

**CALIFORNIA COASTAL COMMISSION**

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# W9b

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Staff:	Robert S. Merrill
Staff Report:	November 2, 2006
Hearing Date:	November 15, 2006
Commission Action:	

**STAFF REPORT: PERMIT AMENDMENT**

**APPLICATION NO.:** **1-05-021-A1**

**APPLICANT:** **JEANINE MARTIN**

**PROJECT LOCATION:** At 1090 Stagecoach Road, approximately 1.5 miles north of Trinidad, Humboldt County (APN 515-231-004)

**DESCRIPTION OF  
ORIGINALLY APPROVED  
PROJECT (1-05-021):**

Divide a 39.7-acre parcel into 4 lots of approximately 5.2 acres (Parcel 1), 10.3-acres (Parcel 2), 10.2 acres (Parcel 3), and 14 acres (remainder parcel) and establish a vertical public access way over an existing foot trail to a beach through a grant of easement.

**DESCRIPTION OF  
AMENDMENT NO. 1  
(1-05-021-A):**

Modify Special Condition No. 1 requiring open space deed restriction to allow for the maintenance and repair of a pre-existing water system to continue to supply water to an existing residence and to serve a future residence on Parcel 1

**GENERAL PLAN DESIGNATION  
(UNCERTIFIED):**

Rural Residential (RRB), One dwelling per two acres.

**ZONING DESIGNATION  
(UNCERTIFIED):**

Rural Residential Agriculture, 5-acre minimum lot size, with Alquist Priolo fault hazard, design review, and the protection of offshore rocks, intertidal areas, streams, and riparian corridors combining zones (RA-5/G,D,O, R)

**SUBSTANTIVE FILE DOCUMENTS:**

Humboldt County Local Coastal Program;  
Coastal Development Permit No. 1-05-021 (Martin)  
Coastal Development Permit No. 1-92-170 (Witherill)

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission approve with conditions the requested amendment to the coastal development permit on the basis that, as conditioned, the proposed development with the proposed amendment is consistent with the Chapter 3 policies of the Coastal Act.

The originally approved development involved a land division of a 39.7-acre parcel into 4 lots of approximately 5.2 acres (Parcel 1), 10.3-acres (Parcel 2), 10.2 acres (Parcel 3), and 14 acres (remainder parcel) with the establishment of a vertical public access way over an existing foot trail to a beach through a grant of easement.

The permit was granted with 13 special conditions intended to address geologic, environmentally sensitive habitat, and public access concerns. Of particular relevance to the current amendment request are Special Condition Nos. 1, 2, and 3. Special Condition No. 1 required that certain areas of the property be restricted as open space, including bluff edge setbacks for new structures to avoid geologic hazards associated with bluff retreat as well as all areas within 100 feet of Martin Creek which runs east west through the property to the ocean in order to protect the environmentally sensitive riparian habitat and a buffer on both sides of the creek. This condition prohibits all development in the

affected areas except for certain specified development activities if approved by a coastal development permit amendment, including (a) the planting of native vegetation and (b) the removal of debris and unauthorized structures. Special Condition No. 2 required the applicant to submit for the review and approval of the Executive Director evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the applicant's project description. Special Condition No. 3 required that the terms and conditions of the permit be recorded as covenants, conditions, and restrictions on the use and enjoyment of the property to ensure that future purchasers of the property will be made aware of the permit requirements.

After the Commission approved the permit on December 15, 2005, and while preparing the necessary legal instrument to satisfy the requirements of Special Condition No. 3 that the terms and conditions of the permit be recorded against the property, the applicant's representative pointed out that there is an existing water line and spring that are located partially within the area that Special Condition No. 1 requires be restricted as open space. The water line and spring were initially installed many years ago prior to the Coastal Act to serve a former residence on the parcel and continue to serve the existing residence on the property. The applicant's representative has pointed out to staff that the water line and spring may need periodic maintenance such as the replacement of damaged sections of line. Although some forms of maintenance such as inspection of the facilities and replacing minor components in-kind by hand may not constitute development, certain other maintenance activities do constitute a form of development that would be precluded within the Martin Creek open space area by the current wording of Special Condition No. 1. The condition prohibits all development along the creek and within a buffer area on both sides of the creek except for the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment.

The existence of the water line and spring and the need for future repairs and maintenance of these facilities was overlooked by all parties when the Commission imposed Special Condition No. 1 of the permit. The amendment resolves this omission by amending Special Condition No. 1 to specifically allow for repair and maintenance by permit of the water line and spring.

Staff also recommends that the Commission modify the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit. As part of its future responsibility to manage and maintain the public accessway that it will be granted from the applicant to Secret Beach, it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. The vertical easement will be established in part within two of the areas required to be restricted to open space where no development can

occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment. Modifying Special Condition No. 1 to allow for such development within the required open space areas will ensure that needed public access improvements can be installed without conflicting with the terms and conditions of the original permit

The modifications to Special Condition No. 1 state that any proposed development for water line maintenance or public access improvement requires a further amendment to the permit by the Commission. The Commission's review of such future amendments will enable the Commission to ensure that only such development consistent with the ESHA, geologic hazard, and public access policies of the Coastal Act will be performed

Staff recommends that the Commission find that the proposed amended development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act including those policies addressing environmentally sensitive habitat areas, geologic hazards, and public access.

In addition to acting on the permit amendment itself, the Commission will need to act on a request by the applicant that the Commission waive the \$300.00 application fee for the permit amendment request. The staff recommends that the Commission waive the fee as (a) the need for the permit amendment request resulted from an omission of a provision in the special conditions of the original permit that would allow by permit for development involving necessary repairs and maintenance of an existing water line and spring that the applicant has certain rights to perform, and (b) the amendment has enabled the Commission to modify the terms of Special Condition No. 1 to allow future public access improvements and repairs by permit to ensure that public access to the shoreline can be maintained in the future consistent with the public access policies of the Coastal Act.

**The Motions to adopt the staff recommendation can be found on pages 8-10.**

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**STAFF NOTES:**

**1. Procedure and Background:**

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it (a) lessens or avoids the intent of the approved permit unless (b) the applicant presents newly discovered material information, which he

or she could not, with reasonable diligence, have discovered and procured before the permit was granted.

The original permit, Coastal Development Permit No. 1-05-021 (Martin), was approved by the Commission on December 15, 2005 for the division of a 39.7-acre parcel into 4 lots of approximately 5.2 acres (Parcel 1), 10.3-acres (Parcel 2), 10.2 acres (Parcel 3), and 14 acres (remainder parcel) with the establishment of a vertical public access way over an existing foot trail to a beach through a grant of easement (see Exhibit 7).

The permit was granted with 13 special conditions intended to address geologic, environmentally sensitive habitat, and public access concerns. Special Condition No. 1 required that certain areas of the property be restricted as open space, including bluff edge setbacks for new structures to avoid geologic hazards associated with bluff retreat as well as and all areas within 100 feet of Martin Creek which runs east west through the property to the ocean in order to protect the environmentally sensitive riparian habitat and a buffer on both sides of the creek. Special Condition No. 2 required the applicant to submit evidence for the review and approval of the Executive Director evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the applicant's project description. Special Condition No. 3 required that the terms and conditions of the permit be recorded as covenants, conditions, and restrictions on the use and enjoyment of the property to ensure that future purchasers of the property will be made aware of the permit requirements. Special Condition No. 4 required that a final erosion control and runoff plan be submitted for the review and approval of the Executive Director to ensure that the construction of the land division road improvements would not result in adverse impacts to coastal water quality. Special Condition No. 5 required the applicant to obtain an encroachment permit from the County to improve the driveway and access roads of the subdivision. Special Condition No. 6 required the applicant to submit a copy of the final parcel map approved by the County for the review and approval of the Executive Director prior to recordation of the map to ensure that the final map reflects the open space deed restrictions imposed by Special Condition No. 1. Special Condition No. 7 required submittal of copies of the final parcel map and other legal instruments implementing the approved subdivision. To protect archaeological resources, Special Condition No. 8 required that if an area of cultural resources is discovered during construction of access roads and the installation of utilities for the approved subdivision, all construction must cease and the significance of the discovery be analyzed and appropriate mitigations be implemented via a permit amendment. Special Condition No. 9 prohibits the planting of invasive and exotic plant species and the use of anticoagulant-based rodenticides to prevent the take-over of environmentally sensitive native habitat by invasives and to prevent the bioaccumulation of toxics in environmentally sensitive animal species. Special Condition No. 10 prohibits bluff or shoreline protective devices from ever being constructed to protect the development authorized by the permit. Special Condition No. 11 requires that the applicant assume the risks of injury and damage from developing a site subject to geologic hazards and waive any claim of liability against the

Commission. Special Condition No. 12 requires the applicant to acknowledge that the voluntary offers to dedicate public access do not waive any public rights of public access that may already exist on the property. Finally, Special Condition No. 13 requires that signage for the public access easement be located in close proximity to, and be prominently visible from, Stagecoach Road.

The proposed permit amendment would adjust Special Condition No. 1, the condition requiring that certain areas of the property be restricted to open space, to allow for future repair and maintenance of an existing water line and spring that exist partially within the area required to be restricted as open space to protect the environmentally sensitive riparian habitat along Martin Creek. The water line and spring were initially installed prior to the Coastal Act to serve a residence that has since been demolished and replaced with an approximately 6,000-square-foot home authorized by Coastal Development Permit No. 1-92-170 (Witherill). The spring and water line will continue to serve this existing residence and are also intended to serve a future residence to be constructed on Parcel 1 of the subdivision. At the time Coastal Development Permit No. 1-05-021 was granted for the subdivision, the existence of the water line and spring within the area to be restricted for open space was overlooked by all parties. Special Condition No. 1 does not currently contain an exception to its prohibition of development in the deed restricted area to allow for repair and maintenance of the water line and spring. The special condition does contain exceptions for the planting of native vegetation and the removal of debris and structures, provided coastal development permit authorization from the Commission is obtained first.

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. The Commission does retain authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations. Future repair and maintenance of the water line and spring could involve the placement of construction materials and the removal and placement of solid materials within 50 feet of an environmentally sensitive habitat area. Portions of the water line and spring are located within the Martin Creek environmentally sensitive riparian habitat and ESHA buffer areas. Thus, these project elements would require a coastal development permit under Section 13252(a)(3) of the Commission regulations. In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. Thus, although the Commission could require a coastal development permit for future repairs or improvements of the water line and spring, the Commission's evaluation of such repair and maintenance would not extend to an evaluation of the conformity with the Coastal Act of the underlying existing water line and spring.

As noted above, the existence of the water line and spring and the need for future repairs and maintenance of these facilities was overlooked by all parties when the Commission imposed Special Condition No. 1 of the permit. The proposed amendment would resolve this omission by amending Special Condition No. 1 to allow for repair and maintenance by permit of the water line and spring.

By adjusting Special Condition No. 1 to allow permitted repair and maintenance activities involving the water line and spring to occur within the area governed by the open space deed restriction, the Commission will ensure that future repairs and maintenance are permitted in a manner that will reduce potential impacts of such development on the environmentally sensitive riparian habitat area to a level of insignificance. Therefore, the proposed amendment would not lessen or avoid the intent of the Commission in approving Coastal Development Permit No. 1-05-021 to protect the environmentally sensitive riparian habitat along Martin Creek. The proposed amendment would have no effect on the public access amenities approved by the permit and in no way would affect the geologic stability of the future development of residences in the approved subdivision. Therefore, the proposed amendment would not lessen or avoid the intent of the Commission in approving Coastal Development Permit No. 1-05-021 to protect and provide public access to the shoreline consistent with the public access policies of the Coastal Act and ensure that future residential development facilitated by the subdivision can be developed without contributing to geologic hazards and be safe from bluff retreat consistent with Section 30253 of the Coastal Act.

It is also necessary to modify the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit. The applicant proposed as part of the project description for the original permit to dedicate a vertical coastal access easement over an existing footpath that crosses approved parcel 2 to the Humboldt North Coast Land Trust (Land Trust) to provide public access to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek. As part of its future responsibility to manage and maintain the public accessway, it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. The vertical easement will be established in part within two of the areas required to be restricted to open space where development can occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment (see Exhibit 4). One of the open space areas is required to prevent the development of residential structures and improvements along the bluff and portions of the bluff top which may be subject to bluff retreat during the expected lifetime of the future residence that the subdivision will accommodate on Parcel 2. The second open space area that encompasses a portion of the trail is the open space area required to be established over the Martin Creek riparian ESHA and ESHA buffer. The western or seaward end of the trail easement is located within a portion of the 100-

foot buffer area that is required by Special Condition No. 1 to be included in the open space area.

To allow for future public access trail improvements within the portions of the open space areas crossed by the vertical easement, it is necessary to modify the language of Special Condition No. 1 affecting development within these open space areas. As modified, the condition would allow the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit.

Commission review of a future permit amendment request for such development would enable the Commission to evaluate the proposed development's effects on the continued utility of the trail for public access use and require any needed modifications to ensure the continued utility of the trail. In addition, reviewing a future permit amendment request would also allow the Commission to evaluate the impacts of the trail on the environmentally sensitive riparian habitat and its buffer along Martin Creek. Impacts from future trail improvements can be mitigated through conditions so as to ensure that the development is performed in a manner that does not degrade the environmentally sensitive riparian habitat and would protect the habitat against any significant disruption of habitat values, consistent with the ESHA protection requirements of Section 30240. Furthermore, reviewing a future permit amendment request would also allow the Commission to evaluate whether the proposed public access improvements would contribute to geologic hazards inconsistent with Section 30253 of the Coastal Act and to impose any necessary conditions to ensure that the development does not increase geologic hazards.

Therefore, for the reasons discussed above, the Executive Director has determined that the proposed amendment, as conditioned, would not lessen the intent of the Commission's prior action on the original permit. Since this amendment request would not result in a lessening or avoidance of the intent of the originally approved permit, the Executive Director has accepted the amendment for processing.

## **2. Standard of Review**

The project site is located in the Trinidad area of Humboldt County. Humboldt County has a certified LCP, but the subject property is located within an area of deferred certification. Therefore, the standard of review that the Commission must apply to the permit amendment request is the Coastal Act.

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## **I. MOTIONS, STAFF RECOMMENDATIONS AND RESOLUTIONS:**



**A. MOTION, STAFF RECOMMENDATION, AND RESOLUTION FOR APPROVAL OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-05-021-A1 AS CONDITIONED**

**Motion:**

I move that the Commission approve Coastal Development Permit Amendment No. 1-05-021-A1 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

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

**Resolution to Approve Permit:**

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

**B. MOTION, STAFF RECOMMENDATION, AND RESOLUTION FOR WAIVER OF APPLICATION FEE**

**Motion:**

I move that the Commission direct the Executive Director to waive the permit application fee for Coastal Development Permit Amendment No. 1-05-021-A1 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Approval of this motion will result in the approval of the Applicant's request to direct the Executive Director to waive the permit amendment application fee and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Fee Waiver Request.**

The Commission hereby directs the Executive Director to waive the permit application fee for Coastal Development Permit Amendment No. 1-05-021-A1.

**II. STANDARD CONDITIONS:** See attached Appendix A.

To ensure that Permit Amendment No. 1-05-021-A1 remains valid, the applicant must not allow the original permit (CDP No. 1-05-021) to expire pursuant to the terms of Standard Condition No. 2 of the original permit by either (1) commencing development prior to expiration of the latest granted time extension, or by (2) applying to the Commission for further extensions of the original permit prior to expiration of the most recently granted time extension. In addition, pursuant to Standard Condition No. 2 of Permit Amendment No. 1-05-021-A1, unless development has commenced prior to expiration of any granted time extension, the applicant must apply for extensions of the permit amendment either prior to the two year anniversary of the date on which the Commission voted on the amendment application or prior to expiration of any granted time extension of the permit amendment.

**III. SPECIAL CONDITIONS:**

Special Conditions No. 1 of the original permit is modified and imposed as a condition of this permit amendment. Special Condition Nos. 2-13 of the original permit (CDP No. 1-05-021) remain in full force and effect. The full text of all of the special conditions imposed in the original permit is included in Exhibit No. 7 attached to this staff report.

Deleted wording within the modified special condition is shown in ~~striketrough~~ text, new condition language appears as **bold underlined** text.

**1. Open Space Restrictions**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of the subject parcels created by the land division situated in or within one-hundred feet (100') of the exterior boundary of delineated wetlands and riparian vegetation environmentally sensitive habitat areas along Martin Creek, except those areas within the County road easement, as documented in the "Biological Assessment for the Martin Subdivision" prepared by SHN Consulting Engineers and Geologists, Inc. dated April 26, 2004, attached as Exhibit No. 7, except for:

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation to improve the habitat value of the buffer, ~~and~~ (b) removal of debris and unauthorized structures- **(c) repair and maintenance of the existing spring and water line that are located within Parcel D as generally shown on the tentative map and depicted in Exhibit of the staff recommendation for Coastal Development Permit Amendment No. 1-05-021-A1, and (d) the installation and maintenance of public access improvements.**
- B. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of parcels 1 and 3 created by the land division situated within 100 feet of the existing bluff edge as documented in the "Bluff Edge Setback Evaluation, Parcels 1, 2, and 3 of the Proposed Subdivision of APN 515-231-004, Trinidad, California," prepared by SHN Consulting Engineers and Geologists, Inc. dated November, 2005, excerpts of which are attached as Exhibit No. 6, except for:
  1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation, ~~and~~ (b) removal of debris and unauthorized structures- **and (c) the installation and maintenance of public access improvements.**
- C. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of parcel 2 created by the land division situated within 125 feet of the existing bluff edge as documented in the "Bluff Edge Setback Evaluation, Parcels 1, 2, and 3 of the Proposed Subdivision of APN 515-231-004, Trinidad, California," prepared by SHN Consulting Engineers and Geologists, Inc. dated November, 2005, excerpts of which are attached as Exhibit No. 6, except for:
  1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation, ~~and~~ (b) removal of debris and unauthorized structures- **and (c) the installation and maintenance of public access improvements.**
- D. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. 1-05-021**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by each subsection of this condition.

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

The Commission hereby finds and declares:

##### **A. Site Description**

The subject 39.6-acre property is located along the coastal bluffs between the City of Trinidad and Patrick's Point State Park, about one and a half miles north of the City (see Exhibits 1-2). The property is on the west side of Stagecoach Road, approximately 1,400 feet southwest from the intersection of Hobson Road with Stagecoach Road, on the property known as 1090 Stagecoach Road. Stagecoach Road is the first public road nearest the sea, and is narrow and windy.

The property is currently developed with one single-family residence, a barn, water wells, a septic system and dirt access roads.

The subject property is designated locally in the Humboldt County General Plan as Rural Residential, 5-acre minimum lot size, with an overlay combining zone involving the evaluation of geologic hazards, design review, and the protection of offshore rocks, intertidal areas, streams, and riparian corridors. The property is surrounded by Stagecoach Road to the east, residential parcels to the north and south, and the Pacific Ocean to the west. The surrounding residential development ranges from smaller older homes of modest stature to large newer homes. The subject property includes ocean beaches, coastal bluffs, forested area, and open fields.

The coastline along the site is characterized by offshore rocks and narrow pocket beaches backed by high rocky bluffs. The area on the property at the top of the bluffs is part of a gently sloping uplifted marine terrace. Site topography varies considerably from the relatively flat ground of the marine terrace to the steep slopes within the Martin Creek ravine and on the coastal bluffs. According to the geotechnical report prepared for the project, elevations on the property range from sea level at the beach at the foot of the bluff to a maximum of 212 feet above mean sea level at the very southeastern corner of the property near Stagecoach Road. The slope gradients of the bluff face vary and range from 25% to 110%, and the length of the slope of the bluff face varies between 330 feet at the north end of the property where the bluff face is steepest to 750 feet near the southern end of the property where the slope is shallower. Martin Creek, a perennial stream, runs through the property.

The property is in an area designated by the County as an area of high slope instability. In addition, a portion of the area to become Parcel 3 is within an Alquist-Priolo Special Studies hazard zone, as the Trinidad fault is present just south of the site.

The majority of the bluff top area of the subject property is covered with North coast coniferous forest habitat. The habitat assessment prepared for the project describes the habitat as follows (see Exhibit 6):

The overstory of the forest habitat is dominated by Sitka spruce (*Picea sitchensis*) and red alder (*Alnus rubra*), with scattered grand fir (*Abies grandis*) and naturalized and/or planted Monterey cypress (*Cupressus macrocarpa*) and blue gum eucalyptus (*Eucalyptus globules*). A subcanopy of cascara (*Rhamnus purshiana*) is present throughout this area. The dense shrub layer is dominated by coyote bush (*Baccharis pilularis*), salal (*Gaultheria shallon*), wax myrtle (*Myrica californica*), sword fern (*Polystichum munitum*), salmonberry (*Rubus spectabilis*), Pacific bramble (*R. ursinus*), and evergreen huckleberry (*Vaccinium ovatum*). The herbaceous layer varies from patchy to dense and is dominated by the following species: milk maids (*Cardamine californica*), sedge species (*Carex* sp.) Siberian candyflower (*Claytonia sibirica*), toothed coast fireweed (*Erechtites minima*), cow parsnip (*Heracleum lantum*), Pacific water parsley (*Oenanthe sarmentosa*), sweet-cicely (*Osmorhiza chilensis*), redwood sorrel (*Oxalis oregano*) hedge-nettle (*Stachys* sp.) and starflower (*Trientalis latifolia*). Heavy woody debris is scattered throughout the forest floor.

The portion of Martin Creek that is within the project area, defined as the SMA study area, is approximately 700 linear feet (Photo 1 in Attachment 2). This portion of the drainage is characterized by a well-developed streambed with moderately steep vegetated slopes. The riparian corridor includes a moderately open overstory of big-leaf maple (*Acer macrophyllum*), Sitka spruce and red alder, with scattered cascara and willows. Numerous moss and lichen species are present on the trees. The dense mesic understory is dominated by lady fern (*Athyrium filix-femina*), sedges, salal, false lily-of-the-valley (*Maianthemum dilatatum*), Pacific water-parsley, sweet-cicely, redwood sorrel, sword fern, salmonberry, Pacific bramble, elderberry (*Sambucus racemosa*), *Stachys* sp., piggy-back plant (*Tolmiea menziesii*), and evergreen huckleberry with scattered native and non-native grass species. Plant species cover the banks of the creek and there is relatively little evidence of stream bank erosion.

