

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



F6a

Filed:	May 27, 2005
49 th Day:	July 15, 2005
Staff:	Robert Merrill
Staff Report:	March 30, 2006
Hearing Date:	April 14, 2006
Commission Action:	

STAFF REPORT: APPEAL

DETERMINATION OF APPEALABILITY

APPEAL NO.:	A-1-MEN-05-024
APPLICANTS:	Monte and Barbara Reed
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	In the Town of Mendocino, at 10751 Lansing Street, on the east side of Lansing St., 150 feet north of Palette Drive, Mendocino County (APN 119-140-38).
PROJECT DESCRIPTION:	Remodel and add to an existing 1,145-square-foot one-story residence, to create a two-bedroom, four-bathroom, 27'8"-tall, 5,428-square-foot two-story residence, with an 826-square-foot attached garage, paved driveway, patio, retaining wall, underground water storage tank, 80-square-foot utility building, LPG tank, landscape berms, and 450 linear feet of 6-foot-high solid fence.
APPELLANTS:	1) Joan Curry; and 2) Lee Edmundson.

SUBSTANTIVE FILE
DOCUMENTS:

- 1) Mendocino County CDP No. 54-03; and
- 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission determine that it does not have jurisdiction over the appeal.

Approval has been granted by Mendocino County to remodel and add to an existing 1,145-square-foot one-story residence, to create a two bedroom, four-bathroom, 27'8"-tall, 5,428-square-foot two-story residence, with an 826-square-foot attached garage, paved driveway, patio retaining wall, underground water storage tank, 80-square-foot utility building, LPG tank, and landscape berms. The property is located in the Town of Mendocino, at 10751 Lansing Street.

The Commission opened the hearing on the appeal at the meeting of July 14, 2005. At that meeting, the applicants' representatives gave testimony challenging the Commission's jurisdiction to hear the appeal, asserting that the project is not located within a Sensitive Coastal Resource Area and the appeal was not valid because one of the appellants, Joan Curry, had passed away since filing the appeal and no longer had standing to pursue the appeal. The Commission considered the issue of jurisdiction in the context of its review of whether the appeal raised a substantial issue of conformance of the project as approved with the certified LCP. The Commission voted to find that the appeal did raise a substantial issue. The Commission continued the public hearing for the de novo portion of the appeal to allow an opportunity for the applicants to consider and propose changes to the project that would enhance the project's consistency with LCP policies.

On September 12, 2005, the applicants filed suit against the Commission, asserting that the Commission does not have appellate jurisdiction over the project. On March 17, 2006, the Superior Court for the County of Mendocino held a hearing on a motion filed by the applicant's attorney for a preemptory writ of mandate to halt the Commission's de novo hearing of the applicants' coastal development permit application. The Court declined to halt the Commission's continued de novo hearing, but expressed concerns about whether the Commission has appellate jurisdiction over the project.

The County's action to approve a coastal development permit for the project with conditions was appealed to the Commission solely on the basis that the project is located within a sensitive coastal resource area, pursuant to Section 30603(a)(3) of the Coastal Act. The project is not located in any of the other geographic appeal areas and is not otherwise appealable to the Commission under Section 30603.

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

The Commission did not ultimately designate SCRAs as contemplated by Section 30502 and 30502.5. However, nothing in Sections 30502 or 30502.5 overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The adopted Town of Mendocino LCP contains policies and definitions that can be interpreted as designating the Town of Mendocino as an SCRA. However, upon further review of the adoption and certification of the LCP segment for the Town of Mendocino, the staff believes that the record indicates that the County did not indicate the requisite intent to designate the Town of Mendocino as a sensitive coastal resource area. Section 30502 sets forth a detailed and involved process for the designation of a Sensitive Coastal resource area. Although these requirements are specific to the process for Commission designation of sensitive coastal resource areas, it is reasonable to conclude that in designating sensitive coastal resource areas in their LCPs, the legislature intended that local government designation of SCRAs be a deliberate decision. In the case of the County's adoption and the Commission's subsequent certification of the Mendocino Town segment of the Mendocino County LCP, for several reasons it is not clear that such a deliberative specific action to designate the SCRA was taken by the County, and that the County and the Commission clearly intended that the Town of Mendocino be treated as an SCRA.

First, the County did not adopt a map specifically identifying the Town as a sensitive coastal resource area. Although the Mendocino Town Zoning Code references Map 32 of the Coastal Element of the General Plan as showing the boundaries of the Town of Mendocino, no specific map has been adopted as part of the Town of Mendocino segment of the LCP that references the sensitive coastal resource area.

Second, the Mendocino Town Zoning code does not indicate that County approval of development within the Town of Mendocino is appealable to the Commission on the

basis that the development is located within a sensitive coastal resource area. The fact that the basis of appeal that a development is located in a sensitive coastal resource area is not included in the Section 20.728.020 of the Mendocino Town Zoning Code suggests that neither the County nor the Commission which certified the zoning code was clearly intending that the Town of Mendocino be designated as a sensitive coastal resource area.

Third, the Mendocino Town Categorical Exclusion that was adopted by the Commission at the same meeting at which the Mendocino Town Segment of the Mendocino Town LCP was certified contains statements that suggest that the Commission does not have appeal jurisdiction that would result from designating the area as a SCRA.

Therefore, staff recommends that the Commission find that as the Town of Mendocino was not clearly identified as a sensitive coastal resource area, Mendocino County's approval of local CDP No. 54-03 for the applicants' proposed residential development is not appealable to the Commission under Section 30603(a)(3) of the Coastal Act. In addition, as the permit is not appealable to the Commission by any other basis under Section 30603, staff recommends that the Commission find that the Commission does not have appellate jurisdiction over the project and the County's action to approve local CDP No. 54-03 is final and effective.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION

A. APPEALABILITY DETERMINATION

Staff recommends that the Commission determine that it does not have jurisdiction over this appeal.

MOTION:

I move that the Commission find that it lacks jurisdiction over this appeal under Public Resources Code Section 30603 and that it adopt the findings that are set forth in the staff report.

Staff Recommendation that Mendocino County CDP No. 54-03 is Not Appealable:

Staff recommends a **YES** vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution. If the Commission finds that it does lack jurisdiction over this appeal, the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that it lacks jurisdiction over this appeal under Public Resources Code Section 30603 and adopts the findings to support its determination that it does not have jurisdiction that are set forth in the staff report.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT AND SITE DESCRIPTION

Approval has been granted by Mendocino County to remodel and add to an existing 1,145-square-foot one-story residence, to create a two bedroom, four-bathroom, 27'8"-tall, 5,428-square-foot two-story residence, with an 826-square-foot attached garage, paved driveway, patio retaining wall, underground water storage tank, 80-square-foot utility building, LPG tank, and landscape berms. The property is located in the Town of Mendocino, on the east side of Lansing Street (CR#500), 150 north of its intersection with Palette Drive (CR#448), at 10751 Lansing Street (See Exhibit Nos. 1-3).

The subject parcel is designated on the Town of Mendocino Land Use Map as Suburban Residential – 20,000 square feet minimum lot size (SR-20,000), and is zoned Mendocino Suburban Residential (MSR). The Town of Mendocino is recognized as a unique community on the northern California coast, and is listed on the National Register of Historic Places. The town is designated as a "Special Community" in the County's LCP. The area is located outside of the core historic district to the south and southwest, which contains structures dating back to the late 1800s. In contrast, the buildings in the area surrounding the subject property were, for the most part, constructed during the mid to later part of the 20th Century. To the east of the applicant's parcel is the two-story Hill House Inn hotel and restaurant. To the south, across Palette Drive, are a cemetery and the MacCullum Suites Bed and Breakfast. To the west, across Lansing Street is the Catholic Church, and to the north is the Point of View Estates Subdivision, which is suburban in feel with a variety of single-family residential homes. The approved building is located just off of Lansing Street (the old Highway One), the main north-south road through town, and it would be significantly closer to the road than the two large inns to the east and southeast.

B. COMMISSION'S JULY 2005 HEARING AND CHALLENGE TO COMMISSION JURISDICTION

The Commission opened the hearing on the appeal at the meeting of July 14, 2005. Commission staff had published and distributed a written staff recommendation prior to the meeting that recommended that the Commission after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal had been filed, and that the Commission hold a *de novo* hearing, because the appellant had raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP). Specifically, staff recommended that the Commission find that the appeal raised substantial issues regarding the compatibility of the project with the visual resource and community character policies of the LCP. Commission staff further recommended that the Commission deny the coastal development permit for the proposed project on the basis that the proposed project is inconsistent with the visual resource protection provisions of the certified LCP, and there are no conditions that could be imposed by the Commission in the *de novo* process that could make the particular residential structure that is proposed consistent with the certified LCP, particularly policies that require development to be compatible with the character of the surrounding area.

At the July 14, 2005 meeting, the applicants' representatives distributed correspondence and gave testimony challenging the Commission's jurisdiction to hear the appeal. The applicants' representatives asserted that the project is not located within a Sensitive Coastal Resource Area and also challenged the validity of the appeal on the basis that one of the appellants, Joan Curry, had passed away since filing the appeal and no longer had standing to pursue the appeal. The Commission considered the issue of jurisdiction in the context of its review of whether the appeal raised a substantial issue of conformance of the project as approved with the certified LCP. At the July 14, 2005 meeting, The Commission voted to find that the appeal did raise a substantial issue. The Commission continued the public hearing for the *de novo* portion of the appeal to allow an opportunity for the applicants to consider and propose changes to the project that would enhance the project's consistency with LCP policies.

C. LAWSUIT AND HEARING ON PEREMPTORY WRIT OF MANDATE TO HALT DE NOVO HEARING

On September 12, 2005, the applicants filed suit against the Commission, asserting that the Commission does not have appellate jurisdiction over the project approved by Mendocino County. On March 17, 2006, the Superior Court for the County of Mendocino held a hearing on a motion filed by the applicant's attorney for a preemptory writ of mandate to halt the Commission's *de novo* hearing of the applicants' coastal development permit application. The Court declined to halt the Commission's continued *de novo* hearing, but expressed concerns about whether the Commission has appellate jurisdiction over the project. The Court set April 21, 2006 as a further court hearing to consider the applicants' motion, timed to occur shortly after the scheduled April Commission continued *de novo* hearing on the appeal.

**D. COMMISSION DETERMINATION THAT IT DOES NOT HAVE
APPEALABLE JURISDICTION**

As noted above, the County's action to approve a coastal development permit for the project with conditions was appealed to the Commission solely on the basis that the project is located within a sensitive coastal resource area, pursuant to Section 30603(a)(3) of the Coastal Act. The project is not located in any of the other geographic appeal areas and is not otherwise appealable to the Commission under Section 30603.

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas.*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*

- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

Section 30502.5 directs the Commission to recommend SCRA's to the legislature for designation by statute, and if the legislature does not legislatively designate the SCRA within two years or the recommendation, the area shall no longer be an SCRA. Section 30517 allows the Commission to extend the deadline for designating SCRA's for up to one year.

The Commission extended the deadline for one year, but did not ultimately designate SCRA's or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5.

Section 30502 gave the Commission only a short time to designate SCRA's. However, Section 30502 does not place exclusive power in the Commission to designate SCRA's. Section 30502 established a process whereby the Commission could require local governments to take implementing actions for the protection of SCRA's in addition to the enactment of zoning ordinances. Because it did not designate SCRA's, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCP's and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRA's, local government approvals of development located in SCRA's delineated in LCP's would nonetheless be appealable to the Commission (See Exhibit No. 4).

The ability of local governments to designate SCRA's in LCP's is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRA's, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRA's. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan).) The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRA's did not have the effect of preventing local governments from designating SCRA's through the LCP process. If the Commission's decision not to designate SCRA's rendered the Coastal Act provisions that relate to SCRA's moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRA's.

Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRAs in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRAs, but local governments are allowed to designate such areas.

The appeal of the Mendocino County Coastal Development Permit (CDP) No. 54-03 was accepted by the Commission on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the Mendocino Town segment of the County's LCP was certified in 1996. Division III of Title 20, Section 20.608.038(6) of the Mendocino Town Zoning Code (MTZC), which is specific to the Town of Mendocino, defines "Sensitive Coastal Resource Areas" to "mean those identifiable and geographically bounded land and water areas with the coastal zone of vital interest and sensitivity." Subpart 6(e) of this section includes "special communities or neighborhoods which are significant visitor designation areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act.

Mendocino Town Plan Policy 4.13-1 designates the Town of Mendocino a "special community" and a "significant coastal resource." Section 20.504.020(A) of the Mendocino Town Zoning Code notes that "the Town of Mendocino is the only recognized special community in the Coastal Element." The boundaries of the Town of Mendocino are "all of the unincorporated areas of the Town of Mendocino as delineated on Map 32 of the Coastal Element of the General Plan."

However, upon further review of the adoption and certification of the LCP segment for the Town of Mendocino, the Commission finds that the record indicates that the County did not indicate the requisite intent to designate the Town of Mendocino as a sensitive coastal resource area. As noted above, Section 30502 sets forth a detailed and involved process for the designation of a Sensitive Coastal resource area. Although these requirements are specific to the process for Commission designation of sensitive coastal resource areas, it is reasonable to conclude that in designating sensitive coastal resource areas in their LCPs, the legislature intended that local government designation of SCRAs be a deliberate decision. In the case of the County's adoption and the Commission's subsequent certification of the Mendocino Town segment of the Mendocino County LCP, for several reasons it is not clear that such a deliberative specific action to designate the SCRA was taken by the County, and that the County and the Commission clearly

intended that the Town of Mendocino be treated as an SCRA where pursuant to Section 30603(a)(3) of the Coastal Act, coastal development permits approved by the County within the Town would be appealable to the Commission. No single one of these factors is determinative, and each local SCRA designation must be examined on its own individual merits, but in combination, they indicate that the County did not intend to designate the entire Town of Mendocino as an SCRA.

