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Filed:	December 19, 2007
49 th Day:	Waived
Staff:	Tiffany S. Tauber
Staff Report:	March 29, 2007
Hearing Date:	April 13, 2007

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE & DE NOVO**

APPEAL NO.:	A-1-MEN-06-052
APPLICANTS:	Redwood Coast Land Conservancy
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately five miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road on blufftop parcels at 29720-29800 South Highway One (APNs 142-010-03, -04, -05, -06, & -07).
PROJECT DESCRIPTION:	Develop public access facilities by (1) improving two existing trails, (2) paving a new encroachment onto Highway One and constructing a four-car parking area, and (3) installing informational signage and symbolic fencing. The project also includes restoring areas of erosion caused by past vehicle use.
APPELLANTS:	(1) Martin Kitzel; (2) Commissioners Meg Caldwell and Sara Wan

SUBSTANTIVE FILE
DOCUMENTS:

1) Mendocino County CDP No. 16-2005 and
2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATIONS:

1. Summary of Staff Recommendation: Substantial Issue

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed and that the Commission hold a de novo hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP) and the public access policies of the Coastal Act.

The development, as approved by the County, involves developing public access facilities by (1) improving two existing trails, (2) paving a new encroachment onto Highway One and constructing a four-car parking area, and (3) installing informational signage and symbolic fencing. The project also includes restoring areas of erosion caused by past vehicle use.

The project site, known as Hearn Gulch, is an approximately six-acre coastal terrace located approximately five miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road at 29720-29800 South Highway One, Mendocino County.

The primary issue raised by the appeal is the project's impacts to environmentally sensitive plant habitat. The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered. As approved by the County, the parking area would directly impact four individual purple-stemmed checkerbloom plants and would be sited within five feet of several individual purple-stemmed checkerbloom plants located to the north of the driveway encroachment.

The County's LCP defines environmentally sensitive habitat areas (ESHA) to include habitats of rare and endangered plants. Therefore, as ESHA, rare plant habitat is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from

possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width and an appropriate buffer width shall be determined based on a set of seven criteria. LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(b) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area, and that structures are allowable within the buffer area only if there is no other feasible site available on the parcel.

Appellant A, Martin Kitzel, contends that the approval of the public access project is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP because (a) the parking area would be constructed within and directly adjacent to rare plant ESHA, and (b) because the County did not consider potential feasible alternative sites or configurations for the parking area that would avoid locating development within the ESHA buffer.

Appellants B, Commissioners Meg Caldwell and Sara Wan, note that projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Appellant B alleges that the County's approval of the subject development is inconsistent with this requirement because the County's findings for approval do not include a discussion of the project's consistency with the public access policies of the Coastal Act including, specifically, policies requiring that the provision of public access and recreational opportunities be provided in a manner that is protective of natural resource areas.

The County approval is based on a determination of the botanical surveys prepared for the project that the purple-stemmed checkerbloom is so widely scattered across the subject property in sufficiently large numbers that the loss of individual purple-stemmed checkerbloom specimens resulting from the installation of a more formal parking area would not compromise the plant's continued existence at Hearn Gulch. The County further found that consolidating indiscriminate vehicle use to a formal parking area would have an overall benefit on the extensive rare plant ESHA throughout the project area. In its approval, the County discusses why for these reasons, and with mitigation measures, a buffer width less than 100 feet may be appropriate, but fails to analyze how a reduced buffer is allowable based on analysis of the seven criteria in the LCP that must be applied in determining whether a potential reduction of the ESHA buffer is warranted and how a buffer less than the minimum required 50 feet is allowable at all under the LCP. Further, the County did not acknowledge that the paved highway encroachment and the four-stall parking area would be located within the 50-foot rare plant buffer area. Moreover, the County did not demonstrate that the approved access parking and trail improvements would be designed and configured in a manner that would fully protect the natural resources of the area from impacts related to overuse and fully take into account the fragility of the natural resources present at the site as required by Coastal Act Sections 30210 and 30214. The County's findings did not discuss alternative designs and configurations that could avoid or minimize impacts to sensitive plant resources.

Therefore, staff recommends that the Commission find that the contentions are valid grounds for an appeal, and that the contentions raise a substantial issue of conformity of the approved development with the certified LCP and the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of Substantial Issue is found on Page No. 6.

2. Summary of Staff Recommendation *De Novo*: Approval with Conditions

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that as conditioned, the development as amended for purposes of the Commission's de novo hearing would avoid any significant adverse impacts to rare plant ESHA and would be consistent with the Mendocino County LCP and the public access and recreation policies of the Coastal Act.