West of the Martin Creek study area, the terrain transitions to a steep coastal bluff that coincides with the shift from mesic North coast coniferous forest to coastal scrub brush habitat. This habitat is dominated by wind battered Sitka spruce and red alder, coyote bush, pampass grass (*Cortaderia jubata*), wax myrtle, and sword fern.

South of the Martin Creek drainage corridor, the vegetation composition consists of North coast coniferous forest habitat, although an open field is located within the building envelope of parcels 2 and 3 (Photo 2 in Attachment 2).

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The subject property provides suitable potential habitat for three species included on federal or state rare or endangered lists including coho salmon, bank swallow, and western lily. The potential coho salmon habitat is within Martin Creek, and the potential bank swallow habitat is along the coastal bluff. Marginal western lily habitat has been identified along Martin Creek and the boundaries of proposed parcels 2 and 3, within County required setback areas.

An existing foot trail crosses the subject property a short distance to the south of Martin Creek at a bend in Stagecoach Road. The trailhead along Stagecoach Road is obscured by existing roadside vegetation and may not be noticeable to the casual observer unfamiliar with the area. The trail extends from Stagecoach Road to the sea by descending a steep slope along the general course of the creek to the sandy and rocky beaches at the shoreline. The applicant proposed as part of the project description for the original permit to dedicate a vertical coastal access easement across proposed parcel 2 to the Humboldt North Coast Land Trust (Land Trust) to provide public access to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek (see Exhibit 5). The Humboldt North Coast Land Trust has indicated its willingness to accept and manage the access way. The easement would encompass an existing footpath that has received some public use in the past. To implement the applicant's proposal, Special Condition No. 2 requires the applicant to submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant.

The property lies within an area designated as "Coastal Scenic" under the County's uncertified General Plan. Views to the ocean through the property from most of Stagecoach Road are obscured by trees, although some views are afforded near Martin Creek.

Native Americans are known to have settled along the Humboldt County coast within the general vicinity of the subject property. However, there are no reports of historical resources having been found on the project site

## **B. Local Coastal Program Background.**

In October of 1982, the Commission certified in part the Trinidad Area Land Use Plan of Humboldt County's Local Coastal Program. However, the Commission denied certification of the plan for privately owned lands, other than lands owned by the

Humboldt North Coast Land Trust, located west of Scenic Drive, Stagecoach Road, and Patrick's Point Drive (where they are the first public roads paralleling the sea), and along the route of the 6<sup>th</sup> Avenue Trail in the Westhaven area. In denying certification for this area, the Commission suggested that the plan's policies regarding the protection of the public's right of access where acquired through use (i.e. potential prescriptive rights) be modified to conform to the natural resource, hazard, and public access policies of the Coastal Act. The County did not accept the suggested modification and the geographic area became an "area of deferred certification" or ADC. Consequently, the authority for granting coastal development permits within the ADC is still retained by the Commission.

**C. Background & Project Amendment Description**

The original permit, Coastal Development Permit No. 1-05-021 (Martin), was approved by the Commission on December 15, 2005 for the division of a 39.7-acre parcel into 4 lots of approximately 5.2 acres (Parcel 1), 10.3-acres (Parcel 2), 10.2 acres (Parcel 3), and 14 acres (remainder parcel) with the establishment of a vertical public access way over an existing foot trail to a beach through a grant of easement.

The permit was granted with 13 special conditions intended to address geologic, environmentally sensitive habitat, and public access concerns. Of particular relevance to the current amendment request are Special Condition Nos. 1, 2, and 3. Special Condition No. 1 required that certain areas of the property be restricted as open space, including bluff edge setbacks for new structures to avoid geologic hazards associated with bluff retreat as well as all areas within 100 feet of Martin Creek which runs east west through the property to the ocean in order to protect the environmentally sensitive riparian habitat and a buffer on both sides of the creek. This condition prohibits all development in the affected areas except for certain specified development activities if approved by a coastal development permit amendment, including (a) the planting of native vegetation and (b) the removal of debris and unauthorized structures. Special Condition No. 2 required the applicant to submit for the review and approval of the Executive Director evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the applicant's project description. Special Condition No. 3 required that the terms and conditions of the permit be recorded as covenants, conditions, and restrictions on the use and enjoyment of the property to ensure that future purchasers of the property will be made aware of the permit requirements.

After the Commission approved the permit on December 15, 2005, and while preparing the necessary legal instrument to satisfy the requirements of Special Condition No. 3 that the terms and conditions of the permit be recorded against the property, the applicant's representative pointed out that there is an existing water line and spring that are located partially within the area that Special Condition No. 1 requires be restricted as open space.

The water line and spring were initially installed many years ago prior to the Coastal Act to serve a former residence on the parcel. The water line was modified in the early 1990's pursuant to Coastal Development Permit No. 1-92-170 (Witherill), which was granted to previous owners of the property to demolish and remove the former residence and replace it with the current approximately 6,000-square-foot house that exists on the parcel identified as the "remainder parcel." The spring and water line serve the current residence and are also intended to serve the future home to be developed on Parcel 1 at the north end of the approved subdivision. The spring from which the water is collected is located on the slope on the south side of Martin Creek, approximately 80-100 feet upslope from the creek. The water line extends from the spring and is suspended from trees and poles as it crosses the creek before eventually connecting to water storage tanks north of the creek. From these water tanks, the water is pumped through various buried water lines and intermediate storage tanks to the existing residence and grounds.

The applicant's representative has pointed out to staff that the water line and spring may need periodic maintenance such as the replacement of damaged sections of line. Although some forms of maintenance such as inspection of the facilities and replacing minor components in-kind by hand may not constitute development, certain other maintenance activities do constitute a form of development that would be precluded within the Martin Creek open space area by the current wording of Special Condition No. 1. The condition prohibits all development along the creek and within a buffer area on both sides of the creek except for the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment.

At the time Coastal Development Permit No. 1-05-021 was granted for the subdivision, the existence of the water line and spring within the area to be restricted for open space was overlooked by all parties. In approving the permit, the Commission did not intend to preclude necessary maintenance of the existing spring and water line that is done in a manner that does not degrade the environmentally sensitive riparian habitat and would protect the habitat against any significant disruption of habitat values. Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. The Commission does retain authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations. Among other things, Section 13252(a)(3) indicates that repair and maintenance activities to facilities or work located within 50 feet of the edge of an environmentally sensitive habitat area that involves the placement of solid materials and the presence of mechanized equipment or construction materials involve a risk of substantial adverse environmental impact. Future repair and maintenance of the water line and spring could involve the placement of construction materials and removal and placement of solid materials within 50 feet of the Martin Creek environmentally sensitive riparian habitat area. Thus, these project elements would require a coastal development permit under Section 13252(a)(3) of the



Commission regulations. In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed *method* of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. Thus, although the Commission would require a coastal development permit for future repairs or improvements of the water line and spring, the Commission's evaluation of such repair and maintenance would not extend to an evaluation of the conformity with the Coastal Act of the underlying existing water line and spring.

As noted above, the existence of the water line and spring and the need for future repairs and maintenance of these facilities was overlooked by all parties when the Commission imposed Special Condition No. 1 of the permit. The proposed amendment would resolve this omission by amending Special Condition No. 1 to specifically allow for repair and maintenance by permit of the water line and spring. The specific wording of the amendment request is as follows:

“To amend Special Condition Number 1 contained in CDP 1-05-021 to allow for the maintenance and repair of pre-existing water system to continue to supply water to ‘remainder’ parcel and ‘Parcel 1’ of the Martin Minor Subdivision as depicted as Parcel D on the Parcel Map thereto.”

Parcel D is an approximately 10-foot-wide strip of land that extends northward from the spring site over the remainder parcel containing the existing home and is described on the tentative map for the approved subdivision as “... a new easement for water purposes for the benefit of Parcel 1.” This easement will ensure that as the different parcels in the subdivision are sold, the owners of Parcel 1 will continue to have access to the spring on Martin Creek as the water source for future development on Parcel 1.

Special Condition No. 1 of the original permit is modified in Part III above to reflect the amendments requested by the applicant and imposed as a condition of this permit amendment. As modified, the condition allows repairs or improvements of the water line and spring within the open space area that encompasses Martin Creek and the buffer around the creek if approved first by the Coastal Commission as an amendment to this coastal development permit.

The Commission's review of a permit amendment request for such development would enable the Commission to evaluate the proposed development's effects on the riparian habitat and require any necessary mitigation to reduce the impacts below levels of significance.

The requirement to first obtain Commission authorization is consistent with the provisions of Section 30610(d) of the Coastal Act and Section 13252(a)(3) of the Commission's regulations described above regarding repair and maintenance activities that involve a risk of substantial adverse environmental impact and thus are not exempt as repair and maintenance activities from the need for a coastal development permit.

It is also necessary to modify the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal

Commission as an amendment to the permit. The applicant proposed as part of the project description for the original permit to dedicate a vertical coastal access easement across proposed parcel 2 to the Humboldt North Coast Land Trust (Land Trust) to provide public access to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek. The Humboldt North Coast Land Trust has indicated its willingness to accept and manage the access way. The easement would encompass an existing footpath that has received some public use in the past. To implement the applicant's proposal, Special Condition No. 2 requires the applicant to submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant. As part of its future responsibility to manage and maintain the public accessway, it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. The vertical easement will be established in part within two of the areas required to be restricted to open space where development can occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment. One of the open space areas is required to prevent the development of residential structures and improvements along the bluff and portions of the bluff top which may be subject to bluff retreat during the expected lifetime of the future residence that the subdivision will accommodate on Parcel 2. The second open space area that encompasses a portion of the trail is the open space area required to be established over the Martin Creek riparian ESHA and ESHA buffer. The western or seaward end of the trail easement is located within a portion of the 100-foot buffer area that is required by Special Condition No. 1 to be included in the open space area.

To allow for future public access trail improvements within the portions of the open space areas crossed by the vertical easement, it is necessary to modify the language of Special Condition No. 1 affecting development within these open space areas. As modified, the condition would allow the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit.

Commission review of a future permit amendment request for such development would enable the Commission to evaluate the proposed development's effects on the continued utility of the trail for public access use and require any needed modifications to ensure the continued utility of the trail.

The requirement to first obtain Commission authorization for public access trail maintenance activities that constitute development under Section 30610 of the Coastal Act is consistent with the provisions of Section 30610(d) of the Coastal Act and Section 13252(a)(3) of the Commission's regulations regarding repair and maintenance activities that involve a risk of substantial adverse environmental impact and thus are not exempt as repair and maintenance activities from the need for a coastal development permit.

Section 13252(a)(3) states that any repair or maintenance to facilities or structure or work located within 50 feet of the edge of a coastal bluff involves a risk of substantial adverse environmental impact. The entire course of the vertical public access easement is within 50 feet of the edge of a coastal bluff.

**D. Environmentally Sensitive Habitat Areas (ESHA)**

Coastal Act Section 30240 states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

A biological assessment was performed for the originally approved project by SHN, in April of 2004 (see Exhibit No. 7 of the staff recommendation). The report identified the riparian area associated with Martin Creek, which traverses east to west through the middle portion of the property on the remainder parcel of the subdivision, which contains the existing residence, as an environmentally sensitive habitat area (ESHA) as defined under the Coastal Act. The portion of Martin Creek that is within the project area is approximately 700 linear feet. This portion of the drainage is characterized by a well-developed streambed with moderately steep vegetated slopes. The riparian corridor includes a moderately open overstory of big-leaf maple (*Acer macrophyllum*), Sitka spruce and red alder, with scattered cascara and willows. Numerous moss and lichen species are present on the trees. The dense mesic understory is dominated by lady fern (*Athyrium filix-femina*), sedges, salal, false lily-of-the-valley (*Maianthemum dilatatum*), Pacific water-parsley, sweet-cicely, redwood sorrel, sword fern, salmonberry, Pacific bramble, elderberry (*Sambucus racemosa*), *Stachys* sp., piggy-back plant (*Tolmiea menziesii*), and evergreen huckleberry with scattered native and non-native grass species. Plant species cover the banks of the creek and there is relatively little evidence of stream bank erosion. The stream may provide habitat to two species included on federal or state rare or endangered species lists, including coho salmon and western lily.

The biological assessment for the original project recommended that a 100-foot buffer be established on either side of the Martin Creek ESHA. In approving the original subdivision project, the Commission imposed Special Condition No. 1, which among other things, requires that all areas within 100 feet of Martin Creek be restricted to open space to protect the environmentally sensitive riparian habitat and a buffer on both sides

of the creek. This condition prohibits all development in the affected areas except for certain specified development activities if approved by a coastal development permit amendment, including (a) the planting of native vegetation and (b) the removal of debris and unauthorized structures.

As discussed previously, the existence of the water line and spring and the need to periodically maintain those facilities was overlooked by all parties when Special Condition No. 1 was imposed in the original permit. Such maintenance activities are a form of development that would be precluded within the Martin Creek open space area by the current wording of Special Condition No. 1.

Consistent with the coastal development permit exemption provisions of Section 30610(d) of the Coastal Act and Section 13252 of the Commission's regulations, the permit amendment modifies Special Condition No. 1 to specifically allow for repair and maintenance of the water line and spring within the open space area that encompasses Martin Creek and the buffer around the creek if approved first by the Coastal Commission as an amendment to this coastal development permit.

The Commission finds that the amended development, as conditioned, is consistent with Section 30240 of the Coastal Act. As the water line and spring already exist within and adjacent to the Martin Creek riparian habitat and predate the Coastal Act, the amendment's allowance for future repairs and maintenance of these existing facilities does not allow for the introduction of any new uses into the ESHA, just maintenance or existing uses. Therefore, the amendment does not introduce uses that are not resource-dependent into the ESHA, consistent with the use limitations of Section 30240(a).

In addition, as Special Condition No. 1 only allows repair and maintenance of the water line and spring within the ESHA by permit, the Commission will be able to require through conditions of such a permit that future repairs and maintenance be performed in a manner that will reduce potential impacts of such development on the environmentally sensitive riparian habitat area to a level of insignificance. The future repair and maintenance project can be mitigated through conditions so as to ensure that the development is performed in a manner that does not degrade the environmentally sensitive riparian habitat and would protect the habitat against any significant disruption of habitat values, consistent with the ESHA protection requirements of Section 30240.

As discussed above, the applicant proposed in the original permit application to dedicate a vertical coastal access easement across proposed parcel 2 along an existing footpath to the Humboldt North Coast Land Trust (Land Trust) to provide public access to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek. To implement the applicant's proposal, Special Condition No. 2 requires the applicant to submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant.

As noted previously, it is also necessary to modify the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit. As part of its future responsibility to manage and maintain the public accessway that it will be granted from the applicant to Secret Beach, it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. Such improvements constitute development. The vertical easement will be established in part within two of the areas required to be restricted to open space where no development can occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment. One of the open space areas is the open space area required to be established over the Martin Creek riparian ESHA and ESHA buffer. The western or seaward end of the trail easement is located within a portion of the 100-foot buffer area that is required by Special Condition No. 1 to be included in the open space area.

As Special Condition No. 1 only allows for the development of public access improvements within the ESHA buffer area by permit, the Commission will be able to require through conditions of such a permit that future trail improvements be performed in a manner that will reduce potential impacts of such development on the environmentally sensitive riparian habitat area to a level of insignificance. Impacts from future trail improvements can be mitigated through conditions so as to ensure that the development is performed in a manner that does not degrade the environmentally sensitive riparian habitat and would protect the habitat against any significant disruption of habitat values, consistent with the ESHA protection requirements of Section 30240.

Therefore, the Commission finds that the amended development, as conditioned, is consistent with Section 30240 of the Coastal Act.

## **E. Public Access and Recreation**

### **1. Summary of Coastal Act Policies**

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of the Coastal Act. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 states, in applicable part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
  - (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
  - (2) Adequate access exists nearby, or,*
  - (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 states:

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
  - (1) Topographic and geologic site characteristics.*
  - (2) The capacity of the site to sustain use and at what level of intensity.*

- (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

### Discussion

As part of the project description for the original subdivision, the applicant proposed to dedicate a vertical coastal access easement across proposed parcel 2 to the Humboldt North Coast Land Trust (Land Trust) to provide public access to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek. The Humboldt North Coast Land Trust has indicated its willingness to accept and manage the access way. The easement would encompass an existing footpath that has received some public use in the past. To implement the applicant's proposal, Special Condition No. 2 requires the applicant to submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant. The applicant is currently in the process of trying to satisfy the condition. No other public access exists on the site or was proposed or required by the original permit.

The proposed amended development will have no adverse impact on public access. The modification to Special Condition No. 1 proposed by the applicant to allow for future repair and maintenance of the existing spring and water line in the vicinity of Martin Creek will have no effect on public access. Both the spring and the water line are located a minimum of 200 feet to the northeast of the location of the proposed grant of vertical public access easement. Thus, future repairs or improvements of these water facilities would not affect the establishment or use of the vertical accessway. In addition, the spring and water line do not exist within or cross any other portions of the property known to have been used by the public in the past for public access purposes. Furthermore, the repair and maintenance development that would be allowed by the modification to the deed restriction would not result in any intensification of use of the site or generate a need for additional public access.

As noted previously, it is also necessary to modify the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit. As part of its future responsibility to manage and maintain the public accessway that it will be granted from the applicant to Secret Beach, at the base of the coastal bluffs near the mouth of Martin Creek, as it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. The vertical easement will be established in part within two of the areas required to be restricted to open space where no development can occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment. One of the open space areas is required to prevent the development of residential structures and improvements along the bluff and portions of the bluff top which may be subject to bluff retreat during the expected lifetime of the future residence that the subdivision will accommodate on Parcel 2. The second open space area that encompasses a portion of the trail is the open space area required to be established over the Martin Creek riparian ESHA and ESHA buffer. The western or seaward end of the trail easement is located within a portion of the 100-foot buffer area that is required by Special Condition No. 1 to be included in the open space area.

Modifying Special Condition No. 1 to allow for such development within the required open space areas will ensure that needed public access improvements can be installed without conflicting with the terms and conditions of the original permit. Therefore, the modifications will help maximize the provision of public access consistent with Coastal Act Sections 30210 and 30212. In addition, as such development will require coastal development permit authorization from the Commission, the Commission will be able to review at the time such development is proposed, the proposed access improvement's effects on the continued utility of the trail for public access use and require any needed modifications to ensure the continued utility of the trail.



Therefore, the Commission finds that the proposed amended development, as conditioned, does not have any significant adverse impact on existing or potential public access, and that the project as proposed, which does not include provision of additional public access other than the vertical access way that will be provided as part of the original permit, is consistent with the requirements of the Coastal Act Sections 30210, 30211, and 30212.

**F. Waiver of Application Fee.**

The applicant has requested that the Commission waive the application fee for the permit amendment request.

The permit was granted with 13 special conditions intended to address geologic, environmentally sensitive habitat, and public access concerns. Of particular relevance to the current amendment request are Special Condition Nos. 1, 2, and 3. Special Condition No. 1 required that certain areas of the property be restricted as open space, including bluff edge setbacks for new structures to avoid geologic hazards associated with bluff retreat as well as all areas within 100 feet of Martin Creek which runs east west through the property to the ocean in order to protect the environmentally sensitive riparian habitat and a buffer on both sides of the creek. This condition prohibits all development in the affected areas except for certain specified development activities if approved by a coastal development permit amendment, including (a) the planting of native vegetation and (b) the removal of debris and unauthorized structures. Special Condition No. 2 required the applicant to submit for the review and approval of the Executive Director evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the applicant's project description. Special Condition No. 3 required that the terms and conditions of the permit be recorded as covenants, conditions, and restrictions on the use and enjoyment of the property to ensure that future purchasers of the property will be made aware of the permit requirements.

After the Commission approved the permit on December 15, 2005, and while preparing the necessary legal instrument to satisfy the requirements of Special Condition No. 3 that the terms and conditions of the permit be recorded against the property, the applicant's representative pointed out that there is an existing water line and spring that are located partially within the area that Special Condition No. 1 requires be restricted as open space. The water line and spring were initially installed many years ago prior to the Coastal Act to serve a former residence on the parcel and continue to serve the existing residence on the property. The applicant's representative has pointed out to staff that the water line and spring may need periodic maintenance such as the replacement of damaged sections of line. Although some forms of maintenance such as inspection of the facilities and replacing minor components in-kind by hand may not constitute development, certain

other maintenance activities do constitute a form of development that would be precluded within the Martin Creek open space area by the current wording of Special Condition No. 1. The condition prohibits all development along the creek and within a buffer area on both sides of the creek except for the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment.

As noted above, the existence of the water line and spring and the need for future repairs and maintenance of these facilities was overlooked by all parties when the Commission imposed Special Condition No. 1 of the permit. The amendment resolves this omission by amending Special Condition No. 1 to specifically allow for repair and maintenance by permit of the water line and spring.

In approving the permit amendment, the Commission has also modified the terms of Special Condition No. 1 to allow for the installation and maintenance of public access improvements to be performed in any of the three open space areas required by the condition if approved first by the Coastal Commission as an amendment to the permit. As part of its future responsibility to manage and maintain the public accessway that it will be granted from the applicant to Secret Beach, it may be necessary for the Land Trust to periodically make various improvements to the existing trail for safety purposes, to repair damage from landslides, or similar purposes. The vertical easement will be established in part within two of the areas required to be restricted to open space where no development can occur other than the planting of native vegetation or the removal of debris and structures, provided these particular development activities are first approved by a coastal development permit amendment. One of the open space areas is required to prevent the development of residential structures and improvements along the bluff and portions of the bluff top which may be subject to bluff retreat during the expected lifetime of the future residence that the subdivision will accommodate on Parcel 2. The second open space area that encompasses a portion of the trail is the open space area required to be established over the Martin Creek riparian ESHA and ESHA buffer. The western or seaward end of the trail easement is located within a portion of the 100-foot buffer area that is required by Special Condition No. 1 to be included in the open space area. Modifying Special Condition No. 1 to allow for such development within the required open space areas will ensure that needed public access improvements can be installed without conflicting with the terms and conditions of the original permit.