First, the County did not adopt a map specifically identifying the Town as a sensitive coastal resource area. Although the Mendocino Town Zoning Code references Map 32 of the Coastal Element of the General Plan as showing the boundaries of the Town of Mendocino, no specific map has been adopted as part of the Town of Mendocino segment of the LCP that references the sensitive coastal resource area.

Second, the Mendocino Town Zoning code does not indicate that County approval of development within the Town of Mendocino is appealable to the Commission on the basis that the development is located within a sensitive coastal resource area. Section 20.728.020 indicates that an action taken on a coastal development permit may be appealed to the commission for (1) developments approved between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line, (2) developments approved within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff, (3) any approved division of land, (4) any development approved that is not designate as the principal permitted use under the zoning ordinance, and (5) any development which constitutes a major public works project or a major energy facility. No express indication is provided that development within a Town of Mendocino sensitive coastal resource area is appealable to the Commission. Although the standard for what development is appealable to the Commission is the Coastal Act and the Commission's implementing regulations and not an LCP, the fact that the basis of appeal that a development is located in a sensitive coastal resource area is not included in the Section 20.728.020 of the Mendocino Town Zoning Code suggests that neither the County nor the Commission which certified the zoning code was clearly intending that the Town of Mendocino be designated as a sensitive coastal resource area.

Third, the Mendocino Town Categorical Exclusion that was adopted by the Commission at the same meeting at which the Mendocino Town Segment of the Mendocino Town LCP was certified similarly does not acknowledge the appeal jurisdiction of the Commission that results from designating an areas as a SCRA. The Categorical Exclusion order exempts single-family residence and other development in certain parts of the Town of Mendocino (not including the neighborhood containing the subject property) from the need to obtain coastal development permits. In its findings for approval of the Categorical Exclusion Order, (Exhibit No. 5, Page 13), the Commission found that neither of the areas of Town covered by the Order is in an area where coastal development permits would be appealable to the Coastal Commission. This finding does not acknowledge that an action taken by the County to approve a coastal development

permit for development anywhere in the Town, including within the zones that were intended to be covered by the categorical exclusion order, would be appealable to the Commission under Section 30603(a) if the Town was designated in the LCP as a sensitive coastal resource area. Although this finding could have been made in error, the fact that the finding was made further suggests that neither the County nor the Commission clearly intended that the Town be treated as a sensitive coastal resource area.

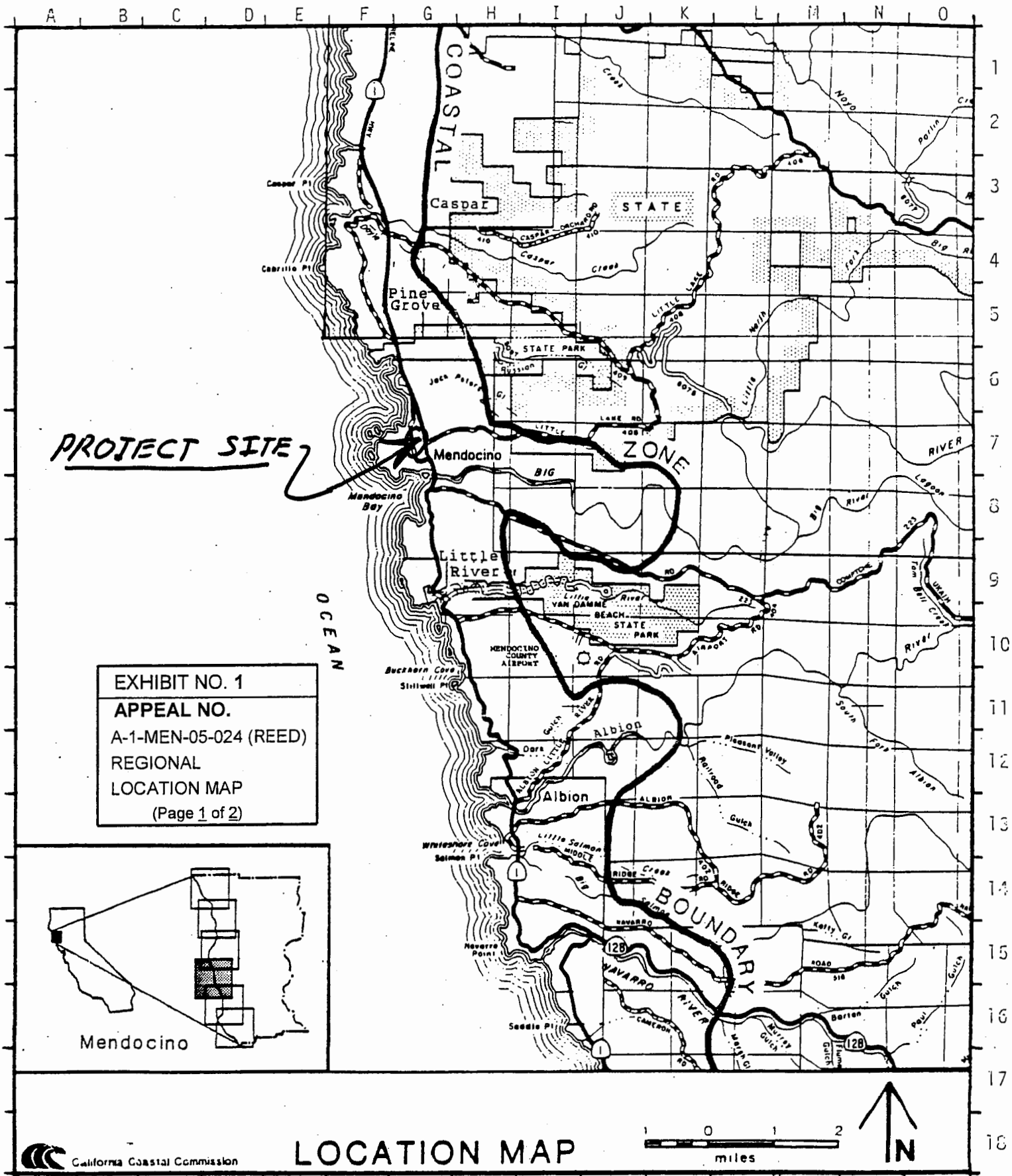
I. CONCLUSION

Therefore, the Commission finds that as the Town of Mendocino was not clearly identified as a sensitive coastal resource area, Mendocino County's approval of local CDP No. 54-03 for the applicants' proposed residential development is not appealable to the Commission under Section 30603(a)(3) of the Coastal Act. As the County's action on the permit is not appealable to the Commission by any other basis under Section 30603, the Commission finds that it does not have appellate jurisdiction over the project. Therefore, the County's action to approve local CDP No. 54-03 is final and effective.

As the Commission finds that it does not have appellate jurisdiction over the project, the Commission makes no determination as to whether the project as approved by the County is consistent with the visual resource protection policies or other policies of the certified Mendocino County LCP. In no way shall the Commission's action be construed as a determination that the project as approved by the Commission is consistent with the certified LCP.

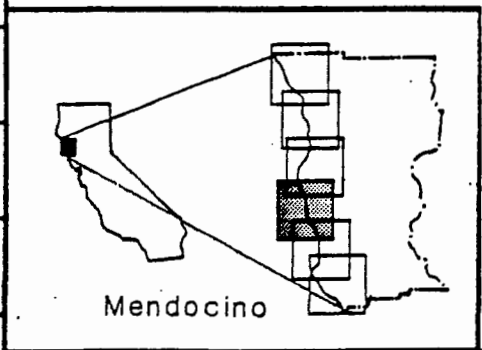
EXHIBITS

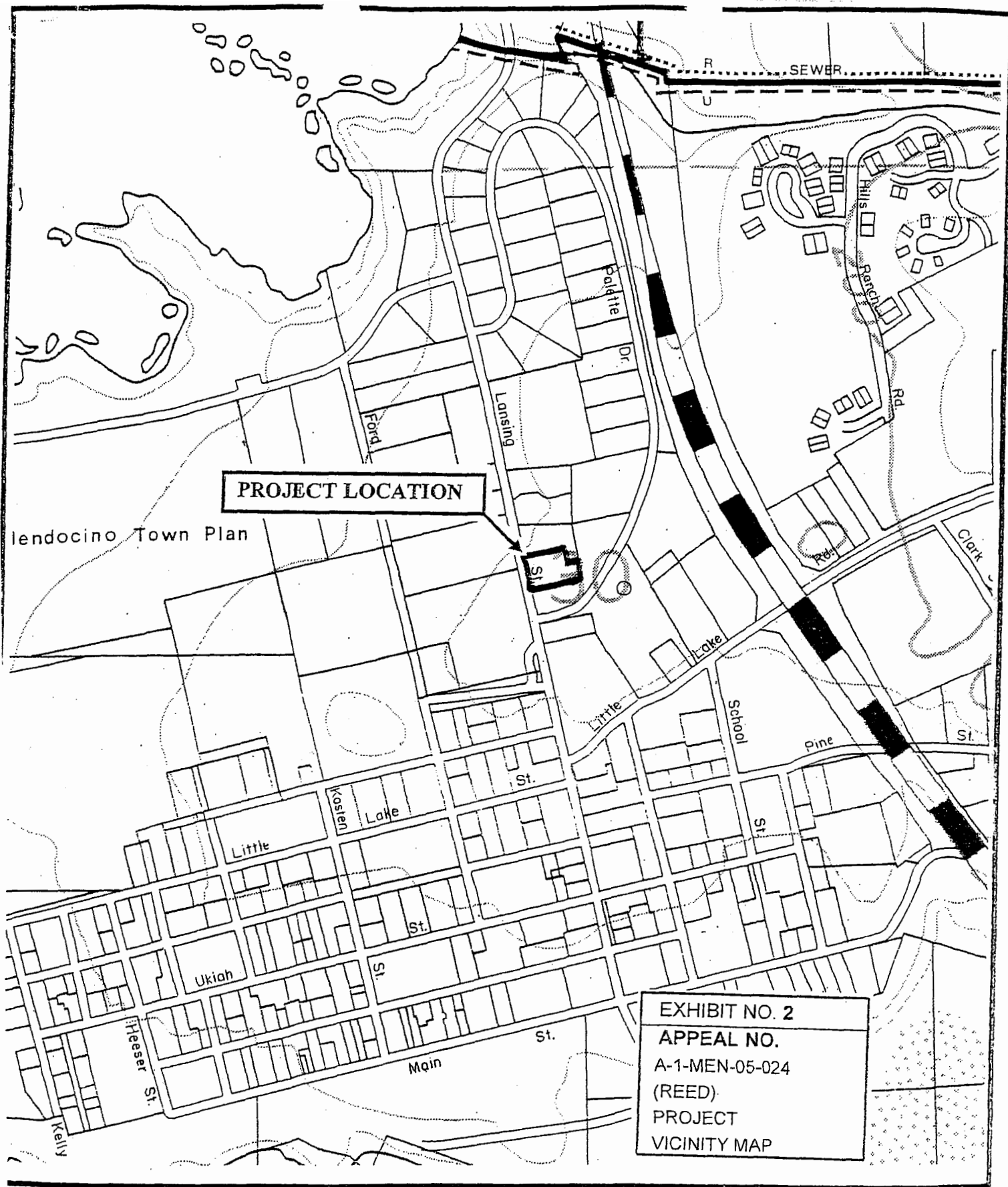
1. Regional Location Map
2. Location Map
3. Project Plans
4. 1977 Attorney General's Opinion on Designating SCRA's and Rights to Appeal
5. Categorical Exclusion Order No. E-96-1 Staff Report



PROJECT SITE

EXHIBIT NO. 1
 APPEAL NO.
 A-1-MEN-05-024 (REED)
 REGIONAL
 LOCATION MAP
 (Page 1 of 2)





