

CALIFORNIA COASTAL COMMISSION

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**F 9b**

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 180th Day: 11/12/06
 Staff: MF-Eureka
 Staff Report: 6/02/06
 Hearing Date: 6/16/06
 Commission Action:

STAFF REPORT:
PERMIT AMENDMENT

APPLICATION NO.: **A-1-MEN-98-017-A2**

APPLICANTS: **California Department of Transportation (Caltrans)**

PROJECT LOCATION: Adjacent to the Ten Mile River Bridge on Highway 1, seven miles north of Fort Bragg in Mendocino County, at 28301 North Highway 1.

DESCRIPTION OF PROJECT
 PREVIOUSLY APPROVED: A-1-MEN-98-017 authorized construction of a 20-unit visitor-serving facility, including 20 guest units in 7 separate structures, a two-story lobby/meeting room/manager's quarters building, an employee utility building, 25 parking spaces, a sign, underground water tanks, wells, leach fields, driveway, and fence.

DESCRIPTION OF PREVIOUS
 AMENDMENT
 (A-1-MEN-98-017-A): Revised special condition that required recordation of an offer to dedicate an agricultural easement over the remainder of the subject parcel to instead require a deed restriction limiting the remainder of the parcel to agricultural uses only.

DESCRIPTION OF

AMENDMENT REQUEST: Remove a 3.3-acre portion of the subject 389-acre parcel outside of the approved 4-acre building envelope, from deed restriction requiring use for agriculture only. Caltrans seeks the use of the 3.3 acres for construction of the proposed Ten Mile River Bridge replacement project pursuant to CDP Application No. 1-06-022 and 1-06 PWP. The deed restriction would continue to apply to the remaining approximately 385.7 acres.

SUBSTANTIVE FILE

DOCUMENTS:

- 1) Coastal Development Permits A-1-MEN-98-017, and 017-A;
- 2) County of Mendocino Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions, the requested amendment to the coastal development permit originally granted for the construction of a 20-unit visitor-serving facility, including 20 guest units in 7 separate structures, a two-story lobby/meeting room/manager's quarters building, an employee utility building, 25 parking spaces, a sign, underground water tanks, wells, leach fields, driveway, and fence, to remove a thin strip of land adjacent to the highway (a total of approximately 3.3 acres) from a deed restriction applicable to a larger 389-acre parcel. The deed restriction requires the balance of the land outside of the designated 4-acre development envelope to be used for agriculture only. The subject 3.3-acre portion of the land does not contain prime agricultural soils. (See Exhibits 1 and 2)

Caltrans' proposed replacement of the Ten Mile River Bridge requires an expansion of Caltrans' right of way north and south of Ten Mile River in order to accommodate the eastward shift of Highway 1 as it aligns with the new Ten Mile River Bridge. To that end, Caltrans has initiated the process of purchasing the required strips of land from adjacent property owners, including the 3.3-acre strip of land described above. Due to the narrow strip of land to be obtained by Caltrans, its location immediately adjacent to Hwy.1, and the public service purpose of the project, the proposed conversion of approximately three acres of land from agricultural use to Hwy. 1 right-of-way would not significantly affect the agricultural viability of the remaining lands currently deed-restricted for agricultural uses. The proposed deletion of the deed restriction over this 3.3-acre strip of land is consistent with the agricultural land protection policies of the CCMP (Coastal Act Sections 30241 and 30242).

Staff is recommending that the Commission approve the amendment request subject to a Special Condition No. 8, which would require amendment of the recorded deed restriction to delete its application to the 3.3-acre strip of land being purchased by Caltrans.

The remaining conditions of the original permit as modified by a previous amendment of the permit would remain in full force and effect.

As conditioned, staff has determined that the development with the proposed amendment would be consistent with the certified LCP and the access and recreation policies of the Coastal Act.

STAFF NOTES:

1. Procedural Note.

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

On October 16, 1998, Coastal Permit No. A-1-MEN-98-017 (Don & Margaret Perry; Henry and Margaret Smith) was approved by the Commission with seven special conditions intended to address an agricultural easement, landscaping, county health approval, ingress/egress, design restrictions, tree removal, and placement of utility lines. Revised Findings for the conditional approval were subsequently adopted by the

Subsequently, on November 12, 1999 the Commission approved A-1-MEN-98-017-A to revise Special Condition 1, a condition that required recordation of an offer to dedicate an agricultural easement over the remainder of the subject parcel to instead require a deed restriction limiting the remainder of the parcel to agricultural uses only.