The permit amendment application fee in this case is \$300.00. Pursuant to Section 13055(a)(9) of the Commission's regulations, the fee for a material amendment is 50% of the fee applicable to the original permit if the original permit were submitted today. The current application fee for a four lot residential subdivision is \$600.00. Therefore, the fee for the permit amendment request is \$300.00.

As a general rule, the Commission does not support application fee waiver requests. The Commission's fee schedule is not directly structured for "at-cost" recovery of the staff time actually spent on applications, and thus tends to charge applicants less than the amount of the Commission resources that are expended in processing an application. In other words, application fees are already generally lower than the amount it costs the Commission to process the application. In part, this is in recognition of the larger public service being provided to the people of the State, including applicants, for a public airing and debate regarding proposed projects in the coastal zone.

In this case, however, the Commission finds that as (a) the need for the permit amendment request resulted from an omission of a provision in the special conditions of the original permit that would allow by permit for development involving necessary repairs and maintenance of on existing water line and spring that the applicant has certain rights to perform, and (b) the amendment has enabled the Commission to modify the terms of Special Condition No. 1 to allow future public access improvements and repairs by permit to ensure that public access to the shoreline can be maintained in the future consistent with the public access policies of the Coastal Act, the Commission hereby waives the \$300.00 permit amendment application fee.

**G. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency 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 above, the amended development, as conditioned, is consistent with the policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been required as permit amendment special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**Exhibits:**

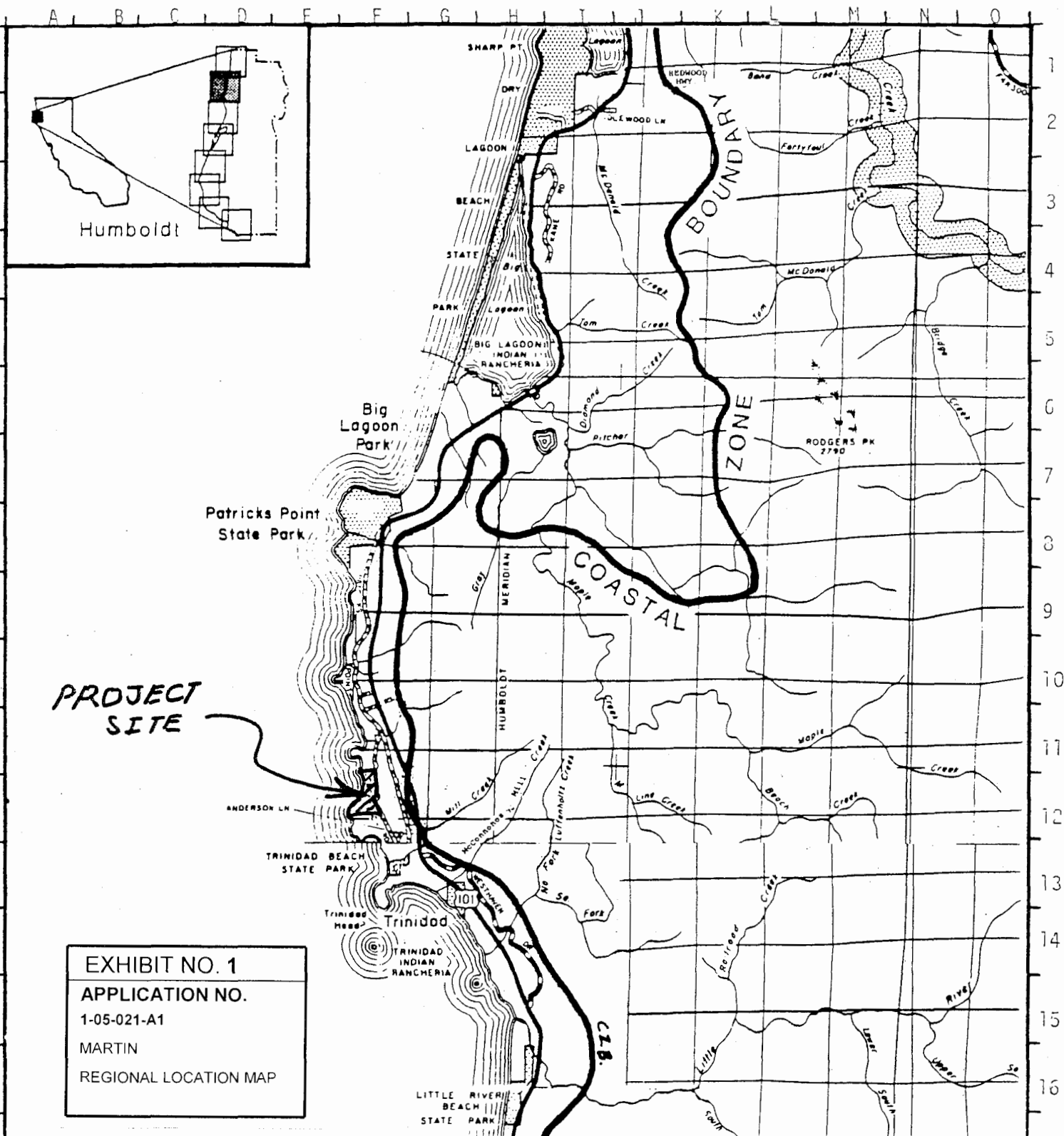
1. Regional Location Map
2. Project Vicinity Map
3. Approved Land Division
4. Open Space Restriction Areas Required by Permit
5. Public Access Proposal
6. Biological Assessment
7. CDP 1-05-021 Adopted Findings

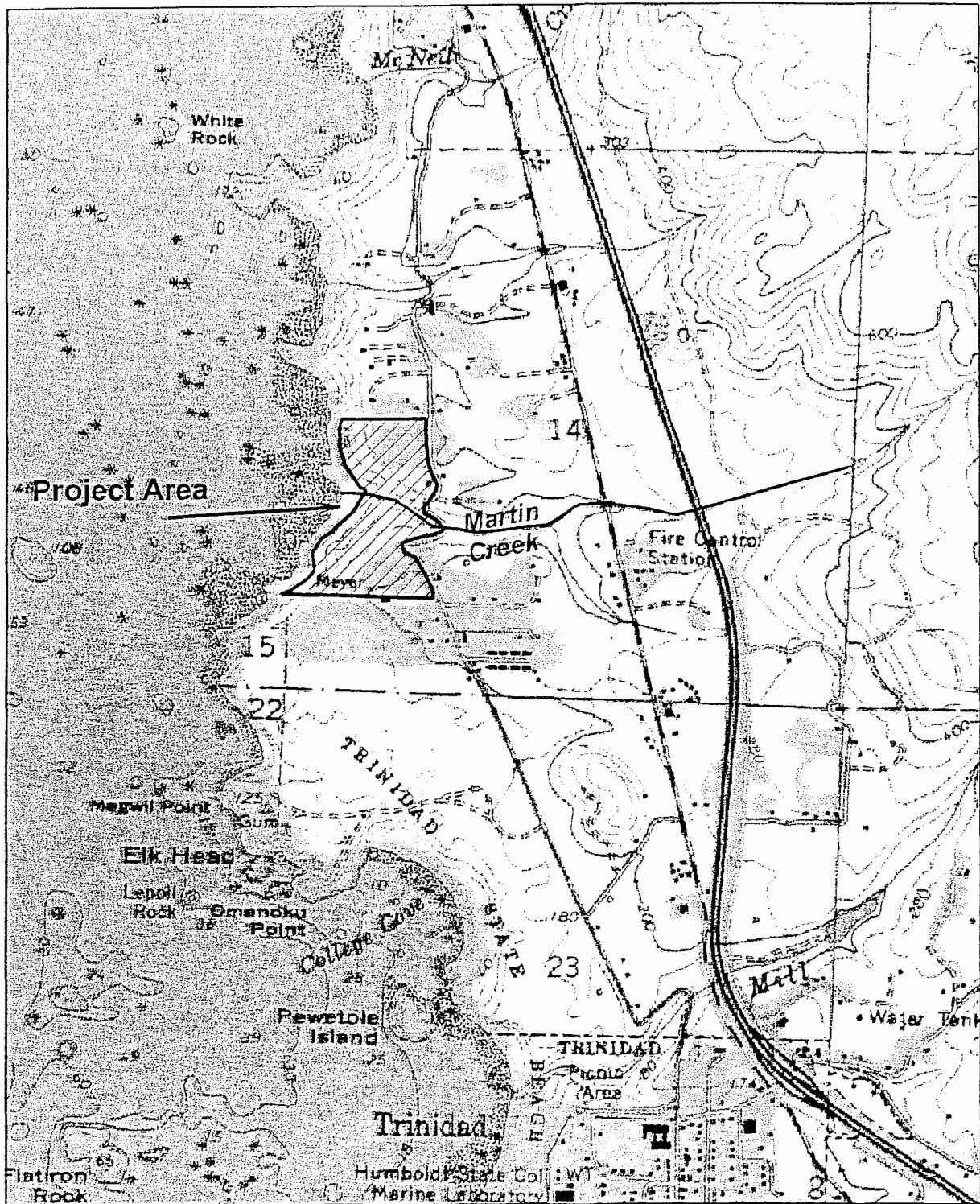
**ATTACHMENT A:**

Standard Conditions:

To ensure that Permit Amendment No. 1-05-021-A1 remains valid, the applicant must not allow the original permit (CDP No. 1-05-021) to expire pursuant to the terms of Standard Condition No. 2 of the original permit by either (1) commencing development prior to expiration of the latest granted time extension, or by (2) applying to the Commission for further extensions of the original permit prior to expiration of the most recently granted time extension. In addition, pursuant to Standard Condition No. 2 of Permit Amendment No. 1-05-021-A1, unless development has commenced prior to expiration of any granted time extension, the applicant must apply for extensions of the permit amendment either prior to the two year anniversary of the date on which the Commission voted on the amendment application or prior to expiration of any granted time extension of the permit amendment.

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





1,000 500 0 1,000 2,000  
Feet



EXHIBIT NO. 2

APPLICATION NO.

1-05-021-A1

MARTIN

PROJECT VICINITY MAP

$$1'' = 200'$$

## EXHIBIT NO. 3

APPLICATION NO.

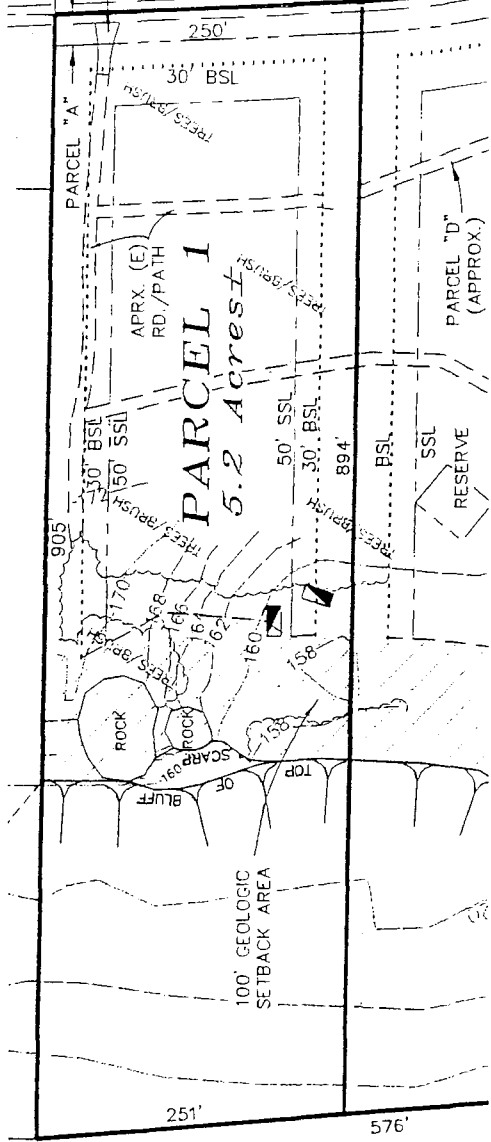
1-05-021-A1

MARTIN

APPROVED LAND DIVISION  
(1 of 3)



0.9 MILE TO PATRICK'S POINT DRIVE  
PROPOSED PARCEL 1  
ACCESS POINT  
SNELL  
515-221-005

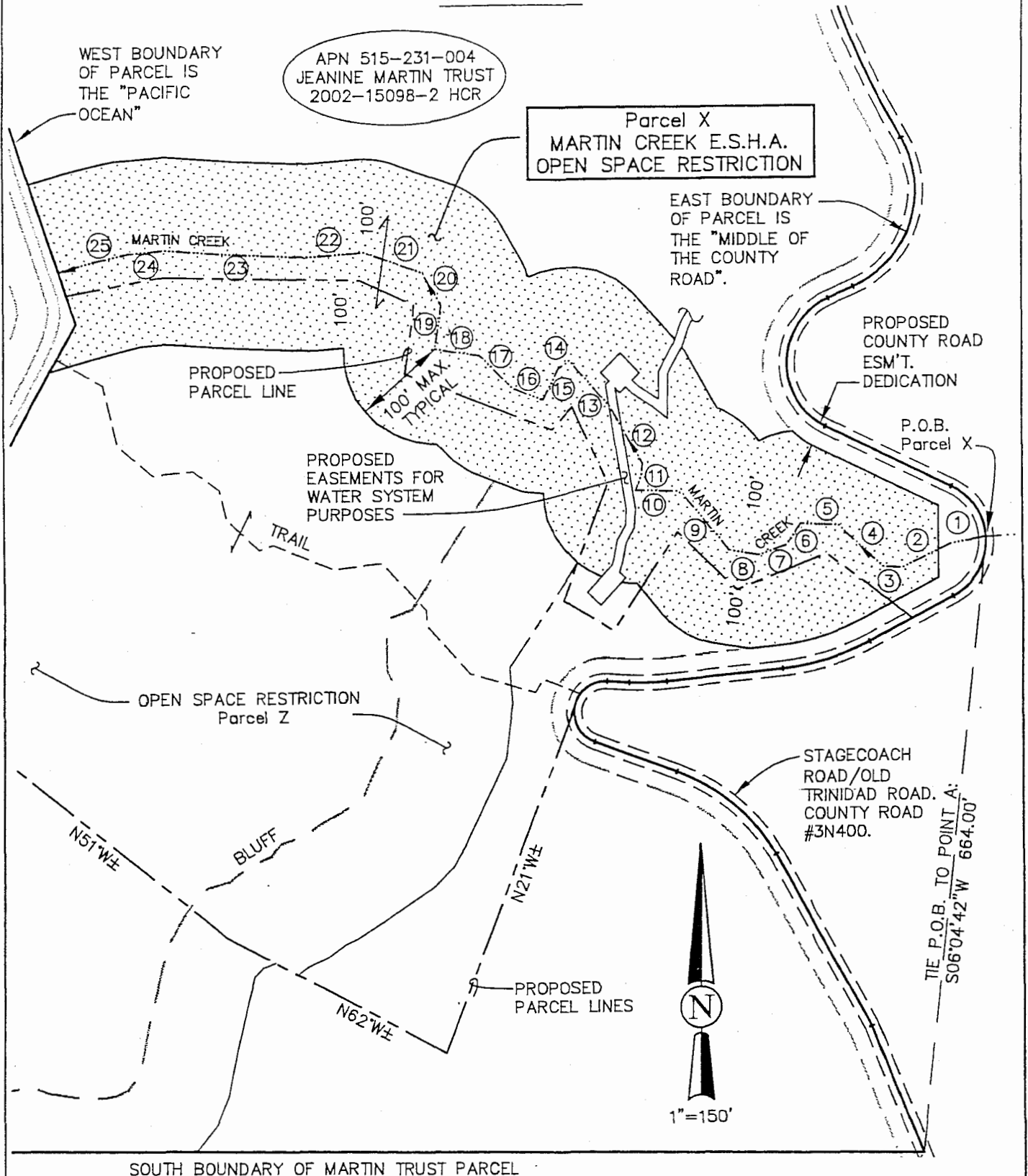


Detail of Parcel 1  
1"=100'

1 N



# EXHIBIT



= OPEN SPACE RESTRICTION (X) = DESCRIPTION COURSE NUMBER



Consulting Engineers  
& Geologists, Inc.

MARTIN MINOR SUBDIVISION  
COASTAL DEVELOPMENT PERMIT  
TRINIDAD, CA

JANUARY 2006

003166BDY.DWG

EXHIBIT NO. 4

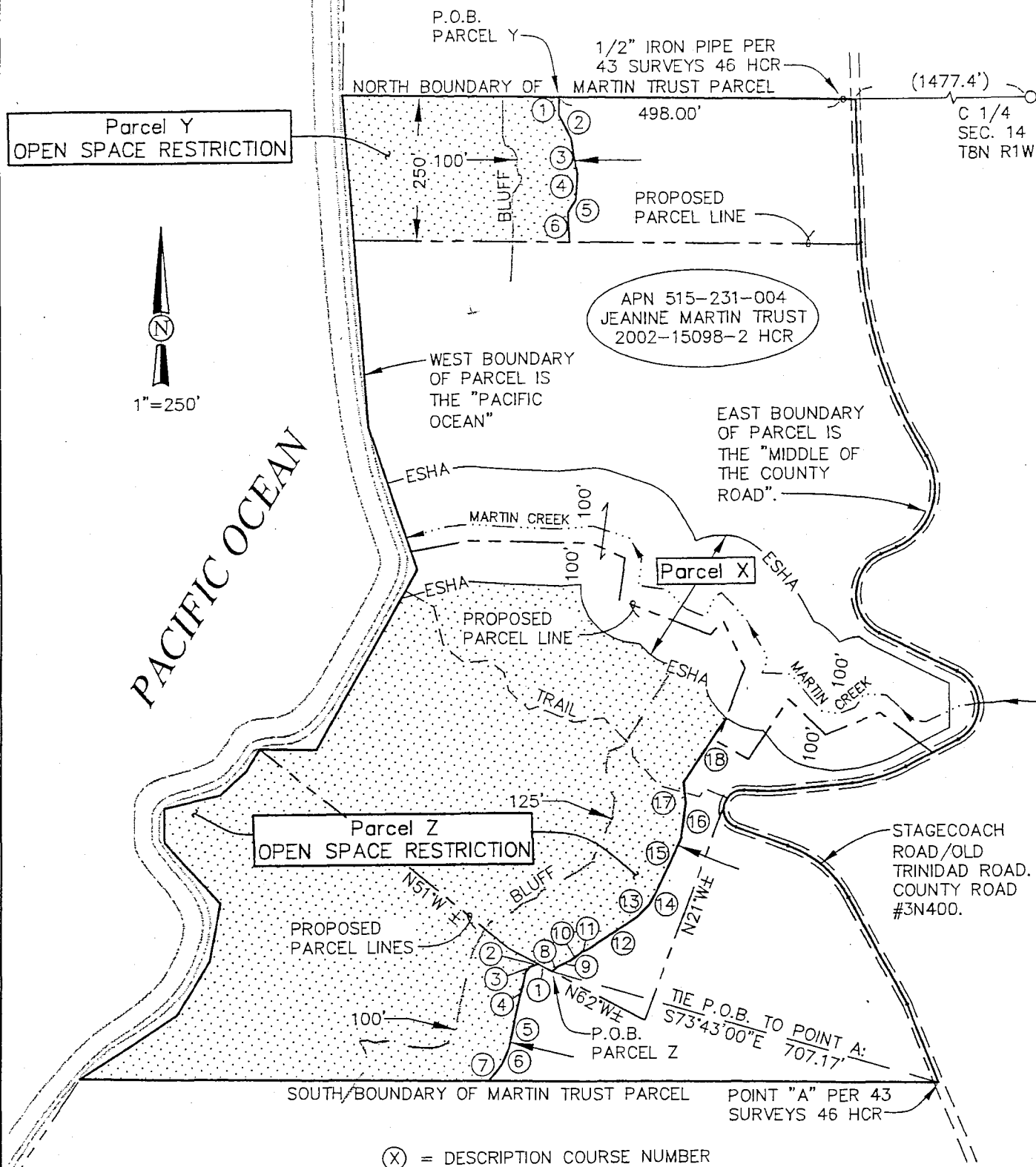
APPLICATION NO.

1-05-021-A1

MARTIN

OPEN SPACE RESTRICTION  
AREAS REQUIRED BY PERMIT  
(1 of 2)

# EXHIBIT



THE PROJECT PARCEL  
BOUNDARY IS SHOWN PER  
43 SURVEYS 46, HCR.

(X) = DESCRIPTION COURSE NUMBER

= OPEN SPACE RESTRICTION

**SHN**  
Consulting Engineers  
& Geologists, Inc.

MARTIN MINOR SUBDIVISION  
COASTAL DEVELOPMENT PERMIT  
TRINIDAD, CA

JANUARY 2006

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PARCELS Y & Z  
BLUFF AREAS  
SHN 003166

2012

# HUMBOLDT NORTH COAST LAND TRUST

P.O. Box 457, Trinidad, CA 95570-0457

Phone (707) 677-0716 / www.hnclt.org

## TRUSTEES:

**Gail Kenny**

President 677-0515

**John Calkins**

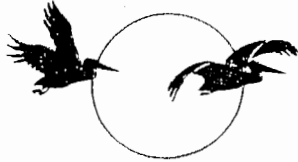
Vice-President 677-3885

**Matthew Marshall**

Secretary 822-7117

**Ned Simmons**

Treasurer 677-0716



**Don Allan**

**Melody Hamilton**

**Kathleen Lake**

**Gail Ward**

## ADVISERS:

**Jeanine Martin**

**Ben Moorehead**

**Tom Lindquist**

June 21, 2005

Jeanine Martin  
P. O. Box 540  
Trinidad, CA 95570

Re: Proposal to Dedicate Martin Creek Coastal Trail to HNCLT

Dear Jeanine:

At the Humboldt North Coast Land Trust meeting on May 5, 2005, the Trustees unanimously approved accepting the terms and conditions outlined for the Martin Creek trail public access easement as stated in Bill Barnum's letter to the Trust dated April 27, 2005. We have since discussed via email and phone calls adding that the trail would be managed as a Class IV trail following the California State Park recommendations for a Class IV trail. You have added this reference to the Class IV trail to your June 21, 2005 letter to Robert S. Merrill with the California Coastal Commission. This serves as our Letter of Intent to Accept the Offer of Dedication as stated in your June 21, 2005 letter to Robert S. Merrill.