CASE NO: CDP 54-03

EXHIBIT B

MONTE & BARBARA REED

VICINITY MAP

SCALE: 1 INCH = 500 FEET



NORTH

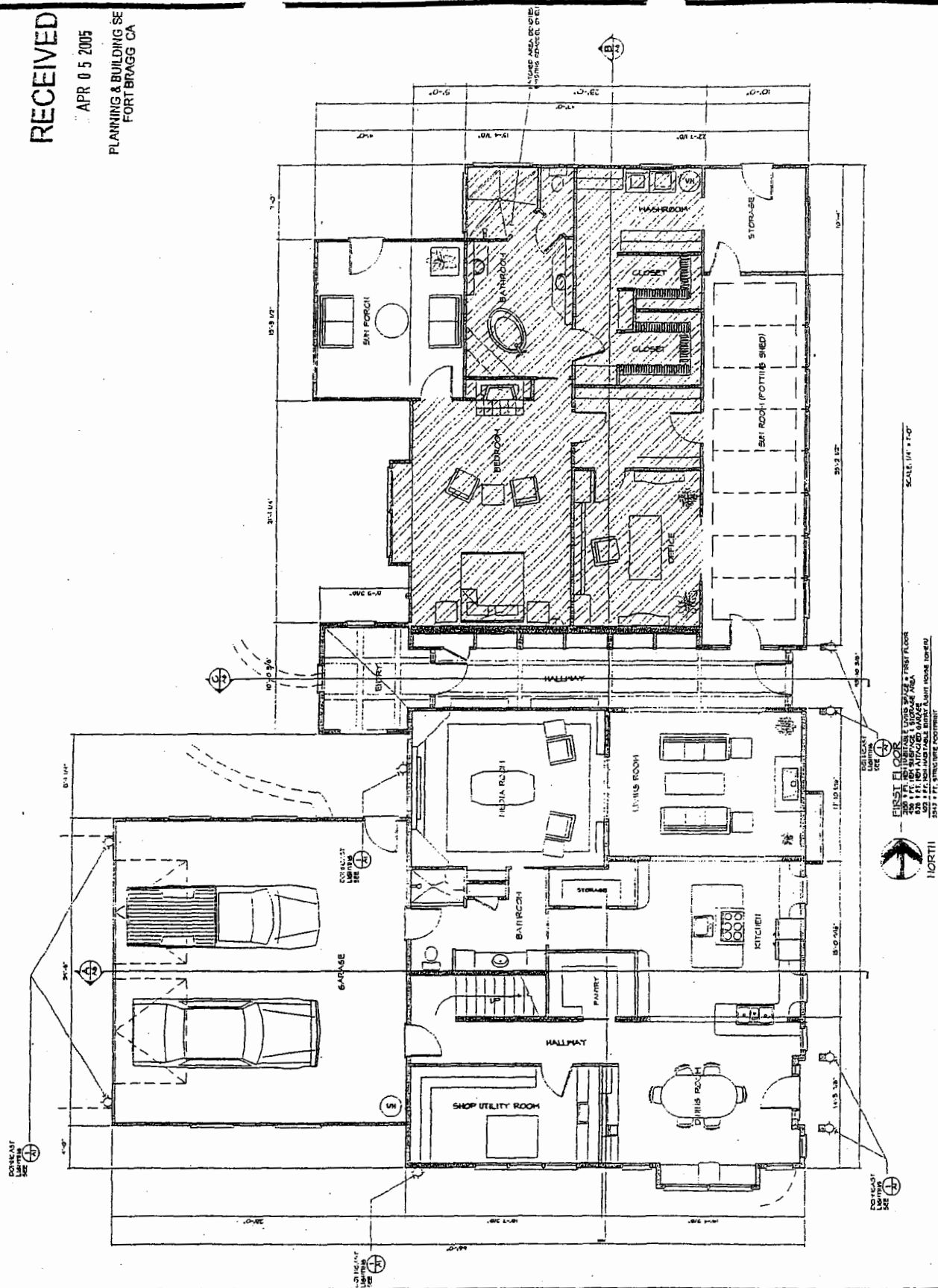


NORTH

RECEIVED

APR 05 2005

PLANNING & BUILDING SE
FORT BRAGG CA



CASE NO: CDP 54-03

EXHIBIT D
REVISED APRIL 2005

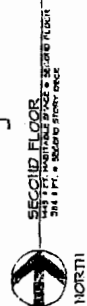
MONTE & BARBARA REED

FIRST FLOOR PLAN REVISED APRIL 2005

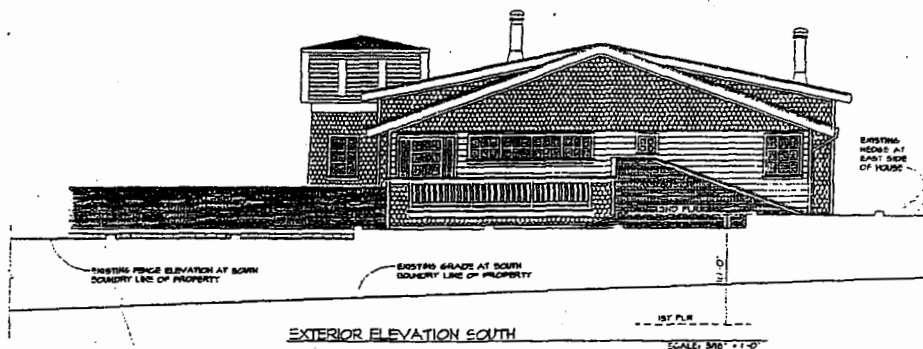
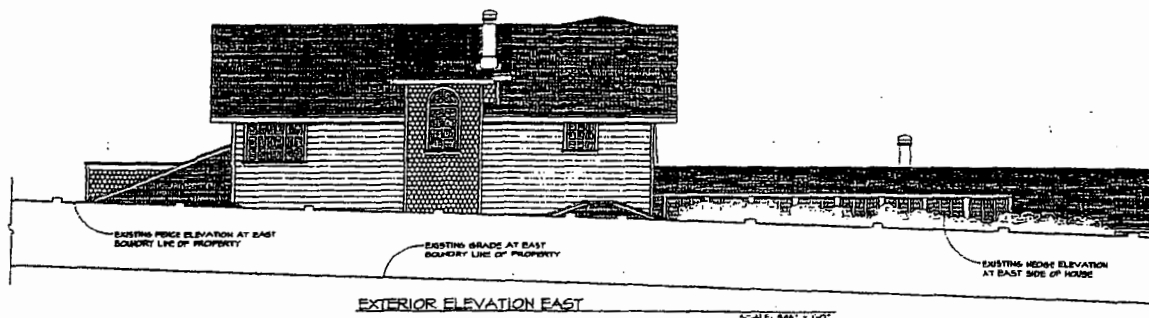
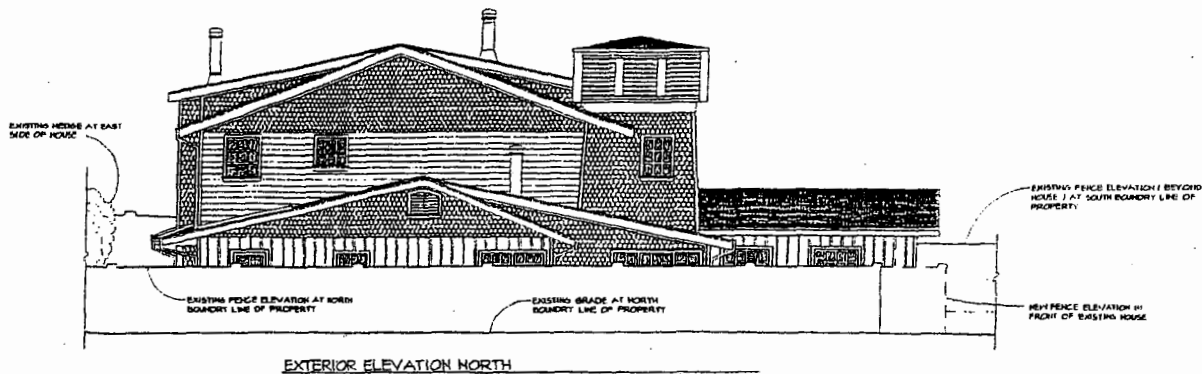
SCALE: NONE