For purposes of *de novo* review by the Commission, the applicant submitted an amended project description dated March 16, 2007 that (1) eliminates the parking improvements, and (2) reduces the improvements to the existing beach access trail. As amended, the proposed project involves (1) making minor improvements to two existing public access trails, (2) installing a bollard and chain vehicle barrier adjacent to the existing, informal gravel vehicle pullout to prevent vehicles from encroaching into sensitive plant habitat, and (3) installing fencing and informational signs. The revisions to the proposed project would eliminate all new development within ESHA and existing ESHA buffer areas.

Portions of the proposed project would be located closer than 50 feet from ESHA areas. However, the proposed public access enhancement project does not propose any new development in areas where public access does not already occur. The proposed project involves improving two existing trails to facilitate and formalize the historic and current public use of the area. The proposed project would not expand existing or add new trails, or introduce a new use at the site in a manner that would encroach further into rare plant habitat or the riparian drainages or otherwise cause significant adverse impacts to these habitats. The buffer areas between the existing access facilities and ESHA, including the trails and the existing gravel vehicle pullout, are already established and would not be decreased as a result of the proposed project. No sensitive plants or riparian vegetation would be removed or directly impacted by the proposed project.

The proposed project would consolidate the current indiscriminate public use of the property by formalizing the existing trails for pedestrian use only and by preventing unauthorized vehicle use on the site. The project would reduce the number of unofficial trails and direct public use to designated areas by fencing off volunteer trails that traverse the steep bluff face, and by installing signs along the trail system as an educational and informational tool. Precluding public use of sensitive areas in this manner would

minimize erosion and allow these areas to revegetate naturally and prevent trampling of rare plant habitat.

To further ensure the maximum amount of protection of rare plant habitat, staff recommends Special Condition No. 1 requiring that the proposed improvements to the existing trails, and installation of fences and signs be monitored by a qualified botanical surveyor to minimize adverse impacts to sensitive plants, such as trampling by volunteers, during construction of the proposed project. Staff also recommends that the Commission attach Special Condition No. 2 that expressly requires all future improvements to the approved development including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements would not be sited or designed in a manner that would result in adverse environmental impacts.

Staff also recommends that the Commission find the proposed project with conditions consistent with the public access and recreation policies of the LCP and the Coastal Act, as the proposed project would (1) enhance and permanently protect public access to and along the coast, (2) protect natural resource areas from overuse, (3) be sited and designed to account for the fragility of the natural resources in the area, (4) be managed and maintained by a responsible agency, RCLC, pursuant to a Public Access Management Plan, and (5) provide public access in a manner that conforms to the applicable access standards set forth in the LCP regarding safety and signage.

In addition to recommended special conditions regarding the protection of ESHA, staff is recommending that the Commission attach several other special conditions. Special Condition No. 3 requires the applicant to submit a revised public access management plan for review and approval of the Executive Director that substantially conforms with the management plan prepared by RCLC for the site, but is revised to accurately reflect the public access improvements authorized by CDP No. A-1-MEN-06-052. Special Condition No. 3 also requires the applicant to demonstrate that the revised public access management plan has been reviewed and approved by Mendocino County. Special Condition No. 4 requires the applicant to submit to the Executive Director a copy of the final, approved Encroachment Permit issued by Caltrans for the installation of the bollard and chain vehicle barrier that would be partially located within areas of Caltrans right-of-way, or evidence that no permit is required. Special Condition No. 5 requires the applicant to submit to the Executive Director a copy of a new, or amended Conditional Use Permit approved by the County of Mendocino for the development authorized by CDP No. A-1-MEN-06-052, or evidence from the County that a Conditional Use Permit or permit amendment is not required. Lastly, Special Condition No. 6 clarifies that this permit has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

As conditioned, staff recommends that the Commission find that the project is consistent with the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 6.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

Motion:

I move that the Commission determine that Appeal No. A-1-MEN-06-052 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-06-052 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act.

II. STAFF RECOMMENDATION, MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-06-052 subject to conditions.

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 a 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 certified Mendocino County LCP and the public access policies 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.

PART ONE – SUBSTANTIAL ISSUE

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified

local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The approved development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is (1) not designated the "principal permitted use" under the certified LCP, (2) is located between the sea and the first public road paralleling the sea, and (3) within three hundred feet of the top of a seaward facing coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellants and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

2. Filing of Appeal

Two appeals were filed including an appeal from (1) Martin Kitzel on December 19, 2007, (Exhibit No. 9) and (2) Commissioners Meg Caldwell and Sara Wan on January 3, 2007 (Exhibit No. 10). Both appeals were filed with the Commission in a timely manner within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 11) on December 18, 2006.

