

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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Date Filed:	May 15, 2006
Hearing Date:	Aug. 11, 2006
49 th Day:	July 3, 2006
180 th Day:	Nov. 11, 2006
Staff Report:	July 27, 2006
Staff:	Robert S. Merrill
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	1-06-026
APPLICANT:	Curtis & Shirley Ambrosini
AGENT:	Debi August
PROJECT LOCATION:	396 and 456 Port Kenyon Road, south of Fendale, Humboldt Co.
PROJECT DESCRIPTION:	Divide a 3.9-acre parcel developed with two single-family houses, garages, and barns into a 3.62-acre parcel and a 0.28-acre parcel resulting in one residence on each parcel.
GENERAL PLAN DESIGNATION:	Low Density Residential, 3-7 Dwelling Units per Acre

ZONING DESIGNATION:	Residential Single-Family with a No Further Subdivision Manufactured Home and a Flood Hazard Area Combining Zones (RS-X-M/F)
LOCAL APROVALS RECEIVED:	Humboldt County Land Use Plan and Zoning Amendment; Humboldt County Tentative Subdivision Map Approval
OTHER APPROVALS REQUIRED:	None
SUBSTANTIVE FILE DOCUMENTS:	Humboldt County LCP Amendment No. HUM-MAJ-1-6: Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **approve** Coastal Development Permit Application Number 1-06-026, to divide an approximately 3.9-acre parcel, currently developed with two single-family residences and accessory structures, into a 0.28-acre parcel and a 3.62-acre parcel in a configuration that results in each of the two residences being located on a separate parcel.

The subject property is located in a developed residential neighborhood within an urban limit line known as Arlynda Corners just north of Ferndale in the lower Eel River Valley in Humboldt County. Both residences are already served by community water and sewer. The creation of the two parcels as proposed would be within the locally designated density range for the area, and is compatible with the development pattern in the surrounding area. Therefore, staff believes that the proposed project would be located in a developed area able to accommodate it consistent with the requirements of Section 30250(a) of the Coastal Act.

The subject property is located within the flood plain of the Salt and Eel Rivers, and approximately half of the site is located within a design floodway established by the County to implement FEMA flood insurance requirements. The proposed land division is intended to establish the two existing residences on the site on separate properties rather than to facilitate the construction of new homes or structures that could exacerbate flood hazard risks. Therefore, as the proposed land division would not facilitate the construction of structures that would contribute to flood hazards, staff believes the project would minimize risks to life and property in an area subject to high flood hazard and is consistent with Section 30253 of the Coastal Act.

For all of the above reasons, staff believes the proposed project is consistent with the Chapter 3 policies of the Coastal Act

The Motion to adopt the Staff Recommendation of Approval is found on page 4.

STAFF NOTES:

1. Standard of Review

The proposed project is located within the Commission's area of retained permit jurisdiction. Humboldt County has a certified LCP, but the proposed project is within an area shown on the State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

2. Related LCP Amendment

Humboldt County has submitted an LCP amendment for certification by the Commission that is related to Coastal Development Permit No. 1-06-026. The proposed amendment would reclassify the zoning designations of the subject property by concurrently removing and restoring the "X" combining zone (no further subdivision) to facilitate the land division proposed under the coastal development permit application. LCP Amendment No.-MAJ-1-6 (Ambrosini) will also be considered by the Commission at the August 11, 2006 Commission meeting as Item No. F7a. See the separate staff recommendation prepared for the LCP amendment for further details.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-06-026 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 as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of the majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached Appendix A.

III. SPECIAL CONDITIONS: None

IV. FINDINGS AND DECLARATIONS FOR APPROVAL

The Commission hereby finds and declares:

1. Site Description

The 3.9-acre subject property is located approximately ¼-mile south of Ferndale in the Arlynda corners area, near the intersection of Port Kenyon Road and Market Street, at 396 and 456 Port Kenyon Road.

Arlynda Corners is a largely developed residential neighborhood surrounded by agricultural lands mostly used for dairy farms and grazing. Arlynda Corners is centered on the angled T-intersection where Market Street meets Port Kenyon Road, and contains a couple of commercial establishments and approximately 20 homes. The irregularly-shaped subject property fronts on the portion of Port Kenyon Road that extends west of Market Street, and also borders the west side of Market Street in two locations. The subject property is surrounded by agricultural lands and the Arlynda Corners neighborhood. The property is bordered on the southwest by a single-family residence and an agricultural property. Across Port Kenyon Road to the northeast of the subject property is an agricultural property containing a farm house and barns. The subject property is bordered to the east by the portions of the Arlynda Corners neighborhood that front along the west side of Market Street, including a commercial establishment at the corner of Market and Port Kenyon and approximately five residences extending south along the west side of Market Street. Finally, agricultural fields border the subject property to the south.

The subject property is currently developed with two single-family residences, one with an attached garage and the other a detached garage, a barn, and a separate accessory

structure located just to the south of both residences. The two houses are both one story with a maximum height of 20 feet. The homes were developed in the early to mid 1900s and are clad in painted wood siding with composition shingle pitched roofs. Each house has a recently paved approximately 25-foot-long paved driveway with room for at least two off-street parking spaces and constructed with driveway aprons connecting to Port Kenyon Road.