APR 05 2005
PLANNING & BUILDING SERV
FORT BRAGG CA



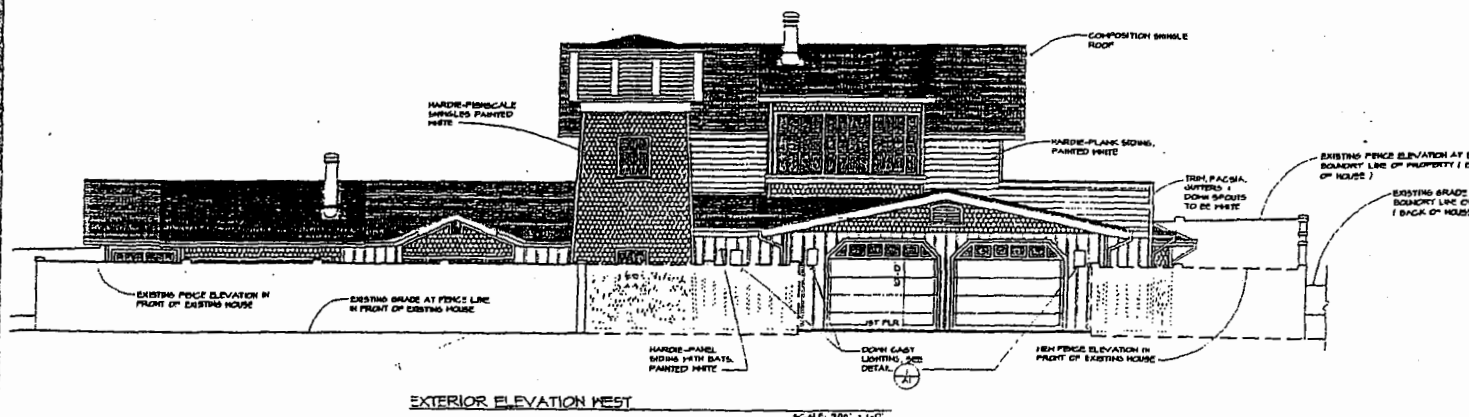
NORTH



RECEIVED

APR 05 2005

PLANNING & BUILDING SERV
FORT BRAGG CA

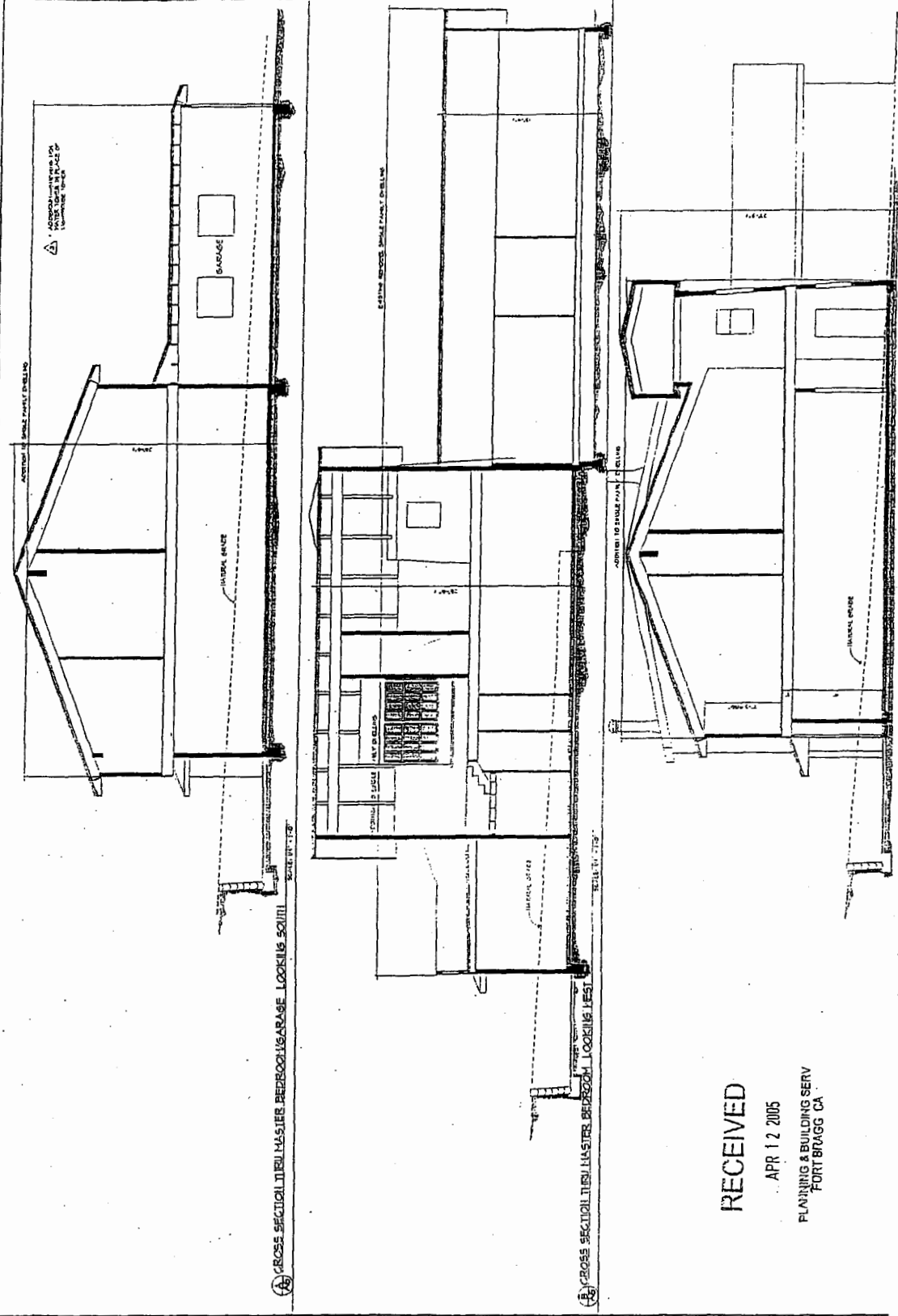


CASE NO: CDP 54-03

MONTE & BARBARA REED

EXHIBIT F
REVISED APRIL 2005

ELEVATIONS REVISED APRIL 2005
SCALE: NONE



RECEIVED

APR 12 2005

PLANNING & BUILDING SERV
FORT BRAGG CA

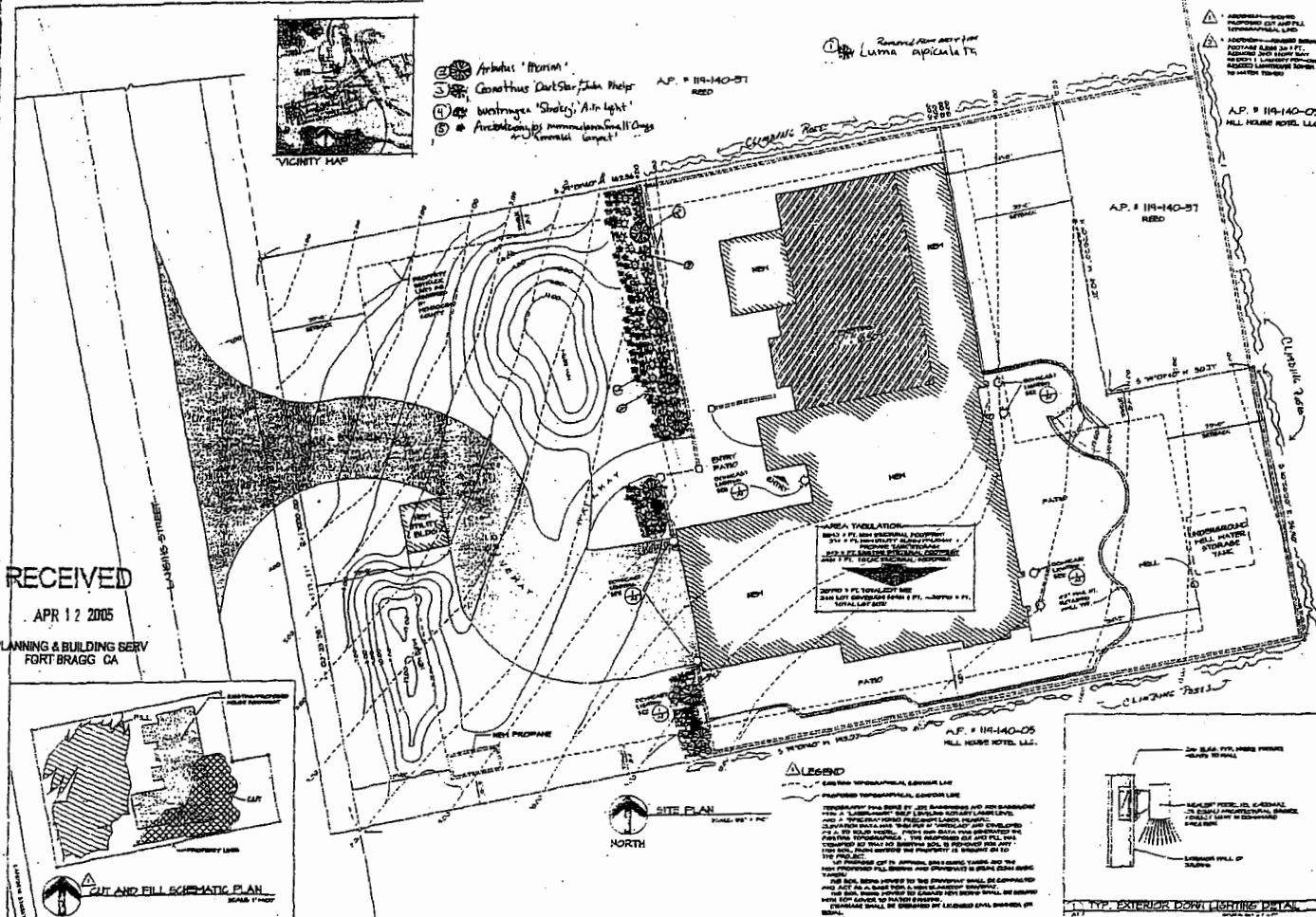
CASE NO: CDP 54-03

EXHIBIT H

MONTE & BARBARA REED

SECTIONS REVISED APRIL 2005

SCALE: NONE



CASE NO: CDP 54-03

EXHIBIT I

MONTE & BARBARA REED

LANDSCAPE PLAN APRIL 2005

SCALE: NONE





OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, SAN FRANCISCO 94102

(415) 557-0285

June 22, 1977

RECEIVED

JUN 23 1977

CALIFORNIA
COASTAL COMMISSION

Melvin B. Lane
Chairman
California Coastal Commission
1540 Market Street
San Francisco, CA 94102

EXHIBIT NO. 4

APPLICATION NO.

A-1-MEN-05-024

REED

1977 OPINION ON SCRA
APPEALS (Page 1 of 4)

Dear Mr. Lane:

The Commission has requested our advice concerning the interpretation of the sections dealing with designation of sensitive coastal resource areas and the right to appeal from local government decisions on development proposed in such areas, following certification of a local coastal plan. Below, we discuss those questions.

Public Resources Code section 30502 permits the Commission to "designate sensitive coastal resource areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the regional commissions and commission of other implementing actions." Public Resources Code section 30116 defines "sensitive coastal resource areas" as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." That section provides a partial list of such areas. Finally, Public Resources Code section 30603(a) specifies the particular developments on which appeals may be taken to the Commission, following certification of the pertinent local coastal program.

Under these sections, we understand the particular concern of the Commission to be the question whether a "sensitive coastal resource area" must be formally designated by the Commission as requiring supplemental "implementing actions" for protection of coastal access and coastal resources, before an appeal may be taken to the Commission from a local governmental decision concerning a development, proposed in such an area, following certification of the pertinent local coastal plan. In other words, is designation under section 30502 a predicate to the right of appeal following certification of a local coastal program, or does that right of

June 22, 1977

appeal exist without regard to the Commission's decisions concerning designation? As we will explain below, we believe that the right of appeal from a local governmental decision concerning a development in a sensitive coastal resource area exists whether or not the Commission designates that area under the provisions of section 30502.

As we noted above, section 30116 provides a specific definition of "sensitive coastal resource areas." Section 30502, in turn, provides a means by which the Commission may seek to impose additional regulations on the use of land in such an area, necessary to implement the local coastal plan and beyond the regulation permissible under "zoning ordinances." Section 30603(a)(3) thereafter permits appeals from developments in sensitive coastal resource areas, where an allegation is made that the development is not in conformity "with the implementing actions of the certified local coastal program."

Because section 30116 provides a specific definition of "sensitive coastal resource areas," however, it is clear that such areas exist whether the Commission finds it necessary, under section 30502, to designate them as requiring additional protective devices; the power to designate is only a means for providing supplemental regulatory power, where necessary. Thus, whether the Commission determines to exercise that power has no bearing whatsoever on the existence of such areas: the areas remain "sensitive coastal resource areas" even if the Commission does not seek to impose supplemental regulatory controls for their protection.

If section 30603(a)(3) permitted an appeal from any development within a sensitive coastal resource area, we would thus have no difficulty in concluding that the right of appeal exists without regard to the Commission's decision whether to exercise its designation power under 30502. Section 30603(a)(3), however, requires further analysis, since the right of appeal is not unlimited, but is permissible only where "the allegation on appeal is that the development is not in conformity with the implementing actions of the certified local coastal program." Thus, the further question arises as to the meaning of "implementing actions."

"[I]mplementing actions" is a term of art, and is defined as including "the ordinances, regulations, or programs which implement either the provisions of the certified local coastal program or the policies of this division and which are submitted pursuant to Section 30502." Public Resources Code, § 30108.4. This section may be read in two entirely different ways, and those differing interpretations create some difficulty in analyzing the problem.

First, section 30108.4 can be read to limit "implementing actions" only to those ordinances, regulations, or programs submitted under section 30502. Under such an interpretation, the right of appeal specified by section 30603(a)(3) would appear to be limited only to those sensitive coastal resource areas in which the Legislature had approved the implementing actions submitted in the Commission's designation.

On the other hand, however, section 30108.4 can be read disjunctively, i.e., as defining "implementing actions" to include "the ordinances, regulations, or programs which implement either the provisions of the certified local coastal program[,] or the policies of this division and which are submitted pursuant to Section 30502." Under this reading, an "implementing action" would include regulatory devices which implemented the certified local coastal programs. As significant here, however, an implementing action would also include regulatory devices which implemented the policies of the Coastal Act, where such devices had been submitted as part of the designation process. We believe this latter interpretation to be the more likely intent of the Legislature for several reasons.

Where possible, "significance should be given to every word, phrase, sentence and part of an act" Select Base Materials v. Board of Equalization, 51 Cal.2d 640, 645 (1959). A statute should not be interpreted in a way which renders any part of it superfluous. Moyer v. Workmen's Compensation Appeals Board, 10 Cal.3d 222, 230 (1973).

If section 30108.4 were read to limit "implementing actions" only to those ordinance, regulations, or programs submitted under section 30502, however, a portion of the section would be rendered superfluous: it would be unnecessary for the section to refer to "the provisions of the certified local coastal program" as a ground independent of "the policies of this division" since any certified local coastal program is already required to be consistent with the policies of the Act. Public Resources Code §§ 30500 et seq. In other words, since the provisions of any certified local coastal program must automatically implement the policies of the Act, it is redundant to differentiate such provisions from the policies of the Act, unless the phrase "which are submitted pursuant to Section 30502" is intended to modify only "the policies of this division."

We need not rely only on such an analysis of section 30108.4, however, since section 30502 itself provides further guidance. As noted above, that section refers to the designation of sensitive coastal resource areas, and the review and approval by the regional and state commissions of "other implementing actions" in addition to zoning ordinances. The phrase "other implementing actions" necessarily means that zoning ordinances

394

Melvin B. Lane

-4-

June 22, 1977

are "implementing actions", since "other" indicates that the items specifically itemized by the statute are also "implementing actions". Thus, zoning ordinances must be read as within the class of "implementing actions."

Since section 30502 thus evidences an intent to include zoning ordinances within the definition of "implementing actions," section 30108.4 must be similarly read, and interpreted as including both zoning ordinances and further regulatory devices where the additional regulatory devices are submitted pursuant to section 30502. Section 30603(a)(3) accordingly authorizes appeals to the Commission from local governmental decisions concerning development proposed in sensitive coastal resource areas, following certification of a local coastal program, where the allegation on appeal is that the local approval is inconsistent with the zoning ordinances approved as part of the local coastal programs. The section is not limited only to appeals where the Commission has acted under section 30502.

There has been some additional concern expressed that, although section 30116 defines sensitive coastal resource areas, there is no formal mapping process which has demarcated the boundaries of such areas; accordingly, so it is suggested, it may be difficult to determine precisely in what geographical areas an appeal may be permitted. Such areas, however, may be formally established and mapped by the Commission as part of the local coastal program process; such a designation would establish the precise areas over which the Commission maintains administrative appellate jurisdiction under section 30603(a)(3).

Ric C Jacobs

RICHARD C. JACOBS
Deputy Attorney General

RCJ:jl

4 of 4

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

Th 6a



October 25, 1996

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Steven Scholl, Deputy Director
Jo Ginsberg, North Coast District Manager

SUBJECT: Proposed Categorical Exclusion Order No. E-96-1 for County of Mendocino, Town Segment
(For Commission consideration at the meeting of November 14, 1996 in San Diego)

SYNOPSISA. Staff Recommendation.

Pursuant to the Coastal Act, the Commission, after public hearing and by two-thirds vote of its appointed members, may certify a Categorical Exclusion Order to exempt certain categories of development from the requirements of coastal development permits, if the Commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast.

The Commission has approved with Suggested Modifications the Local Coastal Program (LCP) for the County of Mendocino, Town Segment, and the Commission will vote on effective certification of the LCP at the meeting of November 14, 1996. The County will therefore take over coastal permit authority shortly. The County wishes to exclude certain types of development from the requirement to obtain a coastal development permit.

Staff recommends that the Commission certify the mitigated Negative Declaration and approve the Categorical Exclusion Order, subject to the ten Special Conditions attached by the Commission. The motion and resolution for approval are found on Page 8 of this report.

EXHIBIT NO. 15

APPLICATION NO.

A-1-MEN-05-024

REED

CATEGORY EXCLUSION
ORDER NO. E-96-1 STAFF
REPORT (Page 1 of 36)

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Two

B. Background.

Public Resources Code Sections 30610(e) and 30610.5(b) authorize the Commission to exclude from the permit requirements of the Coastal Act any category of development within a specifically defined geographic area, if certain findings are made. The Commission must find that:

(1) the exclusion will not result in a potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast; and

(2) where the exclusion precedes certification of the LCP, it will not impair the ability of the local government to prepare a Local Coastal Program.

The Coastal Element of the Mendocino County General Plan includes the Mendocino Town Plan, a separate chapter that addresses issues and provides policies that apply only in the Town of Mendocino. In June of 1990, the Town plan was segmented from the Coastal Element for the balance of the County's coastal zone. The segmented Mendocino Town LCP consists of the Mendocino Town Plan; the Land Use Map for the Mendocino Town Plan; the Mendocino Town Zoning Code; and the Mendocino Town Zoning Map.

In January, 1992, the County of Mendocino submitted to the Commission for certification the Mendocino Town Local Coastal Program, consisting of Mendocino Town Plan Amendment No. 1-92 (Major) (amending the existing Town Plan), and the Mendocino Town LCP Implementation Program, consisting of the Mendocino Town Zoning Code and the Mendocino Town Zoning Map. On April 7, 1992, the Commission certified the Mendocino Town Local Coastal Program with suggested modifications to both the Land Use Plan and the Zoning Code.

The Mendocino County Board of Supervisors accepted the suggested modifications to the Mendocino Town Plan as adopted by the Coastal Commission and the Town Plan amendment eventually became effectively certified. However, the Board took no action on the Implementation Program (Zoning Ordinance) for the Town Plan, but directed that the Planning Department staff meet with the Mendocino Historical Review Board and the Coast Chamber of Commerce, and rewrite certain sections of the ordinance. The Planning Department rewrote some portions of the ordinance, and the revised ordinance was approved by the County Board of Supervisors. In early 1995, the County of Mendocino submitted the revised Mendocino Town LCP Implementation Program to the Coastal Commission for certification. On April 12, 1995, the Commission certified the resubmitted Mendocino Town Local Coastal Program with suggested modifications.

2 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Three

County staff requested a one-year extension of time for final and effective certification of the Implementation Program to ensure adequate time for the County Board of Supervisors to take action to accept the Commission's suggested modifications. On September 13, 1995, the Commission voted to extend the time for final and effective certification of the Mendocino Town LCP for a period not to exceed one year. Within that one year period, the Board of Supervisors passed a resolution accepting the Commission's suggested modifications, and indicated that the County would take over coastal permit authority once all forms and procedures were in place. The Commission will act on the effective certification of the Mendocino Town LCP at the meeting of November 14, 1996.