We are very pleased to be able to hold this public access easement. It fits in well with the mission of our organization and is very similar to other property and easements we hold. We look forward to being the caretakers for this trail.

Sincerely,

Gail Kenny  
President

EXHIBIT NO. 5

APPLICATION NO.

1-05-021-A1

MARTIN

PUBLIC ACCESS PROPOSAL  
(1 of 5)

Jeanine Martin  
P.O. Box 540  
Trinidad, CA 95570  
707.677.9003  
viewpoint1@cox.net

December 12, 2005

RECEIVED

DEC 12 2005

CALIFORNIA  
COASTAL COMMISSION

Robert S. Merrill  
North Coast District Manager  
California Coastal Commission  
710 E Street, Suite 200  
Eureka, CA 95501-1865

**Re: Revised Project Description for Coastal Development Permit Application  
No: 1-05-021**

Dear Mr. Merrill:

The intent of this letter is, at your request, to amend the project description for Permit Application No: 1-05-021, and to replace my letter to you dated June 21, 2005 originally submitted as part of the permit application.

As stated in my June 21, 2005 letter, I am proposing that the Martin Creek Coastal Trail be a 10 foot-wide vertical easement for public access and passive recreational use beginning from Stagecoach Road to "Secret Beach" through the proposed Parcel 2 as shown on the Tentative Map and approved by Humboldt County. In addition to the stated 10-foot-width, we will allow such additional width as may be reasonably necessary to accommodate cuts, fills, switchbacks and landslides. The trail's proposed width is consistent with that specified in the Trinidad Area General Plan, sections 3.50 B (3 and 4).

A proposal to dedicate the above referenced coastal trail was made to the Board of Directors, Humboldt North Coast Land Trust on April 27, 2005 and approved May 9, 2005.

Revised terms of the agreement are as follows:

1. A permanent sign will be erected and maintained by the HNCLT informing users of the trail and that their use is conditioned upon the following limitations:
  - a. The trail is open from sunrise to sunset
  - b. No camping is allowed
  - c. No dogs are allowed.
  - d. No guns are allowed.
  - e. No campfires are allowed.
  - f. Users are prohibited from removing rocks, soil or plants from the trail.
  - g. Users are to remain on the trail. Off-trail use constitutes trespass.

295

Page 2

Revised Project Description for Coastal Development Permit Application No: 1-05-021

2. The entrance to the trail shall not be widened or improved.
3. As stated above, the trail will run through Parcel 2 of the Martin Subdivision and therefore the owner of Parcel 2 will retain all rights and powers to notify potential trespassers of their duty to remain on the designated trail and to enforce such laws and remedies as are available to an affected property owner.
4. Assuming the HNCLT accepts this revised offer of dedication, immediately upon recordation of the Final Map, I will pay the Trust a one-time donation of Five Thousand Dollars (\$5,000.00) for use by the Trust in maintaining the Martin Creek Coastal Trail.
5. If this offer to dedicate is acceptable to the Board of Directors of the HNCLT, we ask that a Letter of Intent to Accept Offer of Dedication be signed so we can inform the County of Humboldt that we have worked out these terms and conditions for the dedication of the Martin Creek Coastal Trail.
6. The classification of this trail, under State Park definitions, is a Class IV trail and it will be so designated as part of the easement.
7. Additional terms for discussion of procedural steps to be followed for recording the easement include the following:
  - a. The applicant shall submit the proposed grant of easement for the discretionary review and approval of the Executive Director prior to recordation and prior to issuance of the Coastal Development Permit;
  - b. The grant of easement to be approved by the Executive Director shall require that any future development that is proposed to be located either in whole or in part within the area described in the recorded easement shall require a Commission amendment of Coastal Development Permit No: 1-05-021;
  - c. The form of the grant of easement to be approved by the Executive Director shall include legal descriptions of the entire property as well as the area of dedication;
  - d. The grant of easement to be approved by the Executive Director shall be recorded free of prior liens and any other encumbrances which the Executive Director reasonably determines may affect the interest being conveyed; and
  - e. The grant of easement to be approved by the Executive Director shall be recorded after approval but prior to issuance of Coastal Development Permit No: 1-05-021.

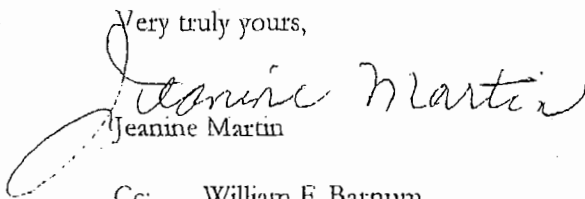
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Page 3

Revised Project Description for Coastal Development Permit Application No: 1-05-021

If you should have any questions or need additional information please do not hesitate to call.

Very truly yours,

  
Jeanine Martin

Cc: William F. Barnum  
Gail Kenny, President, Humboldt North Coast Land Trust  
Robert Wall, Project Manager, SHN

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PACIFIC OCEAN



15 9 15



Reference: 003166

April 26, 2004

Jeanine Martin  
P.O. Box 540  
Trinidad, CA 95570-0540

**EXHIBIT NO. 6**

**APPLICATION NO.**

1-05-021-A1

MARTIN

BIOLOGICAL ASSESSMENT  
(1 of 16)

**Subject: Biological Assessment for the Martin Subdivision; APN 515-231-04**

Dear Mrs. Martin:

On January 28, 2004, SHN Consulting Engineers & Geologists, Inc. (SHN) staff biologist Ted Grantham and I conducted a biological assessment for the proposed Martin subdivision situated on APN 515-231-04. The project area is located approximately 1.5 miles north of Trinidad, Humboldt County, California (T8N, R1W, Section 14; Figure 1). The purpose of the assessment was to determine the appropriate setback from the streamside management area (SMA) of Martin Creek located on the project site, and to analyze the potential for the proposed project to impact sensitive species. The results of the assessment are contained in the remainder of this letter.

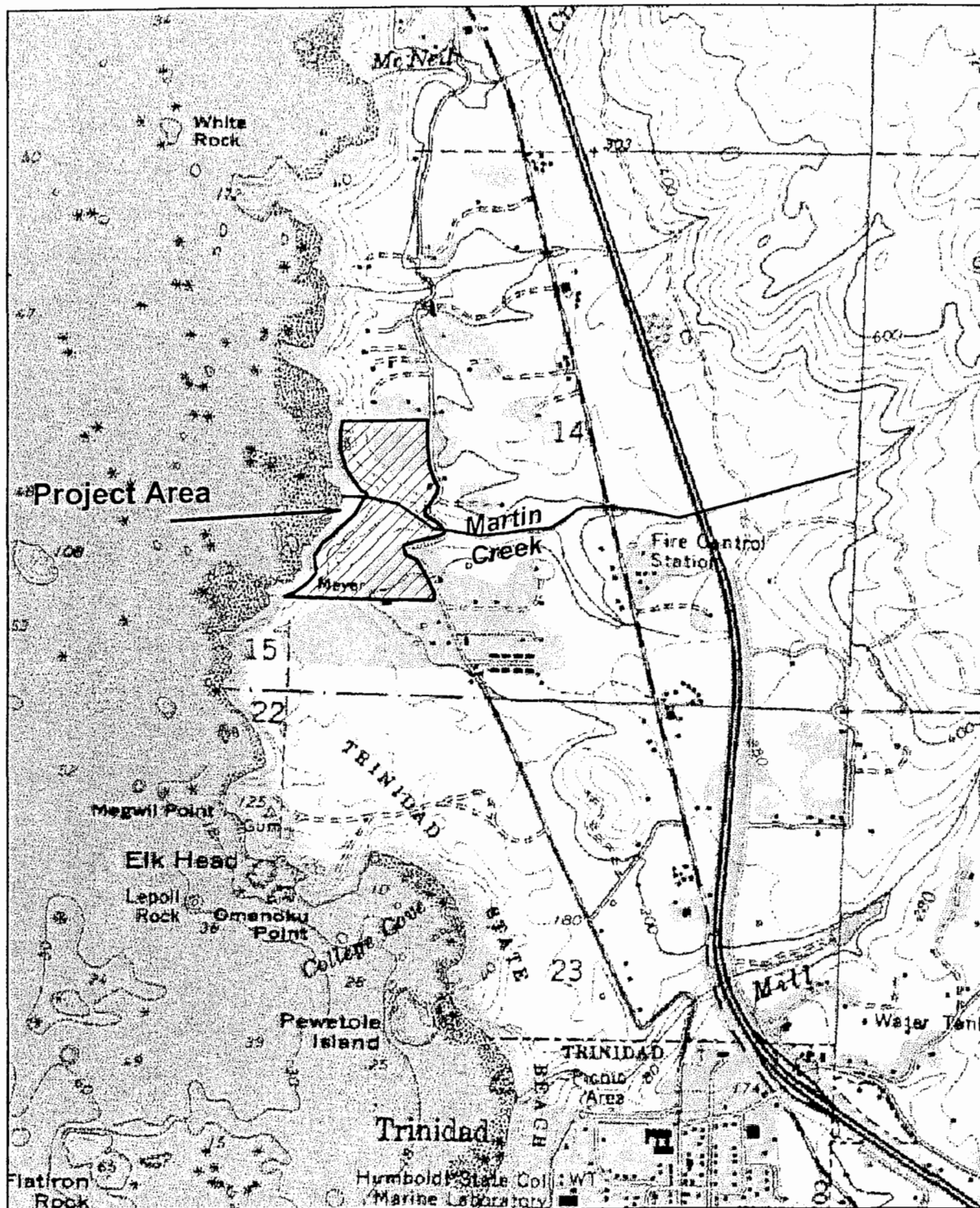
## Environmental Setting

The Martin property lies on the coastal bluffs of Humboldt County, between Trinidad and Patrick's Point State Park. Offshore rocks and narrow sand beaches backed by high rocky bluffs characterize the coastline along the site. Behind the coastal bluffs, a broad plateau extends to the east, with forested areas and open fields. Several coastal streams flow east to west through moderately steep vegetated drainages with the vicinity of the Martin Property.

Geology along this portion of the northern California coast consists of a sequence of preserved uplifted late Pleistocene age marine terraces. The terraces are preserved as erosional remnants of raised shore platforms and associated cover sediments. Sea level has fluctuated throughout the late Pleistocene in response to the advance and retreat of large continental ice sheets. Marine terraces preserved along the coast represent surfaces eroded during the highest levels of these sea level fluctuations, superimposed on a coastline being uplifted by regional tectonics. Marine terraces in the region range from approximately 64,000 years old, to as much as 240,000 years old.

The subject property is located along the west side of Stagecoach Road, within the Martin Creek drainage (Figure 1). Martin Creek is a perennial tributary to the Pacific Ocean and flows east to west through a steep sided ravine that bisects the property. A residence and associated structures are located on the gently sloping plateau, north of Martin Creek. Site topography varies considerably from relatively flat to greater than 30% in the Martin Creek ravine and on the coastal bluffs. Site elevations range from sea level to approximately 200 feet above mean sea level (MSL). A small footpath has been constructed from the residence down to a water tank located on the northern bank of Martin Creek.

Land uses in the site vicinity are primarily designated for rural residential development, although public recreation, commercial timberland, and natural resource areas are also identified. Public facilities and general commercial development are primarily confined to the City of Trinidad.



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2 of 16

Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 2

## Project Description

The project applicant is proposing to subdivide the 39.7 acre Martin property into four parcels: one "developed parcel" that contains the existing residence and improvements, and three other parcels that may eventually be developed with separate residences. Development of the new parcels will be subject to individual coastal development permits (CDPs). Surveying and mapping services have been performed, identifying development "envelopes" within each proposed parcel (Site Plan in Attachment 1). These areas represent the limits of development determined by existing site conditions and regulatory restrictions, such as buffers and setbacks. Parcel 1 is located north of the existing residence and occupies approximately 5.2 acres. Parcels 2 and 3 are located south of the existing residence and Martin Creek. These parcels are each approximately 10.3 and 10.2 acres respectively, however safety buffers and setbacks similarly restrict their "developable" portions. The proposed water and sewage disposal for the new parcels consist of on-site systems confined to the development envelope.

## Habitat Conditions Present at the Site

Northcoast coniferous forest habitat is present throughout the majority of the property, including both the northern and southern areas. The overstory within the mesic forest is dominated by a moderately closed to sporadically open canopy of Sitka spruce (*Picea sitchensis*) and red alder (*Alnus rubra*), with scattered grand fir (*Abies grandis*) and naturalized and/or planted Monterey cypress (*Cupressus macrocarpa*) and blue gum eucalyptus (*Eucalyptus globules*). A subcanopy of cascara (*Rhamnus purshiana*) is present throughout this area. The dense shrub layer is dominated by coyote bush (*Baccharis pilularis*), salal (*Gaultheria shallon*), wax myrtle (*Myrica californica*), sword fern (*Polystichum munitum*), salmonberry (*Rubus spectabilis*), Pacific bramble (*R. ursinus*), and evergreen huckleberry (*Vaccinium ovatum*). The herbaceous layer varies from patchy to dense and is dominated by the following species: milk maids (*Cardamine californica*), sedge species (*Carex* sp.), Siberian candyflower (*Claytonia sibirica*), toothed coast fireweed (*Erechtites minima*), cow parsnip (*Heracleum lanatum*), Pacific water-parsley (*Oenanthe sarmentosa*), sweet-cicely (*Osmorhiza chilensis*), redwood sorrel (*Oxalis oregana*), hedge-nettle (*Stachys* sp.), and starflower (*Trientalis latifolia*). Heavy woody debris is scattered throughout the forest floor.

The portion of Martin Creek that is within the project area, defined as the SMA study area, is approximately 700 linear feet (Photo 1 in Attachment 2). This portion of the drainage is characterized by a well-developed streambed with moderately steep vegetated slopes. The riparian corridor includes a moderately open overstory of big-leaf maple (*Acer macrophyllum*), Sitka spruce and red alder, with scattered cascara and willows. Numerous moss and lichen species are present on the trees. The dense mesic understory is dominated by lady fern (*Athyrium filix-femina*), sedges, salal, false lily-of-the-valley (*Maianthemum dilatatum*), Pacific water-parsley, sweet-cicely, redwood sorrel, sword fern, salmonberry, Pacific bramble, elderberry (*Sambucus racemosa*), *Stachys* sp., piggy-back plant (*Tolmiea menziesii*), and evergreen huckleberry with scattered native and non-native grass species. Plant species cover the banks of the creek and there is relatively little evidence of stream bank erosion.

3 of 16

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Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 3

West of the Martin Creek study area, the terrain transitions to a steep coastal bluff that coincides with the shift from mesic Northcoast coniferous forest to coastal scrub brush habitat. This habitat is dominated by wind battered Sitka spruce and red alder, coyote bush, pampass grass (*Cortaderia jubata*), wax myrtle, and sword fern.

South of the Martin Creek drainage corridor, the vegetation composition consists of Northcoast coniferous forest habitat, although an open field is located within the building envelope of Parcels 2 and 3 (Photo 2 in Attachment 2). The field was probably created from previous mowing and/or grazing activities. Most of the dominant species in this area are ruderal species such as common velvet grass (*Holcus lanatus*), hairy cat's-ear (*Hypochaeris radicata*), ox-eye daisy (*Leucanthemum vulgare*), dandelion (*Taraxacum officinale*), and clovers (*Trifolium* spp.). Additional species include: yarrow (*Achillea millefolium*), coast strawberry (*Fragaria chiloensis*), Douglas's iris (*Iris douglasiana*), self heal (*Prunella vulgaris*), western buttercup (*Ranunculus repens*), and California figwort (*Scrophularia californica*). Douglas fir (*Pseudotsuga menziesii*), Sitka spruce, red alder, Monterey cypress and eucalyptus trees are scattered throughout the field and along its edges. The understory along the meadow edge includes coyote bush, Scots broom (*Cytisus scoparius*), salal, false lily-of-the-valley, and Pacific bramble. This habitat abruptly changes into coastal scrub brush beyond the edge of the bluff.

## Regulatory Context

The Martin property lies within the California Coastal Zone, under primary jurisdiction of the California Coastal Commission. Approved land uses and standards for the property are provided in *The Humboldt County General Plan, Trinidad Area Plan of the Humboldt County Local Coastal Program*, in conformance with the policies of the California Coastal Act of 1976.

The Coastal Commission has jurisdiction over Environmentally Sensitive Habitat Areas (ESHA) within the Coastal Zone and requires that any development within or adjacent to such areas be compatible with the continuance of such habitat areas. Section 30107.5 of the Coastal Act defines ESHA as any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Under Section 30240 of the Coastal Act, the Coastal Commission requires that: (a) environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas, and that (b) development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The *Trinidad Area Plan* identifies coastal streams and rivers, including Martin Creek, as ESHA. The portion of Martin Creek that occurs on the subject property would require a protected buffer zone, or SMA, along the creek's riparian corridor. The Plan states, "Riparian corridors on all perennial and intermittent streams shall be, at a minimum, the larger of the following: (1) 100 feet, measured as the horizontal distance from the stream transition line on both sides, (2) 50 feet plus four times the average percent of slope, measured as the slope distance from the stream transition line on both sides [of the stream], (3) where necessary, the width of the riparian corridor shall be expanded to

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Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 4

include significant areas of riparian vegetation adjacent to the corridor, slides, and areas with visible evidence of slope instability, not to exceed 200 feet measured as a horizontal distance (Section 3.30.B.5.d)." No development would be allowed within the SMA unless the Commission determines, based on specific factual findings, that such development would not result in significant adverse impacts to fish, wildlife, riparian habitat, or soil stability.

Critical habitats for rare or endangered species listed on state or federal lists are also considered ESHA within the County Trinidad Planning Area. The County, in coordination with the California Department of Fish and Game (CDFG), requires that a biological assessment be performed to determine the potential presence of rare or endangered species known to occur in the project vicinity. If critical habitat is identified, a 100-foot buffer from any adjacent development will likely be required.

The northern California coastal region is a geologically unstable and seismically active area. To minimize risks to life and property, the Coastal Commission requires that new development "shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas... (Code 302503)." The proposed project is subject to setbacks of at least 100 feet from coastal bluffs and other areas of known instability.

## Methodology

### Sensitive Species Analysis

#### Sensitive Species Historically Reported within the Project Vicinity

The California Natural Diversity Database (CNDDB) was queried for known occurrences of rare, threatened, and endangered species, also referred to as sensitive species, within the Trinidad and adjacent 7.5' USGS quadrangles. CNDDB includes historical records for 63 species that have a total of 334 occurrences within the queried quads. Those species, their preferred habitats, and their listing status are located in Table 1.

Table 1 CNDDB Sensitive Species Occurrences Reported in the Vicinity of the Project Area			
Latin Name	Common Name	Applicable Habitat <sup>1</sup>	Listing Status <sup>2</sup>
Animals			
<i>Ardea alba</i>	Great egret	M, MF, CS	N/A
<i>Ardea herodias</i>	Great blue heron	B, CA, M, CS, CSM, MF	N/A
<i>Arborimus albipes</i>	White-footed vole	NCF	SC (DFG)
<i>Arborimus pomo</i>	Red tree vole	NCF	SC (fed)
<i>Ascaphus truei</i>	Tailed frog	NCF	SC (fed)
<i>Cerorhinca monocerata</i>	Rhinoceros auklet	CA	N/A
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover	SB,	Threatened (fed)
<i>Clemmys marmorata marmorata</i>	Northwestern pond turtle	Near water	SC (fed)
<i>Egretta thula</i>	Snowy egret	MF, M	SC (fed)
<i>Eucyclogobius newberryi</i>	Tidewater goby	Brackish CA	Endangered (fed)

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Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 5

Table 1 CNDDB Sensitive Species Occurrences Reported in the Vicinity of the Project Area			
Latin Name	Common Name	Applicable Habitat <sup>1</sup>	Listing Status <sup>2</sup>
<i>Fratercula cirrhata</i>	Tufted puffin	CA	N/A
Animals, Continued			
<i>Myotis evotis</i>	Long-eared myotis	numerous	SC (fed)
<i>Nycticorax nycticorax</i>	Black-crowned night heron	B, M, CSM	N/A
<i>Oceanodroma furcata</i>	Fork-tailed storm-petrel	CA	N/A
<i>Oncorhynchus clarki clarki</i>	Coast cutthroat trout	CS	Can (Fed), SC (DFG)
<i>Oncorhynchus kisutch</i>	Coho salmon (s. OR- n. CA)	CS	Threatened (Fed), Can (DFG)
<i>Pandion haliaetus</i>	Osprey	OS, B	SC (DFG)
<i>Phalacrocorax auritus</i>	Double-crested cormorant	CA	SC (DFG)
<i>Plethodon elongatus</i>	Del Norte salamander	NCF	SC (Fed)
<i>Rallus longirostris obsoletus</i>	California clapper rail	MFS	Endangered (fed and state)
<i>Rana aurora aurora</i>	Northern red-legged frog	NCF/Water	SC (fed/DFG)
<i>Rhyacotriton variegatus</i>	Southern torrent/seep salamander	NCF/Water	SC (fed/DFG)
<i>Riparia riparia</i>	Bank swallow	Coastal area cliffs	SC (Fed), Threatened (DFG)
Natural Communities			
Coastal and valley freshwater marsh			
Northern coastal salt marsh			
Northern Foredune Grassland			
Sitka Spruce Forest			
Sphagnum bog			
Plants			
<i>Abronia umbellata ssp. brevifolia</i>	Pink sand-verbena	CD	SC (Fed)/1B (CNPS)
<i>Astragalus pycnostachyus</i> var. <i>pycnostachyus</i>	Coastal marsh milk-vetch	CD, CSM	SC (fed) 1B (CNPS)
<i>Carex arcta</i>	Northern clustered sedge	NCF	2 (CNPS)
<i>Carex leptalea</i>	Flaccid sedge	M	2 (CNPS)
<i>Carex lyngbyei</i>	Lyngbye's sedge	M	2 (CNPS)
<i>Carex praticola</i>	Meadow sedge	MD	2 (CNPS)
<i>Carex saliniformis</i>	Deceiving sedge	CSR, CSM, MFS	SC (Fed), 1B (CNPS)
<i>Carex viridula</i> var. <i>viridula</i>	Green sedge	NCF, M	2 (CNPS)
<i>Castilleja affinis</i> ssp. <i>litoralis</i>	Oregon coast Indian paintbrush	CD, CSR	2 (CNPS)
<i>Castilleja ambigua</i> ssp. <i>humboldtiensis</i>	Humboldt Bay owl's-clover	CSM	SC (fed), 1B (CNPS)
<i>Cordylanthus maritimus</i> ssp. <i>palustris</i>	Point Reyes bird's-beak	CSM	SC (fed), 1B (CNPS)
<i>Discelium nudum</i>	Naked flag-moss	CSR	2 (CNPS)
<i>Empetrum nigrum</i> ssp. <i>hermaphroditum</i>	Black crowberry	CSR, CA	2 (CNPS)
<i>Erysimum menziesii</i> ssp. <i>eurekaense</i>	Humboldt Bay wallflower	CD	Endangered (fed/state), 1B (CNPS)