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On, December 22, 2006, prior to the 49th day after the filing of the appeal, the applicant submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49 days from the date the appeal had been filed.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received two appeals of the County of Mendocino's decision to conditionally approve the development from (1) Martin Kitzel (Appellant A), and (2) Commissioners Meg Caldwell and Sara Wan (Appellant B). The project as approved by the County involves developing public access facilities by (1) improving two existing trails, (2) paving a new encroachment onto Highway One and constructing a four-car parking area, and (3) installing informational signage and symbolic fencing. The project also includes restoring areas of erosion caused by past vehicle use.

The project site, known as Hearn Gulch, is an approximately six-acre coastal terrace located approximately five miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road at 29720-29800 South Highway One, Mendocino County. (See Exhibit Nos. 1-2.)

The appeals raise several contentions alleging inconsistency of the approved project with the County's certified LCP and the public access and recreation policies of the Coastal Act. The appellants' contentions are summarized below, and the full text of the two appeals are included as Exhibit Nos. 9 and 10.

1. Development Adjacent to Environmentally Sensitive Habitat Areas (ESHA)

Appellant A contends that the approval of the public access project is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP, which require, in part, (1) a minimum 50-foot buffer from ESHA, including rare plants, and (2) that structures are allowed in the ESHA buffer only if there is no other feasible site available on the parcel. Appellant A contends that the parking area approved by the County would have adverse impacts on rare plant habitat and that the County did not analyze potential alternative locations or configurations for the parking lot that would minimize impacts to ESHA.

2. Public Access and the Protection of Natural Resource Areas

Appellant B notes that projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. However, Appellant B alleges that the County's approval of the subject development is inconsistent with this requirement because the County's findings for approval do not include a discussion of the

project's consistency with the public access policies of the Coastal Act including, specifically, policies requiring that the provision of public access and recreational opportunities be provided in a manner that is protective of natural resource areas.

B. LOCAL GOVERNMENT ACTION

On October 19, 2006, the Mendocino County Planning Commission conditionally approved the coastal development permit for the project (CDU #16-2005) (Exhibit No. 5). The development, as approved by the County involves developing public access facilities including (1) two walking trails, (2) a paved encroachment onto Highway One and a four-car gravel parking area, and (3) informational signage and symbolic fencing. The project also includes the restoration of erosion caused by vehicles.

The approved permit imposed fifteen special conditions, two of which pertain to the appeal's contentions. These include Special Condition No. 5 requiring incorporation of all recommended mitigation measures contained in the botanical surveys prepared for the project, and Special Condition No. 6 requiring submittal of a status report on rare plant populations at years 3 and 5 and that any recommended mitigation measures contained in these status reports be incorporated into the stewardship of the property.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on December 18, 2006 (Exhibit No. 11). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner by Appellant A on October 30, 2006 prior to Commission staffs' receipt of the Notice of Final Local Action. Thus, the appeal is considered to have been filed on December 19, 2006, the first day of the appeal period which commenced after receipt of the County's Notice of Final Action. The appeal from Appellant B was filed on January 3, 2007, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT SITE BACKGROUND

On April 27, 2000, the County Coastal Permit Administrator denied CDP #44-96 (Bell) for construction of a single-family residence on APNs 142-010-04 & -05 based on project inconsistencies with LCP visual resource policies, geologic hazards and setbacks, and impacts to rare plant ESHA. The applicant (Bell) appealed the permit denial to the Board of Supervisors, but prior to a hearing before the Board, Bell began negotiations with the Redwood Coast Land Conservancy (RCLC) for the purchase of the property for public access. Based on the eventual agreement for sale of the land to RCLC, the appeal was dropped by Bell and was never heard by the Board of Supervisors. Grant funds were

procured from the Coastal Conservancy, Caltrans, and the local community for the purchase of the property and for some of the development costs. The Redwood Coast Land Conservancy Hearn Gulch Headlands Preservation and Public Access Management Plan was prepared in July 2006 and states the purpose for acquiring the property as “to permanently protect the scenic and environmental qualities of the land and maintain the public’s access to the area.”

D. PROJECT AND SITE DESCRIPTION

The development as approved by the County involves developing public access facilities including (1) improving two existing trails, (2) paving an encroachment onto Highway One and constructing a four-car gravel parking area, and (3) installing informational signage and symbolic fencing. The project also includes restoring areas of erosion caused by past vehicle use.

The project site, known as Hearn Gulch, is an approximately six-acre coastal terrace located in a designated “highly scenic” area approximately five miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road at 29720-29800 South Highway One, Mendocino County. (See Exhibit Nos. 1-2.)