A broad shallow drainage swale cuts across the middle of the mostly flat and open property in a southeast to northwesterly direction from Market Street to Port Kenyon Road. This drainage swale is known as the "East Side Drainage," and conveys runoff from areas to the south and east. The approximately 150-foot-wide and several-foot-deep drainage swale contains some wetland vegetation in its lower elevations consisting mostly of sedges or rushes. Areas of the property to the southwest of the drainage swale and some of the area between the swale and the residences on the property are covered with grasses. The applicants use some of this land to support farm animals including cattle and geese. The grounds immediately surrounding each residence are separated from the drainage swale by low fencing built atop a low retaining wall and are landscaped with lawn and ornamental shrubs and trees.

The "East Side Drainage" is the only identified wetland area on the subject property itself. No Environmentally Sensitive Habitat Area (ESHA) would be affected by the project. In addition, no known archaeological resources have been identified on the property. The property is not within any designated highly scenic area and is not located between the first through public road and the sea.

The property is designated as Residential Low Density in the County's Eel River Area Plan and zoned Residential Single-Family, with certain combining zones, including a "No Further Subdivision Manufactured Home" and a "Flood Hazard Area" combining zones (RS-X-M/F). The subject property is located within the urban limit line and urban service boundary for the Arlynda Corners Urban Area and is served by the community sewer and water systems of the City of Ferndale.

The subject property is within an area covered by an antiquated subdivision map of the Town of Arlynda dated August 3, 1882. This antiquated subdivision map shows the subject property as consisting of approximately a dozen separate parcels, with each of the two existing houses on separate parcels as shown on the map. The applicants and previous owners of the property have relied on this antiquated subdivision map as evidence that the two homes were constructed on separate parcels. However, the California Supreme Court ruled in *Gardner v. County of Sonoma* (2003) 29 Cal4th 990, 129 CR2d 869 that subdivision maps that were recorded before the first map act in 1893 do not create legal lots unless: (1) the map was recorded under a local statute that governed subdivisions at the time; or (2) the parcels were conveyed separately after the map was recorded, which may entitle them to legal status under common law. The County has reviewed the specifics of this case and has determined that the 1882

subdivision map did not create separate legal lots on the applicants' property under the Gardner decision. Therefore, the entire property owned by the applicants is currently recognized by the County as a single legal parcel. The subject property is assigned the three separate Assessor's Parcel Numbers for tax purposes of 100-162-08, 100-162-09, and 100-162-29.

The subject property is bisected by a "design" floodway that extends over approximately the northern half of the property, and covers the area containing all of the existing structures on the site. It should be noted that the floodway is a "design" floodway that is based on mathematical modeling, and the configuration of the floodway does not necessarily match topographical features on the ground. For example, immediately south of the boundary of the floodway is the "East Side Drainage." Any actual flooding of the property would first affect this drainage swale, but the drainage swale is not included within the design floodway.

2. Project Description

The proposed project involves the division of the 3.9-acre parcel into a 0.28-acre parcel (Parcel 1) and a 3.62-acre parcel (Parcel 2), resulting in the establishment of an existing residence on each parcel (See Exhibit 4). The smaller parcel would be roughly rectangular-shaped and would be created near the northern end of the subject property. Parcel 1 would front onto Port Kenyon Road and would be surrounded on three sides by portions of Parcel 2. As proposed, Parcel 1 would encompass one of the two residences and its detached garage and a small area of landscaping and driveway. The irregularly-shaped Parcel 2 would encompass the other residence, the existing barn, the other detached structure on the property, the East Side Drainage, and other open land.

As noted previously, the two existing residences on the subject property are already served by community sewer and water lines managed by the City of Ferndale. Thus, utility extensions are not needed to serve the proposed land division.

To satisfy conditions of the County's tentative map approval, the applicants (a) surfaced the parking shoulder along Port Kenyon Road in front of the residences with asphalt concrete over an aggregate base, and (b) paved portions of the two 25-foot-long driveways providing access to the residences with asphalt concrete over an aggregate base. However, the paving work is exempt from coastal development permit requirements and is not part of the development authorized by this coastal development permit. Section 30610(a) of the Coastal Act exempts certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. To avoid adverse impacts to coastal resources from the development of otherwise exempt additions and improvements to existing

homes, Section 30610(a) requires the Commission to specify by regulation those classes of development that involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations. Section 13250(b) of the Coastal Commission Regulations indicates that those improvements to existing single-family residences that involve a risk of substantial environmental impact and therefore require a Coastal Permit include those improvements where the existing structure or improvement is located (1) on a beach, (2) wetland, (3) seaward of the mean high tide line, (4) in an environmentally sensitive habitat area, (5) in an area designated as highly scenic in a certified land use plan, (6) within 50 feet of the edge of a coastal bluff, or (7) between the sea and the first public road paralleling the sea and where the improvement would result in an increase of 10 percent or more of internal floor area or height of the existing structure. The subject property is not located in any of the above described kinds of areas. Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. No previous permit has been granted by the Commission for development at the subject property that includes conditions requiring that future development must be subject to a coastal development permit. Therefore, the paving of the driveway improvements is exempt from the need for a coastal development permit pursuant to Section 30610(a) of the Coastal Act.

3. Locating New Development

Section 30250(a) provides in applicable part that:

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.

The proposed development would subdivide a 3.9-acre parcel currently developed with two, one-story, single-family residences, barns, and accessory structures into two parcels, Parcel 1, consisting of 0.28 acres or 12,197-square feet of area, and Parcel 2, consisting of 3.62 acres or 157,687 square feet of area. The parcels would be configured so that each residence is on a separate parcel.