Presently, Caltrans seeks to remove a small sliver of land along the highway from the deed restriction otherwise applicable to the 389 acres subject to the agricultural deed restriction of A-1-MEN-98-017 as amended in November, 1999.

The Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the approved or conditionally approved permit and subsequent permit amendments. The original permit issued by the Commission contemplated how the open space and pasturelands of the acreage could be preserved while allowing relatively intensive coastal visitor-serving development on approximately 4 acres of the subject land. The fragment of 3.3 acres of interest to Caltrans is a long, thin strip along the highway and removal of this land from the overall acreage subject to the agricultural deed

restriction would not affect the overall use of the land for agricultural purposes, and no prime soils occur on the subject land.

Therefore, for the reasons discussed above, the Executive Director has found that the proposed amendment would not lessen or avoid the intent of the approved permit. Accordingly, the Executive Director accepted the amendment request for processing.

4. Commission Jurisdiction and Standard of Review.

The project subject to this coastal development permit amendment is located within an area covered by a certified LCP. The Coastal Commission effectively certified Mendocino's LCP in November of 1985. Pursuant to Section 30604(b) of the Coastal Act, after effective certification of a certified LCP, the standard of review for all coastal permits and permit amendments within the certified area is the certified LCP and the public access policies of the Coastal Act.

5. Scope.

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources and achieve consistency with the certified LCP and the public access and recreation policies of the Coastal Act, and provides findings for conditional approval of the amended project. All other analysis, findings, and conditions related to the originally permitted project, except as specifically affected by the previous amendment, and presently proposed permit amendment and addressed herein, remain as adopted by the Commission on May 12, 1998 [see Revised Findings Staff Report for Coastal Development Permit Nos. A-1-MEN-98-017 dated September 9, 1998.]

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed Coastal Development Permit Amendment No. A-1-MEN-98-017-A2 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment as conditioned and adoption of the following resolution

and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve with Conditions:

The Commission hereby approves the proposed permit amendment and adopts the findings set forth below, subject to the conditions below, on the grounds that the development with the proposed amendment, as conditioned, will be in conformity with the certified County of Mendocino LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

Note: Special Condition Nos. 2 through 7 of the original Coastal Development Permit No. A-1-MEN-98-017 and Special Condition No.1 of Permit Amendment No. A-1-MEN-98-017-A1 are reimposed without any changes and remain in full force and effect, Special Condition No. 8 is an additional new condition attached to the permit amendment.

8. Amended Deed Restriction

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, and for the review and approval of the Executive Director, the owner of the 3.3-acre property generally depicted on Exhibit No. 2 of the staff recommendation shall execute and record an amendment to the deed restriction that had previously been executed and recorded pursuant to Special Condition 1 of Coastal Development Permit Amendment No. A-1-MEN-98-017-A1. This amendment shall only apply to the 3.3-acre property generally depicted on Exhibit No. 2 of the staff recommendation. The amendment to the deed restriction shall delete the application to the 3.3-acre property generally depicted on Exhibit No. 2 of the staff recommendation of the deed restriction that had previously been executed and recorded pursuant to Special Condition 1 of Coastal Development Permit Amendment No. A-1-MEN-98-017-A1.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares the following:

A. Project Background/Purpose

Caltrans proposes to amend Coastal Development Permit No. A-1-MEN-98-017-A2 to delete approximately 3.3 acres of non-prime agricultural land from a deed restriction applicable to a 389-acre parcel (less 4 acres approved for development envelope). The deed restriction requires the remainder (385.7 acres) of the subject lands to be preserved for agricultural use. The deed restriction applicable to the remaining 385.7 acres of land will remain in full force and effect. The only change would be the removal of the 3.3 acres Caltrans seeks to purchase for the highway project. Caltrans requires the narrow strip of land comprising the 3.3 acres for the purpose of replacing the seismically-deficient Ten Mile River Bridge on Highway 1 and realigning the highway slightly to conform the new bridge footprint with the existing highway, approximately seven miles north of Fort Bragg. The subject location and specific acreage are shown in Exhibits 1 and 2.