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Table 1 CNDDB Sensitive Species Occurrences Reported in the Vicinity of the Project Area			
Latin Name	Common Name	Applicable Habitat <sup>1</sup>	Listing Status <sup>2</sup>
<i>Erythronium revolutum</i>	Coast fawn lily	NCF	2 (CNPS)
<i>Fissidens pauperculus</i>	Minute pocket-moss	NCF	1B (CNPS)
Plants, Continued			
<i>Gilia capitata</i> ssp. <i>pacifica</i>	Pacific gilia	CSR, CA	1B (CNPS)
<i>Lathyrus japonicus</i>	Sand pea	CD	2 (CNPS)
<i>Lathyrus palustris</i>	Marsh pea	M, CA	2 (CNPS)
<i>Layia carnosa</i>	Beach layia	CD	Endangered (fed/state), 1B (CNPS)
<i>Lilium occidentale</i>	Western lily	CA/CSR	Endangered (fed/state) 1B (CNPS)
<i>Lycopodiella inundata</i>	Bog club-moss	M, NCF	2 (CNPS)
<i>Lycopodium clavatum</i>	Running pine	NCF	2 (CNPS)
<i>Mitella caulescens</i>	Leafy-stemmed mitrewort	NCF	2 (CNPS)
<i>Monotropa uniflora</i>	Indian pipe	NCF	2 (CNPS)
<i>Montia howellii</i>	Howell's montia	NCF/MD	2 (CNPS)
<i>Oenothera wolfii</i>	Wolf's evening primrose	CA/CD/ CSR	1B (CNPS)
<i>Puccinella pumila</i>	Dwarf alkali grass	CA/M	2 (CNPS)
<i>Romanzoffia tracyi</i>	Tracy's romanzoffia	CSR	2 (CNPS)
<i>Sidalcea malachroides</i>	Maple-leaved checkerbloom	CA/CSR	SC (fed), 1B (CNPS)
<i>Sidalcea malviflora</i> ssp. <i>patula</i>	Siskiyou checkerbloom	CA/MD	1B (CNPS)
<i>Sidalcea oregana</i> ssp. <i>eximia</i>	Coast checkerbloom	CA/MD	1B (CNPS)
<i>Spergularia canadensis</i> var. <i>occidentalis</i>	Western sand-spurry	CSM	2 (CNPS)
<i>Trichodon cylindricus</i>	Cylindrical trichodon	NCF	2 (CNPS)
<i>Usnea longissima</i>	Long-beard lichen	NCF	N/A
<i>Viola palustris</i>	Marsh violet	CA/CSR	2 (CNPS)
1. Applicable habitat refers to habitat types within the project vicinity: B=Bay; CA= coastal area; CD=coastal dunes; CS=coastal streams; CSM=coastal saltmarsh; CSR=coastal scrub; M=marsh; MD=moist meadows; MF=mudflat or tidal flat; MFS=mudflat sloughs; NCF=Northcoast coniferous forest; OS=ocean shores; SB=sandy beaches; 2. CNPS =California Native Plant Society			

### Potential Sensitive Species Present

In addition to querying the CNDDB, all species included on Lists 1 and 2 of the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Plants of California (Tibor, 2001) were reviewed to determine potential presence in the vicinity of the Martin Subdivision. The CNPS inventory includes all species listed as rare or endangered by Federal and state governments. Based on the 63 species listed in CNDDB records, the range of habitats present at the project site, and the geographical range of the various sensitive species, the species considered most likely to have suitable potential habitat in the project area are listed in Table 2. Following Table 2 is a summary of suitable sensitive plant habitat at the project site and an evaluation of its quality, rated poor, medium, and high. A list of species encountered during the field inspections is included (Attachment 3). Nomenclature follows *The Jepson Manual* (Hickman, 1993).

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Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 7

Table 2 Sensitive Species Potentially Present at the Martin Subdivision			
Latin Name	Common Name	Applicable Habitat <sup>1</sup>	Listing Status <sup>2</sup>
Animals			
<i>Ardea herodias</i>	Great blue heron		N/A
<i>Arborimus albipes</i>	White-footed vole	NCF	SC (DFG)
<i>Arborimus pomo</i>	Red tree vole	NCF	SC (fed)
<i>Ascaphus truei</i>	Tailed frog	NCF	SC (fed)
<i>Myotis evotis</i>	Long-eared myotis	numerous	SC (fed)
<i>Oncorhynchus clarki clarki</i>	Coast cutthroat trout	CS	SC (DFG)
<i>Oncorhynchus kisutch</i>	Coho salmon (s. OR- n. CA)	CS	Threatened (Fed),*Can (DFG)
<i>Pandion haliaetus</i>	Osprey	OS, B	SC (DFG)
<i>Plethodon elongatus</i>	Del Norte salamander	NCF	SC (Fed)
<i>Rana aurora aurora</i>	Northern red-legged frog	NCF/Water	SC (fed/DFG)
<i>Rhyacotriton variegatus</i>	Southern torrent/seep salamander	NCF/Water	SC (fed/DFG)
<i>Riparia riparia</i>	Bank swallow	Coastal area cliffs	SC (Fed), Threatened (DFG)
Natural Communities			
Sitka Spruce Forest			
Plants			
<i>Carex arcta</i>	Northern clustered sedge	NCF/MD	2 (CNPS)
<i>Carex leptalea</i>	Flaccid sedge	NCF/M	2 (CNPS)
<i>Carex praticola</i>	Meadow sedge	NCF/MD	2 (CNPS)
<i>Carex viridula</i> var. <i>viridula</i>	Green sedge	NCF/ MD	2 (CNPS)
<i>Castilleja affinis</i> ssp. <i>litoralis</i>	Oregon coast Indian paintbrush	CD, CSR	2 (CNPS)
<i>Diselium nudum</i>	Naked flag-moss	CSR	2 (CNPS)
<i>Empetrum nigrum</i> ssp. <i>hermaphroditum</i>	Black crowberry	CSR, CA	2 (CNPS)
<i>Erythronium revolutum</i>	Coast fawn lily	NCF	2 (CNPS)
<i>Fissidens pauperculus</i>	Minute pocket-moss	NCF	1B (CNPS)
<i>Gilia capitata</i> ssp. <i>pacifica</i>	Pacific gilia	CSR, CA	1B (CNPS)
<i>Lilium occidentale</i>	Western lily	CA/CSR	Endangered (fed/state) 1B (CNPS)
<i>Lycopodiella inundata</i>	Bog club-moss	M, NCF	2 (CNPS)
<i>Lycopodium clavatum</i>	Running pine	NCF	2 (CNPS)
<i>Mitella caulescens</i>	Leafy-stemmed mitrewort	NCF	2 (CNPS)
<i>Monotropa uniflora</i>	Indian pipe	NCF	2 (CNPS)
<i>Montia howellii</i>	Howell's montia	NCF/MD	2 (CNPS)
<i>Romanzoffia tracyi</i>	Tracy's romanzoffia	CSR	2 (CNPS)
<i>Sidalcea malachroides</i>	Maple-leaved checkerbloom	NCF/CA/CSR	SC (fed), 1B (CNPS)
<i>Sidalcea malviflora</i> ssp. <i>patula</i>	Siskiyou checkerbloom	CA/MD	1B (CNPS)

8 of 16

5/1/04

Table 2 Sensitive Species Potentially Present at the Martin Subdivision			
Latin Name	Common Name	Applicable Habitat <sup>1</sup>	Listing Status <sup>2</sup>
Plants, Continued			
<i>Sidalcea oregana</i> ssp. <i>eximia</i>	Coast checkerbloom	CA/MD	1B (CNPS)
<i>Trichodon cylindricus</i>	Cylindrical trichodon	NCF	2 (CNPS)
<i>Usnea longissima</i>	Long-beard lichen	NCF	N/A
1. B=Bay; CA= coastal area; CD=coastal dunes; CS=coastal streams; CSM=coastal saltmarsh; CSR=coastal scrub; M=marsh; MD=moist meadows; MF=mudflat or tidal flat; MPS=mudflat sloughs; NCF=Northcoast coniferous forest; OS=ocean shores; SB=sandy beaches; 2. CNPS =California Native Plant Society			

One of the coast cutthroat trout occurrences listed in the CNDDB is reported from Martin Creek, approximately .25 miles east of the project site. The survey conducted by DFG in 1979 found that the entire length of Martin Creek is either occupied or accessible habitat for this species. Another occurrence of coast cutthroat trout has been reported from the vicinity of the project area. This occurrence was reported from McNeil Creek (Figure 1), and was rated "very high" in fish abundance at the time of the survey.

The animals included in Table 2 are generally associated with Northcoast coniferous forest habitat and/or coastal streams. Suitable potential habitat at the project site for white-footed vole, tailed frog, red tree vole, Del Norte salamander, northern red-legged frog, and southern torrent/seep salamander is confined to the forested portion of the property, located north of the existing house, with the SMA of Martin Creek, and north of the Parcels 2 and 3. Habitat quality within this portion of the site is considered medium.

Suitable habitat for coast cutthroat trout and Coho salmon is located within the streambed of Martin Creek. Due to the presence of small gravel, close vicinity to the Pacific Ocean, and the shaded overstory of Martin Creek, habitat quality at the project site is considered high.

Suitable nesting sites for great blue heron and osprey occurs in the trees scattered throughout the project site. Quality of the potential nest sites is highest in close proximity to the creek where trees are mature, and lowest in the southern portion of the site where tree species are youngest.

Medium quality suitable potential habitat for bank swallow is found along the steep bluffs located along the western edge of the site.

Suitable potential low-quality habitat for long-eared myotis is scattered throughout the project site.

Suitable potential habitat for the sedge species listed in Table 2 is found in the areas adjacent to Martin Creek and throughout the mesic Northcoast coniferous forest located on the property. Habitat quality for sensitive sedge species is highest adjacent to Martin Creek and the surrounding creek corridor. Medium quality habitat is scattered throughout the undeveloped remainder of the site.

9 of 16

5927

Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 9

Suitable potential habitat for, naked flag-moss, black crowberry, Pacific gilia, and Tacy's romanzoffia is generally located west of the Martin Creek study area, within the coastal scrub brush habitat situated on the steep bluff. Medium quality habitat exists for these species with the exception of Oregon coast Indian paintbrush and Pacific gilia, which have low quality habitat.

Suitable potential habitat for western lily, maple-leaved checkerbloom, Siskiyou checkerbloom, and coast checkerbloom is located in the southern portion of the site, within Parcels 2 and 3. Suitable habitat for these species is confined to a corridor that extends from the edge of the canopy dripline out approximately 50 feet into the field. Suitable habitat for these species also includes approximately 75 feet of the westernmost portion of the site to the edge of the bluff.

Western lily occurs within 4 miles of the coast, and is commonly associated with Sitka spruce. This Federal and state endangered species is known to occur in old, shallow, organically moist soils with a seasonally perched water table. A well-developed deep-organic layer that lacks a noticeable confining layer characterizes the soil profile found at the project site. Due to the lack of confining layer that serves to perch moisture late in the season, hydrological conditions at the site do not appear to be adequate to support on occurrence of western lily; therefore suitable potential habitat for western lily is low at the proposed project site.

Habitat quality for maple-leaved checkerbloom, Siskiyou checkerbloom, and coast checkerbloom is rated as medium at the proposed project site.

Suitable potential habitat for coast fawn lily, bog club-moss, running pine, leafy-stemmed mitrewort, and Indian pipe is located throughout the forested areas of the site, north of the existing house and within the SMA of Martin Creek. Habitat quality for coast fawn lily, running pine, and leafy-stemmed mitrewort is rated as high. Habitat quality for bog club-moss and Indian pipe at the project site is rated as medium to low. Both bog club-moss and running pine are evergreen species that can be identified year-round. No evidence of an occurrence of these species was found at the project site during the site visit.

Suitable potential medium quality habitat for Howell's montia is scattered along and adjacent to the existing access road in the southern portion of the site.

Suitable potential high quality habitat for cylindrical trichodon and long-beard lichen is located throughout the forested portions of the project site. Both of these species are evergreen and can be identified year-round. No evidence of an occurrence of these species was found at the project site during the site visit.

## Assessment of Impact

The biological assessment conducted at the project site found that suitable potential habitat for a number of sensitive plant and animal species exists throughout the project area, but the SMA of Martin Creek is the only portion of the project site that requires a setback from project operations at this time.

10 of 16

5944  
15/11/17

Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 10

The riparian habitat and streambed features of Martin Creek will remain intact during and after development operations, pursuant to the *Humboldt County Grading Ordinance (June, 2002)* SMA restrictions. All proposed and future improvements on the parcels will be within the building envelope, which restrict development on the subdivided parcels to be at least 100 feet from the creek. SMA setbacks and the geological setback from the bluff effectively protect the sensitive habitat and any listed species that may occur within the Martin Creek corridor.

Suitable potential habitat for three species included on state or federal rare or endangered lists exists at the project site (coho salmon, bank swallow, and western lily), however these species do not require additional protection at the site. Due to the SMA buffer of Martin Creek, any occurrences of coho salmon would be adequately protected. Suitable habitat for the bank swallow is confined to the bluff along the western edge of the project site, which will be protected from development by the geological setback. Habitat quality for western lily is poor at the project site. The areas that have been identified as containing marginal western lily habitat are along the boundaries of Parcels 2 and 3, which are outside of the developable portions of the site due to setbacks and buffers. Therefore, there is minimal potential for an impact on western lily or its critical habitat to occur at the project site.

The highest quality sensitive species habitat at the project site is located within the geological setback and the SMA, outside of the proposed buildable areas on the parcels. However, scattered areas of potentially suitable sensitive species habitat are located outside of the setback and buffer and within buildable areas. The proposed subdivision will not have an adverse impact on potentially suitable habitat within the building envelopes. However, during the separate CDP process for future coastal development on the parcels, impacts to sensitive species should be assessed. Focused surveys should be conducted during the seasonally appropriate time of year if future development plans have the potential to impact sensitive species. The need for an ESHA buffer within the building envelopes may be determined following focused surveys associated with future development of the parcels.

## Conclusion and Recommendations

In accordance with ESHA requirements for the Trinidad Planning Area, a 100-foot SMA buffer shall be preserved on either side of Martin Creek. Based on the field assessment and knowledge of sensitive species, the 100-foot Martin Creek SMA would likely adequately protect habitat values of the creek and riparian corridor, thus avoiding either a direct or indirect impact on any sensitive plant or animal species that may occur within that area. As shown on the Site Plan, the developable portions of the subdivided parcels would not encroach the SMA buffer.

During the CDP process for future development on the proposed parcels, the project should be further reviewed to determine if development would significantly impact sensitive species. Focused surveys should be conducted at the time of future development to determine if a sensitive species occurrence is present at the project site. Based on those findings, the need for an ESHA buffer within the developable portions of the parcels will be determined.

11 of 16

SWP  
EHA

Jeanine Martin

Biological Assessment for the Martin Subdivision; APN 515-231-04

April 26, 2004

Page 11

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County of Humboldt. (June 1995). "Trinidad Area Plan of the Humboldt County Local Coastal Program," *Humboldt County General Plan, Volume 2*. Eureka: Humboldt County Planning Department.

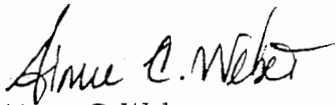
Hickman, J.C., ed. (1993). *The Jepson Manual*. Berkeley: University of California Press Berkeley.

Tibor, David, P., ed. (2001). *Inventory of Rare and Endangered Plants of California, 6th Edition; Special Publication No. 1*. Sacramento: California Native Plant Society.

If you have any questions, please call me at 707/441-8855.

Sincerely,

SHN Consulting Engineers & Geologists, Inc.



Aimee C. Weber  
Staff Botanist

ACW:lms:med

Attachments:   1.   Tentative Map  
                  2.   Photos  
                  3.   Species List

12 of 16

SHN

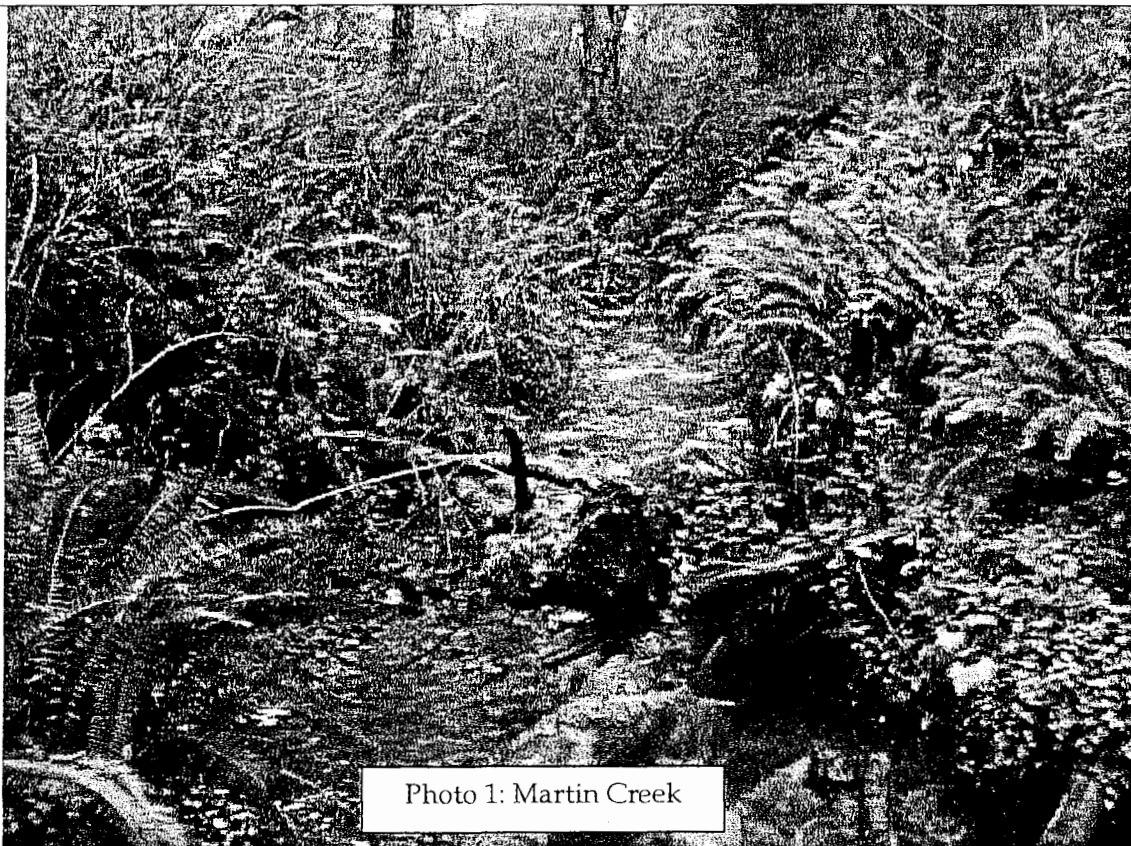


Photo 1: Martin Creek

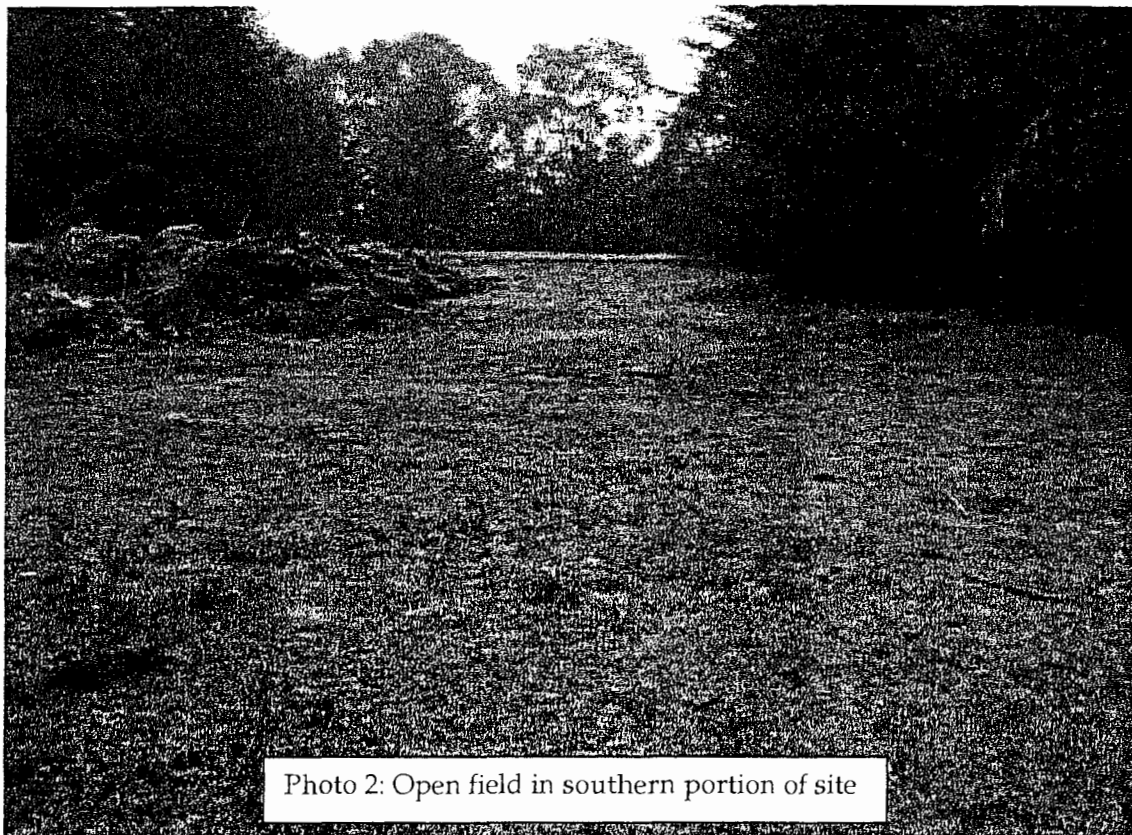


Photo 2: Open field in southern portion of site



Consulting Engineers  
& Geologists, Inc.