The property site is in an existing small urbanized area, in the Arlynda Corners community south of Ferndale. The subject property is located within both the urban limit

line recognized under the County land use plan and within the community services district service area. The Eel River Area Plan land use designation for the site is Residential Low Density (RL) / Density: 1-7 dwelling units per acre, and it is zoned Residential Single-Family specifying a minimum parcel size of 5,000 square feet. (RS-5). The proposed parcel subdivision would create 2 separate parcels that would be consistent with the designated density range. Both parcels would be of a size greater than the 5,000-square-foot minimum parcel size established by the zoning. The resultant parcels would be similar in size to surrounding parcels in this urban neighborhood, and essentially constitute “in-filling” of the neighborhood, compatible with the community development pattern.

Both existing residences are in conformance with the applicable height and lot coverage development standards. The proposed configuration of the land division would site each residence on its respective parcel in a manner that is consistent with zoning setback standards. The proposed subdivision would not create any non-conformance with the applicable zoning provisions.

Both of the existing single-family residences are already served by community water and sewer service. Therefore, the proposed development is consistent with Section 30250(a), as the development is located in a developed area able to accommodate it, and no increase in demand for services is expected as a result of the land division.

Therefore, the Commission finds that the proposed project is located in a developed area able to accommodate it, and, that as proposed and conditioned, the development will not have significant adverse impacts on coastal resources, individually or cumulatively, consistent with Section 30250(a) of the Coastal Act.

4. Flood Hazards

Section 30253 of the Coastal Act states, in applicable part:

New development shall:

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

Section 30253 requires that new development minimize risks to life and property in areas of flood hazard.

The subject property is located in the lower Eel River Valley and is within the flood plain of both the Salt and Eel Rivers. The Salt River is a tributary of the Eel and both rivers flood periodically. In addition, as noted previously, the subject property is bisected by a County-designated “design” floodway that extends over approximately the northern half of the property, and covers the area containing all of the existing structures on the site. It

should be noted that the floodway is a “design” floodway that is based on mathematical modeling, and the configuration of the floodway does not necessarily match topographical features on the ground. For example, immediately south of the boundary of the floodway on the applicants’ property is a topographical depression known as the “East Side Drainage.” Any actual flooding of the property would first affect this drainage facility, but the drainage facility is not part of the design floodway.

The proposed land division is intended to establish the two existing residences on the site on separate properties rather than to facilitate the construction of new homes. Given the purpose of the land division, the project would not directly contribute to flood hazards. In addition, approval of the subdivision would not by itself perpetuate the continued existence or future rebuilding of structures within harms way of flooding. Section 30610(g)(1) of the Coastal Act provides no coastal development permit shall be required for the replacement of any structure, other than a public works facility, destroyed by a disaster as long as the replacement structure conforms to applicable existing zoning requirements, is for the same use as the destroyed structure, and does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent. The proposed subdivision would not affect whether either of the two existing residences could be reconstructed legally in the event of a flood disaster because both structures could be reconstructed in the event of such a disaster on the property now in its current configuration of one parcel. Reconstruction of the second residential unit on the property as it currently exists is also permissible under the County’s zoning ordinance. According to County staff, the second residential unit on the property may be reconstructed in the event of a damaging flood or other disaster either as a legal, non-conforming structure pursuant to the nonconforming uses and structures provisions of the code (Sections 313-131 and 132), or as a permitted second residential unit upon securing a coastal development permit from the Commission and a Special Permit from the County. Therefore, the existing residences could be rebuilt in the future if they were ever destroyed or torn down whether or not the land division was approved and approval of the subdivision would not by itself perpetuate the continued existence or future rebuilding of structures within harms way of flooding.

The County’s Flood Damage Prevention Ordinance (FDPO) requires that development within a “design floodway” not result in a rise in flood height for the base flood event. The County adopted the FDPO to comply with flood protection requirements of the Federal Emergency Management Agency (FEMA). The intent of the FPDO “no rise” provision is to preclude new development that would displace area and volume needed for conveying flood waters during major flood events that could otherwise spread the flooding to a wider area. In existing developed areas such as the location of the proposed project, this “no rise” determination is applied prospectively to new development only. The County conditioned the tentative map approval granted for the project to require that future development be consistent with the “no rise” determination. Should the County ever amend the tentative map approval to eliminate the requirement that only structures consistent with the no rise provisions of the FPDO be allowed, the

development of second residential units on each parcel would still require a coastal development permit from the Commission. In reviewing any such application, the Commission would review whether the proposed development would contribute to flood hazards and could deny any such proposed development that is inconsistent with Section 30253.

The Commission acknowledges that certain other development that could be proposed in the future would be exempt from coastal development permit requirements as improvements to existing single-family residences. As noted above, Section 30610(a) of the Coastal Act exempts certain additions and improvements to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. Whether or not the subject property is divided, however, the exemption from coastal development permit requirements would apply.

The Commission finds that the development will not foster the development of principal structures within the County's designated design floodway that will either be directly endangered by flooding or reduce the capacity of the floodway to convey floodwaters within its current limits and increase the risk of spreading flood impacts. Therefore, the Commission finds that the project will minimize risks to life and property in an area subject to high flood hazard and is consistent with Section 30253 of the Coastal Act.

5. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement 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 the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project is consistent with the requirements of the applicable policies of the Coastal Act. 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 approved, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

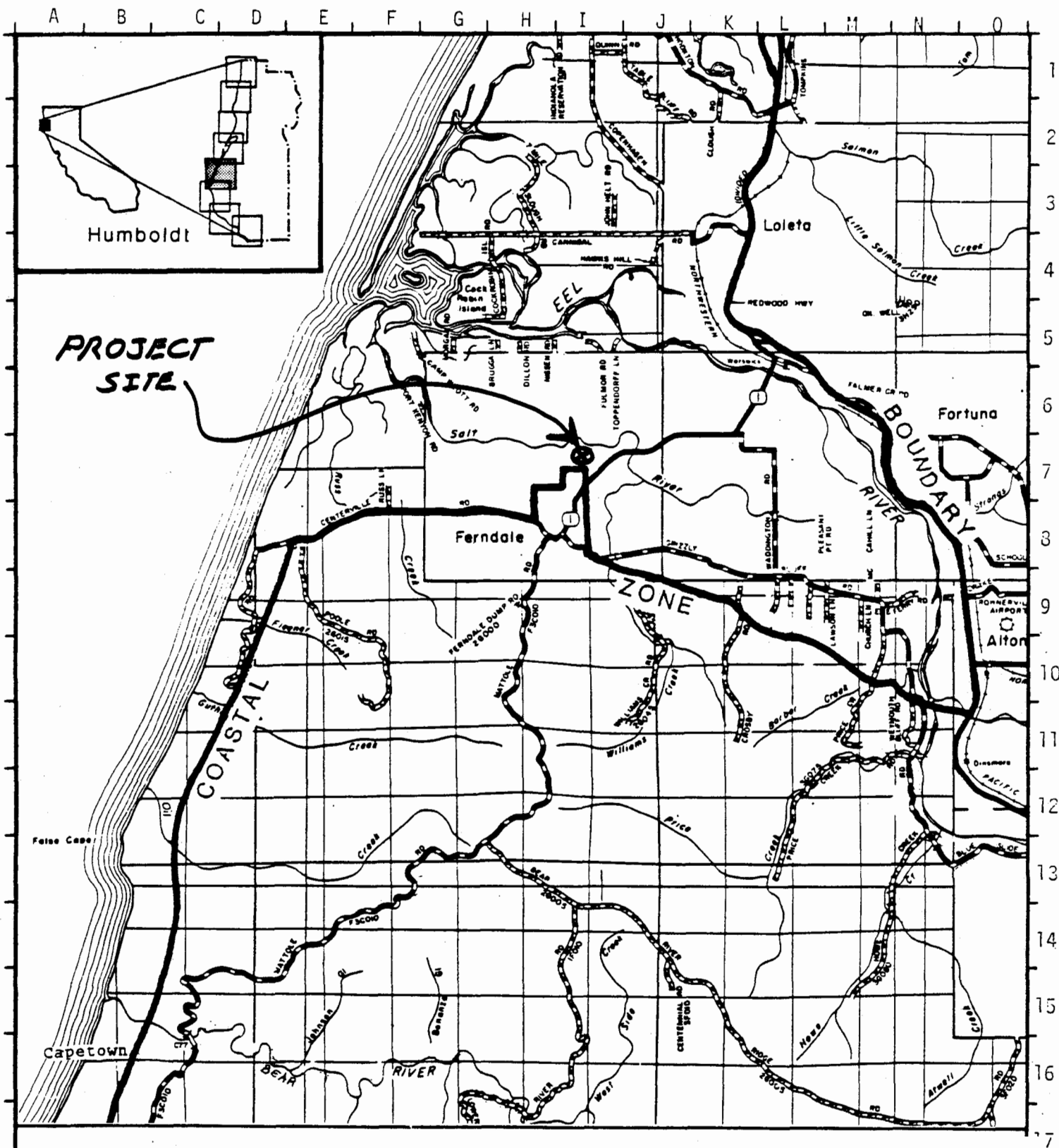
EXHIBITS:

1. Regional Location
2. Vicinity Map
3. Assessor Parcel Map
4. Proposed Land Division Plot Plan
5. Antiquated Subdivision Map
6. Design Floodway