B. Agricultural Lands

The Coastal Act provides the following policies, which are incorporated into the certified Mendocino County LCP by reference:

Section 30241. The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242. All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

The applicable policies of Chapter 3 of the Coastal Act are incorporated by reference into the certified Mendocino County Local Coastal Program and thus are cited herein. The LCP also contains similar policies and the following specific provisions:

3.2-1 All agricultural land use, as represented within the agriculturally designated boundaries on the land use maps, shall be designated AG 60 or RL 160 for the purpose of determining density. This will support continued coastal agricultural use...

Caltrans does not propose to change the land use designation of the subject land, which will remain in public ownership within the Caltrans right-of-way and will not, through this acquisition, lead to reduced coastal agricultural use through a pattern of urban sprawl or other intensified land use. Therefore the Commission finds that the amendment, as proposed, is consistent with LCP Policy 3.2-1.

3.2-3 If legislation permits any public agency to acquire agricultural land, this plan would urge that such acquisition should be carried out only if the property owner is a willing seller. This policy protects existing agricultural operations by limiting public acquisitions of viable agricultural operations.

Caltrans has indicated that the property owner is a willing seller, and the acquisition of the 3.3 acres in the narrow footprint shown in Exhibit 2 (subject land shown in orange highlight) will not adversely affect continuing existing agricultural operations. Therefore, the Commission finds that the proposed amendment is consistent with LCP policy 3.2-3 as submitted.

3.2-16 All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels...

The proposed acquisition of the 3.3-acre sliver of land along the highway for right-of-way to construct the proposed Ten Mile Bridge will not convert prime agricultural land to another use, and the use of the acreage for the highway purpose would not adversely affect continuing agricultural use of surrounding parcels. Therefore, the Commission finds that the proposed amendment is consistent with LCP Policy 3.2-16 as submitted.

The proposed Ten Mile River Bridge replacement project requires an expansion of Caltrans' right of way north and south of Ten Mile River in order to accommodate the eastward shift of Highway 1 as it aligns with the new Ten Mile River Bridge. To that end, Caltrans has initiated (and in some instances completed) the process of purchasing the required strips of land from the property owners. However, the subject property south of Ten Mile River encompasses coastal agricultural resources that are protected from non-agricultural development. On May 12, 1998, the Commission approved a coastal development permit (A-1-MEN-98-17) for a 20-unit inn on a four-acre building envelope within a 389-acre parcel that borders Highway 1 to the east and Ten Mile River to the south. The permitted development (which has yet to be constructed) would occur immediately adjacent to Highway 1 and approximately one-half mile south of the Ten Mile River Bridge. One condition of permit approval was the requirement that the applicant dedicate an agricultural easement across the remaining 385 acres of the subject property for the purpose of preservation of coastal agriculture. On September 9, 1998, the Commission approved a permit amendment (A-1-MEN-98-17-A) to revise the special condition that required the agricultural easement to instead require a deed restriction limiting the remainder of the parcel to agricultural uses only. On September 14, 1999, the Agricultural Deed restriction was recorded on County of Mendocino Assessor's Parcel Number 069-010-22.

The Coastal Act includes provisions to protect prime agricultural lands and agricultural viability from disruptions due to conversion and/or division of agricultural lands to non-agricultural uses. The issue before the Commission in this permit amendment is whether the conversion of land designated for agricultural uses, and deed restricted to preserve such uses, will adversely affect prime agricultural lands or the viability and/or productivity of agricultural operations on the balance of the subject property or on

surrounding lands in agricultural use. The Commission previously found in A-1-MEN-98-17 that the 385-acre property east of Highway 1 was not prime agricultural land. The proposed eastward shift of Hwy.1 would occur in the extreme northwest corner of the subject property, a location that currently does not support agricultural operations. This is due to the man-made and natural constraints found on this narrow, rectangular section of the property: the paved Hwy.1 right-of-way, the old Georgia-Pacific logging haul road, a second dirt roadway, Ten Mile River, steep slopes, and brush and tree cover.