C. Brief Description of the Proposed Categorical Exclusion Order.

The County has submitted a proposed categorical exclusion order for the Town of Mendocino. The County proposes to exclude from the requirements to obtain a coastal development permit the following types of development in the areas specified below:

- (1) Single-family residences and improvements to single-family residences in mapped exclusion areas within the Town of Mendocino, subject to certain criteria;
- (2) Both new production wells and replacement or supplemental water wells in the Town of Mendocino, subject to certain criteria;
- (3) Both new septic systems and the repair, replacement, or expansion of existing septic systems in the Town of Mendocino, subject to certain criteria; and
- (4) Boundary line adjustments in the Town of Mendocino, subject to certain criteria.

D. CEQA Requirements and Public Comments.

Pursuant to the requirements of the California Environmental Quality Act, Commission staff circulated a proposed Negative Declaration for the proposed categorical exclusion order which is attached to this staff report. No comments have been received from the general public or from other State agencies at the time this report was finalized. Any comments received prior to the Commission's hearing on the proposed Negative Declaration will be addressed at the public hearing on this item.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Four

Contents of the Staff Report

	Page
I. PROPOSED CATEGORICAL EXCLUSION ORDER	5
A. TEXT OF THE PROPOSED CATEGORICAL EXCLUSION AS SUBMITTED BY THE COUNTY OF MENDOCINO	5
II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION	8
A. APPROVAL OF THE CATEGORICAL EXCLUSION	9
B. SPECIAL CONDITIONS OF APPROVAL	9
C. RECISSION AND REVOCATION	11
III. RECOMMENDED FINDINGS	12
IV. ADOPTION OF THE NEGATIVE DECLARATION	17
V. ATTACHMENTS: Exhibits A, B, and C	27

4 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Five

I. PROPOSED CATEGORICAL EXCLUSION ORDER.

A. THE TEXT OF THE PROPOSED CATEGORICAL EXCLUSION.

The County of Mendocino proposes the following categories of development to be excluded from the requirements of obtaining a coastal development permit within the Town of Mendocino:

SINGLE-FAMILY RESIDENCES

- A. The construction of a single-family residence will be excluded from coastal development permit requirements in Historic Zone A where:
1. a single-family residence is a principal permitted use; and
 2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the residence; and
 3. the single-family residence will be the only residence to be located on a legally created parcel; and
 4. the Mendocino Historical Review Board has approved the residence; and
 5. the residence will not be located within 100 feet of an environmentally sensitive habitat area.
- B. Improvements to a single-family residence, in locations not otherwise exempted from requiring a coastal development permit under Section 13250 of the California Code of Regulations, will be excluded from coastal development permit requirements in Historic Zone A where:
1. a single-family residence is a principal permitted use; and
 2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the improvements; and
 3. the improvements would be made to a legal, conforming single-family residence; and
 4. the Mendocino Historical Review Board has approved the improvements, or the improvements are exempt from Review Board approval; and

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Six

5. the improvements will not be located within 100 feet of an environmentally sensitive area.
- C. The construction of a single-family residence will be excluded from coastal development permit requirements in mapped exclusion areas of Historic Zone B where:
1. a single-family residence is a principal permitted use; and
 2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the residence; and
 3. the single-family residence will be the only residence to be located on a legally created parcel; and
 4. the residence will not be located within 100 feet of an environmentally sensitive habitat area; and
 5. the improvements will not be located on an area that contains pygmy vegetation.
- D. Where a parcel contains only one single-family residence, a coastal development permit shall not be required for the removal of the existing residence and replacement with a new residence where:
1. a single-family residence is a principal permitted use; and
 2. the parcel is in Historic Zone A, or in a mapped single-family residence exclusion area; and
 3. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the replacement residence; and
 4. the Mendocino Historical Review Board has approved the removal of the existing residence and the replacement residence, or the removal and replacement of the residence is exempt from Review Board approval; and
 5. the replacement residence will not be located within 100 feet of an environmentally sensitive habitat area; and
 6. the replacement residence will not be located on an area that contains pygmy vegetation.

6 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Seven

WATER WELLS

When the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements, water wells shall be excluded in three cases:

- a. where there are no permanent facilities for production (e.g., test wells); or
- b. replacement or supplemental wells to serve an existing legal use on the property; or
- c. production wells in association with single-family residences exempt under this exclusion order.

The well shall not be located within 100 feet of an environmentally sensitive habitat area.

SEPTIC SYSTEMS

The repair or replacement of existing septic systems will be excluded from coastal development permit requirements where:

- a. there is an existing, legal use on the parcel; and
- b. the replacement or repair will not increase septic capacity; and
- c. the replacement or repair will not be located on a parcel that contains pygmy vegetation in the area of replacement or repair; and
- d. the replacement or repair will not be located within 100 feet of an environmentally sensitive habitat area.

The expansion of an existing septic system is excluded from coastal development requirements where:

- a. the expansion is associated with the addition to an existing single-family residence that is statutorily exempt from coastal development permit requirements, and the expansion meets all of the criteria cited above for replacement and repair except (b).

The installation of a septic system will be excluded from coastal development permit requirements where:

- a. the installation is associated with the construction of a single-family residence subject to this categorical exclusion; and

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Eight

- b. the septic system will not be located within 100 feet of an environmentally sensitive habitat area.

BOUNDARY LINE ADJUSTMENTS

As proposed by the County, the adjustment of a lot line or boundary line as defined in Section 66412(d) of the California Government Code (Subdivision Map Act) will be excluded from coastal development permit requirements, provided that the resulting parcels each have an adequate site outside any environmentally sensitive habitat area and 100-foot buffer for the eventual development of the parcels including appurtenant roads, parking, wells, septic systems, etc.

II. STAFF RECOMMENDATION AND RESOLUTION.

The staff recommends that, following a public hearing, the Commission adopt the following resolution and related findings:

APPROVAL OF THE CATEGORICAL EXCLUSION WITH CONDITIONS.

A. MOTION:

"I move that the Commission approve Categorical Exclusion Order No. E-96-1 subject to conditions and certify the mitigated Negative Declaration."

Staff recommends a YES vote, and the adoption of the following resolution and findings. To adopt this resolution, two-thirds of the appointed members of the Commission must vote YES on the resolution.

B. RESOLUTION:

The Commission hereby approves the Mendocino County Town Segment Categorical Exclusion Order No. E-96-1, subject to the ten Special Conditions set forth in the Commission's approval of the categorical exclusion order, and adopts the findings stated below, on the grounds that, as conditioned, the order will not result in a potential for any significant adverse effects, either individually or cumulatively, on coastal resources or on public access to, or along, the coast. The Commission also certifies the mitigated Negative Declaration on the grounds that the categorical exclusion will not cause a significant adverse effect on the environment within the meaning of CEQA. The Coastal Commission, as lead agency, hereby adopts this negative declaration, which reflects its independent judgment.

8 of 36

C. LIMITATIONS OF EXCLUSION.

Pursuant to Section 30610.5, tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach or of the mean high tide line and all lands and waters subject to the public trust shall not be excluded. Also, this exclusion shall not apply to any areas of deferred certification or to uncertified segments where the County does not have coastal permit-issuing responsibility.

D. SPECIAL CONDITIONS OF APPROVAL:

1. Revised Categorical Exclusion Maps.

The Categorical Exclusion Order shall not become effective until Mendocino County has submitted, for the review and approval of the Executive Director, maps that:

- a. delete from the exclusion areas for wells, septic systems, and boundary line adjustments those areas that are statutorily prohibited from being exempted; i.e., tidelands, submerged lands, public trust lands/waters, beaches and lots immediately adjacent to the inland extent of any beach or mean high tide line where there is no beach, and attach to the maps a note to that effect.
- b. delete from the exclusion areas for wells, septic systems, and boundary line adjustments those areas within 100 feet of the centerline of any blue line or intermittent stream, specifically, Slaughterhouse Gulch and Big River, and attach to the maps a note to that effect.
- c. delete from the exclusion areas any areas of deferred certification (ADC's), and attach to the maps a note to that effect.

2. Definition of ESHA.

The term Environmentally Sensitive Habitat Area (ESHA), as it is used in criteria governing the proposed exclusion, shall be defined consistent with the definition in Section 3.1 of the County's LUP and Section 20.308.040(F) of the County's Zoning Code, and with Section 20.608.024(C) of the Town Zoning Code, as follows:

Any area 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 or developments.

In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats or rare and endangered plants and animals.

3. Revised Criteria for Boundary Line Adjustments.

The criteria for boundary line or lot line adjustments shall be revised such that boundary line or lot line adjustments may be excluded only if no portion of the adjusted boundary line or lot line is within 200 feet of the outward extent of an Environmentally Sensitive Habitat Area (ESHA), as defined above and in the County's LCP and the Town Zoning Code, or within 200 feet of the outward extent of an area of pygmy vegetation.

4. Streams and Wetlands.

This order shall not apply to any development within 100 feet of the upland limit of any stream, wetland, marsh, or estuary, regardless of whether such coastal waters are mapped or unmapped.

5. Determination by the Executive Director.

The order granting a categorical exclusion for these categories of development in the Town of Mendocino shall not become effective until the Executive Director of the Commission has certified, in writing, that the local government has taken the necessary action to carry out the exclusion order pursuant to Section 13244 of the Coastal Commission regulations.

6. Exclusion Limited to Coastal Permits.

This exclusion shall apply to the permit requirements of the Coastal Act of 1976, pursuant to Public Resources Code 30610(e) and 30610.5(b), and shall not be construed to exempt any person from the permit requirements of any other federal, state, or local government agency.

7. Records.

Mendocino County shall maintain a record of any other permits which may be required for categorically exempt development which shall be made available to the Commission or any other interested person upon request.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Eleven

8. Notice.

Within five working days of local approval of a development covered by this exclusion, the Coastal Commission area office and any person who has requested such notice shall receive notification of development exempted under this order on a form containing the following information:

- a. the developer's name;
- b. street address and parcel number of the subject property;
- c. description of the development;
- d. date of application for other permits; and
- e. all terms and conditions of approval imposed by the local government in granting other permits.

9. Conformity with the LCP.

Development under this exclusion shall conform with the Mendocino County LCP in effect on the date of this exclusion as adopted by the Commission or to the terms and conditions of this exclusion where such terms and conditions specify more restrictive development criteria.

10. Amendment of LCP.

In the event an amendment of the Mendocino County LCP is certified by the Coastal Commission pursuant to Section 30514 of the Coastal Act, development under this order shall comply with the amended LCP except where the terms and conditions of this order specify a more restrictive criteria. However, such amendment shall not authorize the exclusion of any category of development not excluded herein, nor shall such amendment alter the geographic areas of the exclusion.

E. RECISSION AND REVOCATION.

Pursuant to Title 14 of the California Code of Regulations Section 13243(e), the Commission hereby declares that the order granting this exclusion amendment may be rescinded at any time, in whole or in part, if the Commission finds by a majority vote of its appointed membership, after public hearing, that the terms and conditions of the exclusion order no longer support the findings specified in Public Resources Code Section 30610(e). Further, the Commission declares that this order may be revoked at any time that the terms and conditions are violated.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twelve

III. FINDINGS IN SUPPORT OF APPROVAL WITH CONDITIONS.

Section 30610(e) of the Coastal Act provides for the exclusion of certain categories of development from the requirement to obtain coastal development permits if the exclusion has no potential for significant adverse impacts to coastal resources or public access.

A. Impacts to Coastal Resources.

The proposed categorical exclusion order, as conditioned, will not result in any significant adverse effects on coastal resources or public access, and is consistent with the policies of the Coastal Act, as described below.

1. Public Access.

Section 30210 requires the provision of maximum public access and Section 30211 protects the public's right of access to the sea where acquired through use or legislative authorization. Section 30212 requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or if adequate access exists nearby.

The proposed exemptions to coastal permit requirements are for activities that would primarily occur underground (wells and septic systems) and only where there is an existing development; for single-family residences not located between the first public road and the sea; and for boundary line adjustments not located on oceanfront lots. There would be no potential impact to public access because development on oceanfront parcels is not excluded as part of the categorical exclusion order. Therefore, the types of development excluded pursuant to the proposed categorical exclusion order do not have the potential to significantly affect public access and therefore are consistent with Coastal Act Policies 30210, 30211, and 30212.

2. Scenic and Visual Resources.

Coastal Act Section 30251 requires that the scenic and visual qualities of coastal areas be protected as a resource of public importance, and 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 landforms, and to be visually compatible with the character of surrounding areas.

Since the proposed exemptions to coastal permit requirements are for activities that would not occur on oceanfront parcels, and, in the case of

12 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Thirteen

wells and septic systems, would primarily occur underground, there is no potential for significant adverse impacts to visual resources. The two areas within the Town where residential development would be exempt are Historic Zones A and B. All residential development within Historic Zone A, which is west of Highway One, is subject to design review by the Mendocino Historical Review Board, whose standards have been incorporated into the certified LCP. All residential development within Historic Zone B is also subject to design review by the Mendocino Historical Review Board if the development is visible from any point in Historical Zone A. Neither of these zones are in areas where coastal development permits would be appealable to the Coastal Commission, since they are not located west of the first public road (which in the case of Mendocino is not Highway One). Thus, the Commission finds that the proposed categorical exclusion order is consistent with Coastal Act Policy 30251.