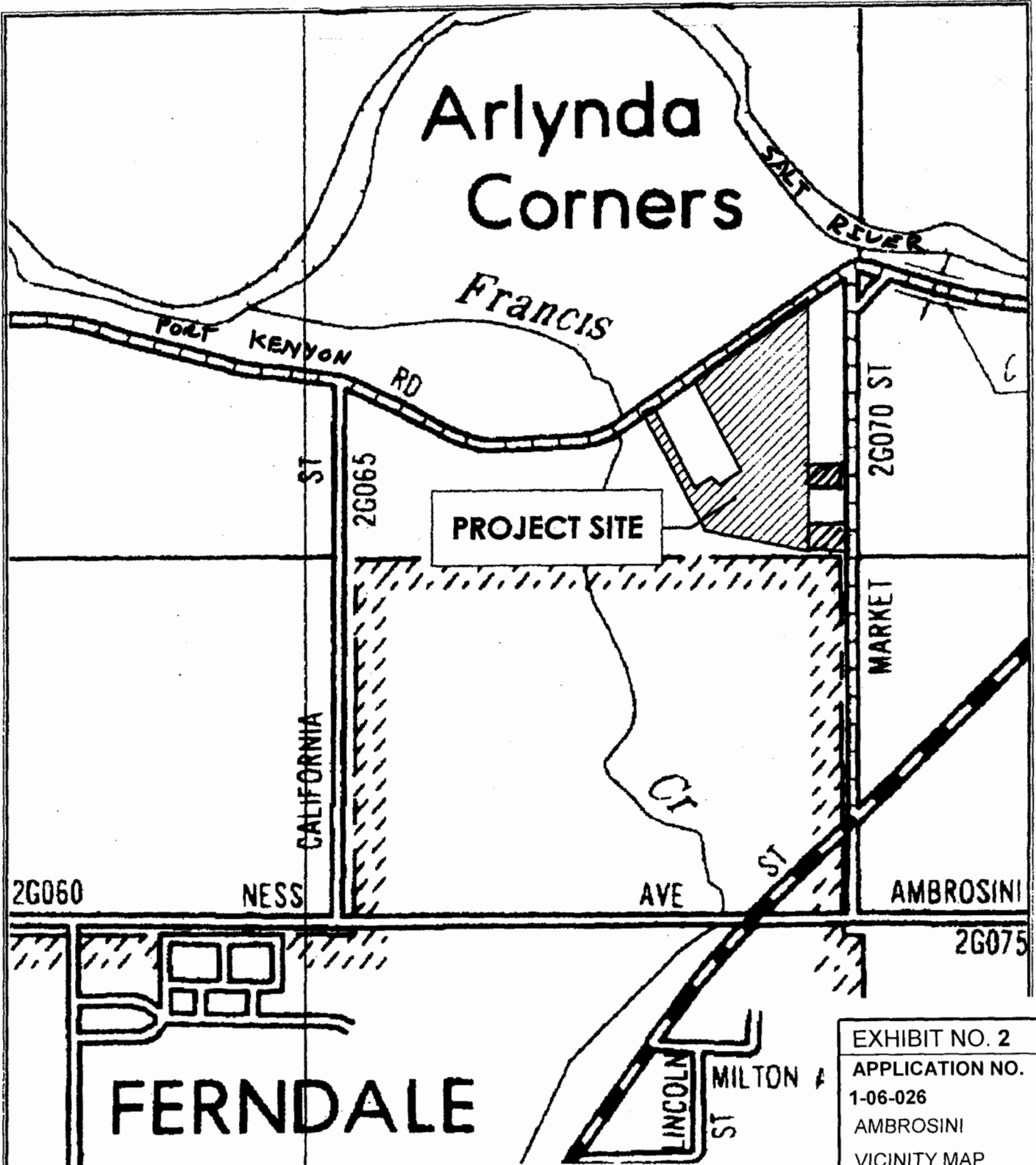
ATTACHMENT A

Standard Conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **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.



Arlynda Corners



FERNDALE

LOCATION MAP

**PROPOSED AMBROSINI PARCEL MAP SUBDIVISION + ZONE RECLASSIFICATION
FERNDALE AREA**

PMS-04-35 / ZR-04-11

APN: 100-162-08, 100-162-09 & 100-162-29

SECTION 35 T3N R2W H. B. & M.

