#### CALIFORNIA COASTAL COMMISSION

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### RECORD PACKET COPY



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Filed:

49th Day:

Hearing Opened:

Staff:

Staff Report: Hearing Date:

Commission Action:

December 2, 2003

Waived

May 13, 2004

Randall Stemler September 24, 2004

October 14, 2004

#### REVISED STAFF REPORT APPEAL

#### **DE NOVO HEARING**

APPEAL NO.:

A-1-MEN-03-069

APPLICANT:

Robert A. Hunt

AGENT:

Ed McKinley

LOCAL GOVERNMENT:

County of Mendocino

**DECISION:** 

Approval with Conditions

PROJECT LOCATION:

At 28300 North Highway One, Inglenook, Mendocino County (APN 069-010-36).

PROJECT DESCRIPTION:

Construct a new 3,855-square-foot, single-family residence with a 3,245-square-foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system and connection to utilities.

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APPELLANT:

Friends of The Ten Mile, Judith Vidaver

SUBSTANTIVE FILE:

1) Mendocino County CDB 31-93; and

**DOCUMENTS** 

2) Mendocino County Local Coastal Program

#### **STAFF NOTES:**

#### 1. Procedure

On May 13, 2004, the Coastal Commission found that the appeal of Mendocino County's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Because the proposed development is between the first road and the sea, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

#### 2. Postponement from May Agenda

The *de novo* hearing on the appeal had originally been scheduled for the Commission meeting of May 13, 2004. Commission staff received a written request, included as Exhibit No. 10, dated May 10, 2004, from the applicant's attorney asking that the hearing on the appeal be postponed until a future date to allow the applicant an opportunity to "meet with staff to consider whether there are any mutually agreeable modifications that could be made to the project as currently approved by the County that would enable staff to support the project. ..." Pursuant to Section 13073 of the Commission's administrative regulations, the applicant had the right to postpone the *de novo* hearing to a subsequent meeting. Therefore, the *de novo* hearing was continued to the October 14, 2004 meeting.

#### 3. Submittal of Additional Information by the Applicant

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information revising the proposed project description by incorporating nine (9) special conditions originally imposed by the County and agreeable to the applicant with some additional amplifying language in an effort to help mitigate the project's potential adverse impacts. The revised project description

dated August 30, 2004 was received by Commission staff on September 2, 2004 and is included herein as Exhibit No. 11.

The revised project description makes no significant changes to the proposed house or garage siting, design or dimensions.

#### 4. Revised Staff Report

The staff mailed a written staff recommendation dated April 30, 2004, on both the substantial issue and de novo portions of the appeal prior to the May 13, 2004 hearing. As discussed above, the Commission found that the appeal raised a substantial issue. As also discussed above, the applicant has made certain changes to the project description for purposes of the Commission's *de novo* review of the appeal. This revised staff recommendation addresses only the *de novo* portion of the appeal and includes certain changes to the *de novo* recommendation in response to the changes made by the applicant to the project description. Most of these revisions are to the Visual, ESHA, and Alternatives findings. However, staff is continuing to recommend that the Commission deny the coastal development permit for the proposed project on the basis that the project is inconsistent with the county's certified LCP policies related to the protection of visual resources.

#### SUMMARY OF STAFF RECOMMENDATION DE NOVO: DENIAL

The staff recommends that the Commission <u>deny</u> the coastal development permit for the proposed project on the basis that, the project is inconsistent with the County's certified LCP policies related to the protection of visual resources.

The principal issues raised by the proposed development involve its conformance with the visual resource protection policies of the LCP. The project site is located within a highly scenic area that is largely undeveloped and surrounded by state park lands, agricultural and timber lands, and other open space in a spectacular setting with views of the ocean, coastal dunes, open grasslands, forested ridges and other wooded areas. The applicant has incorporated a number of features into the design of the proposed project to try and reduce the visual impact. Some of these features are extraordinary such as the proposed incorporation of a subterranean garage, involving costly excavation and design elements to ensure the project will only rise one story above the natural grade and to reduce the apparent size of the structure. The roofing and siding materials would be composed of fiberglass and Hardi-Shingle of dark earthtones, which would help the proposed development blend with the coastal prairie vegetation in the vicinity and thereby reduce the project's visual impact. The color of the stonework would appear to blend with the surroundings and not standout.

As discussed above, the applicant has revised the project description as proposed to specially treat the window glass used for the residence to reduce glare. In addition, the applicant has also revised the project description to provide for the submittal for Coastal Commission staff approval prior to the issuance of the permit a landscaping plan that would visually screen the residence but not block views of the dunes from Highway One, and would prohibit planting of invasive exotic species.

However, even with these design features, the staff recommends that the Commission find that the proposed project is inconsistent with the visual resources protection provisions of the certified LCP. The residential development as proposed would not be sited and designed to protect views to and along the coast as required by LUP Policies 2.5-1, 3.5-3 and CZC Section 20.504.015(C)(1) because it would block views to the ocean from Highway One. Any landscaping that would visually screen the residence, would (together with the house) also block public views from Highway One inconsistent with CZC Section 20.504.015(C)(10).

In addition, the proposed development would not be compatible and subordinate to the character of the setting as required by LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(3) because the surrounding area consists of State Park lands, open agricultural lands, and timber lands with very little development. The subject development would be the only residential structure within public view for many miles in any direction. The proposed residence would be prominent from both the Haul Road portion of the California Coastal Trail looking eastward, and other portions of the dunes of MacKerricher State Park that are traversed by trails utilized by the public.

Furthermore, pursuant to the applicant's August 30, 2004 revised project description, (Exhibit No. 11) landscaping would be proposed for approval prior to issuance of the permit with the intention of visually screening the project from Highway One. This landscaping, while potentially hiding the house, would place an island of vegetation in the coastal terrace prairie community currently dominated by low-growing grasses and brush and an adjoining open sand dune habitat resulting in both a visually and ecologically incompatible mismatch of vegetation types when viewed from Highway One. Rather than blending with the natural landscape, this development, with its landscaping intended to screen the residence from view from Highway One, would be incongruous with the surrounding landscape types within the field of view from Highway One, and would not be subordinate to the character of its setting.

Moreover, the residence as proposed includes a substantial amount of window glass located along a nearly 100-foot façade totaling approximately 400 square feet facing west toward the Haul Road. The applicant has revised the project description (see Exhibit No. 11) to propose that the windows on the northwest and southwest sides of the residence be made of non-reflective glass that is specially treated to reduce glare. While this proposal would certainly help reduce glare from the extensive and multi-faceted window surface

area, the likelihood is that significant adverse visual impacts would still result from some reflection for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail.

Furthermore, the proposed development would be located in an open setting rather than within an approved alternate building envelope of the property near a wooded area, inconsistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(5), which require that development in highly scenic areas be sited in or near wooded areas. An alternate building envelope exists near a grove of *Eucalyptus* and other trees that would allow for the residential development to be located near a wooded area on the property consistent with the aforementioned policies. The building envelope would allow construction of a residence that would not be visible to the public looking east from the Haul Road, would entirely eliminate any reflective window glare concerns, and also would not block views to the coast from Highway One.

There are no conditions that could be applied that could make the proposed project in the proposed location consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Section 20.504.015(C) as discussed above. The Commission could consider approving the project with conditions requiring the house to be relocated to the alternate building site where the residence could be developed consistent with the LCP. However, the design of the proposed house with its subterranean garage and other features are very specific to the originally proposed location and would not be the design that the property owner would likely choose to build in the alternate location. If the applicant chooses to build in the alternate building site, it would be appropriate for the applicant to submit a new application to the County for a house designed specifically for that site. Therefore, staff recommends that the Commission deny the coastal development permit application.

#### I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act and <u>deny</u> the permit. The proper motion is:

**MOTION:** 

I move that the Commission approve Coastal Development Permit No. A-1-MEN-03-069 for the development proposed by the applicant. Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **Resolution to Deny the Permit:**

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

#### II. FINDINGS AND DECLARATIONS FOR DENIAL

The Commission hereby finds and declares:

#### A. PROJECT SETTING AND SITE DESCRIPTION

The subject property is an approximately 64 ½-acre parcel located on the west side of Highway One, about one mile south of Ten Mile River at 28300 North Highway One, Inglenook, Mendocino County (Exhibit Nos. 1, 2, 3, and 4). The location is within a designated highly scenic area in a sparsely populated region adjacent to the northern portion of MacKerricher State Park.

The L-shaped subject parcel has approximately one-half mile of frontage along Highway One, and extends west toward MacKerricher State Park approximately one-third mile into the Ten Mile Dunes. The sand dunes within the northernmost end of the State Park form the Inglenook Fen—Ten Mile Dunes Natural Preserve, which encompasses nearly 1,300 acres of coastal dunes within MacKerricher State Park that extend from Ward Avenue in the town of Cleone, north to the Ten Mile River. As defined in the Public Resources Code, "Natural preserves consist of distinct areas of outstanding natural or scientific significance established within the boundaries of other state park system units. The purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystem. ..." The Ten Mile Dunes complex, which includes Inglenook Fen, is a natural heritage treasure of statewide significance. It is comprised of a unique, relatively pristing native dune and wetland ecosystem that supports three federally and state listed species including Western Snowy Plover (Charadrius alexandrinus nivosus), Menzies' wallflower (Erysimum menziesii spp. menziesii), and Howell's spineflower (Chorizanthe howellii), as well as over thirty special status plants that are sensitive species of concern. Chorizanthe howellii is found no where else in the world but in the dune systems in and around MacKerricher State Park. The Inglenook Fen, an ecological intermediate between a bog and a marsh, is the only known remaining coastal fen in California.

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The subject property slopes at a gentle 8-9% grade toward the west, is located on the youngest geological coastal terrace, and includes coastal terrace prairie, sand dune, and riparian plant communities. The prairie land is very open, supporting mainly grasses, ferns, forbs, and brush. The sand dune community is mostly composed of un-stabilized sand with sparse vegetation. On the far-southwestern portion of the site there is a mature stand of *Eucalyptus* trees that were probably planted originally to arrest the eastward movement of the migrating sand dunes. Between the toe of the dunes and the prairie, there is a natural hedge of willow and wax myrtle. The riparian plant community is associated with a small, unnamed, east-to-west flowing drainage located approximately halfway along the parcel's frontage with the highway. The drainage originates on the parcel immediately to the east of Highway One, enters the property through a culvert under the highway, and eventually disappears under the sand dunes to the west. Riparian species represented along this drainage include willow, wax myrtle, berries, brush, grasses and associated species. The sand dunes and riparian habitat constitute environmentally sensitive habitat areas (ESHA) on the property.

The property is located in an area designated as highly scenic, and the approved residence would be visible from Highway One, and from locations within MacKerricher State Park, including the Haul Road which runs north/south, about 34 of a mile west of the subject property. This former logging road is now an approximately 8-mile segment of the California Coastal Trail that is "well established and open to the public" as described and mapped in the California Coastal Conservancy's January 2003 publication entitled Completing the California Coastal Trail. Additional trails used by the public serve as vertical access to the Haul Road, and as general entrance points into MacKerricher State Park and the Inglenook Fen—Ten Mile Dunes Natural Preserve. These trails originate along Highway One in the immediate vicinity of the subject parcel, particularly from the large pull out on the west side of Highway One known as the "mixing table" adjacent to the north end of the subject parcel, which is an area within the Caltrans right-of-way that is used for gravel storage and highway maintenance operations. Several trails lead west from the parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, Haul Road portion of the California Coastal Trail, and shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. In fact, the Department of Parks and Recreation has placed trail signage along vertical access locations at the mixing table to inform the public that they are on parkland.

The current configuration of the subject property was established by a boundary line adjustment (CDB 31-93) approved by the County with conditions on April 14, 1994, and not appealed to the Commission. This boundary line adjustment combined two separate legal parcels in the easterly portion of the adjacent ownership, and established the approximately 64 ½-acre subject property west of Highway One as a separate parcel. One of the conditions of approval required a map depicting building envelope buffers of

100 feet from the edge of all environmentally sensitive habitat areas to be on file with the Mendocino County Department of Planning and Building Services as mitigation for potential impacts to the various environmentally sensitive habitat areas including sand dunes and riparian areas. The condition also required that a notation be placed within the new legal description of the property stating that development be limited to that area designated as a potential building envelope as noted on the CDB 31-93 map on file with the County. In compliance with this condition of approval, two potential building envelopes were created as depicted on the map included as Exhibit No. 4 for purposes of protecting ESHA. Both potential building envelopes are located along the eastern edge of the parcel within 50 feet of the highway. The northernmost building envelope is the one in which the applicant's County-approved residential development would be constructed. This building envelope is a funnel-shaped area of nearly 143,000 square feet that touches the north property boundary with MacKerricher State Park at its narrowest dimension (approximately 50 feet), and observes 100-foot buffers from the sand dunes along the western edge, and along the approximately 400-foot-long southern edge that borders the riparian ESHA. The southernmost building envelope is a triangular-shaped area of nearly 78,000 square feet in size that provides an alternative building site on the property, and is located on the south side of the riparian ESHA with 100-foot buffers also protecting the riparian habitat to the north of it, and the sand dune habitat to the west of it. This alternative building envelope is situated between the highway and a mature grove of Eucalyptus trees that would block any public views of the ocean.

#### B. PROJECT DESCRIPTION

The project as approved would develop a new single-family residence encompassing 3,855 square feet of living space above a below-grade 3,245-square-foot garage, for a total floor area of 7,100 square feet. The maximum height of the structure would be no higher than 18 feet above average natural grade. The project also would include an approximate 500-foot length of driveway, gated at Highway One north of the residence, that would wind around the southeast side of the house leading to the underground 5-car garage complete with a storage and mechanical room, workshop, and full bathroom. Approximately 2,550 square feet of multi-level patio and retaining wall was approved along the northwest and southwest ocean-facing sides. The approved development includes a well, septic system, and fuel tank. Overhead electric and telephone lines would cross the highway from an existing 35 ½-foot-tall service pole located on the east side of the road to a new pole placed on the subject property, and from there would run underground to the residence.