In analyzing the proposed project's consistency with the policies of Section 30241 and with the applicable policies of the LCP set forth above, the Commission finds that while roads and highways are a form of developed land use, a highway in and of itself does not define adjacent or surrounding lands as an urbanized area. The proposed bridge replacement project is located on a segment of Hwy.1 that passes through a rural region of the Mendocino County coast. Therefore, the proposed conversion of approximately three acres of land from agricultural use to Hwy.1 right-of-way is consistent with Section 30241 in that the proposed conversion does not involve prime agricultural lands and would not create conflicts between agricultural and urban land uses.

The proposed project alternative consists of a replacement bridge immediately upstream from the existing bridge and an associated slight eastward realignment of the Hwy.1 southern approach to the bridge. As a result of this design alternative, and consistent with the development policies of Section 30250 of the Coastal Act, the proposed project minimizes the width of the strip of land to be converted from agricultural use to highway right-of-way, and concentrates new highway development contiguous with and in close proximity to the existing Hwy. 1 paved right-of-way. Due to the narrow strip of land to be obtained by Caltrans, its location immediately adjacent to Hwy.1 (rather than bisecting a parcel of land where such an action could adversely affect its agricultural viability), and the public service purpose of the project, the proposed conversion of approximately three acres of land from agricultural use to Hwy. 1 right-of-way would concentrate existing and proposed roadway development, and would not adversely affect the agricultural viability of the remaining lands on the subject property currently supporting (and deed-restricted for) agricultural uses.

Therefore, the Commission finds that the proposed permit amendment to delete the deed restriction limiting use of the 3.3 acres that Caltrans is purchasing for the Ten Mile River bridge replacement project to agricultural uses is consistent with the agricultural land protection policies of the Chapter 3 of the Coastal Act incorporated into the Mendocino County LCP by reference (Coastal Act Sections 30241, 30242, and 30250) and with the specific LCP provisions set forth in LCP policies 3.2-1, 3.2-3 as submitted and with 3.2-16 as conditioned by Special Condition No. 8

C. Public Access and Recreation.

1. Coastal Act Access Policies

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

LUP Policy 3.6-27 states:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's 'Manual on Implied Dedication and Prescriptive Rights.' Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner that minimizes risks to life and property, or (3) such siting is necessary for consistent with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site.

Note: This policy is implemented verbatim in Section 20.528.030 of the Coastal Zoning Code

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject site is located immediately adjacent to the Highway 1 in an area Caltrans proposes to acquire for the pending realignment of Highway 1 associated with the replacement of the Ten Mile River Bridge.

The County's land use maps do not designate the subject parcel for public access, and there does not appear to be any safe vertical access to the rocky shore down the steep bluffs. Since the proposed amended development would not significantly increase the demand for public access to the shoreline and would have no other significant adverse impacts on existing or potential public access, the Commission finds that the development with the proposed amendment, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP.

D. California Environmental Quality Act (CEQA).

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

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

Therefore, the Commission finds that the proposed amended project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Parcel Map

APPENDIX A

STANDARD CONDITIONS

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



SECTION 33
SECTION 4

NOTE: The State of California and its officers or agents, including the Secretary of State, are not responsible for the accuracy of this map.