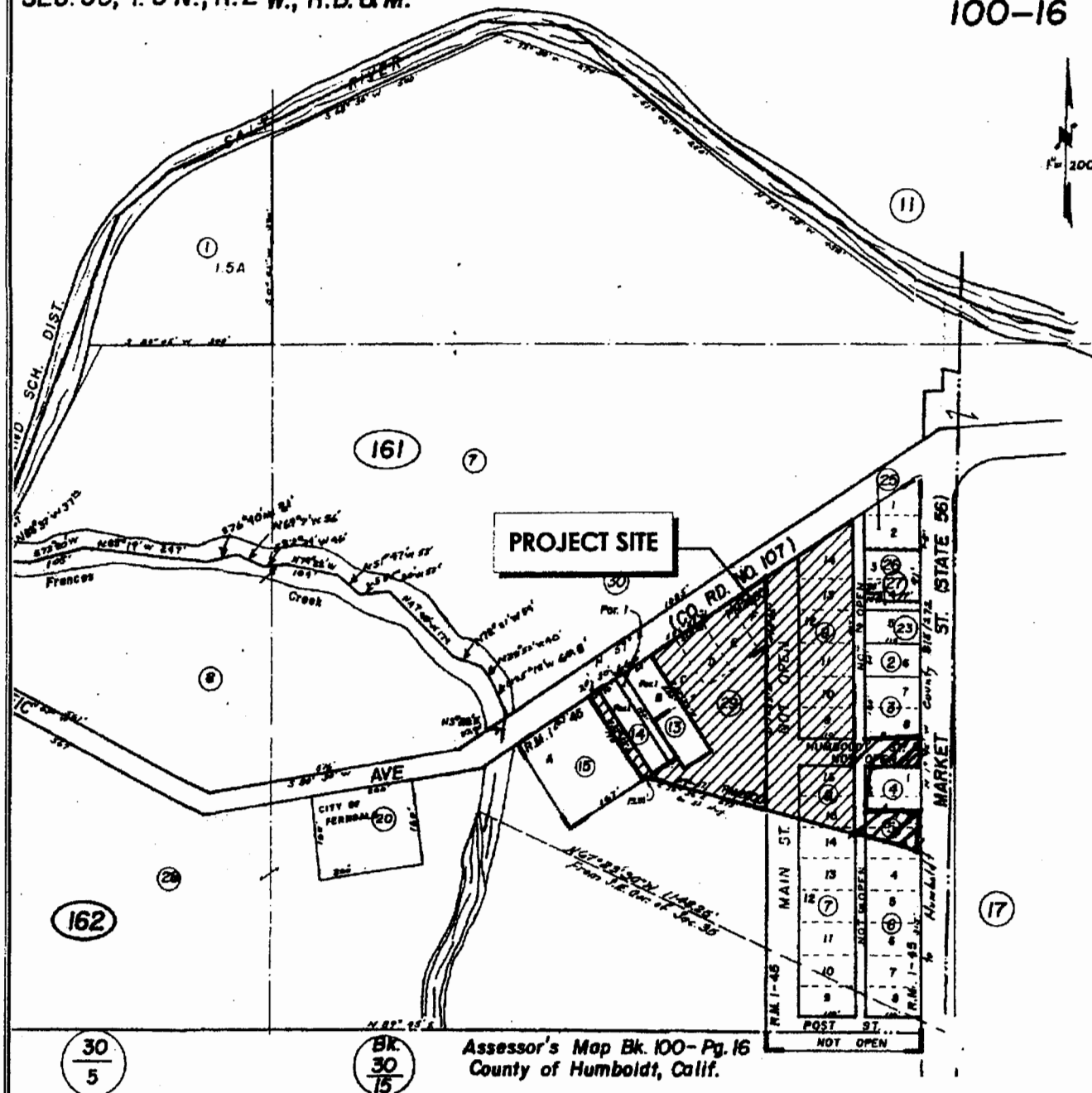
EXHIBIT NO. 2
APPLICATION NO.
1-06-026
AMBROSINI
VICINITY MAP



Map is not drawn to scale.

SEC. 35, T. 3 N., R. 2 W., H. B. & M.

100-16



Assessor's Map Bk. 100-Pg. 16
County of Humboldt, Calif.

EXHIBIT NO. 3

APPLICATION NO.

1-06-026

AMBROSINI

ASSESSOR PARCEL
MAP

ASSESSOR PARCEL MAP

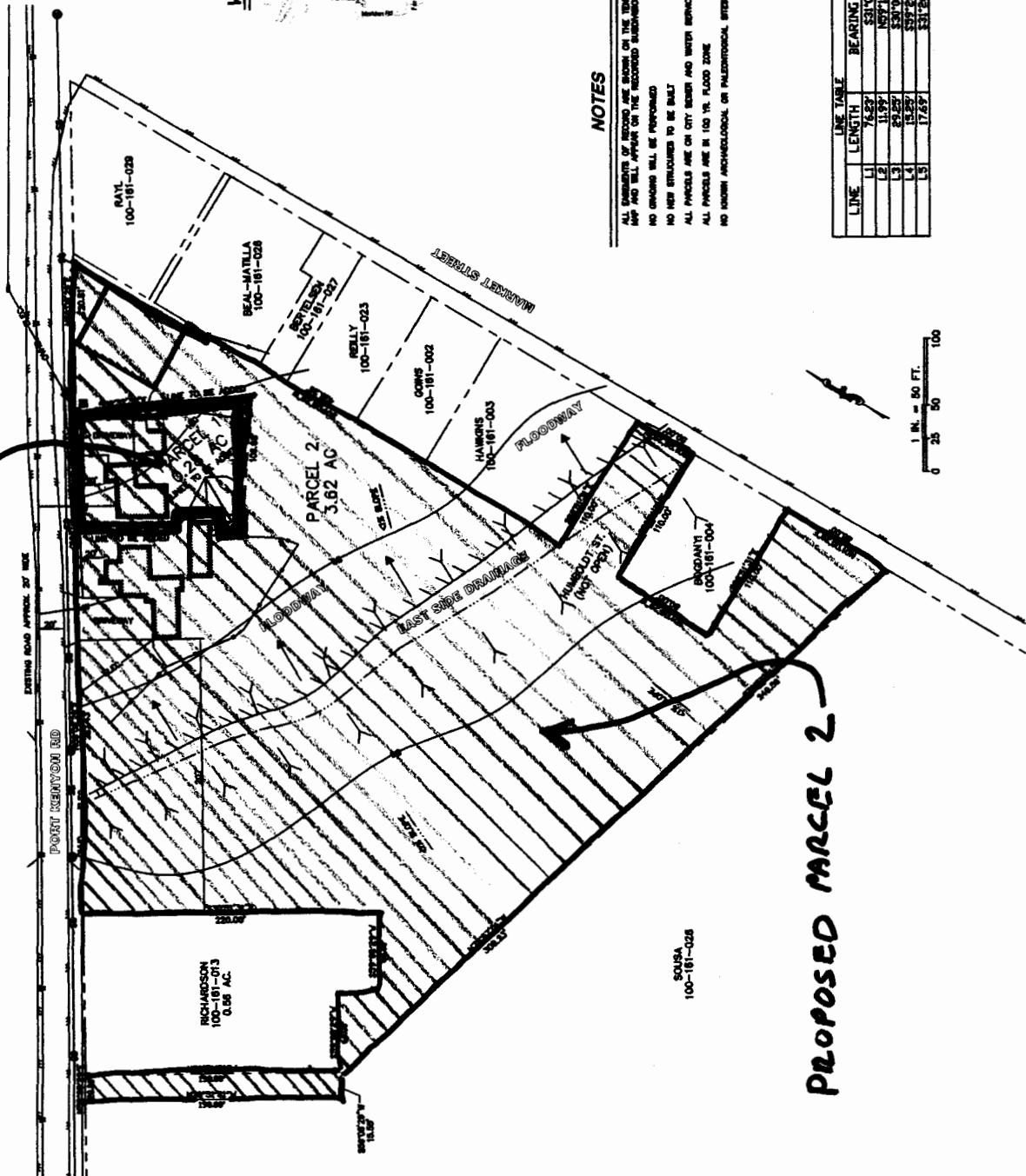
PROPOSED AMBROSINI PARCEL MAP SUBDIVISION
FERNDALE AREA

PMS-04-35/ZR-04-11

APN: 100-162-08, 100-162-09 & 100-162-29
SECTION 35 T3N R2W H. B. & M.

