeal No. A-1-MEN-03-003 (Arthur B. And Linda J. Cody). We believe the facts show that there are no conflicts with any provisions of the Mendocino County LCP, Coastal Zoning Code, or the City of Point Arena's Local Coastal Plan and Zoning Ordinance.

Both the City and County approved the proposed division along the jurisdictional lines finding that the project is in conformance with the City's General Plan and Local Coastal Plan and the County's LCP and Coastal Zoning Code.

The Notice of Appeal, Attachment A, submitted to the applicant, completely ignores the earlier City of Point Arena's action on the same property. There is no analysis of project consistency with provisions of the City's LCP and Zoning Code. Their approval is totally consistent. This, in addition to other discussion later, points out the need for the City to have land use authority over the incorporated area and the County only over the County area.

We request that your staff and Commission reconsider all the reports and documents supporting the City of Point Arena's and the County of Mendocino's approvals de novo and allow this request, finding no significant inconsistencies with the Local Coastal Plans and Zoning Codes.

Thank you for your consideration.

Sincerely,

James R. Barrett

cc: Arthur Cody
County of Mendocino Planning and Building Dept.
City of Point Arena

EXHIBIT NO. 10
APPLICATION NO. 1-MEN-03-003
CODY APPLICANTS' CORRESPONDENCE (1 of 7)

acres zoned Suburban Residential (SR - ½) and the remaining portion zoned Agricultural Exclusive (AE), 20 acres minimum lot size, and is entirely within the City limits. The SR ½ area along Riverside Dr. is zoned to allow 5 (five) ½ acre parcels, with an additional 2 (two) parcels possible within the 40 acre AE 20 acre minimum zone area. Approved Parcel 2 contains approximately 60 acres, is zoned Rangeland (RL-160) and contains land designated Prime Agriculture, is presently undeveloped and is situated entirely within the County of Mendocino. It is not split zoned. Only approximately 30 acres of the County acreage - the east half is designated prime soils Exhibit 1. The approved Parcel 2 is bordered to the north and east by additional RL designated agricultural parcels. That is Not Correct. Parcel 2 is bordered on the north by RL 160 (the 20 acre parcel resulting in the Boundary Adjustment discussed to correct the violation). To the north and east of that parcel (20 ac) and the subject 60 acres is RMR-20 acre minimum (a subdivision of 20 acre parcels). Also, to the east is Suburban Residential SR-1, one acre lot size and Industrial, I, within the City of Point Arena. Land bordering the south is Suburban Residential, SR-1 one acre, Suburban Residential, SR-1/2, one-half acre and multi-family residential, MR. Land bordering to the west is zoned Urban Residential UR and Agricultural-Exclusive AE-20 acre minimum but only a 3 +/- acre parcel. Land bordering on the North west is Agricultural Exclusive AE and consists of 20 acre and smaller parcels (Exhibit 2).

County of Mendocino (RL-160) Rangeland Protection

The project as approved by the County is consistent with the provisions of the Mendocino County LCP regulating RL-160 agriculturally zoned property.

The approval by the County of CDMS 8-2002 does not divide any land zoned RL-160 Rangeland. The integrity of the 60 acre non-conforming portion in the County is maintained. One new residence can be located to the west to avoid being located on any prime soils area. The 60 acre parcel does not qualify for inclusion into an Agricultural Preserve.

Point Arena Agricultural and Suburban Areas and Uses Agriculture Exclusive

These are areas which "accommodate low-density residential activities and agriculture, and contribute to maintaining Point Arena's rural and small town character and small scale agricultural activities." (Pt. Arena General Plan Land Use Element) The minimum lot size is 20 acres.

The City of Point Arena approved - Application No. 2002-07 - the City -County division on June 25, 2002, finding conformance with the City of Point Arena's Local Coastal Plan. No division of the AE Agriculture Exclusive land was made. However, the General Plan and zoning would permit a single division into two 20 acre parcels. The City of Point Arena does not have provision for inclusion of lands into an Agricultural Preserve.

Proof of Adequate Utilities

The proposed division is not inconsistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015 or the Mendocino County subdivision Code. Minor Division

397

RL

20 ACRE SUBDIVISION

(22)