Martin Subdivision Project  
Humboldt County, California

Photos 1 & 2  
SHN 003166

April 2004

003166

Photos 1&2

13 of 16



Table 3-1  
Species List  
Martin Subdivision

Latin Name	Common Name	Presence (1=tree, 2=shrub, 3=herb)
<i>Abies grandis</i>	grand fir	1
<i>Acer macrophyllum</i>	bigleaf maple	1
<i>Alnus rubra</i>	red alder	1
<i>Cupressus macrocarpa</i>	Monterey cypress	1
<i>Eucalyptus globulus</i>	blue gum	1
<i>Ilex aquifolium</i>	English holly	1
<i>Picea sitchensis</i>	Sitka spruce	1
<i>Rhamnus purshiana</i>	cascara	1
<i>Sequoia sempervirens</i>	coast redwood	1
<i>Baccharis pilularis</i>	coyote brush	2
<i>Berberis nervosa</i>	dwarf Oregon-grape	2
<i>Corylus cornuta</i> var. <i>californica</i>	California hazelnut	2
<i>Cytisus scoparius</i>	Scots broom	2
<i>Gaultheria shallon</i>	salal	2
<i>Holodiscus discolor</i>	oceanspray	2
<i>Myrica californica</i>	wax myrtle	2
<i>Ribes sanguineum</i> var. <i>glutinosum</i>	pink-flowering currant	2
<i>Rosa</i> sp.	rose	2
<i>Rubus discolor</i>	Himalayan blackberry	2
<i>Rubus leucodermis</i>	white-stemmed raspberry	2
<i>Rubus parviflorus</i>	thimbleberry	2
<i>Rubus spectabilis</i>	salmonberry	2
<i>Rubus ursinus</i>	Pacific bramble or California blackberry	2
<i>Salix</i> sp.	willow	2
<i>Sambucus racemosa</i>	red elderberry	2
<i>Vaccinium ovatum</i>	evergreen huckleberry	2
<i>Achillea millefolium</i>	common yarrow	3
<i>Adenocaulon bicolor</i>	trail plant	3
<i>Aira caryophylla</i>	silver European hairgrass	3
<i>Anagallis arvensis</i>	scarlet pimpernel	3
<i>Anthoxanthum odoratum</i>	sweet vernal grass	3
<i>Asarum caudatum</i>	wild ginger	3
<i>Aster chilensis</i>	common California aster	3
<i>Athyrium filix-femina</i>	lady fern	3
<i>Bellis perennis</i>	English daisy	3
<i>Blechnum spicant</i>	deer fern	3
<i>Briza minor</i>	small quaking or rattlesnake grass	3
<i>Bromus</i> sp.	brome grass	3
<i>Cardamine californica</i>	California toothwort or milk maids	3
<i>Cardamine oligosperma</i>	western bittercress	3
<i>Carex hendersonii</i>	Henderson's sedge	3
<i>Carex obnupta</i>	slough sedge	3
<i>Carex</i> sp.	sedge	3

Table 3-1  
Species List  
Martin Subdivision

Latin Name	Common Name	Presence (1=tree, 2=shrub, 3=herb)
<i>Cirsium</i> sp.	thistle	3
<i>Claytonia perfoliata</i>	miner's lettuce	3
<i>Claytonia sibirica</i>	Siberian candyflower	3
<i>Conium maculatum</i>	poison hemlock	3
<i>Cortaderia jubata</i>	weedy pampas grass	3
<i>Cynoglossum grande</i>	hound's-tongue	3
<i>Cynosurus echinatus</i>	hedgehog dogtail grass	3
<i>Daucus carota</i>	wild carrot or Queen Anne's lace	3
<i>Dicentra formosa</i>	Pacific bleeding heart	3
<i>Digitalis purpurea</i>	foxglove	3
<i>Disporum</i> sp.	fairy bells	3
<i>Equisetum arvense</i>	common horsetail	3
<i>Erechtites minima</i>	toothed coast fireweed	3
<i>Eschscholzia californica</i>	California poppy	3
<i>Festuca arundinacea</i>	tall fescue	3
<i>Foeniculum vulgare</i>	fennel	3
<i>Fragaria chiloensis</i>	coastal strawberry	3
<i>Galium</i> sp.	bedstraw	3
<i>Geranium dissectum</i>	cut-leaved geranium	3
<i>Geranium molle</i>	dovefoot geranium	3
<i>Hedera helix</i>	English ivy	3
<i>Heracleum lanatum</i>	cow parsnip	3
<i>Holcus lanatus</i>	common velvet grass	3
<i>Hydrophyllum tenuipes</i>	Pacific waterleaf	3
<i>Hypericum perforatum</i>	Klamath weed or common St. John's-wort	3
<i>Hypochaeris radicata</i>	hairy cat's-ear	3
<i>Iris douglasiana</i>	Douglas iris	3
<i>Juncus effusus</i>	common rush	3
<i>Leucanthemum vulgare</i>	ox-eye daisy	3
<i>Linum bienne</i>	western blue flax	3
<i>Lotus corniculatus</i>	birdfoot trefoil	3
<i>Lupinus bicolor</i>	miniature lupine	3
<i>Maianthemum dilatatum</i>	false lily-of-the-valley	3
<i>Marah oreganus</i>	coast man-root	3
<i>Mentha pulegium</i>	pennyroyal	3
<i>Oenanthe sarmentosa</i>	Pacific water-parsley	3
<i>Osmorhiza chilensis</i>	mountain sweet-cicely	3
<i>Oxalis oregana</i>	redwood sorrel	3
<i>Petasites frigidis</i> var. <i>palmatus</i>	western coltsfoot	3
<i>Plantago lanceolata</i>	English plantain	3
<i>Polypodium glycyrrhiza</i>	licorice fern	3
<i>Polystichum munitum</i>	sword fern	3
<i>Prunella vulgaris</i>	self-heal	3



Table 3-1  
Species List  
Martin Subdivision

Latin Name	Common Name	Presence (1=tree, 2=shrub, 3=herb)
<i>Pteridium aquilinum</i> var. <i>pubescens</i>	western bracken fern	3
<i>Ranunculus repens</i>	creeping buttercup	3
<i>Raphanus sativus</i>	wild radish	3
<i>Rumex acetosella</i>	sheep sorrel	3
<i>Scirpus microcarpus</i>	small-flowered bulrush	3
<i>Smilacina racemosa</i>	branched Solomon's seal	3
<i>Stachys</i> sp.	hedge-nettle	3
<i>Taraxacum officinale</i>	dandelion	3
<i>Tolmiea menziesii</i>	youth-on-age	3
<i>Trientalis latifolia</i>	Pacific star flower	3
<i>Trifolium repens</i>	white clover	3
<i>Veronica americana</i>	American brooklime	3
<i>Vicia</i> sp.	vetch	3

16 of 16

**CALIFORNIA COASTAL COMMISSION**

NORTH 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



Hearing Date:  
Commission Action:

December 14, 2005  
**Approved with  
Conditions, December 14, 2005**

**ADOPTED FINDINGS****EXHIBIT NO. 7****APPLICATION NO.**

1-05-021-A1

MARTIN

CDP 1-05-021 ADOPTED  
FINDINGS (1 of 42)**APPLICATION NO.:****1-05-021****APPLICANT:****JEANINE MARTIN****PROJECT LOCATION:**

At 1090 Stagecoach Road, approximately  
1.5 miles north of Trinidad, Humboldt  
County (APN 515-231-004)

**PROJECT DESCRIPTION:**

Divide a 39.7-acre parcel into 4 lots of  
approximately 5.2 acres (Parcel 1), 10.3-  
acres (Parcel 2), 10.2 acres (Parcel 3), and  
14 acres (remainder parcel) and establish a  
vertical public access way over an existing  
foot trail to a beach through a grant of  
easement.

**GENERAL PLAN DESIGNATION  
(UNCERTIFIED):**

Rural Residential (RRB), One dwelling per  
two acres.

**ZONING DESIGNATION  
(UNCERTIFIED):**

Rural Residential Agriculture, 5-acre  
minimum lot size, with Alquist Priolo fault  
hazard, design review, and the protection of  
offshore rocks, intertidal areas, streams, and  
riparian corridors combining zones (RA-  
5/G,D,O, R)

**LOCAL APPROVALS RECEIVED:**

Humboldt County Parcel Map Subdivision  
and Special Permit

**1-05-021 – ADOPTED FINDINGS**

**JEANINE MARTIN**

**PAGE 2**

**OTHER APPROVALS REQUIRED:**      None

**SUBSTANTIVE FILE DOCUMENTS:**    Humboldt County Local Coastal Program;  
Coastal Development Permit No. 1-92-170  
(Witherill)

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**STAFF NOTES:**

**1.     Adopted Findings**

The Commission held a public hearing and approved the permit at the meeting of December 15, 2005. The adopted findings for approval differ from those contained in the written staff recommendation dated December 2, 2005. At the hearing, the applicant submitted a letter amending the project description to detail the proposed grant of a vertical public access easement to the Humboldt North Coast Land Trust for a vertical accessway from Stagecoach Road to Secret Beach through proposed Parcel 2 of the land division. The letter replaced Exhibit 8 of the written staff recommendation. At the hearing, the staff also presented an addendum that made certain changes and additions to the written staff recommendation. The addendum made clarifying changes to recommended Special Condition Nos. 1 and 2, and added a new Special Condition No. 13, requiring changes to the proposed vertical public access easement signage to ensure the access way will be sufficiently marked. Furthermore, the addendum presented certain new findings for approval of the project that were not included in the published staff recommendation, including the findings related to public access, protection of environmentally sensitive habitat, geologic hazards, visual resource protection, and new development. Finally, the addendum included an exhibit showing the location of the proposed vertical access way. That exhibit is included as new Exhibit 9 of the adopted findings. The Commission adopted the changes to the staff recommendation in their entirety.

The following resolution, conditions, and findings were adopted by the Commission on December 15, 2005 upon conclusion of the public hearing.

**2.   Standard of Review**

The proposed project is located in the Trinidad area of Humboldt County. Humboldt County has a certified LCP, but the subject property is located within an area of deferred certification. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act.

---

**I. RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

**II. STANDARD CONDITIONS:      See Attachment A.**

**III. SPECIAL CONDITIONS:**

**1. Open Space Restrictions**

A. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of the subject parcels created by the land division situated in or within one-hundred feet (100') of the exterior boundary of delineated wetlands and riparian vegetation environmentally sensitive habitat areas along Martin Creek, except those areas within the County road easement, as documented in the "Biological Assessment for the Martin Subdivision" prepared by SHN Consulting Engineers and Geologists, Inc. dated April 26, 2004, attached as Exhibit No. 7, except for:

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation to improve the habitat value of the buffer, and (b) removal of debris and unauthorized structures.

B. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of parcels 1 and 3 created by the land division situated within 100 feet of the existing bluff edge as documented in the "Bluff Edge Setback Evaluation, Parcels 1, 2, and 3 of the Proposed Subdivision of APN 515-231-004, Trinidad, California," prepared by SHN Consulting Engineers and Geologists, Inc. dated November, 2005, excerpts of which are attached as Exhibit No. 6, except for:

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation, and (b) removal of debris and unauthorized structures.
- C. No development, as defined in Section 30106 of the Coastal Act, shall occur in all areas of parcel 2 created by the land division situated within 125 feet of the existing bluff edge as documented in the "Bluff Edge Setback Evaluation, Parcels 1, 2, and 3 of the Proposed Subdivision of APN 515-231-004, Trinidad, California," prepared by SHN Consulting Engineers and Geologists, Inc. dated November, 2005, excerpts of which are attached as Exhibit No. 6, except for:
1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: (a) planting of native vegetation, and (b) removal of debris and unauthorized structures.
- D. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. 1-05-021**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by each subsection of this condition.

**2. Vertical Access Over Trail to Beach.**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall submit for the review and approval of the Executive Director, evidence that the applicant has executed and recorded a dedication to the Humboldt North Coast Land Trust of an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant in her letter to the Commission dated December 12, 2005 and included in the addendum to the staff recommendation dated December 13, 2005, except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.

**3. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**4. Final Erosion and Runoff Control Plan**

**PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-05-021**, the applicant shall submit a plan for erosion and run-off control to the Executive Director for review and approval.

1) EROSION CONTROL PLAN COMPONENT

a. The erosion control plan shall demonstrate that:

- (1) During construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and coastal resources;
- (2) The following temporary erosion control measures, as described in detail within in the January 2003 "California Stormwater BMP Handbook - Construction, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force, shall be used during construction: *Scheduling* (EC-1), *Preservation of Existing Vegetation* (EC-2), *Stabilized Construction Roadway* (TC-2), and *Silt Fences* (SE1); and
- (3) Following construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and coastal resources.

b. The plan shall include, at a minimum, the following components:

- (1) A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed for permanent erosion control;

- (2) A site plan showing the location of all temporary erosion control measures;
- (3) A schedule for installation and removal of the temporary erosion control measures;
- (4) A site plan showing the location of all permanent erosion control measures; and
- (5) A schedule for installation and maintenance of the permanent erosion control measures.

2) RUN-OFF CONTROL PLAN COMPONENT

a. The runoff control plan shall demonstrate that:

- (1) Runoff from the project shall not increase sedimentation into coastal waters;
- (2) Runoff from access roads and driveways, emergency vehicle turn-around areas, and other impervious surfaces on the site shall be collected and conveyed into vegetated areas to avoid sedimentation either on or off the site, and provide for bio-filtration treatment of pollutants entrained in runoff; and
- (3) The following temporary runoff control measures, as described in detail within in the January 2003 "California Stormwater BMP Handbook - Construction, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force, shall be used during construction: *Material Delivery and Storage* (WM-01), *Solid Waste Management* (WM-05), and *Vehicle and Equipment Fueling* (NS-9).

b. The plan shall include, at a minimum, the following components:

- (1) A narrative report describing all temporary runoff control measures to be used during construction and all permanent runoff control measures to be installed for permanent runoff control;
- (2) A site plan showing the location of all temporary runoff control measures;
- (3) A schedule for installation and removal of the temporary runoff control measures;
- (4) A site plan showing the location of all permanent runoff control measures; and
- (5) A site plan showing finished grades (at 1-foot contour intervals) and drainage improvements.

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the

Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**5. Encroachment Permit**

**PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-05-021**

the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit or exemption from Humboldt County. The encroachment permit or exemption shall evidence the ability of the applicant to improve the driveway and access roads to parcels 1, 2, and 3 of the subdivision at their intersections with Stagecoach Road, as conditioned herein.

**6. Final Parcel Map Review and Approval**

A. **PRIOR TO RECORDATION OF THE FINAL PARCEL MAP**, the applicant shall submit for the review and approval of the Executive Director a copy of the final parcel map approved by the County of Humboldt. The final map shall be consistent with the terms and conditions of Coastal Development Permit No. 1-05-021, and shall contain the following graphically-depicted information and textual notations:

1) Illustrations to be included on the Final Parcel Map

- a. Demarcation of the open space deed restriction area over the environmentally sensitive habitat area and the 100-foot buffer area required by Special Condition No. 1(A);
- b. Demarcation of the open space deed restriction areas over the bluff edge setbacks required by Special Condition No. 1(B) and 1(C); and
- c. Depiction of all existing and proposed deed restriction and easement areas consistent with the requirements of Coastal Development Permit No. 1-05-021.

2) Notes to be placed on the Final Parcel Map

- a. “The open space areas depicted on this map are areas in which no ‘development’ as defined by Section 30106 of the Coastal Act may occur as required by Special Condition No. 1 of Coastal Development Permit No. 1-05-021.”



- B. The applicant shall record the final parcel map consistent with the final parcel map as approved by the Executive Director.

**7. Recorded Documents Affecting Adjustment of Parcel Boundaries.**

Once the deeds, parcel or survey maps, and/or other instruments affecting the division of land authorized by this permit have been recorded, the applicant shall provide conformed copies of these documents to the Executive Director.

**8. Area of Archaeological Significance**

- A. If an area of cultural deposits is discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (c) hereof; and a qualified cultural resource specialist shall analyze the significance of the find.
- B. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.
  - (i) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director.
  - (ii) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

**9. Landscaping Restrictions**

The permittee shall comply with the following landscaping-related requirements:

- (a) Only native and/or non-invasive plant species shall be planted. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on

the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized within the bounds of the property; and

- (b) The use of rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

**10. No Future Bluff or Shoreline Protective Device**

- A(1) By acceptance of this Permit, the applicant/landowners agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 1-05-021 including, but not limited to, the driveway and access road improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2) By acceptance of this Permit, the applicant/landowners further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the driveway and access road improvements, if any government agency has ordered that the improvements are not to be used due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- A(3) In the event the edge of the bluff recedes to within twenty-five (25) feet of the driveway improvements but no government agency has ordered that the improvements not be used, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the permittee, that addresses whether any portions of the driveway and access road improvements are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the access and driveway improvements without shore or bluff protection, including but not limited to removal or relocation of portions of the access and driveway improvements. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the access and driveway improvements is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal

development permit amendment to remedy the hazard which shall include removal of the threatened portion of the development.

**11. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant/landowners acknowledge and agree: (i) that the site may be subject to hazards from coastal erosion hazards, such as waves, storm waves, and flooding; or landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**12. Public Rights.**

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future.

**13. Public Access Easement Signage**

The signage that will be erected and maintained by the Humboldt North Coast Land Trust pursuant to the terms of the proposed amended project description shall be located in close proximity to and be visible from Stagecoach Road and shall prominently display that the trail is available for public access use.

**III. FINDINGS AND DECLARATIONS.**

The Commission hereby finds and declares:

**A. Site Description.**

The subject 39.6-acre property is located along the coastal bluffs between the City of Trinidad and Patrick's Point State Park, about one and a half miles north of the City. The property is on the west side of Stagecoach Road, approximately 1,400 feet southwest from the intersection of Hobson Road with Stagecoach Road, on the property known as 1090 Stagecoach Road. Stagecoach Road is the first public road nearest the sea, and is narrow and windy.

The property is currently developed with one single-family residence, a barn, water wells, a septic system and dirt access roads.

The subject property is designated locally in the Humboldt County General Plan as Rural Residential, 5-acre minimum lot size, with an overlay combining zone regarding the evaluation of geologic hazards, design review, and the protection of offshore rocks, intertidal areas, streams, and riparian corridors. The property is surrounded by Stagecoach Road to the east, residential parcels to the north and south, and the Pacific Ocean to the west. The surrounding residential development ranges from smaller older homes of modest stature to large newer homes. The subject property includes ocean beaches, coastal bluffs, forested area, and open fields.

The coastline along the site is characterized by offshore rocks and narrow sand beaches backed by high rocky bluffs. The area on the property at the top of the bluffs is part of an uplifted marine terrace. Site topography varies considerably from the relatively flat ground of the marine terrace to the steep slopes within the Martin Creek ravine and on the coastal bluffs. According to the geotechnical report prepared for the project, elevations on the property range from sea level at the beach at the foot of the bluff to a maximum of 212 feet above mean sea level the very southeastern corner of the property near Stagecoach Road. The bluff top consists of a gently sloping (5% to 15%) uplifted marine terrace. The slope gradients of the bluff face vary and range from 25% to 110%, and the length of the slope of the bluff face varies between 330 feet at the north end of the property where the bluff face is steepest to 750 feet near the southern end of the property where the slope is shallower. Martin Creek, a perennial stream, runs through the property.

The property is in an area designated by the County as an area of high slope instability. In addition, a portion of the area to become Parcel 3 is within an Alquist-Priolo Special Studies hazard zone, as the Trinidad fault is present just south of the site.

The majority of the bluff top area of the subject property is covered with North coast coniferous forest habitat. The habitat assessment prepared for the project describes the habitat as follows:

The overstory of the forest habitat is dominated by Sitka spruce (*Picea sitchensis*) and red alder (*Alnus rubra*), with scattered grand fir (*Abies grandis*) and

naturalized and/or planted Monterey cypress (*Cupressus macrocarpa*) and blue gum eucalyptus (*Eucalyptus globules*). A subcanopy of cascara (*Rhamnus purshiana*) is present throughout this area. The dense shrub layer is dominated by coyote bush (*Baccharis pilularis*), salal (*Gaultheria shallon*), wax myrtle (*Myrica californica*), sword fern (*Polystichum munitum*), salmonberry (*Rubus spectabilis*), Pacific bramble (*R. ursinus*), and evergreen huckleberry (*Vaccinium ovatum*). The herbaceous layer varies from patchy to dense and is dominated by the following species: milk maids (*Cardamine californica*), sedge species (*Carex* sp.) Siberian candyflower (*Claytonia sibirica*), toothed coast fireweed (*Erechtites minima*), cow parsnip (*Heracleum lantum*), Pacific water parsley (*Oenanthe sarmentosa*), sweet-cicely (*Osmorhiza chilensis*), redwood sorrel (*Oxalis oregano*) hedge-nettle (*Stachys* sp.) and starflower (*Trientalis latifolia*). Heavy woody debris is scattered throughout the forest floor.

The portion of Martin Creek that is within the project area, defined as the SMA study area, is approximately 700 linear feet (Photo 1 in Attachment 2). This portion of the drainage is characterized by a well-developed streambed with moderately steep vegetated slopes. The riparian corridor includes a moderately open overstory of big-leaf maple (*Acer macrophyllum*), Sitka spruce and red alder, with scattered cascara and willows. Numerous moss and lichen species are present on the trees. The dense mesic understory is dominated by lady fern (*Athyrium filix-femina*), sedges, salal, false lily-of-the-valley (*Maianthemum dilatatum*), Pacific water-parsley, sweet-cicely, redwood sorrel, sword fern, salmonberry, Pacific bramble, elderberry (*Sambucus racemosa*), *Stachys* sp., piggy-back plant (*Tolmiea menziesii*), and evergreen huckleberry with scattered native and non-native grass species. Plant species cover the banks of the creek and there is relatively little evidence of stream bank erosion.