MAP IS NOT TO SCALE

PROPOSED PARCEL 1



LEGEND

- ADJUST UTILITY POLE
- SEWER MANHOLE
- FLOODWAY
- WATER FLOW LINE
- WATER LINE
- SEWER MAIN
- OVERHEAD-ELEC- OVERHEAD ELECTRIC LINE
- EDGE OF PAVEMENT
- PROPERTY LINE
- FENCE LINE
- EXISTING BUILDING

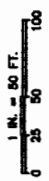
VICINITY MAP



NOTES

ALL DIMENSIONS OF RECORD ARE SHOWN ON THE RECORD MAP AND WILL APPEAR ON THE RECORDED SUBDIVISION MAP
 NO CHANGES WILL BE PERMITTED
 NO NEW STRUCTURES TO BE BUILT
 ALL PARCELS ARE ON CITY WATER AND WATER SERVICES
 ALL PARCELS ARE IN 100 YR. FLOOD ZONE
 NO KNOWN ARCHAEOLOGICAL OR PALEONTOLOGICAL SITES

LINE	LENGTH	BEARING
1	76.22'	S31°02'11"E
2	11.99'	N07°13'14"E
3	89.22'	S31°02'11"E
4	15.22'	S07°07'17"W
5	17.69'	S31°02'11"E



PROPOSED PARCEL 2

A.M. Baird
Engineering & Surveying
1001 Main St., Suite 200, Port Kenton, CA 95326
(925) 336-0111

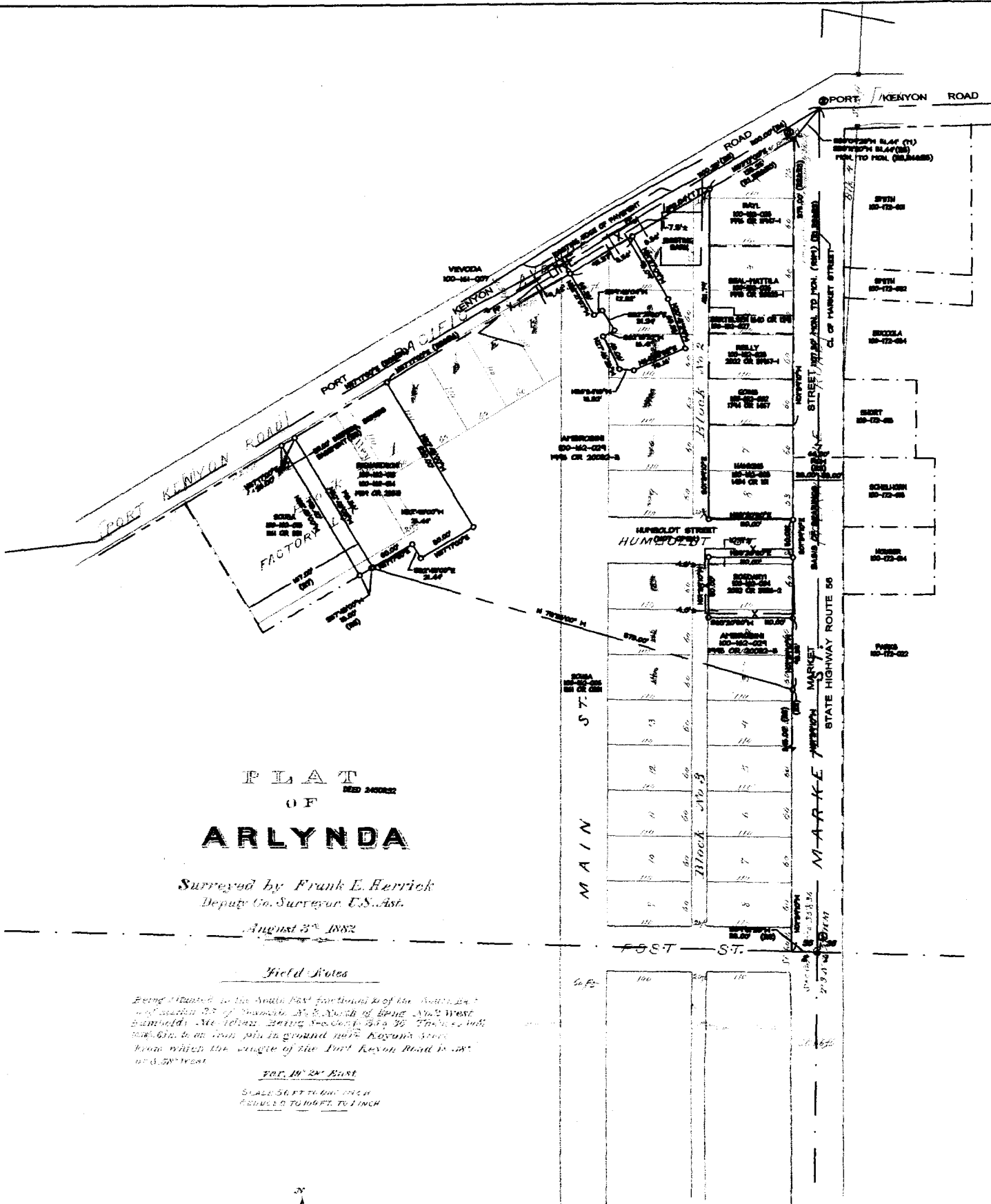
TENTATIVE MAP
A.P.N. 100-181-026-028
PORT KENTON, CA 95326
456 PORT KENTON ROAD
CURTIS AMBROSINI

EXHIBIT NO. 4

APPLICATION NO.
1-06-026

AMBROSINI

PROPOSED LAND DIVISION



A.M. Baird

Engineering & Surveying

1257 Main St., P.O. Box 396, Fortuna, CA 95540, (707) 725-5182

PREPARED FOR: CURTIS AMBROSINI

APN: APN:100-162-029

EXHIBIT TO ACCOMPANY
PARCEL MAP

EXHIBIT NO. 5

APPLICATION NO.