PLANNED SOLID AREA

PARCEL 2
60± AC

PARCEL 1
43± AC

PROPERTY BOUNDARY

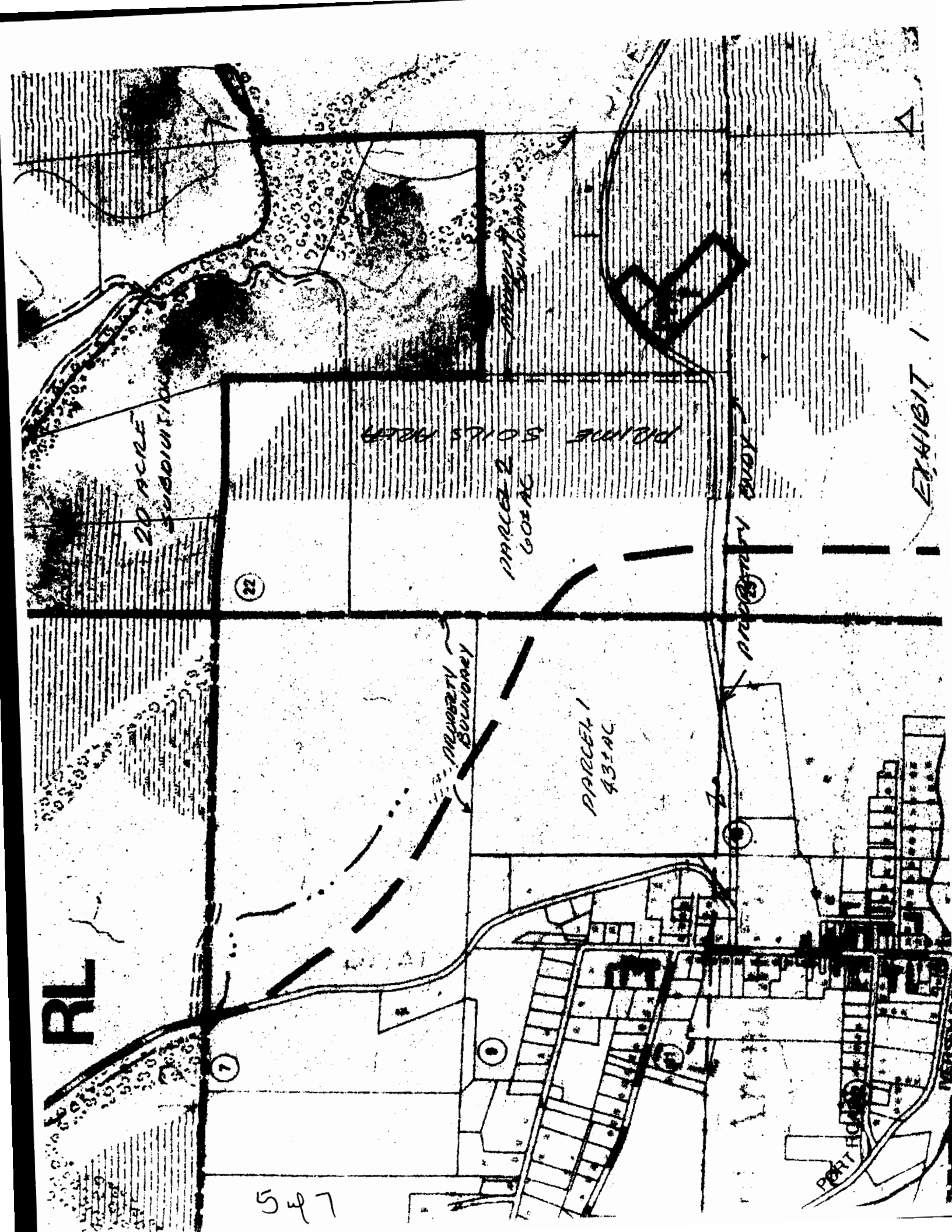
PROPERTY BOUNDARY

(7)

547

PART HOUSE

EXHIBIT 1



2741011 3

UKIAH OFFICE

501 LOW GAP ROAD, ROOM 1326
UKIAH, CA 95482
(707) 483-4468
FAX (707) 483-4038

HAZARDOUS MATERIALS
(707) 483-6426



FORT BRAGG OFFICE

780-A1 S FRANKLIN STREET
FORT BRAGG, CA 95437
(707) 981-2714
FAX (707) 981-2720

COUNTY OF MENDOCINO
DEPARTMENT OF PUBLIC HEALTH
DIVISION OF ENVIRONMENTAL HEALTH

April 7, 2003

Planning & Building Services
501 Low Gap Rd, Room 1440
Ukiah, California 95482

FINAL APPROVAL
LAND DIVISION #: MS 8-2002
NAME: Arthur Cody

Dear Staff:

The Environmental Health Division has received and reviewed documents required by the conditions placed on this project by the Planning Commission. These documents address the concern for adequate water supply and wastewater disposal for the project. The Environmental Health Division had determined the documents satisfy the following conditions placed on the project by the Planning Commission:

5. Submit to the Environmental Health Division, an acceptable site evaluation report (DEH Form Number 42.04) for Parcel 2 to be completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's "Basin Plan Policy for On-site Waste Treatment and Disposal" and Mendocino County Environmental Health Division's "Land Division Requirements" (DEH Form Number 26.09). The report shall also include identifying replacement areas for existing on-site sewage disposal systems which may exist on the project site.

Sincerely,

Scott A. Miller
Program Manager
Land Use Program

cc: Engineer/Surveyor
Developer/Agent
Art Colvin, Transportation
County Surveyor

Form #26.07 8/90

797