The coastal terrace is elevated approximately 60 feet above the ocean with a general absence of tree cover that affords spectacular coastal views of offshore sea stacks, caves and dramatic rock formations. The Hearn Gulch area includes a large headland, a smaller finger-shaped headland to the north, and two small, wind-protected coves with a sandy beach and a seasonal creek in the northern cove. The southern beach is known as Sea Cave Beach and the northern beach is known as Hearn Gulch Beach. A large Caltrans overlook and paved parking area is located approximately 1,000 feet north of Hearn Gulch. Schooner Gulch State Beach public access and parking area is located approximately 1.2 miles north of the project site.

Plant communities present at the site include: Coastal Terrace Prairie, Northern (Franciscan) Coastal Scrub, Northern Coastal Bluff Scrub, and Northern Bishop Pine Forest. The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale’s bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered.

The project site also contains two drainages that support riparian vegetation. The southern drainage carries stormwater runoff from a culvert that emerges from under Highway One and drains to Sea Cave Beach below. The northern drainage, Hearn Gulch, emerges from the highway and drains down the steep slope to Hearn Gulch Beach.

The subject site contains three informal historic trails. One, created by past vehicle use, extends west from the highway to the middle of the large headland (Trail One). A second trail leads north down the wide northern depression to the sandy beach of Hearn Gulch Cove (Trail Two). The third is a footpath that extends from the beginning of the smaller, northern headland out to the edge of that headland's bluff top. In addition, the steep bluff face above Sea Cave Cove shows evidence of past occasional use. The property has a long history of public use as evidenced by historic aerial photos. An existing gravel pullout currently used for parking is located just off the west shoulder of the highway partially within a 40-foot-wide Caltrans right-of-way as measured from the centerline of the highway.

The project as approved by the County includes (1) improving two existing trails, (2) developing a formal parking area, (3) installing signs and fencing, and (4) restoring eroded areas.

Trail Improvements

The trail improvements as approved by the County involve widening two existing footpaths identified as Trail One and Trail Two described above. Trail One would be widened to approximately four feet and outsloped to minimize the concentration of stormwater runoff. The trail would be terminated at a safe distance from the bluff edge to ensure public safety. Trail Two would be improved using hand labor (pick and shovel) due to the steepness of the trail. Trail Two exceeds 12 percent slope for its entire length so erosion control measures, such as water bars, would be utilized to minimize potential erosion. A series of steps would be constructed near the end of Trail Two with the last 10-15 feet of the steps cabled together.

Parking

As approved by the County, an existing informal dirt pullout would be improved by paving an encroachment onto Highway One and creating a four-car gravel parking area in compliance with Caltrans standards. The paved encroachment would include improvements for sight distance to the north by grading the existing cut bank on the west side of the highway. A low barrier fence would be erected to prohibit vehicles from going beyond the parking area and out onto the coastal terrace.

Signs and Fencing

Thirteen information and warning signs and four property boundary posts would be installed including a sign at the designated point of pedestrian entry from the parking area that would instruct the public as to the controlled nature of the shoreline access and provide sponsorship information. Additional signage would be appropriately placed regarding general conditions of use, restrictions regarding littering, overnight camping prohibitions, RV prohibitions and warnings regarding environmentally sensitive habitats and plants and hazardous bluff locations. Signs would be made of non-reflective painted sheet metal and would be bolted to 4 x 4 posts sunk in concrete with an approximately 2½ foot height above ground level.

To prevent vehicles from going out onto the headlands, approximately 200 linear feet of bollard and chain fencing would be installed along the boundaries of the parking area. In addition, two “sheep fences,” each approximately 2½ feet high and 15 feet long, would be located along the north bluff top above Sea Cave Cove to discourage use of old trails down this very steep cliff.

Erosion Restoration

The project as approved by the County also includes restoration of the site from previous misuse. Except for a portion of one old “vehicle trail” that would be converted to a footpath (Trail One), those areas of the property that have been severely scarred and/or eroded either directly or indirectly by past vehicle use would be restored to their natural contours. On-site native soil from the parking area grading and the expansion of the highway cut would be used in the restoration of these areas. In addition, an old bulldozer cut would be partially filled as part of the highway access approach / parking area construction. Wherever possible, top soil from the aforementioned grading and cut expansion would be used for the last (top) 12 inches of those areas needing restoration. Lesser quality native soil, where needed, would be mechanically blended with the underlying (eroded) base to develop a proper bond. Biodegradable matting and native plantings would be utilized to stabilize the remedial soil.