1-06-026

AMBROSINI

ANTIQUATED

SUBDIVISION MAP

SUBJECT PROPERTY

FLOODWAY BOUNDARY

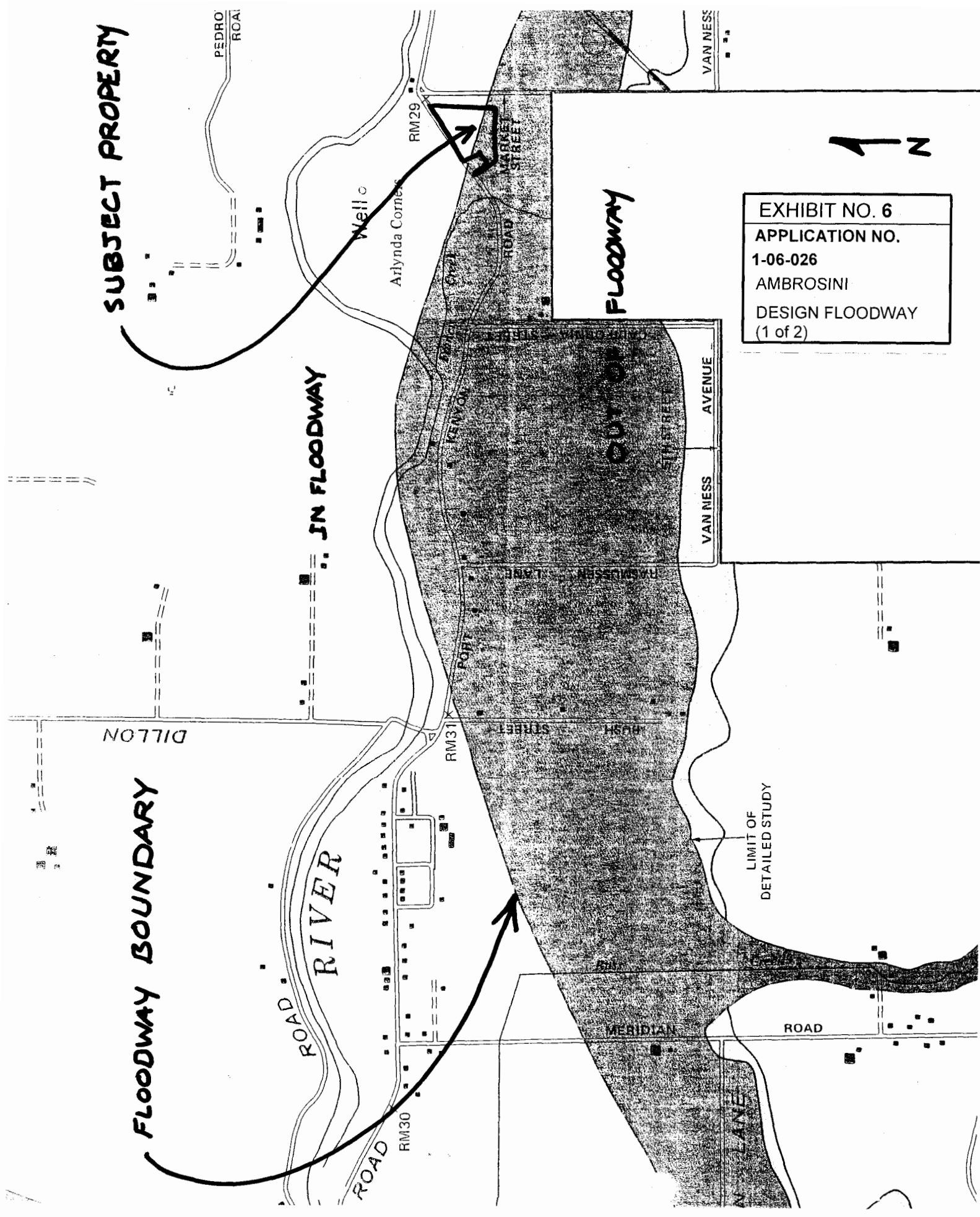
IN FLOODWAY

FLOODWAY

OUT OF FLOODWAY

EXHIBIT NO. 6
APPLICATION NO.
1-06-026
AMBROSINI
DESIGN FLOODWAY
(1 of 2)

1 N



ZEEFENHILL ROAD
 T-34 AE-60
 PG 7-11
 F Cu

11/2/55.

2140

ALL IN

②

PLEASE

**FLOODWAY
BOUNDARY**

SUBJECT PROPERTY

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Pub. R.M. Bk. I, Pg. 45
PM Bk 17, Pg. 115

Aug 04 1995

Assessor's Map Bk. 100 - Pg. 16
County of Humboldt, Calif.

BK. 30

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