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information revising the proposed project description by incorporating nine (9) special conditions originally imposed by the County and agreeable to the applicant with some additional amplifying language in an effort to help mitigate the project's potential adverse impacts. The revised project description dated August 30, 2004 was received by Commission staff on September 2, 2004 and is

included herein as Exhibit No. 11. Special Condition Nos. 3, 4, 6, 8, 9, 10 and 11, as originally imposed by the County, were incorporated into the project description unchanged from the County approval, except those conditions that would have required the submittal of various plans and documents approval by the "County Permit Administrator" were changed to require approval by Coastal Commission staff." Special Condition No. 3 is a prior to issuance condition to require submittal for review and approval of color samples for the exterior siding, trim, garage doors, downspouts and window frames of the proposed residence. Special Condition No. 4 requires that any change in approved colors or materials would be subject to review and approval for the life of the project. Special Condition No. 6 is a prior to issuance condition that would require review and approval of a plan so that placement of the fuel tank(s) would not be visually significant from public viewpoints. Special Condition No. 8 would require that prior to installation of the new entry gate plans and elevations showing the location and appearance of the entry gate would be submitted for review and approval. Special Condition No. 9 would require that utility lines installed to serve the proposed residence would be placed underground. Special Condition No. 10 requires that no development or activity occur within the riparian or dune ESHA or 100-foot buffers. Special Condition No. 11 is a prior to issuance condition that requires the applicant to submit for review and approval verification that the Mendocino County Department of Environmental Health has approved a Site Evaluation Plan for sewage disposal. Special Condition No. 5 imposed by the County was modified and incorporated into the project description to provide that window glass for the residence would be "specially treated to reduce glare." Special Condition No. 7, as imposed by the County, was modified and incorporated into the project description to (1) provide that any proposed landscaping intended to provide visual screening of the project from Highway One, (2) provide visual screening of the residence without blocking views of the dunes from Highway One, (3) provide that no planting of invasive exotic species would be allowed, and (4) provide for review of the landscape plan by Coastal Commission staff.

The revised project description makes no significant changes to the proposed house or garage siting, design or dimensions.

The subject property is zoned Rangeland (RL) and Open Space (OS) with the boundary between these two zoning districts running roughly along the edge of the sand dunes. The approved single-family residence and related development would be located within the RL portion of the property and is a permitted use in the RL Zoning District.

#### C. ANALYSIS OF LCP CONSISTENCY

The project as proposed is consistent with certain LCP provisions, including provision of adequate utilities requiring demonstration of an adequate site for on-site sewage treatment and the availability of water. In addition, with the attachment of a special condition precluding the planting of invasive exotic vegetation, the project as proposed would be consistent with the LCP provisions requiring the protection of environmentally

sensitive habitat. However, as discussed below, the Commission is denying the proposed residential development because it would be inconsistent with certified LCP provisions intended to protect visual resources, including protection of views to and along the coast, ensuring new development is subordinate to the character of the setting, and siting development in or near wooded areas rather than open areas. These development inconsistencies cannot be resolved by condition.

#### 1. Protection of Visual Resources

#### a. Protection of Views To and Along the Coast

#### **LCP Policies**

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...

#### LUP Policy 3.5-3 states in applicable part:

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 I between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway I [emphasis added].

#### CZC Section 20.504. 015(A)(2) states:

(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.

(1) ...

(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.

CZC Section 20.504.015(C)(1) states:

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.

CZC Section 20.504.015(C)(10) states:

Trèe planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas [emphasis added].

#### Discussion

LUP Policy 3.5-1 protects the scenic and visual qualities of Mendocino County coastal areas as a resource of public importance. LUP Policies 3.5-1 and 3.5-8 and CZC Section 20.504.015(C)(1) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas. Views are required to be protected from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. CZC Section 20.504.015(C)(10) encourages tree planting to screen buildings associated with new development, but prohibits such planting from interfering with coastal/ocean views from public areas.

As described above, the project proposal would develop an 18-foot-high, two-level, 7,100-square-foot single-family residence and garage in a location west of Highway One designated highly scenic (Exhibit Nos. 1, 2, 3, and 5). The single-family residence as proposed would be screened from view from Highway One by landscaping, but would be visible from areas within the adjacent MacKerricher State Park, including the Inglenook Fen-Ten Mile Dunes Natural Preserve. The proposed development would also be visible from portions of the Haul Road located to the west of the subject property, which is a very popular coastal access trail forming an approximately 8-mile segment of the California Coastal Trail (Exhibit No. 8). The subject development would be the only residential structure within public view from these vantage points for many miles in any direction.

For the public traveling north along Highway One, the proposed residential development would be sited in a location that provides the first available views toward the west of the Inglenook Fen-Ten Mile Dunes Natural Preserve within MacKerricher State Park. Existing brush grows along both sides of the north/south fence line that demarks the boundary between the subject property and the Caltrans right-of-way appurtenant to Highway One. Two or three small trees, some willow brush, and a few tall cypress are growing within this brushy strip in widely scattered locations. Although this brush affects the lower portion of one's view from Highway One toward the ocean, and the scattered trees that exist within this strip of brushy vegetation block somewhat more view, views for northbound travelers on Highway One are still afforded over the top of the vast majority of the brushy vegetation of the dunes and the ocean beyond. The proposed house would have two levels with the lower (largely invisible) level excavated into the ground to provide an underground five-car garage and workshop. The 3,855-square-foot upper level of the residence would present a 115-foot-long façade, as close as approximately 62 feet from, and facing, the Highway One scenic corridor. While the majority of the residence would be below eye level as seen from the highway, it would still be an intrusive structure adversely blocking views toward the ocean from Highway One prior to the growth to maturity of the proposed landscape screen and adversely impacting public views along the scenic coastline in the vicinity of MacKerricher State Park where no other residential development currently exists in the vicinity.

The proposed landscaping plan would be submitted for approval of Commission staff prior to issuance of the permit, with the intention of providing visual screening of the project from Highway One, while not blocking views of the dunes from Highway One. Without any specific detail provided as to plant species, heights and spacing that would be used, it is difficult to determine if the proposed residential development could be effectively blocked from public view, and at the same time not block public views toward the ocean and scenic coastal areas. In fact, any vegetation planted between the highway and the ocean that is taller than prairie and dune plant species (which are typically diminutive species such as forbs, grass, and brush) would block existing views toward the ocean and scenic coastal areas. Furthermore, devising a landscaping plan that would actually screen public views of the house from the various angles, approaches, and distances along the highway, while not blocking public views toward the ocean and scenic coastal areas from other angles, approaches, and distances along the highway would be very problematic, and it is not clear that it is even possible to develop such a plan. For example, screening the house from view of southbound travelers would require planting vegetation between the north-facing side of the proposed house and the line-of-sight of southbound travelers. Any landscaping planted in that location would adversely affect views of the ocean and scenic coastal areas from portions of the highway that are directly opposite this proposed landscaping. Similar problems would be encountered in screening the

house from other angles of view from the highway. No matter how much the proposed landscape plan is limited, any landscaping planted between the house and the highway, together with the proposed house itself, would block views to and along the ocean and scenic coastal areas inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1) requiring the protection of views to and along the ocean and scenic coastal areas. In addition, since the proposed vegetative screen and house would interfere with coastal and ocean views from the public highway, the project as proposed is inconsistent with CZC Section 20.504.015(C)(10), which requires that trees planted for visual screening purposes not interfere with coastal and/or ocean views from public areas.

As described previously, a popular coastal access trail known as the Haul Road runs the length of MacKerricher State Park following the old route of the historic steam railroad that transported redwood logs to be milled in Fort Bragg. The Haul Road runs north/south, about 34 of a mile west of the subject property, and forms an approximately 8-mile segment of the California Coastal Trail that is "well established and open to the public," as described and mapped in the California Coastal Conservancy's January 2003 publication entitled Completing the California Coastal Trail. The proposed residential development on the subject property would be seen looking east from the Haul Road along the section of trail just north of Inglenook Creek, and continuing north along the trail for a distance of over half a mile. Public views in this direction are also afforded from places within the State Park between the Haul Road and Highway One. As discussed previously, several trails lead west from the Highway One parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, Haul Road portion of the California Coastal Trail, and shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. Many people currently use these vertical access trails to enter State Parkland, and the Department of Parks and Recreation has placed trail signage at this location to inform the public that they are on State Park property.

From these vantage points, the subject development would be the only residential structure within public view for many miles in any direction. The side of the house facing the ocean and Haul Road portion of the California Coastal Trail would contain numerous windows along a nearly continuous row facing west, and represents a significant glass surface area of more than 400 square feet. Because much of the Haul Road is located to the west and southwest of the approved residence, the potential for reflection off the windows from the late afternoon sun is very significant. As discussed above, the applicant has revised his project description for purposes of the Commission's *de novo* review of the appeal (Exhibit No. 11) to propose that the windows on the northwest and southwest

sides of the residence be made of non-reflective glass that is specially treated to reduce glare. While this proposal may help to reduce glare from the extensive and multi-faceted window surface area, the likelihood is that reflective glare would not be entirely eliminated, and that significant adverse visual impacts would still result from some reflection and glare for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail. The glare emanating from the proposed residential development would be inconsistent with the requirements of LUP Policy 3.5-1 and 3.5-3 that new development in highly scenic areas be sited and designed to protect views to and along the ocean and scenic coastal areas.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1) as the proposed development would block views to the ocean from Highway One and would interfere with views of the scenic coastal area from the Haul Road and parts within the dunes of MacKerricher State Park. The Commission further finds that landscaping planted to achieve visual screening of the proposed development from public views from Highway One would also block views to the ocean from the highway inconsistent with the requirements of CZC Section 20.504.015(C)(10) that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas. As the proposed project is inconsistent with these policies and standards of the certified LCP, the coastal development permit application must be denied.

## b. Ensuring New Development is Compatible and Subordinate to the Character of the Setting

#### LCP Policies

Policy 3.5-1 states in applicable part:

New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be <u>subordinate</u> to the character of its setting [emphasis added].

LUP Policy 3.5-3 states in applicable part:

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 [emphasis added].

The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.

[Note: The foregoing portion of LUP Policy 3.5-3 is implemented verbatim in Coastal Zoning Code Section 20.504.015(A)]

LUP Policy 3.5-3 in applicable part states:

New development should be subordinate to natural setting and minimize reflective surfaces. ...

CZC Section 20.504.015(C)(3) in applicable part states:

New development shall be subordinate to the natural setting and minimize reflective surfaces. ...

#### Discussion

LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) require that new development in highly scenic areas such as the subject property be subordinate to the character of its setting, and that any development permitted in highly scenic areas 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. In addition, pursuant to LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3), new development must be subordinate to the natural setting and minimize reflective surfaces. The subject property is within an area designated as highly scenic.

As discussed above, the project as proposed would be visible from Highway One and would block views toward the ocean inconsistent with the provisions of the certified LCP. Proposed landscaping that would provide a visual screen for the residential development from the highway, would, by definition, also block public views to the ocean and scenic coastal areas from Highway One inconsistent with the provisions of the certified LCP. Additionally, any landscaping used to effectively block an 18-foot-tall house would result in both a visually and ecologically incompatible mismatch of vegetation types between the landscaping species and the coastal terrace prairie vegetation community between the highway and the residence. The landscape screening would result in an incongruous island of vegetation surrounded by low growing grasses and brush associated with

coastal terrace prairie and sand dunes. This effect would be most noticeable from the highway, where the coastal prairie, sand dunes and ocean form the backdrop of the view. This effect would be less when viewed from the Haul Road and the sand dunes, as the forested ridgeline to the east of Highway One forms more of the backdrop of the view. Rather than blending with the natural landscape, this proposed development with its incongruity of landscape types would stand out inconsistent with the requirements of LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that development in highly scenic areas be subordinate to the character of its setting.

The character of the surrounding area is distinctive for its openness and unique expanse of sand dune habitat (Exhibit No. 8). Looking southeast (landward) from the Haul road toward the subject parcel, the stand of *Eucalyptus* trees on the subject property blends into an unbroken swath of coastal forest to the south, with a view of the Ten Mile Dunes in the foreground. Looking to the northeast (landward) from the Haul Road toward the subject parcel, the Ten Mile Dunes in the foreground are set against forested hills and rolling grasslands further in the background east of Highway One. Though they appear small, the location of the story poles where the proposed residential structure would be built are visible with the naked eye from the Haul Road. The construction of a house in this visible location would not be subordinate to the character of the existing natural setting since there are no other residential structures visible in the vicinity, and there are only minimal agriculturally related structures in the vicinity.

The natural setting would be affected by a nearby development proposal that has been approved but not yet built. On May 12, 1998, the Commission approved with conditions a 20-unit visitor serving facility on property located immediately east of the subject parcel across Highway One (See Exhibit No. 3). This approved development does not raise the same issues of consistency with the visual resource policies of the certified LCP, especially given its location east of Highway One and outside of any designated highly scenic area. This approved development consists of seven separate buildings that would serve as the guest rooms, two with five units each, and five with two units each. A managers residence, reception area, and meeting room would be contained within a separate two-story structure. Another separate building would provide a laundry, storage, and employee facilities. The approved project would be set back from the highway about 300 feet, and the buildings would be arranged along the contour of the slope at a height of approximately 30 feet above the height of the highway at the driveway entrance. The visitor-serving facility site would be partially screened from view to the east along much of the highway frontage by roadside shrubs, but would be visible for about a half-mile stretch of highway, mostly north of the driveway entrance, and mostly for southbound motorists.

In approving the project, the Commission found that the inn would include several two-story structures with barn-type rooflines consistent with the surrounding rural, agricultural area, but imposed several special conditions to further reduce adverse visual impacts of the development on scenic coastal resources. So that the proposed structures would be screened from view to the east along Highway One, consistent with LUP Policy 3.5-5, the Commission attached Special Condition No. 2, which included a tree maintenance program and required submittal of a landscaping plan that provides for the planting of an evergreen screen of drought-tolerant native or naturalized trees and/or shrubs along the western property line and along the north-facing side of the structures and parking lot to screen the project from views to the east along Highway One. When screened from view, the proposed development will be barely visible from view to the east along Highway One and would appear in character with the surrounding undeveloped area and landscape as views from the west are toward the tree covered hillsides that form the backdrop to the inn's setting. The approved landscape plan requires 20 shore pine trees to be planted along the western fence line of the property. As mentioned earlier, shore pine can grow to a height of 20-30 feet, and the approved (but not yet constructed) inn would be built to a height of approximately 30 feet above the height of the highway at the driveway entrance. The inn would be substantially screened by the shore pine to be planted along the east side of the highway as a part of the approved landscape plan for the permitted development.

Thus, only the currently proposed single-family residence located west of Highway One, adjacent to MacKerricher State Park and within a designated highly scenic area, would be substantially visible from the Haul Road trail and other locations within the park as a conspicuous development in the vicinity, inconsistent with the requirements of LCP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that development in highly scenic areas be subordinate to the character of its setting.