West of the Martin Creek study area, the terrain transitions to a steep coastal bluff that coincides with the shift from mesic North coast coniferous forest to coastal scrub brush habitat. This habitat is dominated by wind battered Sitka spruce and red alder, coyote bush, pampass grass (*Cortaderia jubata*), wax myrtle, and sword fern.

South of the Martin Creek drainage corridor, the vegetation composition consists of North coast coniferous forest habitat, although an open field is located within the building envelope of parcels 2 and 3 (Photo 2 in Attachment 2). The field was probably created from previous mowing and/or grazing activities. Most of the dominant species in this area are ruderal species such as common velvet grass (*Holcus lanatus*), hairy cat's-ear (*Hypochaeris radicata*), ox-eye daisy (*Leucanthemum vulgare*), dandelion (*Taraxacum officinale*), and clovers (*Trifolium* spp.). Additional species include: yarrow (*Achillea millefolium*), coast strawberry (*Fragaria chiloensis*), Douglas's iris (*Iris douglasiana*), self heal (*Prunella vulgaris*), western buttercup (*Ranunculus repens*), and California

figwort (*Scrophularia californica*). Douglas fir (*Pseudotsuga menziesii*), Sitka spruce, red alder, Monterey cypress and eucalyptus trees are scattered throughout the field and along its edges. The understory along the meadow edge includes coyote bush, Scots broom (*Cytisus scoparius*), salal, false lily-of-the-valley, and Pacific bramble. This habitat abruptly changes into coastal scrub brush beyond the edge of the bluff.

The subject property provides suitable potential habitat for three species included on federal or state rare or endangered lists including coho salmon, bank swallow, and western lily. The potential coho salmon habitat is within Martin Creek, and the potential bank swallow habitat is along the coastal bluff. Marginal western lily habitat has been identified along Martin Creek and the boundaries of proposed parcels 2 and 3, within County required setback areas.

An existing foot trail crosses the subject property a short distance to the south of Martin Creek at a bend in Stagecoach Road. The trailhead along Stagecoach Road is obscured by existing roadside vegetation and may not be noticeable to the casual observer unfamiliar with the area. The trail extends from Stagecoach Road to the sea by descending a steep slope along the general course of the creek to the sandy and rocky beaches at the shoreline.

The property lies within an area designated as "Coastal Scenic" under the County's uncertified General Plan. Views to the ocean through the property from most of Stagecoach Road are obscured by trees, although some views are afforded near Martin Creek.

Native Americans are known to have settled along the Humboldt County coast within the general vicinity of the subject property. However, there are no reports of historical resources having been found on the project site

**B. Local Coastal Program Background.**

In October of 1982, the Commission certified in part the Trinidad Area Land Use Plan of Humboldt County's Local Coastal Program. However, the Commission denied certification of the plan for privately owned lands, other than lands owned by the Humboldt North Coast Land Trust, located west of Scenic Drive, Stagecoach Road, and Patrick's Point Drive (where they are the first public roads paralleling the sea), and along the route of the 6<sup>th</sup> Avenue Trail in the Westhaven area. In denying certification for this area, the Commission suggested that the plan's policies regarding the protection of the public's right of access where acquired through use (i.e. potential prescriptive rights) be modified to conform to the natural resource, hazard, and public access policies of the Coastal Act. The County did not accept the suggested modification and the geographic area became an "area of deferred certification" or ADC. Consequently, the authority for

granting coastal development permits within the ADC is still retained by the Commission.

**C. Project Description.**

The proposed project consists of the subdivision of the 39.7-acre parcel into 4 lots of approximately 5.2 acres (Parcel 1), 10.3-acres (Parcel 2), 10.2 acres (Parcel 3), and 14 acres (remainder parcel). The remainder parcel is the parcel currently developed with a single-family residence, barn, water well system, and septic system. Proposed Parcels, 1, 2, and 3 are undeveloped except for existing wells and dirt access roads.

Water service would be accommodated by on-site wells. Wastewater treatment would be accommodated by individual on-site sewage disposal systems to be developed on each lot.

As part of its action on the tentative parcel map, the County required certain site access improvements. The County required that the proposed access drive intended to serve Parcels 2 and 3 that enters the southeast corner of the property from Stagecoach Road be widened to a width of 18 feet and paved with asphalt concrete for the first 50 feet, widened to 12 feet and constructed with an aggregate base for the remainder of the access road, and include a turnaround at the end of the access road. The access road and turnaround must be built consistent with the County's Fire Safe Ordinance Regulations. In addition, the existing access roads serving the remainder parcel and Parcel 1 must be paved with asphalt concrete for the width of the driveway and a distance of 25 feet from the edge of the County road.

Furthermore, the County required that each parcel, including the remainder parcel to developed with a 2,500-gallon emergency water supply. Water supply lines are also required to be installed to each parcel.

As part of the proposed project, the applicant is proposing to dedicate an easement to the North Coast Land Trust for a ten (10) foot wide vertical easement located on proposed Parcel 2 which would provide access to "Secret" Beach. The proposed easements and the conditions under which the grant easement would be recorded and public access use allowed are further discussed in Finding G, Public Access.

**D. Land Divisions Outside Existing Developed Areas.**

Section 30250(a) provides as follows:

*New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such*

*areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The subject property is located outside of the urban boundary of Trinidad, and is therefore subject to the rural land division criteria of Section 30250(a) of the Coastal Act. To meet the criteria, the subject property must be located within an area where 50% or more of the usable parcels have been developed, and the newly created parcels must be no smaller than the average size of the surrounding parcels.

Taking the second test first, the Commission has normally taken "surrounding parcels" to include those within a quarter-mile radius. Consistent with the decision of a state court of appeal (Billings v. CCC (1980) 103 Cal.App.3<sup>rd</sup> 729), this radius may be modified where geographic or other features clearly distinguish some of the parcels within it from those surrounding the subject property. In this instance, a major distinguishing factor is the local zoning and land use of the surrounding area. A total of 39 parcels in the surrounding area (excluding the subject parcel) are designated locally as Rural Residential which can be developed for low density residential use with five acre minimum parcel sizes. This rural residential area extends along the coastal bluff area approximately 1,000 feet south of the property, 2,500 feet north of the property, and a maximum of 1,000 feet east of the property, generally to Patrick's Point Drive in areas north of Martin Creek and Stagecoach Road south of Martin Creek (See page 4 of 4 of Exhibit 5). The surrounding area beyond this rural residentially zoned area is of a very different character. The area east of Patrick's Point Road includes parcels of relatively large size zoned for timber production and parcels of variable size zoned for commercial recreation partially because of their adjacency to Highway 101. The area north of the rural residentially zoned area is similarly zoned as commercial recreation, and to the south of the rural residentially zoned area is the large area encompassed by a portion of the Trinidad State Beach state park unit. Therefore, the Commission finds that it is appropriate to exclude the parcels beyond the surrounding rural residential area from the study area of conformance with the rural land division criteria.

The applicant submitted an analysis of the conformance of the parcels within the surrounding study area described above with the rural land division criteria of the Coastal Act (see Exhibit 5).

Of the 39 residential parcels in the lot size study area, over half (20) are less than five acres in gross size, with the largest being 25 acres. The arithmetic mean of these parcels is 6.3-acres, the median parcel size (the value falling in the middle of the range) is 5.0-acres, and the mode (the value which occurs most frequently) is five acres ( $n = 6$ ). Three



of the four parcels that would be created by the proposed subdivision, the 10.2-acre Parcel 3, the 10.3-acre Parcel 2 and the 14-acre remainder parcel, would be larger than the 6.3-acre arithmetic mean, and the 5.2-acre Parcel 1 would be smaller than the mean. All four parcels would be larger than the 5.0-acre median parcel size and mode of the surrounding parcels.

The court in Billings concluded that the Commission should identify the "typical" or "representative" parcel size. Where the presence of several large parcels would skew the average, the median parcel size and mode provide a better picture of the typical parcel size in the area. In this instance, due to the presence of several large parcels, the arithmetic mean of surrounding parcels is larger than the smallest of the parcels proposed to be created by the subdivision (5.2 acres). However, both the median parcel size and the mode of surrounding parcels is smaller than 5.2 acres, and therefore the Commission finds that the proposed parcel sizes of the lots to be created by the land division are consistent with the rural land division criteria of Section 30250(a) of the Coastal Act.

The other test of the rural land division criteria of Section 30250(a) is whether 50% or more of the surrounding parcels are developed. In this case, 27 of the 39 surrounding parcels in the study area, or 69% are developed. Therefore, the proposed land division meets the developed parcel criteria as over 50 percent of the surrounding parcels are developed.

On the basis of the above analysis, the Commission finds that the proposed subdivision is consistent with the rural land division criteria of Section 30250(a) of the Coastal Act.

**E. New Development.**

Coastal Act Section 30250 (a) states in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

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

The proposed land division is located within a rural area that has been planned and zoned to accommodate it. The proposed residential subdivision is consistent with the uncertified rural residential use and zoning designations locally applied to the site and the parcel sizes proposed of all of the parcels to be created by the subdivision exceed the 5-acre minimum parcel size required by the zoning ordinance.

The applicant is proposing that the residential parcels to be created be served by on-site sewage disposal and water systems. Test wells and soils evaluations have been conducted to evaluate the suitability of the site for sewage septic systems and to evaluate the suitability of groundwater found at the site for residential use. These studies indicate that the soils are adequate to accommodate on-site septic systems and sufficient groundwater is available to serve the proposed residential uses of the site. In a memorandum dated August 10, 2004, the Humboldt County Department of Public Health, Division of Environmental Health states that (1) the applicant has completed soils testing which demonstrates that conventional in-ground gravity sewage disposal systems can serve each of the proposed parcels of the land division, and (2) the applicant has completed water supply testing which meets the current requirements for the proposed subdivision (see Exhibit 4 of the staff recommendation).

With regard to road services, County concluded in its review of the subdivision that the added traffic generated by future residents of the subdivision would not create a significant impact on traffic and that necessary emergency access to and from the site would not be adversely affected.

As (1) the proposed subdivision will be located in an area planned and zoned for rural residential development at the density proposed by the applicant; (2) the applicant has submitted evidence that on-site sewage disposal systems and water wells will be adequate to serve the development; and (3) the County has determined there will be no significant traffic impact resulting from the project, the Commission finds that the proposed development is consistent with Section 30250(a) of the Coastal Act to the extent that the development will be located in an area able to accommodate it.

**F. Environmentally Sensitive Habitat Area.**

Coastal Act Section 30240 states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

A biological assessment was performed for the proposed project by SHN, in April of 2004 (see Exhibit No. 7 of the staff recommendation). The report identifies the riparian area associated with Martin Creek, which traverses east to west through the middle portion of the property, as an environmentally sensitive habitat area (ESHA) as defined under the Coastal Act. The portion of Martin Creek that is within the project area is approximately 700 linear feet. This portion of the drainage is characterized by a well-developed streambed with moderately steep vegetated slopes. The riparian corridor includes a moderately open overstory of big-leaf maple (*Acer macrophyllum*), Sitka spruce and red alder, with scattered cascara and willows. Numerous moss and lichen species are present on the trees. The dense mesic understory is dominated by lady fern (*Athyrium filix-femina*), sedges, salal, false lily-of-the-valley (*Maianthemum dilatatum*), Pacific water-parsley, sweet-cicely, redwood sorrel, sword fern, salmonberry, Pacific bramble, elderberry (*Sambucus racemosa*), *Stachys* sp., piggy-back plant (*Tolmiea menziesii*), and evergreen huckleberry with scattered native and non-native grass species. Plant species cover the banks of the creek and there is relatively little evidence of stream bank erosion. The stream may provide habitat to two species included on federal or state rare or endangered species lists, including coho salmon and western lily. The biological assessment recommends that a 100-foot buffer be established on either side of the Martin Creek ESHA.

Although the biological assessment did not specifically identify such habitat, the assessment indicates that suitable habitat for another rare or endangered species, the bank swallow, may be found along the bluffs at the western edge of the project site. The report notes that any habitat along the bluffs would be protected by the proposed and required geologic setbacks.

The assessment examined the identified building sites for the future homes on each of the proposed new parcels and determined that development in these sites would not have an adverse impact on sensitive species within the building envelopes. However, the assessment indicates that suitable habitat for sensitive species may exist in areas outside of the identified building sites, even though no such habitat has yet been positively identified. The assessment recommends that additional habitat assessments be performed during the review of future coastal development permit applications seeking authorization to construct the homes to determine whether the need to provide ESHA buffers would affect home location within the identified building areas.

In its approval of the tentative map for the subdivision, the County required that a 100-foot streamside management area be established around both sides of Martin Creek. The County required that the 100-foot wetland protection area (including the 100-foot buffer and wetlands themselves) be shown on a Development Plan and be designated as “non-buildable.” A Notice of Development Plan referencing the limitations imposed on the Development Plan must be recorded against the property.

**1-05-021 – ADOPTED FINDINGS**

**JEANINE MARTIN**

**PAGE 19**

Building sites have been identified for all of the parcels to be created by the proposed land division. All of the identified building sites are located well away from the identified ESHA on the site. However, to ensure that future home development does not encroach into the Martin Creek ESHA or the recommended 100-foot buffer around each side of the stream, the Commission attaches Special Condition No. 1. Among other things, this condition requires the recordation of an open space deed restriction over all areas within 100 feet of the exterior boundary of delineated wetlands and the riparian vegetation along Martin Creek except those areas within the County road easement. The deed restriction must be submitted for the review and approval of the Executive Director prior to recordation. The deed restriction would prohibit all development in the affected area except for the planting of native vegetation and the removal of debris and unauthorized structures if approved by a permit amendment. The Commission notes that the requirement of Special Condition No. 1 to record a deed restriction will ensure that both the applicant and future purchasers of the property are notified of the prohibitions on development within the Martin Creek ESHA and buffer area.

With respect to the protection of bank swallows that may inhabit the bluff face, the Commission notes that open space deed restriction requirements imposed to ensure that future homes are set back sufficiently from the bluff edge to protect against geologic hazards will also serve to protect potential bank swallow habitat. Special Condition No. 1 requires that a 100-foot wide open space deed restriction extending landward from the bluff edge be established over proposed parcels 1 and 3, and that a 125-foot- wide open space deed restriction be established landward of the bluff edge of proposed parcel 2.

The Commission notes that each future home would require additional coastal development permit authorization from the Commission, or the County if this area of deferred certification should become certified in the meantime. Therefore, the Commission or the County will have the opportunity to review the location and design of each of the houses for its effects on ESHA. Additional habitat assessments will be required as part of the applications for these future homes to determine whether the specific building locations selected encroach into any sensitive plant habitat or needed buffer area. Special conditions could be imposed in the permits to ensure that such encroachment into ESHA or ESHA buffer does not occur.

Coastal Development Permit Application No. 1-05-021 includes a request for authorization for certain driveway and water facility improvements. The driveway improvements would be limited to the widening and extension of existing dirt roadways that exist on the site. The water facility improvements would largely be underground, although water storage tanks to provide water for fire suppression would need to be installed on each proposed parcel. The habitat assessment did not identify any ESHA or

needed ESHA buffer area in the immediate vicinity of the proposed driveway and water facility improvements.

Therefore, the proposed development would not adversely affect ESHA and would not result in the development of future homes on the parcels in or closely adjacent to environmentally sensitive habitat areas that would adversely affect the environmentally sensitive habitat contrary to Section 30240.

As conditioned, the Commission finds that the proposed development is consistent with Section 30240 of the Coastal Act as (1) no development would occur within any environmentally sensitive habitat area, (2) development on the property will be sited and designed to prevent impacts which would significantly degrade those areas and will be compatible with the continuance of the habitat, and (3) future development that might occur on the property within the Commission's jurisdiction will be reviewed by the Commission to ensure that such development also does not adversely affect the environmentally sensitive habitat areas on the property.

**G. Public Access and Recreation.**

**1. Summary of Coastal Act Policies**

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of the Coastal Act. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 states, in applicable part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
  - (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
  - (2) *Adequate access exists nearby, or,*
  - (3) *Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 states:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
  - (1) *Topographic and geologic site characteristics.*
  - (2) *The capacity of the site to sustain use and at what level of intensity.*
  - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
  - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a*

*limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

### Discussion

#### Dedicated Public Access Facilities

As proposed under the amended project description included as Attachment 1 to the staff addendum, dated December 13, 2005, the applicant is proposing to grant to the Humboldt North Coast Land Trust a ten-foot-wide vertical easement for public access and passive recreational use from Stagecoach Road to a pocket beach at the base of the bluffs on the property known as "Secret Beach." The easement alignment is centered along an existing footpath in the vicinity of Martin Creek within proposed Parcel 2, as shown in Attachment 2 of the addendum to the staff recommendation and Exhibit 9 of the Adopted Findings. The easement would be ten feet wide, but in some locations may be wider to accommodate cuts, fills, switchbacks, and landslides. The Board of Directors of the Humboldt North Coast Land Trust has preliminarily agreed to accept and manage the easement.

The accessway would be dedicated in a manner consistent with the standards typically applied by the Commission and including the following dedication and recordation procedures:

- (1) The applicant would submit the proposed grant easement for the discretionary review and approval of the Executive Director prior to recordation;
- (2) The grant easement approved by the Executive Director would be recorded prior to issuance of the coastal development permit;
- (3) The grant easement approved by the Executive Director would include legal descriptions of both the entire project site and the area of dedication;
- (4) The grant easement approved by the Executive Director would be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed;

- (5) The grant easement approved by the Executive Director would require that any future development that is proposed to be located either in whole or in part within the areas described in the recorded easement shall require a Commission amendment of the coastal development permit;

The offers, as proposed, would be subject to the following seven limitations on use by the public:

- (1) The trail would be open from sunrise to sunset;
- (2) No camping would be allowed;
- (3) No dogs would be allowed;
- (4) No guns would be allowed;
- (5) No campfires would be allowed;
- (6) Users would be prohibited from removing rocks, soil or plants from the trail;
- (7) Users would be required to remain on the trail.

These limitations on use would be listed on a permanent sign to be installed and maintained by the Land Trust. The grant of the vertical public access easement would be conditioned upon the Land Trust not widening or improving the entrance to the trail. The trail would be classified as a Class IV trail. To assist the Land Trust in maintaining the trail, the applicant proposes to pay the Land Trust a one-time donation of \$5,000.00.

To approve the proposed project, the Commission must find the project to be consistent with the public access policies outlined in Section 30210, 30211, 30212, and 30214 of the Coastal Act listed above. The project's consistency with each of these policies is described below.

a. Consistency with Sections 30211 and 30214 of the Coastal Act

Section 30211 of the Coastal Act states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization.*" Applicants for coastal development permits which involve development between the first public road and the sea must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Sections 30211 and 30214 of the Coastal Act. Section 30214 indicates that public access shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case. In implementing these policies, the Commission must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. The Commission must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use only if the Commission finds the proposed development will interfere with an impliedly dedicated public use.



Because the authority to make a final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues use the same analysis as the courts. Essentially, this requires the Commission to consider whether there is substantial evidence indicating that the requisite elements of an implied dedication are present. The Commission also must consider whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication." The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitations, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- 1) The public has used the land for a period of five years or more as if it were public land;
- 2) Without asking for or receiving permission from the owners;
- 3) With the actual or presumed knowledge of the owner;
- 4) Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- 5) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any prescriptive rights which may exist.

In the present case, the applicant has proposed public access as part of the project. The applicant elected to grant such access to eliminate the potential that proposed development would interfere with any public access rights which may exist. Consequently, the Commission will evaluate whether the project as proposed would interfere with potential prescriptive rights of public access that might exist on the property. If the proposed project would not interfere with any potential prescriptive rights of public access that might exist, the project would be consistent with Section 30211 of the Coastal Act because any public rights of access to the sea acquired through use would be protected. Therefore, if the Commission determines that the proposed development would not interfere with potential prescriptive rights of public access that might exist on the property, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the project consistent with Section 30211.

b. Potential for Development to Interfere with Public's Right of Access

The project site occupies a portion of an uplifted marine terrace. The property is crossed by a well-worn footpath extending from Stagecoach Road and descending to Secret Beach near Martin Creek on proposed Parcel 2 of the land division. While this feature indicates that some access use has occurred across the bluff top and down to the beach, the period in which the access use has occurred, the casual or continuous pattern of access use, and the degree to which such use has been substantial is not fully known.

In the past, the Commission has received telephone inquiries from a number of individuals inquiring about the status of the trail and indicating that they had used the trail on many occasions for their own use and had observed others using the trail as well.

In addition, the uncertified portion of the Humboldt County Land Use Plan that covers the area west of Stagecoach Road, where the subject property is located, identifies the foot path to Secret Beach as an existing beach access trail and recommends that an accessway along the trail be provided with new development.

Although this information suggests a period of use in the past, the evidence does not by itself establish potential prescriptive rights of public access. For example, the information does not show the extent of public use or whether the public use was adverse or without the permission of the property owner.

In addition to this information, the Commission staff also examined aerial photographs from 1948 through 2001. All of the photographs examined from this period show evidence of a trail to the beach. Thus, the evidence derived from the aerial photography analysis suggests potential prescriptive use of the pathway to the beach.

There are some limitations that prevent property from being impliedly dedicated, even if the requisite elements of implied dedication have otherwise been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g., permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

Section 813 of the Civil Code, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur even if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive.

Section 1008 of the Civil Code provides that no use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code."

It is not clear whether a Notice of Permissive Use has ever been recorded against the subject property consistent with Section 813 of the Civil Code or posted on the subject property in a manner consistent with Section 1008 of the Civil Code.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose on shoreline properties than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean its bays, and inlets, unless there has been a written, irrevocable offer of dedication or unless a government entity has improved, cleaned, maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore the required five-year period of use need not have occurred prior to March of 1972 in order to establish public rights in the property.