T 19 N R 17 W, MDM
SECTION 4



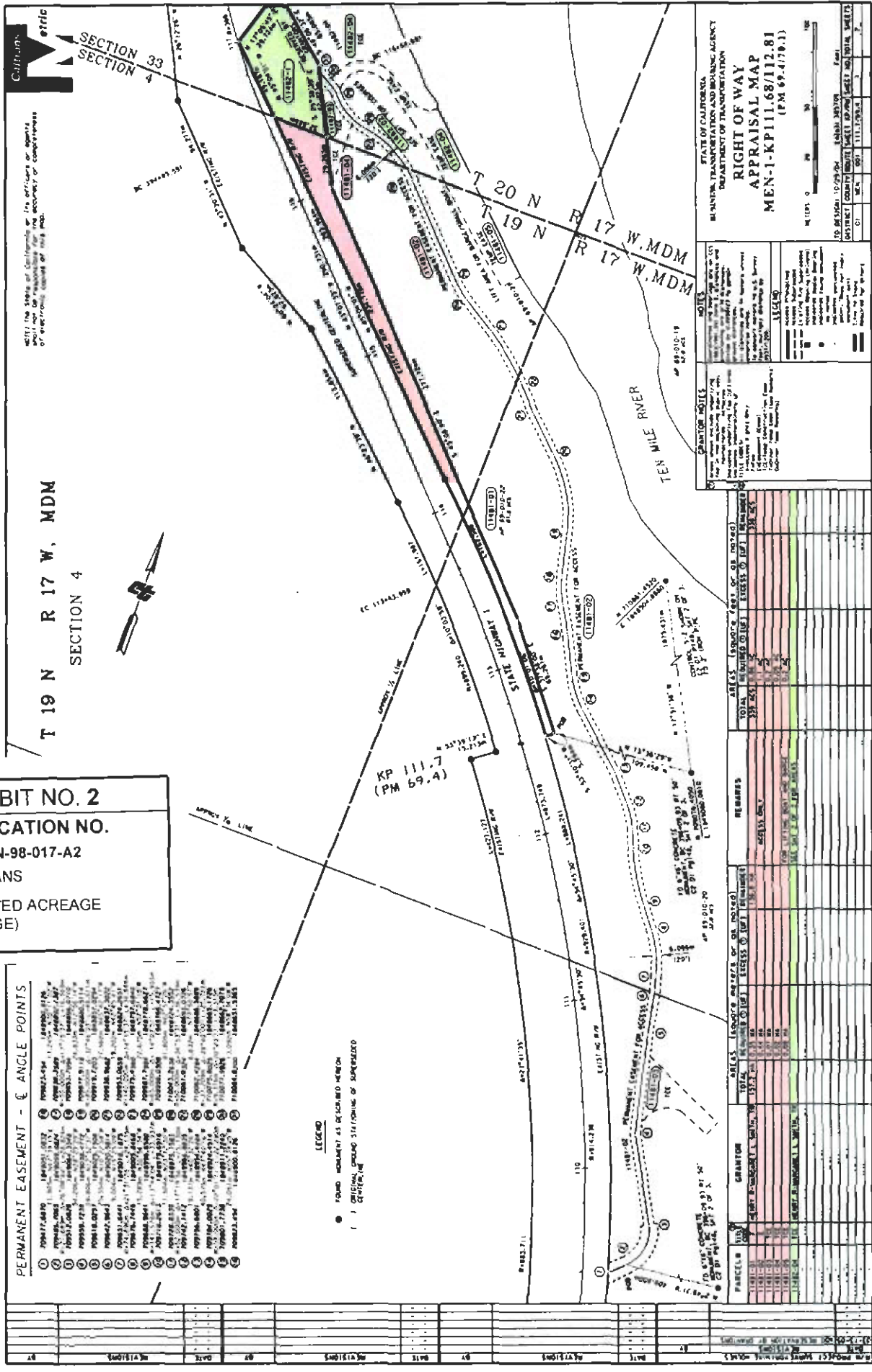
EXHIBIT NO. 2
APPLICATION NO.
A-1-MEN-98-017-A2
CALTRANS
AFFECTED ACREAGE
(ORANGE)

PERMANENT EASEMENT - € ANGLE POINTS

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LEGEND

- FOUND MONUMENT AS DESCRIBED HEREIN
- () ORIGINAL CORNER SITUATION OF SURVEYED CENTERLINE



STATE OF CALIFORNIA
REVENUE, TRANSPORTATION AND MARINE AGENCY
DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY
APPRAISAL MAP**
MEN-1-KP111-69/112.81
(PM 69.4/70.1)

SCALE: 1" = 100'

DATE: 11/11/98

DRAWN BY: [Name]

CHECKED BY: [Name]

APPROVED BY: [Name]

NOTES

1. THIS MAP IS A SUMMARY OF THE SURVEY AND IS NOT TO BE USED FOR CONVEYANCE OF INTERESTS.
2. THE SURVEY WAS MADE BY THE CALIFORNIA SURVEYING BOARD AND IS SUBJECT TO THE RULES AND REGULATIONS OF THE BOARD.
3. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1907 AND 1941.
4. THE SURVEY WAS MADE BY THE CALIFORNIA SURVEYING BOARD AND IS SUBJECT TO THE RULES AND REGULATIONS OF THE BOARD.
5. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1907 AND 1941.

PARCEL NO.	GRANTOR	AREAS (SOURCE AREA'S OF OR POLYED)	TOTAL	EXCESS	DEF	REMARKS
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