Furthermore, as noted above, the residence as proposed includes a substantial amount of window glass. Even if the windows are made of non-reflective glass that is specially treated to reduce glare as proposed by the applicant in his revised project description (Exhibit No. 11). The large amount of glass would very likely still reflect the sun for extended periods of time from mid-day to sunset as viewed from the Haul Road portion of the California Coastal Trail (Exhibit Nos. 3, and 5, Pages 4 & 5). The glass windows along the nearly 100-foot-west-facing façade are set at many different angles in numerous rooms of the approved house. The applicant proposes to specially treat the windows to reduce glare. Special treatment of the windows may help to reduce the glare, but it will not eliminate the sun's reflection from the proposed bank of windows, and there is a high probability that glaring reflections of sunlight would still be visible from the Haul Road and beach late in the day when the sun is near the horizon. The windows

would still be reflective surfaces. This nearly continuous row of windows adds up to more than 400 square feet of glass surface. As the sun's angle of incidence changes during the afternoon, the sequenced window reflection from the approved development would be long lasting. Since the residence as proposed would have a very large amount of window surface area that could produce glare that would affect public access users within the adjoining state park, the proposed project is inconsistent with the requirements of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) that new development be subordinate to the natural setting and minimize reflective surfaces.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.5-1, 3.5-3 and CZC Section 20.504.015(A) that new development be subordinate to the character of its setting and with the requirements of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) that new development minimize reflective surfaces and must be denied.

#### c. Siting Development In or Near Wooded Areas Rather Than Open Areas

#### LCP Policies

LUP Policy 3.5-4 states in applicable part:

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

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

CZC Section 20.504.015(C) establishes development criteria for designated highly scenic areas, providing in applicable part:

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings

- (5) <u>Buildings and building groups that must be sited in highly scenic areas</u> <u>shall be sited</u>:
  - (a) Near the toe of a slope;
  - (b) Below rather than on a ridge; and
  - (c) <u>In or near a wooded area</u> [emphasis added].
- (7) Minimize visual impacts of development on terraces by the following criteria:
  - (a) <u>Avoiding development</u>, other than farm buildings, <u>in large open</u> areas if alternative site exists;
  - (b) <u>Minimize the number of structures and cluster them near existing vegetation</u>, natural landforms or artificial berms;
  - (c) <u>Provide bluff setbacks for development adjacent to or near public areas along the shoreline [emphasis added];</u>
  - (d) Design development to be in scale with rural character of the area. ...

#### Discussion

LUP Policy 3.5-4 and CZC Section 20.504.015(C) require that if an alternative site exists, buildings that must be sited within a highly scenic area must be sited in or near the edge of a wooded area and concentrated near existing major vegetation rather than being sited in the middle of large open areas. As described above, the proposed project involves development of a residence in an open coastal terrace prairie setting, even though a residence could be sited near the edge of forested areas of the property.

As discussed above, the subject parcel was established in its current configuration in 1994, pursuant to a County-approved Coastal Development Boundary Line Adjustment. A condition of the permit delineated two potential building envelopes for the subject property for the purpose of protecting ESHA. The two potential building envelopes, however, had not yet been evaluated for purposes of visual resource protection. The proposed building site for the subject development is located in the more northerly building envelope situated in the open coastal terrace prairie bounded on the west and north by extensive coastal sand dunes comprising the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, on the south by a riparian zone, and on the east by

Highway One. The other potential building envelope for the property is situated to the south and is bounded on the west by a tall stand of *Eucalyptus* trees, on the north by a riparian zone, and on the east by Highway One (Exhibit Nos. 3 and 4).

The public views that would be affected by the development proposed on the more northerly building envelope would be significantly different than for development on the southerly building envelope. While the northerly building envelope is located in a very open setting with the State Park, sand dunes, and ocean in the background as viewed west from Highway One, the southerly building envelope is located in a wooded setting with a thick stand of mature Eucalyptus trees in the immediate background and no view of the ocean or sand dunes from the highway. The proposed residential development in the northern building envelope would appear very prominent looking south from certain areas within the Inglenook Fen—Ten Mile Dunes Natural Preserve and MacKerricher State Park, and looking east from the Haul Road. In contrast, if development of the residence were to occur in the southern building envelope, the residence would be well screened from public views by the Eucalyptus grove and the strip of riparian vegetation growing between that building envelope and the park. In addition, because of the backdrop of trees, additional trees could be planted in front of a residence built within the southern building envelope in a manner that would not look incongruous with surrounding vegetation and habitats as the proposed vegetative screen would appear in the northerly building envelope. As discussed in the alternatives finding below, it would be feasible to develop a residence consistent with the certified LCP in this alternate building site.

Given the existence of this alternate building envelope adjacent to a wooded area, development of the residence as proposed in a building envelope that is not near a wooded area where the visual impacts would be significantly reduced is inconsistent with the visual resource LCP requirement that if an alternative site exists, buildings sited within a highly scenic area shall be sited in or near the edge of a wooded area rather than in the middle of large open areas. Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C) and must be denied.

#### 2. Protection of ESHA Resources

#### **LCP Policies**

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....

#### LUP Policy 3.1-10 states:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;
- pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;
- existing agricultural operations;
- removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values [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. ...

#### Discussion:

LUP Policy 3.1-7 requires that buffers be established to protect ESHA from significant degradation resulting from future developments on the property. LUP

Policy 3.1-10 requires that riparian ESHA be protected against any significant disruption of habitat values. CZC Section 20.496.020 requires that buffers be established to protect the environmentally sensitive habitat from degradation resulting from future developments and be compatible with the continuance of such habitat areas.

As discussed previously, the subject property contains riparian ESHA with a riparian plant community that is associated with a small, unnamed, east-to-west flowing drainage located approximately halfway along the parcel's frontage with the highway. The drainage originates on the parcel immediately to the east of Highway One, enters the property through a culvert under the highway, and eventually disappears under the sand dunes to the west. Riparian species represented along this drainage include willow, wax myrtle, berries, brush, grasses and associated species. The subject property also contains sand dune ESHA that is mostly composed of un-stabilized sand with sparse vegetation. The property is immediately adjacent to MacKerricher State Park and the Inglenook Fen—Ten Mile Dunes Natural Preserve, which is a distinct area of outstanding natural and scientific significance established to preserve rare or endangered plant and animal species and their supporting sand dune ecosystem. The Ten Mile Dunes complex, which includes Inglenook Fen, is a natural heritage treasure of statewide significance. It is comprised of a unique, relatively pristine native dune and wetland ecosystem that supports federally and state listed species including Menzies' wallflower (Erysimum menziesii spp. menziesii), and Howell's spineflower (Chorizanthe howellii), as well as over thirty special status plants that are sensitive species of concern constituting rare plant ESHA.

In 1994, as discussed above, the subject property was created from Boundary Line Adjustment #CDB 31-93. This boundary line adjustment combined two separate legal parcels in the easterly portion of the adjacent ownership, and established the approximately 64 1/2-acre subject property west of Highway One as a separate parcel. One of the conditions of approval required a map depicting building envelope buffers of 100 feet from the edge of all environmentally sensitive habitat areas to be on file with the Mendocino County Department of Planning and Building Services as mitigation for potential impacts to the various environmentally sensitive habitat areas including sand dunes and riparian areas. The condition also required that a notation be placed within the new legal description of the property stating that development be limited to that area designated as a potential building envelope as noted on the CDB 31-93 map on file with the County. In compliance with this condition of approval, two potential building envelopes were created as depicted on the map included as Exhibit No. 4. These two potential building envelopes were established for the purpose of protecting ESHA, but had not yet been evaluated for purposes of visual resource protection. Both building envelopes are located along the eastern edge of the parcel within 50 feet of the highway. The northernmost approved building

envelope is the one in which the applicant proposes to construct a single-family residence. This building envelope observes 100-foot buffers from the sand dunes ESHA along the western edge, and also along the approximately 400-foot-long southern edge that borders the riparian ESHA.

Consistent with LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020 the applicant conducted a botanical study to investigate whether any ESHA resources exist on the property in the vicinity of the proposed development that would need additional buffers in addition to those as established previously to protect the sand dunes and riparian habitat. The botanical survey did not discover any new additional ESHA resources needing increased buffer widths, and the previously-established buffers were determined to be adequate. The applicant has proposed development that would adhere to the 100-foot buffer areas previously established by the boundary line adjustment as depicted on the building envelope map on file with the Mendocino County Department of Planning and Building Services (Exhibit No. 4).

If invasive exotic vegetation were planted as part of the landscaping for the project, these species could easily spread to the riparian and dune habitat and outcompete rare plants that exist in the adjoining areas seriously jeopardizing ESHA resources inconsistent with the provisions of the certified LCP designed to protect ESHA resources. As revised by the applicant (Exhibit No. 11) the project description proposes that no planting of invasive exotic species be allowed. By imposing a special condition as proposed by the applicant to prohibit the planting of invasive exotic species, the proposed project could be made consistent with the LCP ESHA policies including LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

#### 3. Suitable Site for Septic System

LCP Policies

LUP Policy 3.8-1 states:

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies. Highway capacity impacts shall be considered in determining land use classification and density changes.

#### LUP Policy 3.9-1 in applicable part states:

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and the proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

CZC Section 20.532.095—Required Findings for all Coastal Development Permits—in applicable part states:

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish 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 this Division 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...

#### Discussion:

LUP Policy 3.8-1 requires that adequate sewage disposal be considered when reviewing development permits. LUP Policy 3.9-1 requires that sewage disposal

capacity exist, and that a determination of service capacity be made prior to the issuance of a coastal development permit. CZC Section 20.532.095 requires that the granting of any coastal development permit be supported by findings which establish that the proposed development will be provided with adequate utilities, and that the proposed development will not have any significant adverse impacts on the environment. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

In general, a site may be approved for development of an onsite sewage disposal system if it can be found that: (1) it is at least 100 feet from any well, water body, or major break in terrain; (2) it is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) it meets established soil depth, texture and percolation rate criteria.

In 1994, Mendocino County approved Boundary Line Adjustment #CDB 31-93, which established the present configuration of the 64 1/2-acre subject property. A Site Evaluation Report demonstrating the adequacy for on-site sewage disposal on the property was prepared in 1994 as a part of that development approval. On October 23, 2003, the County approved the subject development that has been appealed to the Commission for a single-family residence on the property, and as requested by the Mendocino County Division of Environmental Health, imposed a special condition requiring that the applicant update the sewage disposal system to meet current requirements. However, no information exists in the local record that suggests the sewage disposal system could not be conformed to current Health Department requirements. Because the 64 ½-acre property was determined to have adequate sewage disposal capacity at the time of the boundary line adjustment, and there is no information existing that suggests the proposed sewage disposal system could not be modified to conform to current Health Department standards, there is a reasonable expectation that the applicant would be able to rely on a private, on-site sewage disposal system to adequately serve the development. The fact that the substrate of the building envelopes is very sandy material strongly suggests that there would be no problem in achieving very adequate leach field percolation.

The Commission finds the proposed residential development could be made consistent with the requirements of LUP Policy 3.8-1 that adequate sewage disposal be considered when reviewing development permits, LUP Policy 3.9-1 that sewage disposal capacity exist, and CZC Section 20.532.095 that a determination of service capacity be made prior to the issuance of a coastal development permit, if a special condition of approval were imposed to require submittal of evidence that the proposed sewage disposal system has been modified to meet current County Department of Environmental Health

requirements. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is <u>not</u> consistent with certain other LCP policies regarding protection of visual resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

#### 4. Availability of Water

#### **LCP Policies**

LUP Policy 3.8-1 states:

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel·size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies. Highway capacity impacts shall be considered in determining land use classification and density changes.

#### LUP Policy 3.9-1 in applicable part states:

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and the proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

CZC Section 20.532.095—Required Findings for all Coastal Development Permits—in applicable part states:

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish 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 this Division 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...

#### Discussion

LUP Policy 3.8-1 requires that the availability water be considered when reviewing development permits. LUP Policy 3.9-1 requires that adequate water exists, and that a determination of service capacity be made prior to the issuance of a coastal development permit. CZC Section 20.532.095 requires that the granting of any coastal development permit be supported by findings which establish that the proposed development will be provided with adequate utilities, and that the proposed development will not have any significant adverse impacts on the environment.

The subject property is located within an area designated with Sufficient Water Resources as mapped by the Department of Water Resources in the 1982 Coastal Groundwater Study. Proof of adequate water has already been demonstrated by the drilling of a test well in 1995 and the performance of a pump test done in conformance with the requirements of the Mendocino County Division of Environmental Health requirements. No adverse impact to groundwater resources would occur from conversion of the test well to a production well.

Therefore, as the evidence submitted by the applicant for purposes of the Commission's *de novo* review demonstrates that adequate water is available to support development of a single-family residence on the property, the Commission finds the proposed residential development is consistent with the provisions of LUP Policies 3.8-1 and 3.8-9 and CZC Section 20.532.095 concerning proof of availability of water for development. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is <u>not</u> consistent with certain other LCP policies regarding protection of visual and ESHA resources including 1) policies requiring the protection of views to and along the coast, 2) policies requiring that new development be subordinate to the character of the setting, and 3) policies requiring that

development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

#### 5. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30210, 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

As discussed above, several trails lead west from the Highway One parking area at the "mixing table" through the coastal terrace prairie and sand dunes on State Park property and enable public access to the Ten Mile Dunes Natural Preserve, the Haul Road portion of the California Coastal Trail, and the shoreline. Although the Ten Mile Dunes Natural Preserve is an ecologically sensitive resource, and no dunes management plan has been adopted for this area, there are no current restrictions against accessing the park or Haul Road in this manner. Many people currently use these vertical access trails to enter State Parkland, and the Department of Parks and Recreation has placed trail signage at this location to inform the public that they are on State Park property.

Some of these trails appear to cross the applicant's property. However, the proposed residential development would not block or interfere with these existing trails since the trails are located several hundred feet away from the proposed development. In addition, development of the proposed single-family residence would not increase the demand for public access. Because the proposed development would not affect existing access to the shoreline, or increase the demand for access to the shoreline, the development would have no significant adverse impact on public access. Therefore, the Commission finds that the proposed development does not have any significant adverse effect on public access, and that the proposed development without new public access is consistent with the coastal access requirements of Coastal Act Sections 30210, 30211, and 30212. However, as discussed in Findings a, b, and c above, the Commission finds that the proposed residential development is not consistent with certain other LCP policies regarding protection of visual and ESHA resources including 1) policies requiring the protection of views to and along the coast, 2) policies

requiring that new development be subordinate to the character of the setting, and 3) policies requiring that development be sited in or near wooded areas rather than open areas. Therefore, the proposed development must be denied.

#### 6. 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 develop a single-family residence in the northernmost approved building envelope would still leave the applicant available alternatives to use the property in a manner that would be consistent with the policies of the LCP.