3. Geologic Hazards.

Coastal Act Section 30253 states that new development shall minimize risks to life and property in areas of high geologic hazard, and shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

The proposed categorical exclusion order does not apply to oceanfront parcels; thus there is no potential for significant adverse impacts to coastal bluffs or geologic instability due to bluff erosion or retreat. In addition, the Town is located on a relatively flat coastal terrace with few steep slopes. The few steep slopes are generally found adjacent to streams, and the categorical exclusion order does not apply to development within 100 feet of streams, pursuant to Condition No. 4. Furthermore, there are also limitations as to the appropriate siting of septic systems established by the Regional Water Quality Control Board (RWQCB) and the Mendocino County Division of Environmental Health. These standards, including minimum setbacks from banks, bluffs, or breaks in slope, are to assure that the systems will function properly requiring that the systems not be susceptible to hazards or to erosion. As no activity excluded from coastal permit requirements pursuant to this proposed categorical exclusion order will be located where it could have a significant adverse impact on geologic stability or erosion, the proposed categorical exclusion order is consistent with Coastal Act Section 30253.

4. Water Resources.

Coastal Act Section 30231 states that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes shall be maintained through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of

13 of 32

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.

As conditioned herein, the proposed exclusions will have no significant impacts on groundwater resources. The RWQCB and County Environmental Health standards applicable to septic systems establish appropriate separations between septic tanks and leach lines to groundwater and wells to prevent groundwater contamination. Condition No. 1 of the categorical exclusion order requires submittal of revised maps that remove from the exclusion those areas that are within 100 feet of the centerline of a blue line or intermittent stream, such as Slaughterhouse Gulch and Big River, which are blue line streams.

In addition, Condition No. 3 requires the criteria for boundary line or lot line adjustments to be revised such that boundary line or lot line adjustments may be excluded only if no portion of the adjusted boundary line or lot line is within 200 feet of the outward extent of an ESHA, as defined in the County LCP and Town Zoning Code, or is within 200 feet of the outward extent of an area of pygmy vegetation. Condition No. 4 states that the exclusion order does not apply to any development located within 100 feet of the upland limit of any stream, wetland, marsh, or estuary, regardless of whether such coastal waters are mapped or unmapped. These conditions ensure that development in or near a sensitive water resource area will not occur without coastal development permit review.

Thus, as conditioned, the categorical exclusion order will not result in the potential for significant adverse impacts to the biological productivity and quality of water resources, consistent with Coastal Act Section 30231.

5. Environmentally Sensitive Habitat.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. In addition, development in areas adjacent to environmentally sensitive habitat shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The Town of Mendocino contains very little environmentally sensitive habitat. There are two blue line streams, Slaughterhouse Gulch and Big River, that are located within the Town, and several smaller creeks, not all of which are mapped, which may support riparian or wetland habitat.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Fifteen

Additionally, there may be rare or endangered plant habitat within the Town, such as Mendocino coast paintbrush (Castilleja latifolia mendocinensis), which grows on bluffs and blufftops. Also, it is possible that there may be some pygmy vegetation east of Highway One, where U.S.D.A. soil conservation maps show there to be pygmy soils. The proposed categorical exclusion order, as conditioned, will not exclude development that affects any sensitive habitat.

The proposed exclusion applies to single-family residences within Historic Zones A and B, water wells serving existing development, septic systems serving existing development, and boundary line adjustments within the Town of Mendocino. Special Condition No. 1 of the categorical exclusion order requires submittal of a revised map that removes from the exclusion those areas that are within 100 feet of the center line of a blue line or intermittent stream, and those areas that are statutorily prohibited from being exempted, such as tidelands, submerged lands, public trust lands, beaches, and lots immediately adjacent to the inland extent of any beach or mean high tide line where there is no beach. Condition No. 2 requires that the definition of ESHA, as it is used in criteria governing the proposed exclusion, shall be defined consistent with the definition in the County's LCP and the Town Zoning Code. Condition No. 3 requires that the criteria for boundary line or lot line adjustments be revised such that boundary line or lot line adjustments may be excluded only if no portion of the adjusted boundary line or lot line is within 200 feet of the outward extent of an Environmentally Sensitive Habitat Area (ESHA), as defined in the County's LCP and the Town Zoning Code, or is within 200 feet of the outward extent of an area of pygmy vegetation. Condition No. 4 states that the exclusion order does not apply to any development located within 100 feet of the upland limit of any stream, wetland, marsh, or estuary, regardless of whether such coastal waters are mapped or unmapped.

These special conditions ensure that no well or septic system within 100 feet of an environmentally sensitive habitat area would be excluded from permit requirements, and no boundary line or lot line adjustment would be excluded from permit requirements that is within 200 feet of the outward extent of an environmentally sensitive habitat area, as defined in the LCP, or within 200 feet of the outward extent of an area of pygmy vegetation. Additionally, RWQCB and County Environmental Health standards establish minimum setbacks from perennial streams, seasonal streams, and other bodies of water. Thus, as conditioned, the proposed categorical exclusion order has no potential for significant adverse impacts to environmentally sensitive habitat areas, consistent with Coastal Act Section 30240.

The certified LCP maps do not show any pygmy vegetation anywhere within the Town of Mendocino. However, the Commission notes that U.S.G.S. soil survey maps show pygmy soils within some of the mapped exclusion area of Historic

15 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Sixteen

Zone B. No pygmy soils are mapped within the mapped exclusion area of Historic Zone A. To avoid any possible impact to pygmy vegetation, the categorical exclusion order, as proposed, does not exclude from coastal permit requirements residential development within Historic Zone B in areas that contain pygmy vegetation. Thus, the proposed categorical exclusion order has no potential for significant adverse impacts to pygmy vegetation.

Within the Town, the areas most likely to contain rare and/or endangered plants are blufftop parcels. As conditioned, the proposed categorical exclusion order will not apply to blufftop lots. Condition No. 1 requires submittal of revised maps that delete from the exclusion lots immediately adjacent to the inland extent of any beach or mean high tide line where there is no beach (i.e., blufftop lots). Therefore, the proposed categorical exclusion order has no potential for significant adverse impacts to rare and/or endangered plants.

B. CEQA.

The Commission has prepared and circulated a mitigated Negative Declaration according to the requirements of CEQA. The exclusion order has been conditioned to ensure that development in or near sensitive habitats will not occur without coastal development permit review. Therefore, the exclusion order will not cause a significant adverse impact on the environment within the meaning of CEQA.

C. Department of Fish and Game Fees.

The Commission, as lead agency under CEQA and pursuant to Section 711.4 of the Fish and Game Code, is required to collect fees for the Department of Fish and Game whenever a project has an impact on wildlife resources. If a project (in this case, a categorical exclusion order) has an inconsequential or de minimis effect on wildlife, then no fee is required. No comments have been received from the Department of Fish and Game on the proposed categorical exclusion order or the Negative Declaration. As conditioned, the categorical exclusion order does not apply to tidelands, submerged lands, environmentally sensitive habitat areas (such as streams, wetlands, or areas having rare and/or endangered plant and/or animal species), or to any area within 100 feet of the upland limit of any stream, wetland, marsh or estuary, whether mapped or unmapped. Therefore, those areas which have the highest potential for wildlife use will not be subject to the exclusion order. Therefore, the Commission finds that the proposed categorical exclusion order will have an inconsequential or de minimis effect on wildlife resources, and no fee is required.

16 of 36

IV. ADOPTION OF THE NEGATIVE DECLARATION.

**ADOPTED MITIGATED NEGATIVE DECLARATION
BY THE CALIFORNIA COASTAL COMMISSION
FOR THE TOWN OF MENDOCINO
CATEGORICAL EXCLUSION NO. E-96-1**

A. THE CATEGORICAL EXCLUSION PROCESS.

The Coastal Act of 1976 (Act) requires that a coastal development permit be issued for all development within the defined coastal zone and that local governments prepare Local Coastal Plans (LCP's) conforming to the policies of the Act. The Coastal Commission issues these permits prior to certification of an LCP. After LCP certification, the local government then issues coastal development permits in its jurisdiction in the coastal zone, except for certain areas where the Commission retains original permit jurisdiction, such as tidelands and submerged lands.

As the County of Mendocino has assumed permit issuing authority for the Town of Mendocino, it proposes a categorical exclusion pursuant to Sections 30610(e) and 30610.5(b) of the Coastal Act.

B. SYNOPSIS OF THE PROPOSED CATEGORICAL EXCLUSION.

The proposed categorical exclusion order excludes four categories of development within the Town of Mendocino from the requirements of a local coastal development permit: (1) single-family residences in mapped exclusion areas subject to certain criteria; (2) water wells subject to certain criteria; (3) septic systems subject to certain criteria; and (4) boundary line adjustments subject to certain criteria.

The County may not propose to exclude any types of development from its coastal development permit requirements in areas where the County does not have coastal development permit authority, such as an uncertified area of its LCP or an area of deferred certification. In addition, the County may not propose to exclude any types of development from its coastal development permit requirements in areas where a categorical exclusion is statutorily prohibited by Section 30610.5(b) of the Coastal Act. The areas covered under Section 30610.5(b) include:

tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust.

17 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Eighteen

The County proposes to exclude from coastal permit development permit requirements single-family residences that fall within two residential exclusion areas. These two areas do not include any areas where a categorical exclusion is statutorily prohibited by Section 30610.5(b), and are limited to areas zoned for residential use. However, as proposed, wells, septic systems, and boundary line adjustments, subject to certain criteria, would be excluded throughout the Town of Mendocino, regardless of zoning. To make it clear that wells, septic systems, and boundary line adjustments are not excluded in areas where a categorical exclusion is statutorily prohibited by Section 30610.5(b), a special condition will be attached to the categorical exclusion order, requiring the County to submit revised categorical exclusion maps that remove areas where a categorical exclusion is statutorily prohibited by the Coastal Act, and to attach to the maps a note to that effect.

In addition, to make it clear that development within Areas of Deferred Certification (ADC's) is not excluded by the categorical exclusion order, a special condition will be attached to the exclusion order, requiring the County to submit revised categorical exclusion maps that remove Areas of Deferred Certification, and to attach to the maps a note to that effect.

In addition, for all types of development proposed to be excluded, the categorical exclusion order will also be conditioned to remove areas that are unsuitable for exclusion based on their proximity to a blue line or intermittent stream. Specifically, the Commission will condition the categorical exclusion order to remove from the maps those areas that are within 100 feet of the centerline of Slaughterhouse Gulch or Big River, which are blue line streams, and to attach to the maps a note to that effect.

Furthermore, the categorical exclusion order will be conditioned to require the term Environmentally Sensitive Habitat Area (ESHA) as it is used in criteria governing the proposed exclusion to be defined as "any area 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 or developments," consistent with the definition in Section 3.1 of the County's LUP and Section 20.308.040(F) of the County's Zoning Code, and with Section 20.608.024(C) of the Town Zoning Code. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats or rare and endangered plants and animals.

In addition, the categorical exclusion order will be conditioned to revise the criteria for boundary line or lot line adjustments so that boundary line or lot line adjustments may be excluded only if no portion of the adjusted lot

line or boundary line is within 200 feet of the outward extent of an Environmentally Sensitive Habitat Area, as defined above and in the County's LCP and the Town Zoning Code, or within 200 feet of the outward extent of an area that contains pygmy vegetation.

Finally, all construction under this exclusion must meet all other LCP requirements including height limits, setbacks, design, parking, and maximum lot coverage.

The method used to determine the single-family residence exclusion areas and the criteria for well, septic, and boundary line exclusions are discussed below.

C. THE TEXT OF THE PROPOSED CATEGORICAL EXCLUSION.

The County of Mendocino proposes the following categories of development to be excluded from the requirements of obtaining a coastal development permit within the Town of Mendocino:

SINGLE-FAMILY RESIDENCES

- A. The construction of a single-family residence will be excluded from coastal development permit requirements in Historic Zone A where:
 - 1. a single-family residence is a principal permitted use; and
 - 2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the residence; and
 - 3. the single-family residence will be the only residence to be located on a legally created parcel; and
 - 4. the Mendocino Historical Review Board has approved the residence; and
 - 5. the residence will not be located within 100 feet of an environmentally sensitive habitat area.
- B. Improvements to a single-family residence, in locations not otherwise exempted from requiring a coastal development permit under Section 13250 of the California Code of Regulations, will be excluded from coastal development permit requirements in Historic Zone A where:
 - 1. a single-family residence is a principal permitted use; and

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty

2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the improvements; and
 3. the improvements would be made to a legal, conforming single-family residence; and
 4. the Mendocino Historical Review Board has approved the improvements, or the improvements are exempt from Review Board approval; and
 5. the improvements will not be located within 100 feet of an environmentally sensitive area.
- C. The construction of a single-family residence will be excluded from coastal development permit requirements in mapped exclusion areas of Historic Zone B where:
1. a single-family residence is a principal permitted use; and
 2. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the residence; and
 3. the single-family residence will be the only residence to be located on a legally created parcel; and
 4. the residence will not be located within 100 feet of an environmentally sensitive habitat area; and
 5. the improvements will not be located on an area that contains pygmy vegetation.
- D. Where a parcel contains only one single-family residence, a coastal development permit shall not be required for the removal of the existing residence and replacement with a new residence where:
1. a single-family residence is a principal permitted use; and
 2. the parcel is in Historic Zone A, or in a mapped single-family residence exclusion area; and
 3. the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements for the replacement residence; and

20 of 36

4. the Mendocino Historical Review Board has approved the removal of the existing residence and the replacement residence, or the removal and replacement of the residence is exempt from Review Board approval; and
5. the replacement residence will not be located within 100 feet of an environmentally sensitive habitat area; and
6. the replacement residence will not be located on an area that contains pygmy vegetation.

WATER WELLS

When the Mendocino City Community Services District has granted a groundwater extraction permit or an exemption to groundwater extraction permit requirements, water wells will be excluded in three cases:

- a. where there are no permanent facilities for production (e.g., test wells); or
- b. replacement or supplemental wells to serve an existing legal use on the property; or
- c. production wells in association with single-family residences exempt under this exclusion order.

The well shall not be located within 100 feet of an environmentally sensitive habitat area.