The available preliminary evidence suggests that the only portions of the project site where prescriptive rights of access may have accrued are over the trail to and along Secret Beach at the base of the bluffs in proposed Parcel 2. Even so, it is not clear that the use has been prescriptive. In the early 1990s, former owners of the property filed a quiet title action with the Humboldt County Superior Court that resulted in the court determining at that time that no prescriptive easement for public access exists. It is not clear whether other evidence exists to establish potential prescriptive rights during other periods of time not addressed by the 1990s quiet title action. In addition, it is not clear whether a Notice of Permissive Use has ever been recorded against the property.

However, the project as proposed would not affect any potential prescriptive rights of access. Firstly, the project includes a proposal to grant an easement of vertical public access over the footpath from Stagecoach Road to Secret Beach. This proposed grant easement covers the most probable location where prescriptive rights may have accrued and that could most easily be adversely affected by future development facilitated by the subject land division (i.e., trail to Secret Beach). The area offered under the proposed grant easement is the most critical portion of the area where potential implied dedication may have occurred as it provides the most easily accessible point from the public road. In addition, this area is located where a future proposed gate, fence, or other accessory structure could very easily obstruct public access. By recording the grant easement of vertical public access, this area of potential prescriptive rights will be protected for public access use.

Furthermore, in this case, the proposed parcel that would include the grant easement is large enough that, even if substantial evidence of prescriptive rights of public access along the trails on the bluff edge and down to Secret Beach could be established, future development on the parcel could be sited where it would not adversely affect such access. The Commission notes that the applicant has identified a building site located approximately 250 feet to the south of the existing footpath. Although the building site must be moved 25 feet further east from the bluff edge to ensure the future building would not be affected by bluff retreat, as discussed in Finding H below, future development on the parcel could easily be sited where it would not adversely affect potential prescriptive rights of public access. The development proposed under current Coastal Development Permit Application No. 1-05-021 itself includes the construction of certain driveways and utility improvements to serve proposed Parcel 2. However, none of this development is proposed in the vicinity of the proposed easement for vertical access. Therefore, the proposed development would not conflict "with the public's right of access to the sea where acquired through use or legislative authorization." Therefore, the Commission finds that the proposed project is consistent with Coastal Act Section 30211.

The applicant has included several provisions under which the easement dedications are being offered, including limiting use of the trail to the period between sunrise and sunset, and prohibiting users from camping, bringing dogs or guns, having campfires, going off

the trail, or removing rocks, soil, or plants from the trail. These limitations on use would not significantly interfere with any potential rights of public access that may exist. The limitations on use of the trail to daylight hours is consistent with the safe use of the trail, as the trail descends over 140 feet to the beach and is very steep, rocky, and unimproved. The trail is challenging to negotiate in daylight and would be hazardous to use at night in the dark. In addition, there is no evidence that use of the trail or Secret Beach at night has been significant or substantial. Thus, prohibition of camping and use of the trail at night would not interfere with any potential rights of public access that may exist. The prohibition on guns is also consistent with public safety and the enjoyment of the trail by members of the public. The prohibition of removing rocks, soil, or plants from the trail would help maintain bluff stability and would protect the environment for the enjoyment of future users of the trail. Therefore, the project is consistent with Section 30211 as the limitations on use of the vertical easement and future development that would be accommodated by the proposed land division would not interfere with any potential right of public access to the sea where acquired through use or legislative authorization.

Allowing the limitations on use of the public access area proposed by the applicant is consistent with the requirements of Section 30214 of the Coastal Act that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access depending on the facts and circumstances of each case. In this case, allowing the limitations on use of the proposed public access easement proposed by the applicant is appropriate given the safety concerns that would be associated with nighttime use of the trail, fires on the beach, and the presence of guns. In addition, the prohibition against removing rocks, soil, or plants from the trail is appropriate to help retain the native landscape and minimize bluff stability problems. Therefore, the Commission finds that the project as proposed with its specific limitations on public access use of the proposed easement is consistent with Section 30214 of the Coastal Act.

Thus, with the proposed grant of an easement for vertical public access, the proposed development as conditioned would not adversely affect any potential prescriptive rights of public access that may exist. Therefore, the Commission need not perform an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because, regardless of the outcome of the investigation, the Commission could find the project as conditioned consistent with Section 30211 of the Coastal Act, as any public rights of access to the sea acquired through use would be protected consistent with these provisions. To ensure that the proposed grant of an easement of vertical public access is recorded as proposed, the Commission attaches Special Condition No. 2. This condition requires the applicant to submit, prior to issuance of the permit and for the review and approval of the Executive Director, evidence that the applicant has executed and recorded the proposed dedication to the Humboldt North Coast Land Trust of the easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant. In addition, the special condition requires that any future development that is proposed to be located either in whole or in part within the area described in the

recorded offer of dedication shall require a Commission amendment, to ensure the Commission will be able to review the effects of the proposed development on public access and the project's continued consistency with the public access policies of the Coastal Act. As conditioned, the Commission finds that the proposed development is consistent with Section 30211.

c. Consistency with Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast need not be provided in new development projects where: (1) it would be inconsistent with the protection of fragile coastal resources; or (2) adequate access exists nearby. However, the Commission notes that Section 30212 of the Coastal Act is a separate section of the Act from Section 30211, the policy that states that development shall not interfere with the public's right of access to the sea when acquired through use. The limitations on the provision of new access imposed by Section 30212 do not pertain to Section 30211. Even if public prescriptive rights of access have accrued over trails that pass through environmentally sensitive habitat areas or in areas near other public access, Section 30211 requires the development not be allowed to interfere with those rights.

Moreover, in the absence of the proposed grant of an easement for vertical public access from Stagecoach Road to Secret Beach, adequate access does not exist nearby. Thus, without the grant of access easement proposed by the applicant, pedestrian public access to this section of the coast from the area would be blocked.

Therefore, the Commission finds that the offers to dedicate public access easements proposed by the applicant are consistent with Section 30212 of the Coastal Act, as the access will be provided consistent with the protection of coastal resources and adequate access does not exist nearby.

d. Consistency with Section 30210

Section 30210 of the Coastal Act states that the maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with the public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. As proposed by the applicant, a sign will be erected and maintained by the Humboldt North Coast Land Trust listing the limitations on use of the trail. However, no specific trail marker that would be visible to passers by on Stagecoach Road is proposed. To ensure that the vertical public access easement is conspicuously posted so the public will be better aware of its availability for use as required by Section 30210, the Commission attaches Special Condition No. 13. This special condition requires changes to the proposed vertical public access easement signage to ensure the access way will be sufficiently marked, by

requiring the proposed signage to be located in close proximity to and visible from Statecoach Road and prominently display that the trail is available for public use.

As proposed by the applicant, and as further conditioned below by Special Condition Nos. 2, 12, and 13 which collectively protect the public's right of access where acquired through use, both now and into the future, the Commission finds that the project is consistent with Section 30210 of the Coastal Act.

e. Conclusion

Wherever possible, it is advantageous to secure either an offer to dedicate an easement for public access or an actual dedication and recordation of public access rights. Unless this is done, the controversy over implied dedication is merely postponed, and passage of time may complicate problems of proof. Even where the evidence of implied dedication is clear, the public is best served by recordation of an actual dedication which clarifies the rights of everyone.

To ensure that the proposed project will not interfere with any implied dedication of access which may have occurred, both now and into the future, the Commission attaches Special Condition Nos. 2, 12, and 13.

Special Condition No. 2 requires the applicant to provide evidence for the review and approval of the executive Director that her proposal to grant an easement for vertical public access over the property has been properly recorded prior to issuance of the coastal development permit.

Special Condition No. 12 protects the public's rights of access over the property since public prescriptive rights have not been adjudicated by a court of law at this time. Special Condition No. 12 states that by acceptance of the permit, the applicant agrees that the issuance of the permit and the completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline (prescriptive rights), and that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with the rights of public access to the shoreline acquired through use which may exist on the property.

Special Condition No. 13 ensures the public access way will be conspicuously marked as required by Section 30210 of the Coastal Act by requiring the signage to be in close proximity to and prominently visible from Stagecoach Road where passers by would see it.

In conclusion, although there is an unresolved question as to the existence of public prescriptive rights, the applicants offers to dedicate easements for public access protects any potential rights of public access where acquired through use. The proposed project as conditioned is consistent with Section 30211 of the Coastal Act because, whether or not a court of law were to adjudicate that existing use of the site for coastal access

constitutes a public prescriptive right, for the reasons stated above, the Commission finds that the proposed development would not interfere with such access rights in a manner inconsistent with Section 30211 of the Coastal Act.

## **H      Geologic Stability**

### Coastal Act Policies:

Section 30235 states:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.*

Section 30253 states in applicable part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

The subject property encompasses an uplifted marine terrace situated approximately 200 feet above the ocean. The coastal bluffs are subject to bluff retreat, which poses a hazard to development of the subject parcel.

In previous actions on coastal development permits, the Commission has interpreted Section 30253 of the Coastal Act to require that coastal development be sited a sufficient distance landward of coastal bluffs that it will neither be endangered by erosion nor lead to the construction of protective coastal armoring during the assumed economic life of the development. The Commission has generally assumed the economic life of a new



house to be 75 to 100 years. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. Long-term bluff retreat is measured by examining historic data including vertical aerial photographs and any surveys conducted that identified the bluff edge. Slope stability is a measure of the resistance of a slope to land sliding, and is assessed by a quantitative slope stability analysis. In such an analysis, the forces resisting a potential landslide are first determined. These are essentially the strength of the rocks or soils making up the bluff. Next, the forces driving a potential landslide are determined. These forces are the weight of the rocks as projected along a potential slide surface. The resisting forces are divided by the driving forces to determine the "factor of safety." The process involves determining a setback from the bluff edge where a factor of safety of 1.5 is achieved. The quantitative slope stability analysis needs to be prepared by licensed geotechnical professional familiar with the process.

The applicant commissioned SHN Consulting Engineers & Geologists, Inc. to perform a geotechnical investigation of the site. The geotechnical investigation of the site is documented in the geotechnical report entitled, "Bluff Edge Setback Evaluation, Parcels 1, 2, and 3 of the Proposed Subdivision of APN 515-231-004, Trinidad, California. Excerpts of the report are included in Exhibit 6 of the written staff recommendation. The report indicates that the bluffs are composed of terrace deposits underlain by the Franciscan Complex regional bedrock unit. The report indicates the bluffs are subject to retreat and that recent and historic ground movement is evident along the bluff edge and on the surface of the slopes leading down to the shoreline.

In assessing the long-term bluff retreat rate at the site, the SHN investigation utilized 8 sets of aerial photographs spanning 54 years. The report the long-term average erosion rate for the 54-year period is variable along the bluff. The investigation calculated a long-term average rate of bluff retreat for the bluffs in the vicinity of proposed parcel 1 of 0.7 feet per year, and a rate of 1.1 feet per year for the bluffs in the vicinity of proposed parcels 2 and 3. Using a design life of 75 years, SHN determined that a bluff retreat setback of at least 52.5 feet would be needed for parcel 1 and 82.5 feet for parcels 2 and 3. .74 feet per year

The SHN investigation includes a quantitative slope stability analysis using data obtained from five other geotechnical investigations in the project area. The factor of safety increases with distance from the bluff edge, and the report considered the point on the ground corresponding to a factor of safety of 1.5, the industry standard for new development.

Based on the results of the analysis of long term bluff retreat and slope stability, SHN indicates a minimum setback line from the present bluff edge of 79.5 feet is needed for proposed Parcel 1, a 125-foot setback is needed for proposed parcel 2, and a 96-foot setback is needed for proposed Parcel 3 feet to protect the future homes that would be accommodated by the subdivision. SHN has generalized these results to recommend a

## **1-05-021 – ADOPTED FINDINGS**

**JEANINE MARTIN**

**PAGE 33**

100-foot setback for proposed parcels 1 and 3 and a 125-foot setback for proposed parcel 2.

Coastal Commission staff geologist Dr. Mark Johnsson has reviewed the SHN report and conferred with the applicants' geologists. Dr. Johnsson has indicated that he believes that the recommended setbacks are reasonable based on the analysis that was prepared and concurs that the applicant's geologist's recommended setbacks are appropriate.

All of the proposed driveway and water facility improvements would be set back from the bluff edge at greater distances than the recommended setbacks. In addition, each of the proposed parcels has ample room to accommodate building sites for future homes that would both be landward of the recommended bluff setbacks and outside of the required Martin Creek ESHA open space area.

To ensure that (1) the currently proposed and future development is actually setback sufficient distances as recommended to ensure their safety from bluff erosion and cliff retreat during their typical economic lifespans, and (2) the setback would be of sufficient distance to eliminate the need for shoreline protection devices to protect the structure in the future consistent with Section 30253 of the Coastal Act, the Commission attaches Special Condition No. 1. This special condition requires the recordation of a 100-foot-wide open space deed restriction extending landward from the bluff edge be established over proposed parcels 1 and 3, and that a 125-foot-wide open space deed restriction be established landward of the bluff edge of proposed parcel 2. The deed restriction must be submitted for the review and approval of the Executive Director prior to recordation. The deed restriction would prohibit all development in the affected area except for the planting of native vegetation and the removal of debris and unauthorized structures if approved by a permit amendment. The Commission notes that the requirement of Special Condition No. 1 to record a deed restriction will ensure that both the applicant and future purchasers of the property are notified of the bluff edge setback requirements.

The Commission finds that the proposed development as conditioned will be set back a sufficient distance from the bluff edge to provide for the economic design life of each element of the development and eliminate the need for shoreline protection devices to protect the development consistent with Section 30253 of the Coastal Act.

Notwithstanding the relative degree of insulation of the proposed project improvements in their proposed locations from geologic hazards, the applicant is proposing to construct development that would be located on a high uplifted marine terrace bluff top that is actively eroding. Consequently, the development would be located in an area of high geologic hazard. However, new development can only be found consistent with Sections 30235 and 30253 of the Coastal Act if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicant has submitted information from a registered engineering geologist which states that if new

## 1-05-021 – ADOPTED FINDINGS

JEANINE MARTIN

PAGE 34

development is set back at least 100-feet from the bluff edge on proposed parcels 1 and 3 and 125 feet from the bluff edge on proposed parcel 2, the development will be safe from erosion and will not require any devices to protect the development during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff top parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff top lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a bluff top project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

The Commission emphasizes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device, inconsistent with Section 30235 of the Coastal Act. The Commission finds that the proposed development could not be approved as being consistent with Section 30235 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicant's geologist and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized if development is set back at least 100-feet from the bluff edge on proposed parcels 1 and 3 and 125 feet from the bluff edge on proposed parcel 2. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed development is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 10 to ensure that no future shoreline protective device will be constructed.

Special Condition No. 10 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the proposed driveway and water facility improvements associated with the land division if bluff retreat reaches the point where this development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with Coastal Act Section 30253, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not

be approved as being consistent with Coastal Act Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 11 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed previously, the requirement of Special Condition No. 1 that a deed restriction be recorded, will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 10 requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the driveway and water facility improvements should the bluff retreat reach the point where a government agency has ordered that these facilities not be used.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the Coastal Act regarding geologic hazards, including Coastal Act Sections 30235 and 30253, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, will not require the construction of shoreline protective works, and as the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the Coastal Act.

## **I. Protection of Water Quality**

### Coastal Act Policy

Section 30231 of the Coastal Act states as follows:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### Discussion

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. Recognizing this potential impact, Section 30231 requires the protection of coastal waters to ensure biological productivity, protect public health and water quality. New development must not adversely affect these values and should help to restore them when possible.

The subject parcel includes intertidal areas, coastal bluffs and gently sloping portions of an uplifted coastal terrace planned and zoned for low-density rural residential development. Runoff from the terrace generally flows westerly across the property to the coastal bluffs and also north and south into the Martin Creek drainage which cuts across the property from east to west before discharging to the ocean.

As discussed in the Project Description finding above, the project entails only the platting of a total of four lots, consisting of three parcels and a remainder parcel in the parlance of the Subdivision Map Act, with no residential improvements being proposed at this time. The County's approval of the tentative subdivision map was, however, conditioned upon certain access roadway and water system improvements being performed on the property. Runoff originating from the development site that is allowed to drain off the site to Martin Creek or the coastal bluffs could contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters, including both Martin Creek and adjoining coastal waters. The applicant's engineer has submitted a conceptual storm water management plan that identifies several water quality management practices to be used in conjunction with development of the property.

Sedimentation impacts from runoff would be of the greatest concern during and immediately after construction of the access road improvements. Consistent with Section 30231 of the Coastal Act, the Commission attaches Special Condition No. 4, requiring that the applicants minimize erosion and sedimentation impacts from the proposed construction of the access road improvements. Special Condition No. 4 requires that the applicants submit for the review and approval of the Executive Director a final erosion and runoff control plan that would require that: (1) road work be performed in the dry season, (2) debris fencing be installed to contain runoff from road construction areas; (3)

on-site vegetation be maintained to the maximum extent possible during construction; (4) the construction roadway be stabilized; and (5) runoff from all roads, driveways, and emergency vehicle turn-around areas be conveyed into vegetated swales.

The Commission notes that as subsequent residential construction is undertaken on the lots created by the subdivision, the Commission will have an opportunity to assess the effects this construction would have on water quality resources of the area during the review of the related coastal development permits for any future residences.

The Commission thus finds that as conditioned, the proposed development is consistent with Section 30231 of the Coastal Act because existing water quality and biological productivity will be protected and maintained from impairing waste discharges.

**J. Visual Resource Protection**

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and requires in applicable part that permitted development 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 restore and enhance where feasible the quality of visually degraded areas, and to be visually compatible with the character of surrounding areas.

The subject property is located on a bluff top site overlooking the Pacific Ocean. The site is not located within a designated "Highly Scenic Area." The principal public vantage points are from Stagecoach Road. Some limited blue water views are afforded through the property from Stagecoach Road, but for the most part, views of the ocean are obstructed by the forest vegetation on the property and the rolling topography of the site. Other public vantage points will include views from the proposed vertical public access way through Parcel 2 and views from Secret Beach at the base of the bluffs. Finally, the subject property is visible from the open ocean from boats at sea.

The proposed land division would accommodate the future development of one home each on proposed Parcels 1-3. Each of the proposed parcels is large enough that the building site can be located where future home construction can be located where it would not be visible from Stagecoach Road. The applicant has identified specific building sites on each parcel where homes could be located in this manner. The homes would also be largely invisible from the proposed public access way due to intervening vegetation and topography. The closest new home would be the future home to be developed on proposed Parcel 2. The building site identified by the applicant is approximately 250 feet away from the easement behind existing vegetation. As the building sites would each be set back between 100 and 125 feet from the bluff edge and as the bluffs are relatively high, very minimal views of the future houses, if any, would be afforded from Secret Beach. The houses would likely be visible from boats at sea.

As the future homes would be located where views from Stagecoach Road to the ocean are already obstructed by existing vegetation and topography, the proposed land division would not result in future development that would adversely affect views to and along the ocean. All of the identified building sites are located on relatively level ground, thereby eliminating the need for any significant landform alteration. As viewed from Stagecoach Road, the future public access way, and the beach, the future homes would largely be invisible and thus would not raise an issue of visual compatibility with the visual character of the surrounding area. As noted, the future houses would be visible from sea. However, as each home would require additional coastal development permit authorization from the Commission or the County if this area of deferred certification should become certified in the meantime, the Commission or the County would have the opportunity to review the location and design of each of the houses for its compatibility with the surrounding area. Conditions could be imposed to require such visual mitigations as relocating the homes, screening vegetation, and limitations on lighting that would reduce any impact on visual resources to a level of less than significance.

Coastal Development Permit Application No. 1-05-021 includes a request for authorization for certain driveway and water facility improvements. The driveway improvements would be limited to the widening and extension of existing dirt roadways that exist on the site. As the driveway improvements would be made to existing roadways, the proposed driveway improvements would be compatible with the character of the surrounding area and would not adversely affect visual resources. The water facility improvements would largely be underground, although water storage tanks to provide water for fire suppression would need to be installed on each proposed parcel. However, the water tank locations proposed by the applicant would be located well away from Stagecoach Road and would not be visible from the roadway or other public vantage points.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act, as the project has been sited and designed to minimize visual impacts of proposed and future development that would be accommodated by the land division, will not result in significant landform alteration, and will be visually compatible with the character of surrounding areas.

**K. Archaeological and Cultural Resources**

Coastal Act Section 30244 provides protection of archaeological and paleontological resources and requires reasonable mitigation where development would adversely impact such resources.

The Yuroks, a Native American tribe, are known to have settled along the Humboldt County coast within the general vicinity of the subject property. The Yurok tribe had settlements extending north from Little River State Beach several miles to the south of



the project site, to areas within Del Norte County, including over 50 named villages clustered along the Klamath River and coastal lagoons and creeks, including 17 villages on the coast. The North Coast Information Center, a unit of the State Historical Resources Information System, was asked to perform a cultural records search in the area affected by the proposed subdivision and the surrounding area. The Center reported there are no reports of historical resources from the project site and did not recommend further studies for historical resources. In addition, excavations performed on the portion of the site that would become Parcel 3 to evaluate fault rupture hazards uncovered no evidence of paleontological or archaeological resources.

Given the fact that no known archaeological resources have been discovered at the site and that the ground disturbing activities of the proposed development will be limited to shallow grading work in limited areas for driveway and access road development, the potential for the development to adversely affect archaeological or paleontological resources is very low. However, as Yurok settlements are known to exist in the general area, the potential impacts are not non-existent.

Therefore, to ensure protection of any cultural resources that may be discovered at the site during construction of the proposed project, the Commission attaches Special Condition No. 8, which requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section Coastal Act Section 30244, as the development will not adversely impact archaeological resources.

**L. California Environmental Quality Act (CEQA).**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

**1-05-021 – ADOPTED FINDINGS**

**JEANINE MARTIN**

**PAGE 41**

The Commission incorporates its findings on conformity with Coastal Act 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 Coastal Act, the proposed project has been conditioned to be found consistent with the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Proposed Land Division
4. Health Department Letter
5. Rural Land Division Criteria Analysis
6. Excerpts of Geotechnical Report
7. Biological Assessment
8. Revised Public Access Proposal
9. Location of Proposed Vertical Access Way

**ATTACHMENT A:**

**STANDARD CONDITIONS**

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