As discussed previously, the applicant currently has an alternate building envelope available on the property for locating a single-family residence. This alternate building envelope was established for purposes of protecting ESHA pursuant to a previous permit granted for a boundary line adjustment that reconfigured the boundaries of the subject property. Development of a residence in this alternate location would be both feasible and consistent with other Mendocino Country certified LCP policies and standards including those that govern visual resource protection, provision of adequate utilities (water and septic) to serve the development, ESHA protection, and public access.

Significant adverse visual impacts would be greatly reduced by siting the single-family residence in the alternate building envelope as (1) the development would be located near the edge of a wooded area rather than in the middle of large open area, (2) the development would be subordinate to the character of its setting by better fitting into its surroundings rather than standing out as an incongruous island in an open area, (3) the placement of the structure where a grove of trees would separate the home from most public areas would eliminate any concerns about reflective surfaces, (4) the residence would not block views to the ocean from Highway One, and (5) the residence would not interfere with views of the scenic coastal area from the Haul Road and areas within the dunes of MacKerricher State Park. Furthermore, any trees or other vegetation planted to screen the development from public views from Highway One would clearly not block views to the ocean from the highway, since views toward the ocean through the alternate site are already blocked by the mature *Eucalyptus* grove.

Provision of adequate sewage disposal capacity and water would be available to serve the development sited at the alternate building envelope. As discussed above, there is a reasonable expectation that the applicant would be able to rely on a private, on-site sewage disposal system to adequately serve the development. The fact that the substrate of both building envelopes is very sandy material

strongly suggests that there would be no problem in achieving very adequate leach field percolation. The 64 ½-acre property was determined to have adequate sewage disposal capacity at the time of the boundary line adjustment that created the parcel, and there is no information existing that suggests a sewage disposal system could not conform to current Health Department standards. The availability of adequate water to serve the development has already been demonstrated by the drilling of a test well in 1995, and the performance of a pump test done conforming with the requirements of the Mendocino County Division of Environmental Health requirements. No adverse impact to groundwater resources would occur from conversion of the test well to a production well. Water from the existing well could be piped to the alternate building site, or another well could likely be drilled in the alternate building envelope.

There is adequate room for construction of a single-family residence in the alternate building envelope while also achieving conformance with sand dune and riparian ESHA buffers that have been established to protect sensitive habitat from significant adverse impacts associated with development on the property. Improvement of a driveway to serve a residence sited in the alternate building envelope could be approved, since there is already an existing, culverted, road that crosses through the riparian ESHA and over the small drainage separating the two building envelopes.

Public access would not be adversely impacted by development of a single-family residence in the alternate building envelope. There is no evidence that any trails exist in the vicinity of the alternate building envelope (unlike the other building envelope where trails used by the public to access the State Park and shoreline are within a few hundred feet of the proposed project) and therefore, residential development sited in the alternate location would not block or interfere with any trails since the trails that are located on the property are a great distance away from the alternate building site. In addition, development sited in the alternate location would not increase the demand for public access. Because development of a single-family residence in the alternate location would not affect existing access to the shoreline, or increase the demand for access to the shoreline, development at the alternate site would have no adverse impact on public access.

Even if the applicant chose not to construct a single-family residence on the property, the applicant would still retain economically beneficial or productive use of the property in other respects. The subject property is zoned as rangeland, and the applicant can use the approximately 64 ½-acre holding for a number of agricultural uses specified as principal permitted uses in the RL zone including grazing and forage for livestock and raising of crops, whether for an agricultural operation conducted by the owner himself, or through a lease to another rancher who could utilize the land in combination with other grazing lands in nearby areas. After securing a coastal development use permit from the County, the

applicant could also utilize this approximately 64 ½-acre portion of the property for any relevant conditionally permitted agricultural use related to and compatible with ranching such as recreational use. All of the above-referenced uses allow the owner economic use of the subject property without developing the northernmost potential building envelope for residential use.

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

#### 7. Conclusion

The Commission finds that as discussed above, the project as proposed is inconsistent with the Mendocino County certified LCP because the proposed project would not (1) protect views to and along the coast, (2) ensure new development is compatible and subordinate to the character of the setting, and (3) site the development in or near wooded areas rather than open areas.

The Commission finds that there are no conditions that could be applied that could make the proposed project consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Sections 20.504.015(C)(10) and 20.504.015(A)(4) as discussed above. Therefore, the Commission finds that the permit application must be denied.

#### D. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

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

The 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 visual resource protection, including policies requiring protection

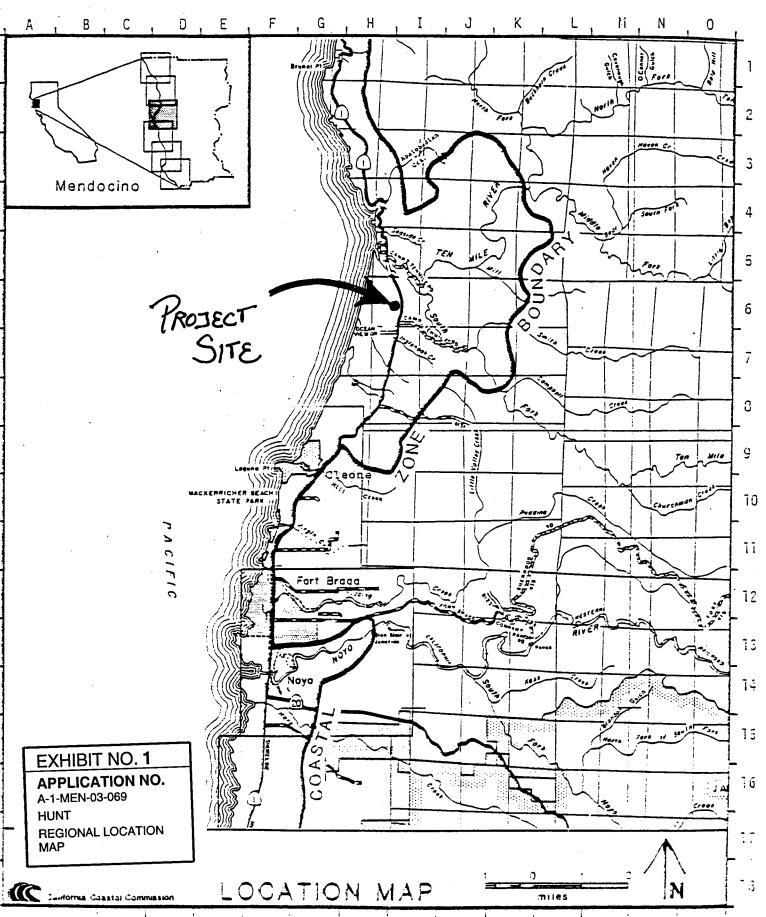
#### A-1-MEN-03-069 Robert A. Hunt Page 32

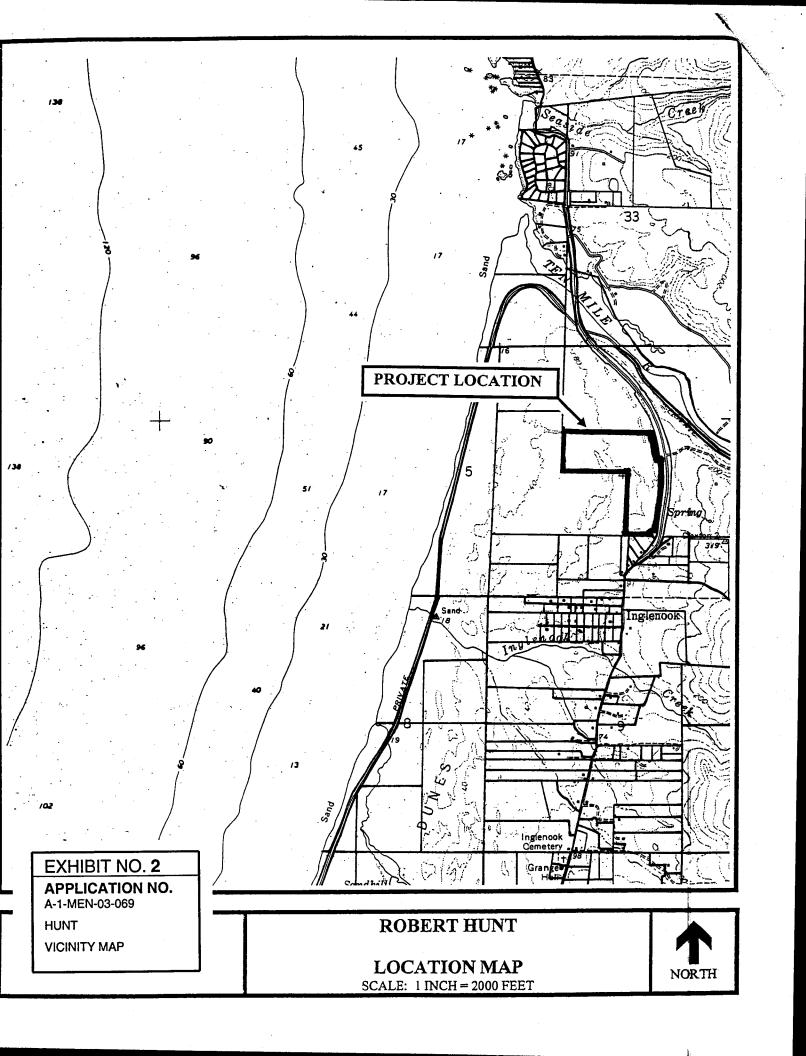
of views to and along the coast, ensuring new development is compatible and subordinate to the character of the setting, and requiring site development in or near wooded areas rather than open areas. The Commission finds that there are no conditions that could be applied that could make the proposed project consistent with the visual resource protection provisions of LUP Policies 3.5-1, 3.5-3, 3.5-4, and CZC Sections 20.504.015(C)(10) and 20.504.015(A)(4) as discussed above.

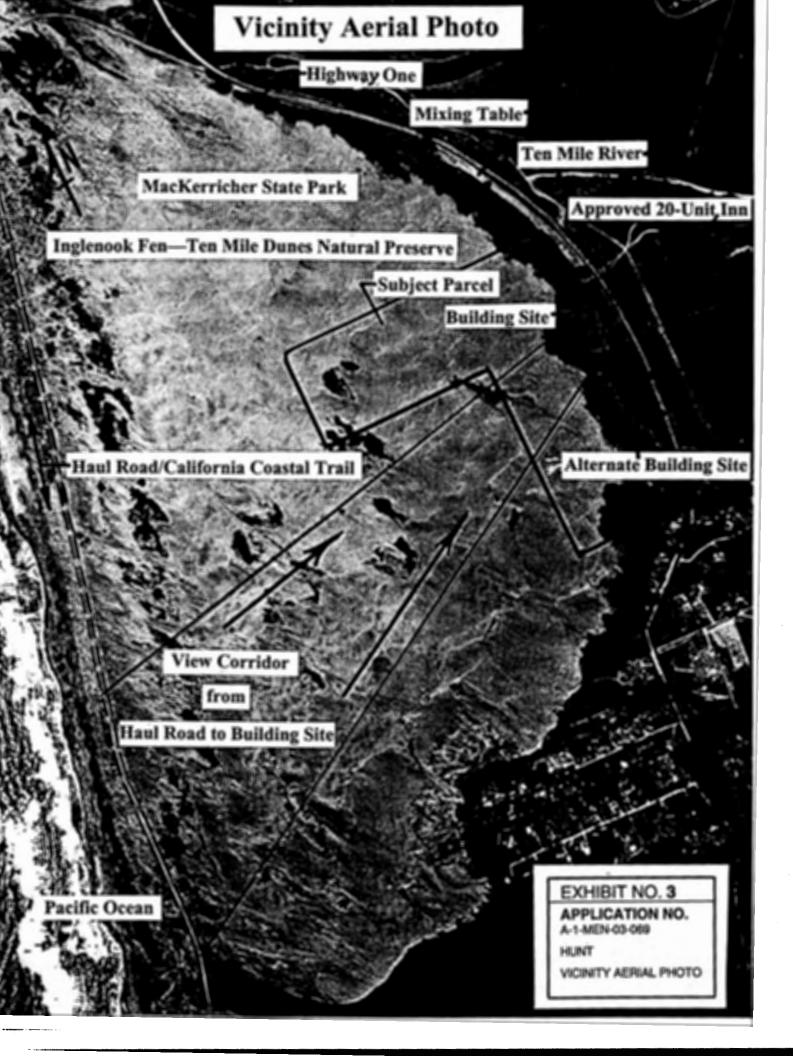
Also, as discussed above in the findings addressing project alternatives, there are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the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