SEPTIC SYSTEMS

The repair or replacement of existing septic systems will be excluded from coastal development permit requirements where:

- a. there is an existing, legal use on the parcel; and
- b. the replacement or repair will not increase septic capacity; and
- c. the replacement or repair will not be located on a parcel that contains pygmy vegetation in the area of replacement or repair; and
- d. the replacement or repair will not be located within 100 feet of an environmentally sensitive habitat area.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty-Two

The expansion of an existing septic system will be excluded from coastal development requirements where:

- a. the expansion is associated with the addition to an existing single-family residence that is statutorily exempt from coastal development permit requirements, and the expansion meets all of the criteria cited above for replacement and repair except (b).

The installation of a septic system will be excluded from coastal development permit requirements where:

- a. the installation is associated with the construction of a single-family residence subject to this categorical exclusion; and
- b. the septic system will not be located within 100 feet of an environmentally sensitive habitat area.

BOUNDARY LINE ADJUSTMENTS

As proposed by the County, the adjustment of a lot line or boundary line as defined in Section 66412(d) of the California Government Code (Subdivision Map Act) will be excluded from coastal development permit requirements, provided that the resulting parcels each have an adequate site outside any environmentally sensitive habitat area and 100 foot buffer for the eventual development of the parcels including appurtenant roads, parking, wells, septic systems, etc.

D. ENVIRONMENTAL REVIEW OF THE PROPOSED CATEGORICAL EXCLUSION.

1. Analysis Criteria.

To approve the categorical exclusion order, the Commission must find, after a public hearing and by a two-thirds vote of its appointed members, that the proposed categorical exclusion has no potential for any significant adverse effects, either individually or cumulatively, on coastal resources, including public access to or along the coast. The Coastal Commission may also impose conditions of approval it deems necessary to avoid any potentially significant adverse effects on coastal resources or public access.

The Commission intends to condition the categorical exclusion order to require the County to submit a revised categorical exclusion map that removes areas that are unsuitable for exclusion based on the following criteria:

22 of 32

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty-Three

- a. tidelands, submerged lands, public trust lands/waters, beaches and lots immediately adjacent to the inland extent of any beach or mean high tide line where there is no beach;
- b. areas within 100 feet of the center line of a blue line or intermittent stream.
- c. areas of deferred certification (ADC's).

The categorical exclusion order will further be conditioned to require the term ESHA as it is used in criteria governing the exclusion to be defined according to the definition in the County's LCP and Town Zoning Code: "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 or developments."

The categorical exclusion order will also be conditioned such that boundary line or lot line adjustments may be excluded only if no portion of the adjusted boundary line or lot line is within 200 feet of the outward extent of an Environmentally Sensitive Habitat Area, as defined in the County's LCP and Town Zoning Code, or within 200 feet of an area of pygmy vegetation.

2. Analysis.

a. Limitations on Exclusion Area Boundaries.

The proposed Town of Mendocino Categorical Exclusion Order, as conditioned, will not result in any significant adverse effects on coastal resources or public access, as described below. The construction of single-family residences on vacant, legal lots should have no significant impact on the environment, as long as no sensitive resources are located on those lots. The categorical exclusion for the construction of residences only applies to Historic Zones A and B, which are not located west of the first public road and do not raise significant coastal or LCP issues (see Exhibit A).

During the preparation of the Town LCP, the County and the Commission reviewed existing land use patterns and distribution of important coastal resources to determine the appropriate density and location of land use types within the Town. In certifying the Mendocino Town LCP, the Commission found that the LCP residential land use designations and zones would have no significant adverse individual or cumulative impacts on the environment. Therefore, the lots proposed for exclusion are appropriate for the construction of a single-family residence.

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty-Four

In preparing the categorical exclusion map, the County did not exclude residential development within sensitive resource areas such as floodplains and areas adjacent to parks from coastal permit requirements. Therefore, development in these sensitive areas will receive the heightened level of review required for a coastal development permit, to ensure that development of a single-family residence will not adversely affect the environment.

In addition, the development of wells, septic systems, and boundary line adjustments sited away from sensitive habitat will not adversely affect the environment. As currently proposed, wells and septic systems are exempted only if they are not located within 100 feet of an environmentally sensitive habitat area. Boundary line adjustments are exempted only if the resulting parcels each have an adequate site outside any environmentally sensitive habitat area and 100 foot buffer for the eventual development of the parcels including appurtenant roads, parking, wells, and septic systems. However, the maps submitted by the County only show the exclusion area for residential development, and do not map those areas where septic systems, wells, and boundary line adjustments are excluded, relying solely on the text of the categorical exclusion and on staff to interpret the text.

A condition will be attached requiring submittal by the County of revised maps that omit from the categorical exclusion those areas for which an exclusion is not appropriate, either because it is an area statutorily prohibited from being excluded (oceanfront or blufftop lots); because it is an area within 100 feet of Slaughterhouse Gulch or Big River (blue line streams); or because it is within an Area of Deferred Certification (ADC). As conditioned, therefore, the proposed categorical exclusion order will not have any significant adverse impacts on the environment.

b. Public Access.

The proposed exemptions to coastal permit requirements are either for activities that would primarily occur underground (wells and septic systems); for the construction of single-family residences located on parcels not seaward of the first public road; or for boundary line adjustments. There would thus be no potential for significant adverse impacts to public access because residential development on oceanfront parcels is not excluded as part of the categorical exclusion order. The Commission therefore finds that the types of development excluded pursuant to the proposed categorical exclusion order have no potential for adverse impacts on public access.

c. Visual Resources.

The proposed exemptions to coastal permit requirements are either for activities that would occur underground (wells and septic systems), or for

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty-Five

construction of single-family residences on parcels not located seaward of the first public road, or for boundary line adjustments. Residential development is exempted only in Historic Zones A and B, which are subject to design review by the Mendocino Historical Review Board; standards for review have been incorporated into the Town LCP. Therefore, the Commission finds that the proposed categorical exclusion order will not result in the potential for significant adverse impacts to visual resources.

d. Geologic Hazards.

The proposed categorical exclusion order does not apply to residential development on oceanfront parcels; thus there is no potential for significant adverse impacts to coastal bluffs or geologic stability. There are also limitations as to the appropriate siting of septic systems established by the Regional Water Quality Control Board (RWQCB) and the Mendocino County Division of Environmental Health. These standards, including minimum setbacks from banks, bluffs, or breaks in slope, are to assure that the systems will function properly, requiring that the systems not be susceptible to hazards or to erosion.

The Commission therefore finds that the proposed categorical exclusion order will not result in the potential for geologic hazards.

e. Groundwater.

The proposed exclusions have no potential to impact groundwater resources because the RWQCB and County Environmental Health standards applicable to septic systems establish appropriate separations between septic tanks and leach lines to groundwater and wells in order to prevent groundwater contamination. Thus the proposed categorical exclusion order will not result in the potential for significant adverse impacts to groundwater supplies.

f. Environmentally Sensitive Habitat.

The proposed exclusion order applies to single-family residences in mapped exclusion areas within the Town of Mendocino subject to certain criteria; to new or supplemental water wells and repairs and replacement of existing wells subject to certain criteria; to the installation of new septic systems and repairs, replacement, and expansion of existing septic systems subject to certain criteria; and to boundary line adjustments subject to certain criteria.

The categorical exclusion order will be conditioned to require the term ESHA as it is used in criteria governing the exclusion to be defined consistent with the definition in the County's LCP and Town Zoning Code. The categorical

25 of 36

COUNTY OF MENDOCINO
TOWN OF MENDOCINO
CATEGORICAL EXCLUSION ORDER NO. E-96-1
Page Twenty-Six

exclusion order will also be conditioned to require the criteria governing boundary line or lot line adjustments to be revised such that the adjustment of a boundary line or lot line may be excluded only if the adjusted boundary line or lot line is not within 200 feet of the outward extent of an Environmentally Sensitive Habitat Area, as defined in the County's LCP and Town Zoning Code, or within 200 feet of the outward extent of an area of pygmy vegetation.

In addition, RWQCB and County Environmental Health standards establish minimum setbacks from perennial streams, seasonal streams, and other bodies of water. Thus, the proposed categorical exclusion order has no potential for significant adverse impacts on environmentally sensitive habitat areas.

3. Conclusion.

As conditioned above, the proposed categorical exclusion order for the Town of Mendocino does not have the potential for significant adverse impacts to coastal resources or public access.

E. CERTIFICATION.

I certify that the statements furnished above present data and information required for this evaluation to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

4 October 1996
Date

Jo Ginsberg
Jo Ginsberg
Coastal Planner
California Coastal Commission

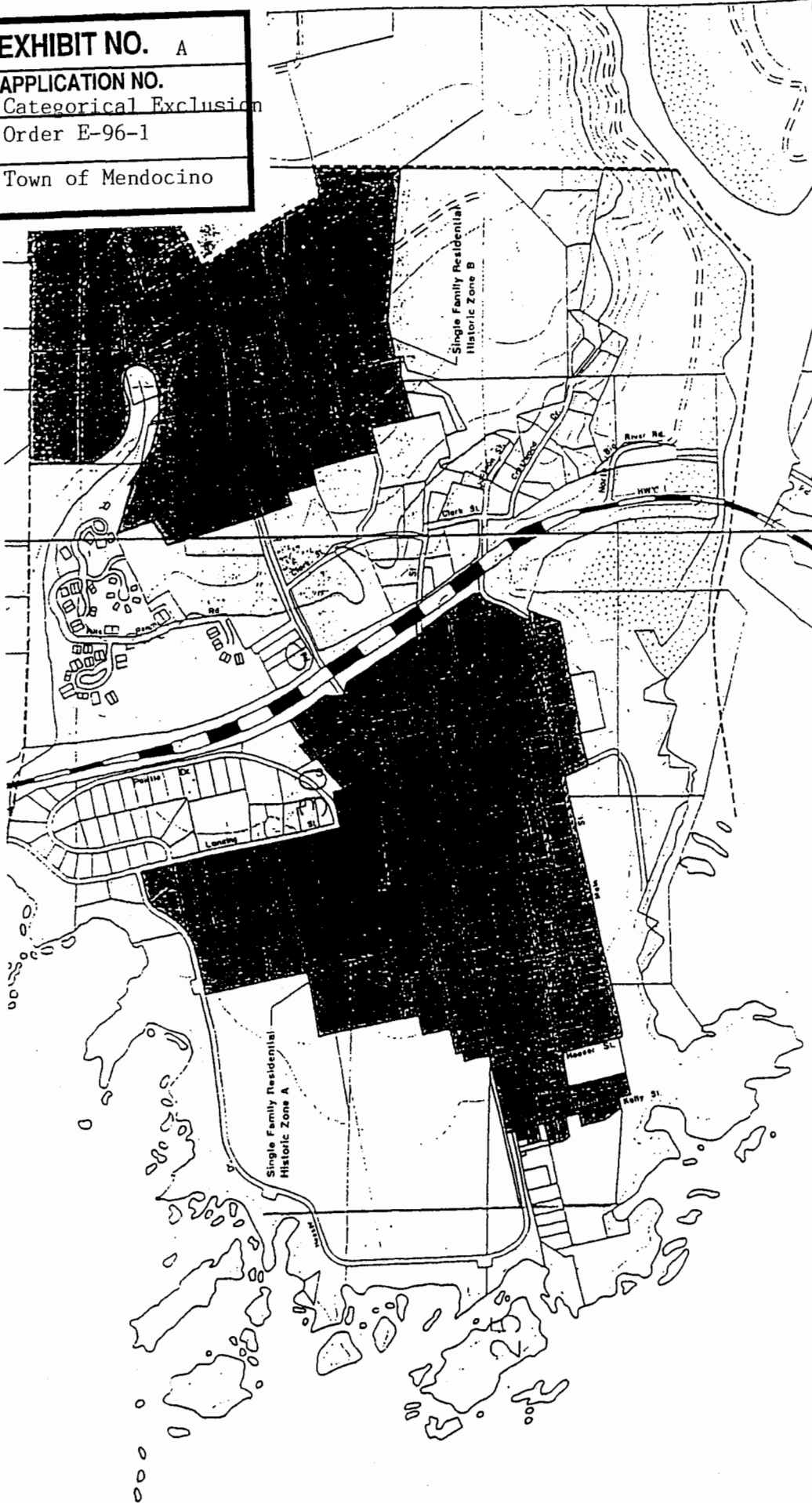
EXHIBIT NO. A

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino



MENDOCINO TOWN PLAN CATEGORICAL EXCLUSION AREAS

2000
0
Feet
Approximate Scale

----- Town Plan Boundary

Single Family Residence
Categorical Exclusion Areas



EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

Mail to: State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, CA 95814 — 916/445-0613

NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL FORM

SCH #

1. Project Title: Categorical Exclusion # E-96-1

2. Lead Agency: California Coastal Commission 3. Contact Person: Jo Ginsbe

3a. Street Address: 45 Fremont St., Ste 2000 3b. City: San Francisco

3c. County: San Francisco 3d. Zip: 94105 3e. Phone: (415) 904-5260

PROJECT LOCATION 4. County: Mendocino 4a. City/Community: Town of Mendocino

4b. Assessor's Parcel No. _____ 4c. Section _____ Twp. _____ Range _____

5a. Cross Streets: _____ 5b. Community: _____

For Rural, Nearest

6. Within 2 miles: a. State Bay # One b. Air-ports _____ c. Rail-ways _____ d. Water-ways _____

7. DOCUMENT TYPE

CEQA

01. NOI 06. NOE

02. Early Cons 07. NOI

03. X Neg Dec 08. NOI

04. Draft EIR

05. Supplement/
Subsequent EIR
(Prior SCH No.: _____)

8. LOCAL ACTION TYPE

01. General Plan Update

02. New Element

03. General Plan Amendment

04. Master Plan

05. Annexation

06. Specific Plan

07. Community Plan

08. Redevelopment

09. Rezoning

10. Land Division
(Subdivision, Parcel
Map, Tract Map, etc.)

9. DEVELOPMENT TYPE

01. Residential: Units _____ Acres _____

02. Office: Sq. Ft. _____
Acres _____ Employees _____

03. Shopping/Commercial: Sq. Ft. _____
Acres _____ Employees _____

04. Industrial: Sq. Ft. _____
Acres _____ Employees _____

05. Water Facilities: MGD _____

06. Transportation: Type _____

07. Mining: Mineral _____

08. Power: Type _____ Watts _____

09. Waste Treatment: Type _____

NEPA

09. NOI 11. Draft
ETIS

10. FOISI 12. EA

OTHER

13. Joint Document14. Final Document15. Other12. Waste Mgmt Plan13. Cancel Ag Preserve14. X other Categorical Exclusion Order10. OCS Related11. X other: Exclusion from requirements for local coastal development permits

10. TOTAL ACRES:

11. TOTAL JOBS CREATED:

12. PROJECT ISSUES DISCUSSED IN DOCUMENT

01. X Aesthetic/Visual02. Agricultural Land03. Air Quality04. Archaeological/Historical05. X Coastal Zone06. Economic07. Fire Hazard13. FINDING (approx) Federal \$ _____14. PROJECT LAND USE AND ZONING:08. Flooding/Drainage09. X Geologic/Seismic10. Jobs/Housing Balance11. Minerals12. Noise13. Public Services14. Schools15. X Septic Systems16. Sewer Capacity17. Social18. Soil Erosion19. Solid Waste20. Toxic/Hazardous21. Traffic/Circulation22. Vegetation23. X Water Quality24. Water Supply25. X Wetland/Riparian26. Wildlife27. Growth Inducing28. Incompatible Landuse29. Cumulative Effects30. Other

State \$ _____ Total \$ _____

Variable

15. PROJECT DESCRIPTION: Categorical Exclusion Order No. E-96-1 excludes four categories of development within specified areas of the Town of Mendocino's Coastal Zone from the requirements of a local coastal development permit: (1) single-family residences in mapped exclusion areas subject to certain criteria; (2) water wells in mapped exclusion areas subject to certain criteria; (3) septic systems in mapped exclusion areas subject to certain criteria; and (4) boundary line adjustments in mapped exclusion areas subject to certain criteria.

16. SIGNATURE OF LEAD AGENCY REPRESENTATIVE: [Signature]DATE: October 4, 1996

NOTE: Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. from a Notice of Preparation or previous draft document) please fill it in.

28 of 36

REVIEWING AGENCIES

<u>X</u> Resources Agency	<u>X</u> Caltrans District <u>4</u>
<u>X</u> Boating/Waterways	<u>X</u> Dept. of Transportation Planning
<u>X</u> Conservation	<u> </u> Aeronautics
<u>X</u> Fish and Game	<u> </u> California Highway Patrol
<u>X</u> Forestry	<u>X</u> Housing & Community Dev't.
<u> </u> Colorado River Board	<u> </u> Statewide Health Planning
<u>X</u> Dept. Water Resources	<u>X</u> Health
<u> </u> Reclamation	<u> </u> Food & Agriculture
<u>X</u> Parks and Recreation	<u> </u> Public Utilities Commission
<u>X</u> Office of Historic Preservation	<u> </u> Public Works
<u>X</u> Native American Heritage Commission	<u> </u> Corrections
<u> </u> S.F. Bay Cons. & Dev't. Commission	<u> </u> General Services
<u>X</u> Coastal Commission	<u> </u> OLA
<u> </u> Energy Commission	<u> </u> Santa Monica Mountains
<u>X</u> State Lands Commission	<u> </u> TRPA
<u> </u> Air Resources Board	<u> </u> OPR - OLGA
<u> </u> Solid Waste Management Board	<u>X</u> OPR - Coastal
<u>X</u> SWRCB: Sacramento	<u> </u> Bureau of Land Management
<u>X</u> RWQCB: Region # <u>2</u>	<u> </u> Forest Service
<u> </u> Water Rights	<u>X</u> Other: <u>Mendocino County Department</u>
<u> </u> Water Quality	<u> </u> Other: <u>of Planning & Building Services</u>

FOR SCH USE ONLY

Date Received at SCH <u> </u>	Catalog Number <u> </u>
Date Review Starts <u> </u>	Applicant <u> </u>
Date to Agencies <u> </u>	Consultant <u> </u>
Date to SCH <u> </u>	Contact <u> </u> Phone <u> </u>
	Address <u> </u>

EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

29 of 36

APPENDIX I

ENVIRONMENTAL CHECKLIST FORM (To Be Completed By Lead Agency)

I. Background

1. Name of Proponent County of Mendocino
2. Address and Phone Number of Proponent c/o Ray Hall, Planning Director
Mendocino County Planning and Building Services, 501 Low Gap Road, Room 1440, Ukiah
CA, 95482 (707) 463-4281
3. Date of Checklist Submitted _____
4. Agency Requiring Checklist California Coastal Commission
5. Name of Proposal, if applicable Categorical Exclusion # E-96-1

II. Environmental Impacts

(Explanations of all "yes" and "maybe" answers are required on attached sheets.)

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
1. Earth. Will the proposal result in:			
a. Unstable earth conditions or in changes in geologic substructures?	___	___	<u>X</u>
b. Disruptions, displacements, compaction or overcovering of the soil?	___	___	<u>X</u>
c. Change in topography or ground surface relief features?	___	___	<u>X</u>
d. The destruction, covering or modification of any unique geologic or physical features?	___	___	<u>X</u>
e. Any increase in wind or water erosion of soils, either on or off the site?	___	___	<u>X</u>
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	<u>X</u>
Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?	___	___	<u>X</u>

EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
2. Air. Will the proposal result in:			
a. Substantial air emissions or deterioration of ambient air quality?	_____	_____	<u>X</u>
b. The creation of objectionable odors?	_____	_____	<u>X</u>
c. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	_____	_____	<u>X</u>
3. Water. Will the proposal result in:			
a. Changes in currents, or the course of direction of water movements, in either marine or fresh waters?	_____	_____	<u>X</u>
b. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?	_____	_____	<u>X</u>
c. Alterations to the course or low of flood waters?	_____	_____	<u>X</u>
d. Change in the amount of surface water in any water body?	_____	_____	<u>X</u>
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	_____	_____	<u>X</u>
f. Alteration of the direction or rate of flow of ground waters?	_____	_____	<u>X</u>
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	_____	_____	<u>X</u>
h. Substantial reduction in the amount of water otherwise available for public water supplies?	_____	_____	<u>X</u>
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	_____	_____	<u>X</u>
4. Plant Life. Will the proposal result in:	_____	_____	_____
Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, and aquatic plants)?	_____	<u>X</u>	_____

EXHIBIT NO.	B
APPLICATION NO.	Categorical Exclusion
	Order E-96-1
	Town of Mendocino

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
b. Reduction of the numbers of any unique, rare or endangered species of plants?	—	<u>X</u>	—
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	—	—	<u>X</u>
d. Reduction in acreage of any agricultural crop?	—	—	<u>X</u>
5. Animal Life. Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms or insects)?	—	—	<u>X</u>
b. Reduction of the numbers of any unique, rare or endangered species of animals?	—	—	<u>X</u>
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	—	—	<u>X</u>
d. Deterioration to existing fish or wildlife habitat?	—	<u>X</u>	—
6. Noise. Will the proposal result in:			
a. Increases in existing noise levels?	—	—	<u>X</u>
b. Exposure of people to severe noise levels?	—	—	<u>X</u>
7. Light and Glare. Will the proposal produce new light or glare?	—	—	<u>X</u>
8. Land Use. Will the proposal result in a substantial alteration of the present or planned land use of an area?	—	—	<u>X</u>
9. Natural Resources. Will the proposal result in:			
a. Increase in the rate of use of any natural resources?	—	—	<u>X</u>
10. Risk of Upset. Will the proposal involve:			
a. A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	—	—	<u>X</u>

EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

32936
290

- | | <u>Yes</u> | <u>Maybe</u> | <u>No</u> |
|---|------------|--------------|-----------|
| b. Possible interference with an emergency response plan or an emergency evacuation plan? | — | — | <u>X</u> |
| 11. Population. Will the proposal alter the location, distribution, density, or growth rate of the human population of an area? | — | — | <u>X</u> |
| 12. Housing. Will the proposal affect existing housing, or create a demand for additional housing? | — | — | <u>X</u> |
| 13. Transportation/Circulation. Will the proposal result in: | | | |
| a. Generation of substantial additional vehicular movement? | — | — | <u>X</u> |
| b. Effects on existing parking facilities, or demand for new parking? | — | — | <u>X</u> |
| c. Substantial impact upon existing transportation systems? | — | — | <u>X</u> |
| d. Alterations to present patterns of circulation or movement of people and/or goods? | — | — | <u>X</u> |
| e. Alterations to waterborne, rail or air traffic? | — | — | <u>X</u> |
| f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? | — | — | <u>X</u> |
| 14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas: | | | |
| a. Fire protection? | — | — | <u>X</u> |
| b. Police protection? | — | — | <u>X</u> |
| c. Schools? | — | — | <u>X</u> |
| d. Parks or other recreational facilities? | — | — | <u>X</u> |
| e. Maintenance of public facilities, including roads? | — | — | <u>X</u> |
| f. Other governmental services? | — | — | <u>X</u> |
| gy. Will the proposal result in: | | | |
| Use of substantial amounts of fuel or energy? | — | — | <u>X</u> |

EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

33 of 36

- | | <u>Yes</u> | <u>Maybe</u> | <u>No</u> |
|---|------------|--------------|-----------|
| b. Substantial increase in demand upon existing sources or energy, or require the development of new sources of energy? | — | — | <u>X</u> |
| 16. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities: | — | — | <u>X</u> |
| 17. Human Health. Will the proposal result in: | | | |
| a. Creation of any health hazard or potential health hazard (excluding mental health)? | — | — | <u>X</u> |
| b. Exposure of people to potential health hazards? | — | — | <u>X</u> |
| 18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? | — | — | <u>X</u> |
| 19. Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? | — | — | <u>X</u> |
| 20. Cultural Resources. | | | |
| a. Will the proposal result in the alteration of or the destruction of a prehistoric or historic archaeological site? | — | — | <u>X</u> |
| b. Will the proposal result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object? | — | — | <u>X</u> |
| c. Does the proposal have the potential to cause a physical change which would affect unique ethnic cultural values? | — | — | <u>X</u> |
| d. Will the proposal restrict existing religious or sacred uses within the potential impact area? | — | — | <u>X</u> |
| 21. Mandatory Findings of Significance. | | | |
| a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate | | | |

EXHIBIT NO. B

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

EXHIBIT NO.	B
APPLICATION NO.	
Categorical Exclusion	
Order E-96-1	
Town of Mendocino	

important examples of the major periods of California history or prehistory?

Yes	Maybe	No
___	<u>X</u>	___

b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)

___	___	<u>X</u>
-----	-----	----------

c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)

___	<u>X</u>	___
-----	----------	-----

d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

___	___	<u>X</u>
-----	-----	----------

III. Discussion of Environmental Evaluation

(Narrative description of environmental impacts.)

IV. Determination

(To be completed by the Lead Agency.)

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared. ☐

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION WILL BE PREPARED. ☒

I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required. ☐

4 October 1996
Date

[Signature]
Signature

For California Coastal Commission

(Note: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

**PUBLIC
NOTICE**

**NOTICE OF
PREPARATION OF
NEGATIVE
DECLARATION BY
THE CALIFORNIA
COASTAL COMMISSION**

Pursuant to the requirements of Public Resources Code Section 21092 and by the authority vested in it by Public Resources Code Section 21082.1 and Public Resources Code Section 30610(e), the California Coastal Commission, as the lead agency for the project identified below, proposes to prepare a mitigated Negative Declaration for this project and will accept comments thereon.

The project consists of an Order of Categorical Exclusion pursuant to Section 30610(e) and 30610.5(b) of the California Coastal Act to exempt the following specific types of development, within a particularly described area of the Coastal Zone in the Town of Mendocino, from the requirements of a coastal development permit:

1. Single family residences and improvements to single family residences in mapped exclusion areas within the Town of Mendocino, subject to certain criteria;
2. Both new production wells and replacement or supplemental wells within the Town of Mendocino, subject to certain criteria;
3. New septic systems, the repair or replacement of existing septic systems, and the expansion of existing septic systems within the Town of Mendocino, subject to certain criteria;
4. Boundary line adjustments within the Town of Mendocino, subject to certain criteria.

A draft mitigated Negative Declaration will be available for public review and comment for 30 days commencing October 8, 1996. A copy of the draft is available on file with Jo Ginsberg, California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219. Any person wishing to comment may do so in writing by providing written comments to Jo Ginsberg at the indicated address. All written comments received by 5 p.m. November 7, 1996 will be responded to by the Commission's staff as part of the staff's recommendations on the draft mitigated Negative Declaration.

The draft mitigated Negative Declaration will be considered by the Commission at a public hearing on November 14, 1996 at the Radisson Hotel/Mission Valley, 1433 Camino Del Rio South, San Diego, CA 92108. (619) 260-0111. Hearings begin at 9:00 a.m. but there are many items on the Commission's agenda for that day and this item may not be the first item heard.

Publish: Oct. 10, 1996.

PROOF OF PUBLICATION

EXHIBIT NO. C

APPLICATION NO.

Categorical Exclusion

Order E-96-1

Town of Mendocino

36 of 36