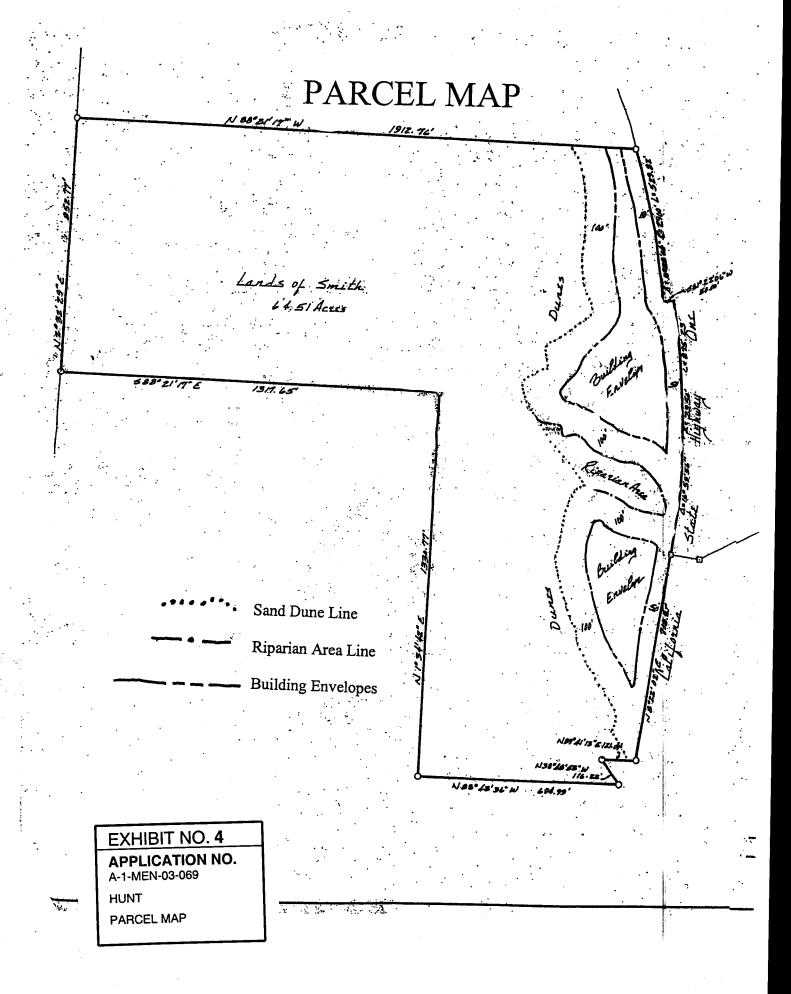
#### **Exhibits:**

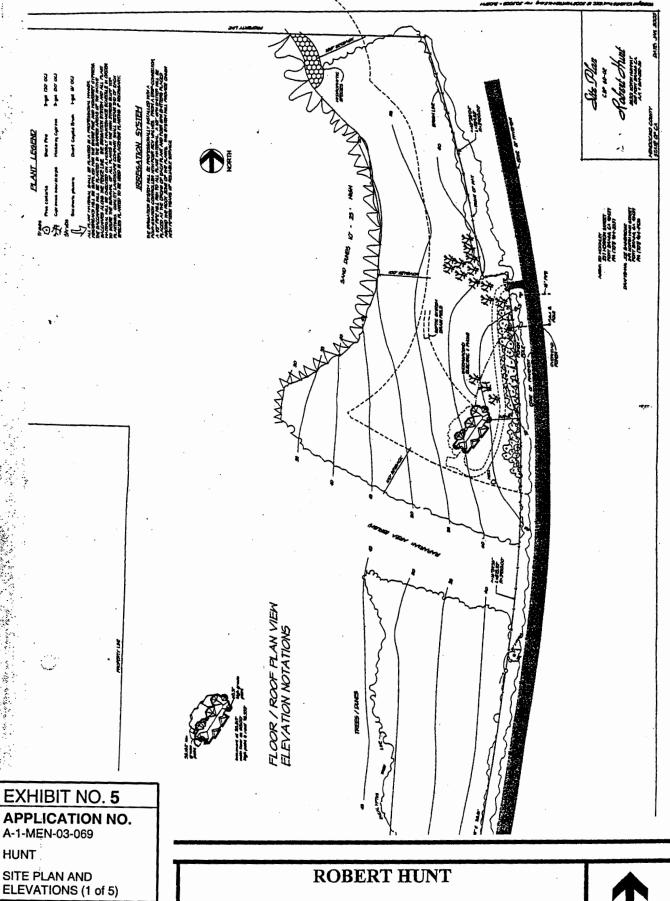
- 1. Regional Location Map
- 2. Vicinity Map
- 3. Vicinity Aerial Photo
- 4. Parcel Map
- 5. Site Plan and Elevations
- 6. Notice of Final Action & Staff Report
- 7. Appeal
- 8. Photographs
- 9. Correspondence
- 10. Request for Postponement
- 11. Amendment of Project Description







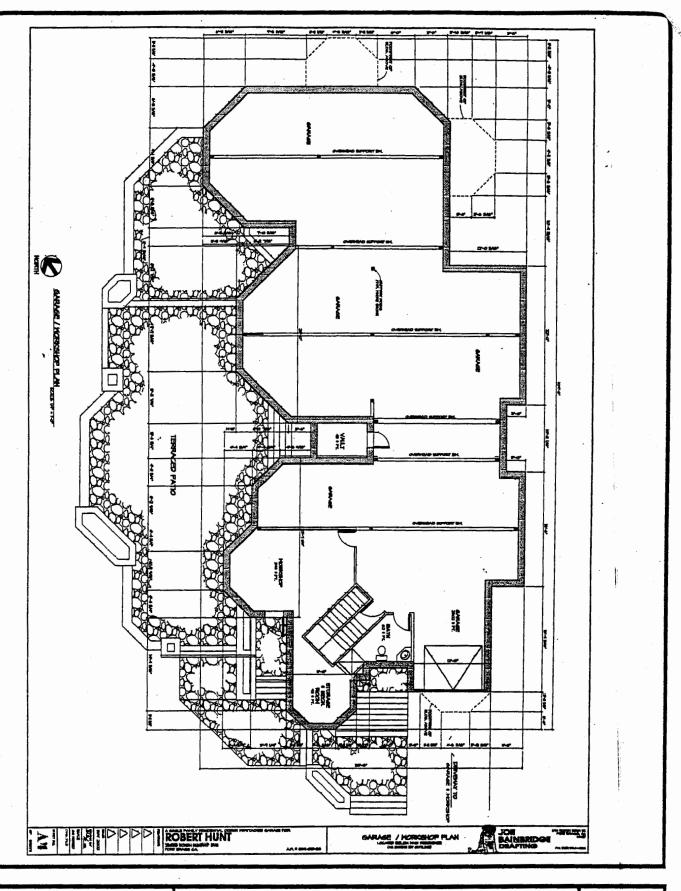




SITE PLAN

SCALE: NONE

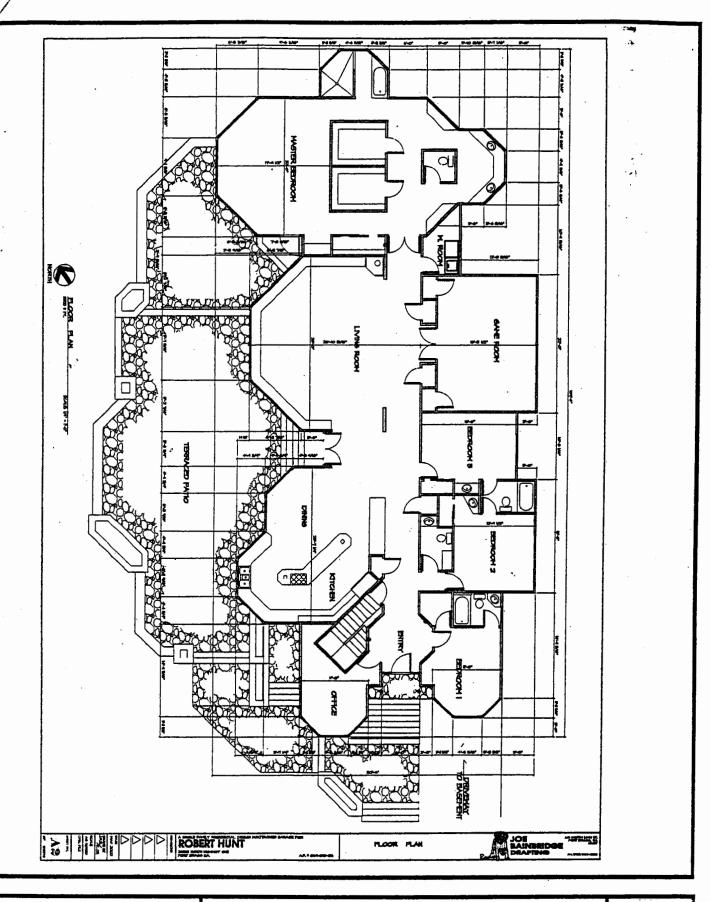




LOWER FLOOR PLAN SCALE: NONE





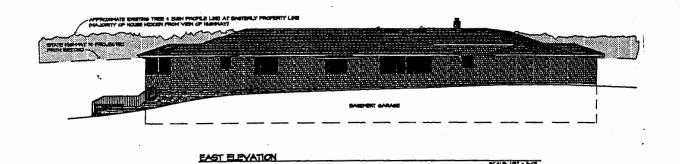


**UPPER FLOOR PLAN** 

SCALE: NONE







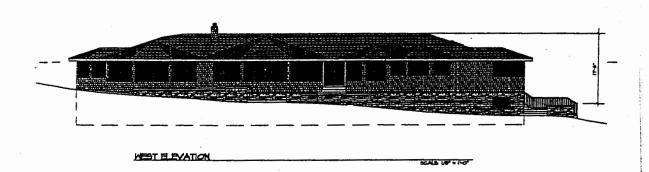


SOUTH ELEVATION

STATE HOMBAY I

EXATOR

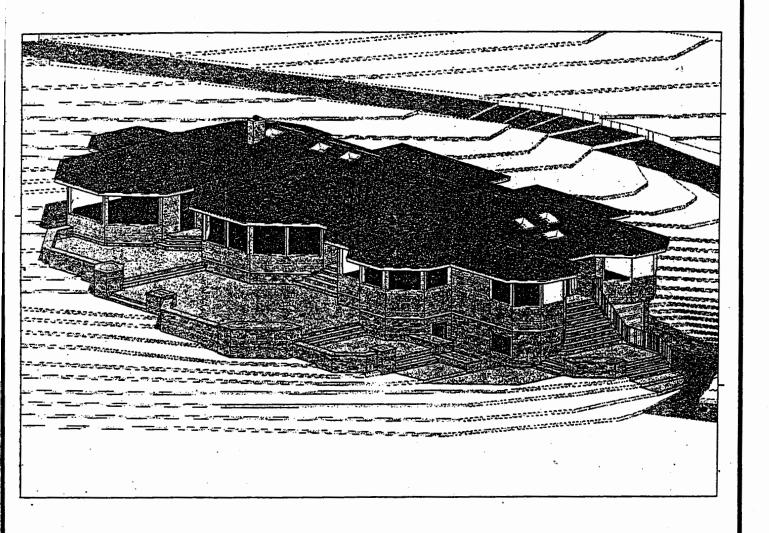
NORTH ELEVATION



ROBERT HUNT

**ELEVATIONS** 

SCALE: NONE



PERSPECTIVE

SCALE: NONE

<u> ५५</u>५



RAYMOND HALL DIRECTOR TELEPHONE (707) 984-5979

# COUNTY OF MENDOCINO DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS: 790 SO. FRANKLIN FORT BRAGG, CA 95437

RECEIVED

November 3, 2003

NOV 1 7 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#:

CDP #60-02

OWNER: AGENT:

Robert A. Hunt

REQUEST:

Ed McKinley
Construct a new 3,855 square foot single-family residence with a 3,245 square foot

garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system and connection to

utilities.

LOCATION: On the W side of Highway One approximately 1 mile S of the Ten Mile River at mile

marker PM 69.12 (APN 069-101-36).

PROJECT COORDINATOR: Charles Hudson

**HEARING DATE:** October 23, 2003

APPROVING AUTHORITY: Coastal Permit Administrator

**ACTION:** Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The 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.

**EXHIBIT NO. 6** 

APPLICATION NO.

A-1-MEN-03-069

HUNT

NOTICE OF FINAL ACTION & STAFF REPORT (1 of 19)

/	COASTAL PERIVITI ADMINISTRATOR AC	TION SHEET
CASE#:	CDP 60 02 HEARING DATE:	10/23/03
OWNER:	Hunt	
ENVIRONMEN	ITAL CONSIDERATIONS:	
	Categorically Exempt	•
	Negative Declaration	
	_ EIR	
FINDINGS:		
	Per staff report	
· ·	Modifications and/or additions	
ACTION:		
:	_ Approved	
<del></del>	_ Denied	
	Continued	
CONDITIONS:		·
	Per staff report	
•	_ Modifications and/or additions	
	ALR	

Signed: Coastal Permit Administrator



RAYMOND HALL DIRECTOR

#### COUNTY OF MENDOCINO

TELEPHONE (707) 964-5379

#### DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS: 790 SO. FRANKLIN FORT BRAGG, CA 95437

RECEIVED

OCT 1 5 2003

October 10, 2003

CALIFORNIA COASTAL COMMISSION

#### PUBLIC NOTICE OF PENDING ACTION STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, October 23, 2003 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #:

CDP #60-02

**DATE FILED: 5/22/02** 

OWNER:

Robert A. Hunt

AGENT:

Ed McKinley

REQUEST:

Construct a new 3,855 square foot single-family residence with a 3,245 square foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic system and connection to

LOCATION: On the W side of Highway One approximately 1 mile S of the Ten Mile River at mile

marker PM 69.12 (APN 069-101-36).

PROJECT COORDINATOR: Charles Hudson

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Raymond Hall, Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL L ELOPMENT PERMIT

CDP# 60-02 October 23, 2003 CPA-1

OWNER:

Robert A. Hunt 204 North 3<sup>rd</sup> Street

McCall, ID 83638

AGENT:

Ed McKinley

237 Morrow Street Fort Bragg, CA 95437

**REQUEST:** 

Construct a new 3,855 square foot single family residence with a 3,245 square foot garage below, for a total floor area of 7,100 square feet, and a maximum height of 18 feet above average natural grade, and 2,550 square feet of exterior patio. The project also includes a driveway, gate, well, propane and/or oil tanks, septic

system, and connection to utilities.

LOCATION:

On the west side of Highway 1, approximately 1 mile

south of the Ten Mile River at mile marker PM 69.12;

AP# 069-010-36.

APPEALABLE AREA:

Yes, west of 1st public road, highly scenic.

PERMIT TYPE:

Standard

TOTAL ACREAGE:

 $64.5 \pm acres$ .

GENERAL PLAN:

RL,  $17.45\pm$  acres and OS,  $47.05\pm$  acres.

ZONING:

RL,  $17.45 \pm$  acres and OS,  $47.05 \pm$  acres.

**EXISTING USES:** 

Undeveloped

ADJACENT ZONING:

North: RL & OS East: RL \*2C South: RR:L-2 West: OS

SURROUNDING LAND USES:

North: State Park

East: Rangeland, approved for a 20 unit VSF.

South: Residential West: State Park

SUPERVISORIAL DISTRICT:

4

ENVIRONMENTAL DETERMINATION:

Categorically Exempt, Class 3(a)

#### OTHER RELATED APPLICATIONS:

Use Permit U 39-74 and Rezoning R 52-74 submitted for a campground, recreation and education facility were not pursued after an Environmental Impact Report was required.

Coastal Development Boundary Line Adjustment CDB 31-93, completed in June, 1995, combined 2 parcels in the easterly portion of the Smith's ownership and established the parcel west of Highway One, now owned by Hunt, as a separate parcel.

Pre-application Conference PAC 2-02: Planning staff met with the applicant and his agents on the site to discuss development of a residence on the property.

**PROJECT DESCRIPTION:** The applicant proposes to construct a single family residence on a 64.5± acre parcel on the west side of Highway 1, approximately one mile south of Ten Mile River.

The residence will be approximately 3,900 square feet on the upper, residential level, with a garage, workshop and storage area of approximately 3,300 square feet below. Approximately 2,550 square feet of multi-level patio and retaining wall is proposed along the northwest and southwest sides. Approximately 500 feet of driveway, a well, and a septic system will be constructed. A fuel tank for LPG or oil will be installed. Overhead electric and telephone lines will cross the highway from an existing pole to a new pole, and then be placed underground to the residence. Landscaping, consisting of shore pine, Monterey cypress and dwarf coyote brush is proposed to provide additional screening from the highway. Staff has also been advised by the applicant's agent that the existing gate at the existing driveway encroachment may be replaced with a remotely-controlled wrought iron gate and stone gateposts, however no plans or other descriptive information have been submitted.

Exterior colors and materials are proposed as follows:

Roof:

Architectural grade composition shingles; dark gray

Siding:

Hardi-Shingle; sage (light gray)

El Dorado Stone or equivalent; fog (varied colors of gray and tan)

Trim

Desert sand (beige/tan)

Vinyl Windows

Almond

The residence is sited on land with an 8 to 9 percent slope downward toward the west. The high point of the roof is approximately seventeen feet above the average ground elevation at the building footprint. In order to achieve a two-level structure with a height less than the 18 foot height limit, portions of the residence are below grade. The upper floor (living area) of the residence is approximately four inches below the highest point of the natural grade within the building footprint. The lower floor (garage) is approximately 2 feet 4 inches below the lowest point of the natural grade within the building footprint. On the northwest and southwest sides of the building, a large multi-level terraced patio and retaining walls provide a transition from the residential level to the lower natural grade, and also forms a belowgrade driveway entry into the garage level.

The applicant's parcel has approximately ½ mile of frontage along the west side of Highway 1, and extends almost ½ mile westerly into the Ten Mile Dunes. Although the parcel is 64.5± acres in size, the area available for development is limited by the dunes, a riparian area crossing from the highway to the dunes, the adjacent buffer areas, and the front yard setback along the highway. As proposed, the building

site, driveway, well and leach field are more than 100 feet from dunes and riparian areas, and comply with setbacks.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use: The Coastal Plan Maps show the property within two land use classifications; Range Lands (RL) and Open Space (OS). The boundary between the two classifications appears to be approximately at the edge of the sand dunes, with the dunes designated OS and the remaining strip of land along the highway designated RL. The parcel is also within an area designated as "highly scenic". The proposed residence and related development would be on the RL portion of the property, and is a permitted use. Consistent with the Coastal Plan classifications, zoning applicable to the property is also Range Land and Open Space.

Within the RL zone, structures are required to be set back a minimum of 50 feet from property lines. In addition, along Highway 1, a corridor preservation setback of 40 feet from the centerline is required, resulting in a required setback along the highway frontage of either 50 feet from the property line or 90 feet from the highway centerline, whichever is greater. The house is shown on the Site Plan to be 62 feet 5 inches from the property line, and approximately 110 feet from the highway centerline, in compliance with setback requirements.

In designated highly scenic areas west of Highway 1, the maximum allowable building height is 18 feet above natural grade unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Building height is defined as the vertical distance from the average ground level of the building to the highest point of the roof ridge. Based on topographic information presented on the Site Plan, and the building heights shown on the elevation drawings, the building complies with the 18 foot height limit, even when including the patio as part of the building footprint.

Maximum lot coverage for a lot over 5 acres in size in an RL zone is 10%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 64.5 acres, or 2,809,620 square feet. The Site Plan shows approximately 13,000 square feet of coverage, or 0.5%. The project complies with lot coverage limits.

The lower floor garage and its driveway entrance will require the excavation of approximately 1,100 cubic yards of earth. Approximately 200 cubic yards of the excavated material will be used as fill under the terraced patio. The remainder is to be transported off site for other use or disposal. A minor amount of grading will be required in conjunction with construction of the new driveway.

The 3,300 square foot lower floor garage/workshop/storage area, with parking space for at least five cars, is somewhat large for a single family residence. When reviewing applications that include workshops over 1,000 square feet as accessory buildings, it is standard practice to include a condition prohibiting commercial use prior to obtaining required permits. The condition is included primarily to advise the owner, or any future owner, of the limitations and requirements of the Coastal Zoning Code regarding commercial use of such facilities. Section 20.448.010 (B) of the Coastal Zoning Code states the use of an accessory building or garage for purposes of conducting a home occupation is prohibited. Section 20.452.010 (A) of the Coastal Zoning Code states cottage industries may be permitted in the rangeland zoning district upon issuance of a coastal development use permit and would be subject to specific

standards. Given the size of the lower floor garage/shop area, staff would recommend that such a condition be included for this application as well. Special Condition Number 1 is recommended.

Public Access: The parcel is located on the west side of Highway 1, between the highway and MacKerricher State Park. Until recently local access to park lands could only be achieved by crossing privately-owned land lying between the highway and the park, and there is evidence of access trails across the northerly portion of the applicant's parcel between the highway and the dunes. A map submitted by the applicant's agent shows two trails that have had recent light use crossing the applicant's parcel from the highway to the dunes. There is a possibility that prescriptive rights may have been acquired through public use of the trails.

Coastal Plan Policy 3.6-27 states, in part:

Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have hot been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights".

The Manual describes the circumstances through which the public may acquire the right to use private property, and sets forth the process to be followed to establish the existence of prescriptive rights. The Manual also recognizes that establishing the existence of prescriptive rights is a complex and time-consuming process that ultimately must be decided in court, and therefore should only be initiated to protect important public rights that may be jeopardized by the proposed development. Staff does not recommend that a prescriptive rights investigation be initiated in this case for the following reasons.

The sand dunes within MacKerricher State Park west of the applicant's parcel are part of the Inglenook Fen-Ten Mile Dunes Natural Preserve, which has been established, in part, to protect three federally and state listed species (Western Snowy Plover, Charadrius alexandrinus nivosus, Menzies' wallflower, Erysimum menziesii spp. Menziesii, and Howell's Spineflower, Chorizanthe howellii), and numerous other special status plants. County planning staff discussed the issue of possible prescriptive access rights and the possibility of requiring an offer of dedication of a trail easement with State Park personnel. Greg Picard, then District Superintendent of the Department of Parks and Recreation, responded with the following comment:

State Parks strongly recommends against such a permit condition. Trail development in the dune complex with federally endangered species is a long and difficult process entailing an expensive EIR for the entire dune area. State Parks is not ready to develop one yet, nor do we consider this location our prime need for a trail, considering Caltrans' reluctance to use the mixing table lot there for public parking.

In a telephone conversation with Ron Munson, the current District Superintendent, staff confirmed that State Parks does not support an access into the dunes across the Hunt parcel.

A letter was received from Henry R. Smith, former owner of the applicant's parcel. He stated, in part:

The Smith Family for close to 70 years has owned the above referenced parcel #069-010-36. Please be advised that we have always maintained "No Trespassing" signs and if trespassers were

found on the property they were advised that they were trespassing and asked to leave. Additionally we have maintained a fence along Highway One.

These efforts by the landowner may have prevented the acquisition of any prescriptive right.

In 2000 the State acquired a 54.5 acre parcel immediately north of the applicant's parcel. The acquisition of this parcel provides a publicly-owned connection between Highway 1 and MacKerricher State Park, where a public access could be developed, although it would not be the preferred access location due to the sensitivity of the dunes that would be impacted. A preferable access would be closer to the south end of the Ten Mile River Bridge where a connection could be made to the old Haul Road with minimum impact on the dunes. An access at this point is dependent on acquisition of other private lands, or on the Ten Mile Bridge replacement, which may create an access opportunity within the exiting highway right-of-way. While a developed public access is not likely in the short term, it is likely that an access will be developed eventually. Once a public access is developed, there will be no need for an access trail in a location that is environmentally undesirable.

The trails shown on the map of the applicant's parcel are approximately 600 to 700 feet north of the proposed residence, and would not be affected by the proposed development.

As part of preparation and adoption of the County's Coastal Plan, existing and potential and access points were identified and shown on the land use maps. In the area south of Ten Mile River, an existing trail is shown leading from Highway 1, south of the Ten Mile River Bridge, west into MacKerricher State Park. No trail, either existing or proposed, is shown in the vicinity of the applicant's parcel. Public access to the shoreline west of the applicant's parcel is provided by MacKerricher State Park and the Haul Road, to which there is established public access at locations to the south.

Based on the above, it is staff's recommendation that the project site is not an appropriate location at which to either attempt to establish the existence of prescriptive rights, or to require recordation of an offer of dedication of an access easement. Staff recommends that the project be found to be consistent with public access policies of the Coastal Act and the Coastal Element of the General Plan without any requirement for an offer of dedication, or attempt to establish the existence of prescriptive rights.

Hazards: The project site is located within an area of beach deposits which are subject to intermediate shaking in the event of an earthquake. There are no mapped fault lines in the Ten Mile River area. Compliance with Uniform Building Code standards for residential construction will address potential hazards associated with ground shaking.

The property is not within a mapped flood hazard area.

The property lies in an area with a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The Department of Forestry has submitted recommended conditions of approval (CDF# 4-03) for address standards, driveway standards, and defensible space standards. Special Condition Number 2 is recommended to achieve compliance with the fire safe standards recommended by the Department of Forestry.

Visual Resources: The project site is west of Highway 1, within a designated highly scenic area, and therefore is subject to the visual resource policies of the Mendocino County Coastal Element of the General Plan and Chapter 20.504 of the Coastal Zoning Code. The residence will be visible from

Highway 1, although it will be partly obscured by existing and proposed vegetation along the highway. It will also be slightly below and about 90 feet back from the highway. The residence will also be visible from locations within MacKerricher State Park. The nearest point within the park is about 600 feet west of the building site, however this location is in the middle of the dunes, and is not likely to have as much public use as the Haul Road and beach, which are ¾ of a mile west of the building site. Telephone and electric utilities are proposed to be installed overhead across Highway 1 to a new pole on the west side of the highway, then underground to the residence.

Coastal Plan Policy 3.5-1 of the Mendocino County Coastal Element states:

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.

Coastal Plan Policy 3.5-3 states, in part:

Any development permitted in [highly scenic] 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.

In addition to other visual policy requirements, new development west of Highway One in designated highly scenic areas is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. ... New development should be subordinate to the natural setting and minimize reflective surfaces.

Section 20.504.015 (C) (2) of the Coastal Zoning Code states:

In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

The California Department of Parks and Recreation, in a letter dated September 17, 2002, submitted the following comments regarding the visibility of the residence:

The 18' maximum height above grade is appropriate for this site, as are the downcast exterior lighting fixtures. Glass, especially along the northern and western sides should be non-reflective. Although State Parks typically recommends <u>dark</u> earth tones that recede into the natural surroundings, the sage siding and Desert sand trim may actually blend better with the dune and eucalyptus environment here. Looking at color samples on site would enable our staff to make a better determination.

P1419

Although the residence will have two levels, it is to be set into the ground to achieve a building height of less than 18 feet above the average natural grade, and therefore complies with the height limit in highly scenic areas west of Highway 1. There are no other residences or other structures in the nearby vicinity.

Section 20.504.015 (C) (3) of the Coastal Zoning Code states:

New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

Exterior building materials and colors are proposed to be as follows:

Roofing: Certainteed, Landmark 40, Class A Fiber glass shingles, colonial slate

(dark gray).

Siding: Hardy shingle, sage (light gray).

Trim Desert sand, (beige/tan).

Exterior doors: Natural wood.

Garage door Sage.

Gutters & downspouts Desert sand to match trim.

Stone El Dorado Stone or equivalent.

Window frames: Almond vinyl.

Exterior lights: Shielded, downcast fixtures, Kilcher Model # K-9234AZ, bronze

The colors selected for the roof shingles and stonework appear to be colors that will blend with the surroundings and not stand out. The colors selected for the siding, trim, garage door, gutters, downspouts and window frames are too light, will contrast with the darker roof and stonework colors, and will result in the structure being unnecessarily visible. The color samples for these items are marked on a sheet of Glidden exterior color chips. Staff recommends that darker colors be selected, more similar to Glidden color chips for "Moss Agate", "Eucalyptus Tree", or "Gateway". Special Condition Number 3 is recommended to require that darker colors be used and that samples be submitted for review and approval of the Coastal Permit Administrator prior to issuance of the Coastal Development Permit.

Special Condition Number 4 is recommended to require that building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

The elevation drawings for the residence show a substantial amount of glass on the northwest and southwest elevations. With the State Park to the west of the site, there is a high probability that glaring reflections of sunlight could be visible from the Haul Road and beach late in the day when the sun is near the horizon. Special Condition Number 5 is recommended to require that non-reflective glass be used to reduce the potential of glare visible from the State Park.

The application states that propane and/or oil tanks are to be installed on the site, but they are not shown on the site plan, and no information regarding location or screening is provided. Special Condition Number 6 is recommended to require that fuel tanks be located or screened to be visually insignificant.

Section 20.504.035 (A) (2) of the Coastal Zoning Code states:

Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed. Only reflected, non-glaring light shall be visible from beyond the parcel boundaries.

The application specifies that shielded downcast fixtures, specifically Kichler Model # 9234AZ, will be used for exterior lighting.

Coastal Plan Policy 3.5-5 states:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

A revised Site Plan dated January 2003, and received April 23, 2003, specifies landscaping to be established on the site to provide additional screening of the residence from Highway. The plan specifies Shore Pine, Monterey Cypress, and Dwarf Coyote Brush, along with an irrigation system. The parcel is not within a tree removal area, and consequently no removal or thinning of trees is required. Special Condition Number 7 is recommended to require that the proposed landscaping and irrigation system be installed, maintained, and replaced if needed.

As mentioned above, the existing gate is proposed to be replaced with a remotely operated wrought iron gate and stone gate posts, but no detailed plans have been submitted. Special Condition Number 8 is recommended to require that plans and elevations of the gate be submitted for review and approval of the Coastal Permit Administrator prior to installation of the gate.

Electric and telephone lines are proposed to be installed overhead across Highway 1 from an existing pole line on the east side of the highway to a new pole to be placed on the west side of the highway. From the new pole the utilities are to be underground to the residence.

Coastal Plan Policy 3.5-8 states, in part:

Power transmission lines shall be located along established corridors. Elsewhere transmission lines shall be located to minimize visual prominence. Where overhead transmission lines cannot be located along established corridors, and are visually intrusive within a "highly scenic area", the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible.

Section 20.504.015(C) (11) of the Coastal Zoning Code states:

Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

Section 20.504.015(C) (12) of the Coastal Zoning Code states:

110/10

Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

The applicant's parcel and adjacent lands west of the highway are designated highly scenic. Land on the east side of the highway, while not designated highly scenic, is part of the scenic rural environment of the area. Staff does not find the proposed pole on the west side of Highway 1 and overhead utility lines crossing the highway to be consistent with the above Coastal Plan policy and Zoning Code sections. The new pole and wires crossing the highway would cause a significant visual impact. In a similar case (CDP 59-01, Knapp, north of Westport) overhead utilities crossing Highway 1 were not allowed. Therefore, staff recommends that utility lines from the east side of the highway be required to be installed underground across the highway to the site. Special Condition Number 9 is recommended.

Natural Resources: The building site is bounded on the west by the Ten Mile Dunes, and on the south by an unnamed drainage course and associated riparian vegetation. Both the dunes and the riparian vegetation constitute environmentally sensitive habitat areas.

Coastal Plan Policy 3.1-7 of the Mendocino County Coastal Element states, in part:

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 and the adjacent upland transitional habitat function of the buffer 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

This policy is implemented through Section 20.496.020 of the County Code which establishes standards for protection of environmentally sensitive habitat areas.

In conjunction with Coastal Development Boundary Line Adjustment CDB 31-93, a botanical survey was conducted by Gordon McBride, PhD. Dr. McBride determined that the parcel was comprised of three plant communities: coastal terrace prairie, sand dunes, and riparian. He identified a building envelope on the coastal terrace prairie portion of the site that was free of any rare or endangered plants, and was more than 50 feet from riparian and sand dune plant communities. As a condition of the boundary line adjustment, a more detailed exhibit map was required that delineated two building envelopes on the site that were a minimum of 100 feet from environmentally sensitive habitat areas.

In conjunction with the current application, a botanical survey was conducted by Halleh Paymard, of Trillium Botanical Consulting. The survey was limited to the building envelopes, and adjacent areas, established as a condition of the 1993 boundary line adjustment. No rare or endangered plants were discovered, and the previously-established buffers were determined to be adequate.

The initial site plan submitted with the application showed portions of the driveway, patio, and leach field to be outside the building envelope. A revised site plan, dated January, 2003, was submitted which shows

the residence and associated development completely within the building envelope established by CDB 31-93, and thereby in compliance with Coastal Plan policies for the protection of environmentally sensitive habitat areas.

In the botanical report prepared by Dr. McBride in 1993, he stated that it was not possible to rule out the existence of two rare and endangered plants that are characteristic of the sand dune community, but it was his opinion that County regulations prohibiting development within the dunes would provide adequate protection should they be present. Also, the Department of Parks and Recreation expressed concern for protection of the dunes, and stated that a conservation easement or fee title transfer to State Parks would be supported should the applicant be interested. To underscore the need to avoid disturbance of environmentally sensitive habitat areas on the site – both the sand dunes and the riparian area – Special Condition Number 10 is recommended reiterating Coastal Plan and zoning provisions for protection sensitive areas.

Archaeological/Cultural Resources: The project was reviewed by the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University. The Information Center responded that the project area has the possibility of containing unrecorded archaeological sites and recommended a study. The application was reviewed by the Mendocino County Archaeological Commission on November 20, 2002 which required that a survey be performed. A survey was performed by Thad Van Bueren, MA, Registered Professional Archaeologist, in December 2002. The survey covered the portions of the parcel not covered by sand dunes, and found no archaeological or historic resources. In the event that archaeological resources may be discovered during construction on the parcel, Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance.

Groundwater Resources: The site is located within an area mapped as a Sufficient Water Resources (SWR) area as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Water is to be provided by an existing well drilled in 1995 in accordance with Division of Environmental Health requirements.

Sewage disposal is to be by a private septic tank and leach field system. The Department of Environmental Health commented that a Site Evaluation Report was prepared in 1994, but will need to be updated to meet current requirements. The original plans submitted with the application for CDP 60-02 showed one of the soil profile holes and a portion of the primary leach field within the 100 foot wide buffer required along the dunes to the west of the building site. The revised Site Plan shows the leach field to be outside the buffer area. Special Condition Number 11 is recommended to require that design and construction of the sewage disposal system comply with all applicable Division of Environmental Health requirements, and that no part of the system be located within the 100 foot buffer adjacent to the sand dunes to the west of the site.

A drainage plan has been submitted showing that runoff from the roof, patio, and driveway is to be collected in drain lines and directed onto the ground surface below (west) of the residence. The outlet of the drain lines will not be within the riparian or dune buffer.

No impact to groundwater resources is anticipated.

Transportation/Circulation: Access to the site is directly off of Highway 1. Caltrans submitted a letter that included the following comments:

State Route 1 is classified as a conventional highway with no access restrictions. Along the northeastern portion of this parcel (from approximately post mile 69.3) Caltrans owns right of way that extends 100 feet from centerline, which includes adequate space for vehicles to park and circulate off the highway. Caltrans will continue to allow public parking at this location; however, overnight camping is not allowed.

Access improvements for the proposed development must be constructed to meet Caltrans standards for a residential driveway approach.

Any work within the State highway right of way, including access improvements, will require a current Encroachment Permit

Special Condition Number 12 requires that an encroachment permit or other evidence of compliance with Caltrans' requirements be submitted to Planning and Building Services prior to issuance of the building permit.

While the project would contribute incrementally to traffic volumes on Highway 1, such incremental increases were considered when the LCP land use classifications and densities were assigned to the site, and no mitigation measures are required.

Zoning Requirements: The project complies with the zoning requirements for the Range Land District set forth in Chapter 20.368, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopt the following findings and conditions.

#### FINDINGS:

- 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 applicable zoning district, as well as all other provisions of Division  $\Pi$ , and preserves the integrity of the zoning district; and
- 4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
- 5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and

- 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; and
- 7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

#### STANDARD CONDITIONS:

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

- 2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
- 4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
- 5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- 6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.

- d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
- 7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- 8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Chapter 22.12 of the Mendocino County Code.

#### SPECIAL CONDITIONS:

- Use of the lower floor garage/workshop/storage space, for other than non-commercial
  uses accessory to the residential use of the building, is prohibited in the absence of
  approval of a coastal development use permit in compliance with all applicable
  provisions of the County Code.
- 2. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 4-03) or other alternatives as acceptable to the Department of Forestry. Prior to the final inspection of the building permit, 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.
- 3. Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, color samples for the exterior siding, trim, garage door, gutters, downspouts, and window frames of the proposed residence. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Sec. 20.504.015 (C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones which will blend with the coastal prairie vegetation in the vicinity. Tan, beige or other light colors shall not be appropriate. Metal chimney parts shall be a non-reflective dark color. All other exterior building materials and finishes shall match those specified in the coastal development permit approval.
- 4. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
- Windows on the northwest and southwest sides of the residence shall be made of nonreflective glass.

16 09 19

- 6. Prior to issuance of the coastal development permit, the applicant shall submit drawings or other information for the review and approval of Coastal Permit Administrator showing that the tanks will not be visually significant from public viewpoints. This may be accomplished by locating the tanks in an area that is out of public view, or by screening the tanks with fencing or landscaping.
- 7. Prior to obtaining a final building inspection, the landscaping and irrigation system described on the Site Plan dated January 2003, and received by Planning and Building Services on April 23, 2003, shall be installed and inspected by the Planning Division. The landscaping is intended to provide visual screening of the project from Highway One. The Plant Legend and Irrigation System indicated on the plan shall be considered part of the landscaping. All required landscaping shall be irrigated, staked, maintained and replaced, as necessary, to ensure that they are established and maintained in perpetuity.
- 8. Prior to installation of a new gate to replace the existing gate along Highway 1, the applicant shall submit for review and approval of the Coastal Permit Administrator plans and elevations showing the location and appearance of the new gate and any related development. The gate and entry shall comply with provisions in the Coastal Plan and Zoning Code regarding visual resources, fences, and any requirements of the California Department of Forestry and Fire Protection regarding width and setback from the highway. The materials, colors and design of the gate shall be selected to be subordinate to its setting. Any work within the Highway 1 right-of-way shall comply with all encroachment permit provisions administered by Caltrans.
- 9. Prior to issuance of a building permit for the residence, the applicant shall submit a revised plot plan specifying that any new utility lines installed to serve the residence from the existing lines on the east side of the highway be installed underground across Highway 1 and to the residence.
- 10. No development or activity shall occur within the riparian or sand dune areas or the 100 foot buffers adjoining these areas without prior review by the Department of Planning and Building Services to determine that the development or activity is consistent with all provisions of the Coastal Plan and Coastal Zoning Ordinance for the protection of such environmentally sensitive habitat areas.
- 11. Prior to the issuance of a building permit, the applicant shall submit to the Department of Planning and Building Services written verification from the Division of Environmental Health that an acceptable Site Evaluation Report has been prepared. No portion of the sewage disposal system shall be located within the 100 foot wide buffer adjacent to sand dunes or other environmentally sensitive habitat areas.
- 12. Prior to the issuance of the building permit, and pursuant to encroachment permit procedures administered by Caltrans, the applicant shall obtain an encroachment permit for all work proposed or required within the highway right-of-way. A copy of the approved encroachment permit or other evidence of compliance with Caltrans' requirements shall be submitted to the Planning Division along with the application for the building permit for the residence.

CDP# 60-02 October 23, 2003 CPA-15

Staff Report Prepared By:

Senior Planner

Attachments: Exhibit A - Location Map

Exhibit B - Site Plan

Exhibit C - Lower Floor Plan Exhibit D - Upper Floor Plan Exhibit E - Elevations

Exhibit F - Perspective

Appeal Period:

Ten calendar days for the Mendocino County Board of Supervisors, followed by ten

working days for the California Coastal Commission following the Commission's

receipt of the Notice of Final Action from the County.

Appeal Fee:

\$645 (For an appeal to the Mendocino County Board of Supervisors.)

#### SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning - Ukiah

Department of Transportation

Environmental Health - Fort Bragg

No comment.

No comment.

Environmental Health has a Site Evaluation Report dated Oct., 1994. Per EH Policy 4211.03 the owners shall contact a Site

Evaluator (original or other) to update &/or acknowledge design & site conditions of property. This policy covers Site Evaluation

Reports five or more years old.

Building Inspection - Fort Bragg

Assessor

SSU

Archaeological Commission

Caltrans

No comment.

No response.

Possibility of unrecorded archaeological sites. Survey

recommended.

Survey required. Survey submitted and accepted – no resources.

Caltrans owns a wide easement adjacent to parcel, where parking

is allowed, but not camping. A residential driveway will be

required, upon approval of an encroachment permit.

Coastal Commission No response.

Dept. of Parks & Recreation Letter 9/17/02: Will be visible from park. Grading plan?

Archaeological impact? Non-reflective glass. Colors will be important. Potential impact to Natural Preserve resulting from use of adjacent private lands. Plant and animal survey? Fence? Impact of road? Impact of future development? Liquefaction?

18-616

CDP# 60-02 October 23, 2003 CPA-16

Water availability? Salt water intrusion? Landscaping plan to screen from park.

Letter 3/20/03: Previous concerns largely addressed by revised site plan, botanical and archaeological surveys. Require notification if arch. resources are found during construction. Supports 100 foot buffer and defers to DF&G for biological issues. A study of dune advancement might be good but is not requested, nor is a snowy plover survey. A conservation easement on the dunes is encouraged, or outright transfer to DPR. No longer recommending a fence in the dunes, but some boundary delineation is recommended. Access to dunes through Hunt parcel is opposed.

US Fish & Wildlife Service

P1 fo P1

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

HORTH COAST DISTRICT OFFICE 710 E STREET . SUITE 200 EUREKA, CA 95501-1865 VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS: P. O. BOX 4908 EUREKA, CA 95502-4908





APPEAL FROM COASTAL PERMIT.

CALIFORNIA

DEC 0 2 2003

DECISION OF LOCAL GOVERNMENT COASTAL COMMISSION
Please Review Attached Appeal Information Sheet Prior To Completing This Form.
SECTION I. Appellant(s)
Name, mailing address and telephone number of appellant(s):  JUDITH VIDAVER for FRIENDS of The Ten Mile  PO Box 25
FORT BRAGE CA 95437 707 964-2742
Zip Area Code Phone No.
SECTION II. <u>Decision Being Appealed</u>
government: MENDOLING COUNTY DEPT OF PLANNING & BLDG
2. Brief description of development being appealed: Construct 3,855 s; single-family residence w/3,245 s; garage below. Total 7,100 sq' max ht. 18' + 2,350 sq' patio + drive way, propose tentes, to = 13,000 sc' development
3. Development's location (street address, assessor's parcel no. cross- street, etc.: Wide Hwy I I mile 5. Ten Mile River & mm. Ph 69.12  APN 069-101-36 in Highly Sienic Area of Coastal Zone adjacent to Mackarisha  State Park Natural Dune Preserve
4. Description of decision being appealed
a. Approval; no special conditions:
b. Approval with special conditions:
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: EXHIBIT NO. 7

APPEAL NO:

DATE FILED:

Jorth Coast

APPLICATION NO.

A-1-MEN-03-069

HUNT

APPEAL (1 of 6)

### APPEAL FROM COASTAL PERMIN JECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):	
a. ✓ Planning director/Zoning c. — Planning Commission Administrator	
b City Council/Board of d Other	
6. Date of local government's decision: Oct. 23, 2003	
7. Local government's file number (if any): CDP#60-02	
SECTION III. Identification of Other Interested Persons	
Give the names and addresses of the following parties. (Use additional paper as necessary.)	
Name and mailing address of permit applicant:  Robert A. Honi 204 N. 3 <sup>rd</sup> St.	
MC CALL ID 83638	
b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.	
(1) Joan Curry	
PO 457 Mendocino CA 95460	
(2)	
(3)	
(4) Rixanne Wehren - Traits Committee Mendagino Sierra C PO 340 Albim 95410	ادا

### SECTION IV. Reasons Supporting This Appeal

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

### APPEAL FROM COASTAL PE T DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly <u>your reasons for this appeal</u>. 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 Reverse this short -Element: leadin improper laction & scale of buildings blockage alteration of natural land forms." Project is "In competible" development shall be sited & designed to protect views to Educa the ocean ascenic coastal areas, to minimize the alteration of natural land forms to be visually compatible of the character of survounding cress ... in highly scenic areas (EPP 3.5-3) be Subordinate to the character of its setting. New development in HEAis limited to one-story. 3.5-4 Riddings. that must be sited win HSA shall be rited in or near the edge of a wooded area and evelopment in the middle of large open erest shall be excided if an alternative site 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/or knowledge. Signature of Appellant(s) or Authorized Agent Nov. 10, 2003 Note: If signed by agent, appellant(s) must also sign below. SECTION VI. Agent Authorization I/We hereby authorize to act as my/out representative and to bind me/us in all matters concerning this appeal. Signature of Appellant(s)

Date

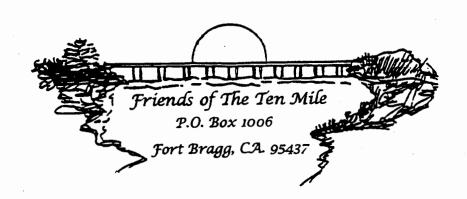
PHONE NO.: 707 964 6543 Dec. 02 2003 01:59PM P5 win the State Perk. It alters the natural land forms by excavating 1100 cu yords. of meterial 200 anyons of which will be used as fill under attermed petro. It is out of character withe surrounding undereloped sceniciones & would set a precential for fiture development of inessive structures. It's 2 story-ness of messive bulk in an open dres in HSA violetes a facementional policies of the Cost [2] Program. This not asbordinate to its setting

Coastal Zoning Code: Sec. 20. 504.015(C)(14)

"The planting to screen brildings shall be encouraged, however, new development Thall not allow trees to interfere my coasted loccen views from public andi. Robert Dostelok; "Tree plentings are intended to further seften the visual impact of buildings that were initially designed to sited to protect views to talony The ocean even open great where no elternative building site exists set of the public viewshelf. There is possible building site out of the public view shed just south of the proposed site, on The other side of the rigarian area - This site was never devaluated for suitability] ... Land scaping is not intended to hide structures that would other wise be in empirishent wi after visual resource cortes & policies."

Sibilited land suggest of interest of hide structure to uses species which either must likely won't grow Have (shore jime) or one invisive six ctics. That could have adjacent Highly Lenistive Habitat of the Preserve. (Monteray Cypress)

Rea plant was found just north & site (Horledie) - need to make some and non-native plants to not invade habitat 4 of 6



December 2, 2003

### Addendum to Appeal Re CDP# 60-02

During the Public Hearing for this project Friends of the Ten Mile submitted comments on this project (see file).

We'd now like to comment on the comments on our comments made by the County Coastal Permit administrator, Frank Lynch.

We mentioned our concern re this residence being used as a vacation rental by multiple families and potential impacts to the adjacent Preserve. FOTTM recommended an additional condition prohibiting such use. Mr. Hunt agreed to such a condition, offering to make it part of the deed.

Mr. Lynch refused to include this condition.

A landscaping plan was required as a condition of approval of this permit. That plan as submitted includes the use of Monterey Cypress and Shore Pine. FOTTM questioned the use of these plants as a) there is no indication Shore Pine will grow there and b) Monterey Cypress is an invasive non-native species that could easily spread into the Preserve. (By the way, there is a rare plant that grows just north of the site, *Horkelia marenensis.*)

In response to our concerns, Mr. Lynch stated that he didn't care what was used for landscaping.

Given the sensitivity of the site, FOTTM believes this is an inappropriate response: the landscaping plan needs very careful consideration. Nor must trees be allowed to block the ocean views just to hide the structure.

These two issues lead FOTTM to conclude that the County is more interested in the project's revenue generating potential than it is in protecting coastal resources.

FOTTM also asked about the non-reflective windows. We note that the staff report expresses this concern: "With the State Park to the west of the site, there is a high probability that glaring reflections of sunlight could be visible from the Haul Road and beach late in the day..." Afternoon sun-glare is visible from the Park from houses with non-reflective windows two and a half miles to the north. Will such glare from this project with its many windows be insignificant?

All these concerns would be resolved by re-locating the structure on the site south of the riparian area. When FOTTM asked if that alternative site had been evaluated, we were told "No, because the special conditions mitigate the visual impacts to insignificance."

We strongly disagree with this contention.

One final point: The project is being presented as the equivalent to a one-story structure so as to minimize its size. Even if it was only one-story, at 3.855 sq. ft. plus 2,550 sq.ft.patio, plus tanks, plus stone gate, it is still humongous--way larger than anything in the vicinity-- and completely out of character with the setting.

The issues that prevented former Coastal Planner Robert Dostalak from finding this proposal in compliance with the Coastal Plan do not yet seem to be resolved.

# Residential Development Site

as viewed from Haul Road—MacKerricher State Park



To the Members of the Coastal Commission:

**RECEIVED** 

Friends,

DEC 0 4 2003

I'm writing re: project Hunt CDP# 60-02.

CALIFORNIA COASTAL COMMISSION

I hope you will take a good look at this project which certainly has a potentially negative impact and might also open the coastal area to future construction of massive and environmentally damaging homes.

The project as planned, is out of character with the setting in the Ten Mile area, one of the most beautiful and, so far, most open areas of our northern coast. I understand that there is a possible alternative location for the project which would at least be less visible and therefore less damaging.

I hope that you will either deny or relocate the project.

Thank you for your thoughtful caretaking.

som K, ashita

Sincerely,

Joan Kennedy White

31823 Airport Rd.

Fort Bragg, CA 95432.

EXHIBIT NO. 9

APPLICATION NO. A-1-MEN-03-069

HUNT

CORRESPONDENCE (1 of 3)

Colifornia Coastal Commission 710 E ST., SUITE 200 EUREKA CA 95501 RE: PROJECT HUNT COP # 60-02 Dear Toastal Tommission, The Hunt project is out of setting of the Highway one RECEIVED

DEC 11 2003

CALIFORNIA The 7,000 rquare for COASTAL COMMISSION maga-mencion planned for the natural Deure Preserve will compromise the integrity of the Dune/Coastal Crainie Nabutat. The proposed building site has not been evaluated for cuitability by mr. Hunt or The country! is a ling Time resident, I am strongly oriented to 60-01. Sincerely, NORMAN DOYCK 310 N. HAROLA ST 243

FURT BRAGG CA 95437

To: Wastal Commission Eureka, CAUf.

Re: HUNT CDP#60-02

# RECEIVED

DEC 0 4 2003

CALIFORNIA
COASTAL COMMISSION

Dear Commissioners -

I have lived in the Mendocino Coastal area for 23 years - For all thosey ears, I have enjoyed the beauty of the 10 Mile River area and Marvelled at its UN-spoilded-Ness - the Estuary and dunes should remain undeveloped - devoid of condos - Shops - conference centers - and 7000 sq.ft. "homes". Aside from the quotesqueness of such a size domicile and the Wastefulness of natural resources to build and maintain it, it is just plain out of character for that area - Thores No reason on earth to MAR The gorgeous Vista at the 10 Mile dune (coastal) prairie location.

I beg you to leave it alone - Keep it free of rich people's grandiose schemes.

I Hope you will DENY this project as planned - OR INSIST IT be Moved to a

Much LESS visible location -

Please PROTECT the 10 Mile ESTUARRY and surrounding area - Thank for Louise Juni and Louise J. MARIANA, Box 416, MENDOCIND, CA. 95460

### Allen Matkins Leck Gamble & Mallory LLP

attorneys at law

# Allen Matkins

501 West Broadway 9th Floor San Diego Californi telephone. 619 233 1155 facsimile. 619 233 115

writer. Kari M. Prevost t. 619 235 1548
file number. H3614-001/SD599227.01 e. kprevo

EXHIBIT NO. 10

APPLICATION NO.

A-1-MEN-03-069

HUNT

REQUEST FOR POSTPONEMENT (1 of 2)

May 10, 2004

#### VIA FACSIMILE (707-445-7877) AND FED EX

Mr. Randall Stemler California Coastal Commission North Coast District Office 710 E Street, Suite 200 Eureka, CA 95501 RECEIVED

MAY 1 1 2004

CALIFORNIA COASTAL COMMISSION

Re:

Coastal Commission Appeal; Permit Number A-1-MEN-03-

069; May 13, 2004 Hearing; Agenda Item Number 9b

Dear Mr. Stemler:

We are submitting this letter to you as agent for the applicant, Robert A. Hunt, on the above-referenced matter. For the reasons set forth below, we respectfully request that the appeal on both the substantial issue and de novo determinations be continued.

One issue that we believe is worth further consideration is whether legally the Commission has jurisdiction to hear the appeal when the appellant, Friends of the Ten Mile, failed to exhaust its local remedies prior to filing an appeal with the Commission. The appellant had the right, as noted in the decision by the County Coastal Permit Administrator, to appeal that decision to the County Board of Supervisors. However, as noted in the Notice of Final Action, the decision was not appealed at the local level. Section 13111 of the Coastal Commission regulations only allows an aggrieved party who has "exhausted local appeals" to appeal to the Commission. Although we may not currently know all of the key facts relating to this issue, we would like to have time to explore this jurisdictional issue further. Given the possibility that the Commission does not have jurisdiction, then both determinations should be continued.

More importantly, even if the Commission does have jurisdiction to hear the appeal, our client would very much like to meet with staff to consider whether there are any mutually agreeable modifications that could be made to the project as currently approved by the County that would enable staff to support the project, including changes to the proposed landscaping along Highway One and a new proposal to dedicate a substantial portion of the property to State Parks for preservation in perpetuity.

We are hopeful that a mutually acceptable solution can be reached, and hope you agree that it would be better to devote resources to working towards that solution instead of proceeding with either determination at the May 13 hearing.

# Allen Matkins Leck Gamble & Mallory LLP attorneys at law

Mr. Randall Stemler May 10, 2004 Page 2

We would appreciate it if you could confirm to us in writing on or before the end of the day on Tuesday, May 11, 2004 whether you will agree to continue both the substantial issue and de novo determination.

We look forward to working with you on this matter and appreciate your consideration of this continuation request.

Very truly yours,

Lan Prevostla

Kari M. Prevost

cc: Mr. Robert A. Hunt

## Allen Matkins Leck Gamble & N

attorneys at law

# Allen Matkins

501 West Broadway 9th Floor San Diego Califori telephone. 619 233 1155 facsimile. 619 233 11

writer. Kari M. Prevost t. 619 235 1548 file number. H3485-001/SD605931.01 e. kpr

### EXHIBIT NO. 11

APPLICATION NO.

A-1-MEN-03-069 HUNT

AMENDMENT OF PROJECT DESCRIPTION

August 30, 2004

# VIA FACSIMILE (707.445.7877) and FIRST CLASS MAIL

Mr. Randall Stemler California Coastal Commission North Coast District Office P.O. Box 4908 Eureka, California 95502-4908 RECEIVED

SEP 0 2 2004

CALIFORNIA
COASTAL COMMISSION

Re: Appeal No. A-1-MEN-03-069; Amendment of Project Description

Dear Mr. Stemler:

We are submitting this letter on behalf of Robert A. Hunt, the applicant of that certain project that is the subject of Appeal number A-1-MEN-03-069 before the Commission. On May 13, 2004, the Commission determined that the appeal presented a substantial issue and therefore will hear the appeal at a de novo hearing. At the applicant's request, the de novo hearing was not heard on May 13, 2004. As we have discussed, we request that this hearing be agendized and heard for the Commission's meeting in San Diego on October 13-15, 2004.

In our past discussions, you indicated that because the Project will be heard de novo by the Commission, none of the conditions imposed by the County would be considered as part of the Project. Because many of those conditions will help to mitigate the Project's potential impacts that appear to be of concern to the staff and are agreeable to the applicant, we are submitting this letter to formally revise the project, as submitted, for the de novo hearing before the Commission.

The Project, as amended, is described as follows:

Construction of a new 3,855-square-foot, single-family residence above a 3,245-square-foot garage, for a total floor area of 7,100 square feet. The maximum height of the structure would be no higher than 18 feet above average natural grade. The project also includes an approximate 500 foot driveway, gated at Highway One north of the residence, that would wind around the southeast side of the house leading to the underground garage. The garage includes a storage and mechanical room, workshop, and full bathroom.

Mr. Randall Stemler August 30, 2004 Page 2

There will be approximately 2,550 square feet of multi-level patio and retaining wall along the northwest and southwest ocean-facing sides. The development would also include a well, septic system, and fuel tank.

The applicant also incorporates as part of the Project the following conditions:

- Prior to the issuance of the coastal development permit, applicant will submit for the review and approval of the Coastal Commission staff, color samples for the exterior siding, trim, garage doors, downspouts and window frames, of the proposed residence. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Sec. 20.504.015(C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones which will blend with the coastal prairie vegetation in the vicinity. Tan, beige or other light colors shall not be appropriate. Metal chimney parts shall be a non-reflective dark color. All other building materials and finishes shall match those specified in the coastal development permit approval.
- Any change in approved colors or materials shall be subject to the review and approval of the Coastal Commission staff for the life of the project.
- Windows on the northwest and southwest sides of the residence shall be made of non-reflective glass that is specially treated to reduce glare.
- Prior to the issuance of the coastal development permit, the applicant will submit drawings or other information for the review and approval of the Coastal Commission staff showing that the propane and/or oil tanks will not be visually significant from public viewpoints. This may be accomplished by locating the tanks in an area that is out of public view, or by screening the tanks with acceptable fencing or landscaping.
- Prior to issuance of the coastal development permit, the applicant shall submit to Coastal Commission staff for approval any proposed landscaping intended to provide visual screening of the project from Highway One. Any such landscaping shall be provide a visual screening of the residence, but shall not block views of the dunes from Highway One. All required landscaping shall be irrigated, staked, maintained and replaced, as necessary, to ensure that they are established and maintained in perpetuity. No planting of invasive exotic species shall be allowed.

attorneys at law

Mr. Randall Stemler August 30, 2004 Page 3

- Prior to the installation of a new gate to replace the existing gate along Highway One, the applicant shall submit for review and approval of the Coastal Commission staff plans and elevations showing the location and appearance of the new gate and any related development. The gate and entry shall comply with provisions in the Coastal Plan and County Zoning Code regarding visual resources, fences, and any requirements of the California Department of Forestry and Fire Protection regarding width and setback from the highway. The material, colors and design of the gate shall be selected to be subordinate to its setting. Any work within the Highway One right-of-way shall comply with all encroachment permit provisions administered by Caltrans.
- Prior to the issuance of a building permit for the residence, the applicant shall submit a revised plot plan specifying that any new utility lines installed to serve the residence from the existing lines on the east side of the highway be installed underground across Highway 1 and to the residence.
- No development or activity shall occur within the riparian or sand dune areas or the 100 foot buffers adjoining these areas without prior review by the Coastal Commission staff to determine that the development or activity is consistent with all provisions of the Coastal Plan and County Coastal Zoning Ordinance for the protection of such environmentally sensitive habitat areas.
- Prior to the issuance of a building permit, the applicant shall submit to the Coastal Commission staff written verification from the Division of Environmental Health that an acceptable Site Evaluation Report has been prepared. No portion of the sewage disposal system shall be located within the 100 foot wide buffer adjacent to sand dunes or other environmentally sensitive habitat areas.

We would appreciate it if you would confirm at your earliest convenience that the appeal will be heard at the Commission's October meeting in San Diego.

Kari M. Prevost

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