E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

All of the contentions raised by the appellants present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. The contentions allege that the approval of the project by the County is inconsistent with LCP provisions regarding development adjacent to environmentally sensitive habitat areas (ESHA) and the public access policies of the Coastal Act. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP and the public access policies of the Coastal Act.

Allegations Raising Substantial Issue:

a. Development Adjacent to Environmentally Sensitive Habitat Areas

Appellant A contends that the approval of the public access project is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP, which require, in part, (1) a minimum 50-foot buffer from rare plant ESHA, and (2) that structures be allowed in the ESHA buffer only if there is no other feasible site available on the parcel.

LCP Policies:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states: (emphasis added)

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states (emphasis added):

(A) Buffer Areas. *A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(1) Width. *The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. *Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*

(iii) An assessment of the impact and activity levels of the proposed development on the resource.

(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

(e) Use of Existing Cultural Features to Locate Buffer Zones. *Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

(f) Lot Configuration and Location of Existing Development. *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

(2) Configuration. *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

(3) Land Division. *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) Permitted Development. *Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the

drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

Discussion:

As discussed above, the project as approved by the County involves developing public access facilities, including a formal parking area by paving an encroachment onto Highway One and constructing four parking stalls.

The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered. As approved by the County, the parking area would directly impact four individual purple-stemmed checkerbloom plants and would be sited within five feet of several individual purple-stemmed checkerbloom plants located to the north of the driveway encroachment.

As cited above, Coastal Zoning Code Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and includes habitats of rare and endangered plants. Therefore, as ESHA, rare plant habitat is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the

biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(b) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area, and that structures are allowable within the buffer area only if there is no other feasible site available on the parcel.

Appellant A contends that the approval of the public access project is inconsistent with the environmentally sensitive habitat area (ESHA) policies of the certified LCP because (a) the parking area would be constructed within and directly adjacent to rare plant ESHA, and (b) because the County did not consider feasible alternative sites or configurations for the parking area that would avoid locating development within the ESHA buffer.

The County approval is based on a determination of the botanical surveys prepared for the project that the purple-stemmed checkerbloom is so widely scattered across the subject property in sufficiently large numbers that the loss of purple-stemmed checkerbloom specimens resulting from the installation of a more formal parking area would not compromise the plant's continued existence at Hearn Gulch. The County further found that consolidating indiscriminate vehicle use to a formal parking area would have an overall benefit on the extensive rare plant ESHA throughout the project area. In its approval, the County discusses why for these reasons, and with mitigation measures, a buffer width less than 100 feet may be appropriate, but fails to analyze how a reduced buffer is allowable based on analysis of the seven criteria in the LCP that must be applied in determining whether a potential reduction of the ESHA buffer is warranted and how a buffer less than the minimum required 50 feet is allowable at all under the LCP. Further, the County did not acknowledge that the paved highway encroachment and the four-stall parking area would be located within the 50-foot rare plant buffer area.

LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 (A)(1) regarding the reduction of an ESHA buffer width does allow for development to be permitted within a buffer area if the development is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. The LCP sets forth uses permitted in wetland and riparian ESHAs, but is silent with regard to allowable uses within rare plant ESHA, and thus allowable uses within the rare plant buffer.

Nonetheless, even if a public parking lot were considered allowable development in a rare plant buffer, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020(A)(4) require permitted development within an ESHA buffer to comply with several standards.

These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that the development be sited and designed to prevent impacts that would significantly degrade the ESHA. The County's findings do not analyze alternative sites or project designs or demonstrate that the project as approved was sited and designed in a manner that would best protect the rare plant ESHA. For example, as noted by Appellant A, the County's findings do not discuss alternatives such as providing parking closer to and parallel with the highway shoulder, and why such alternatives are or are not feasible as a means of avoiding and/or minimizing impacts to rare plant habitat.

Thus, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because development is allowed within a buffer area only if it is demonstrated that there is no other feasible site available on the parcel, the degree of legal and factual support for the local government's decision is low. Furthermore, as the cumulative impact of the loss of rare and endangered plants over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, for all of the above reasons, the Commission finds that the project as approved by the County raises a substantial issue of conformance with the provisions of LUP Policy 3.1-7, and Coastal Zoning Code Section 20.496.020.

b. Coastal Access and Natural Resource Protection

Appellant B notes that projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Appellant B alleges that the County's approval of the subject development is inconsistent with this requirement because the County's findings for approval do not include a discussion of the project's consistency with the public access policies of the Coastal Act including, specifically, policies requiring that the provision of public access and recreational opportunities be provided in a manner that is protective of natural resource areas.

Coastal Act Public Access Policies:

Coastal Act Section 30210 states:

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

Coastal Act Section 30214 states in applicable part:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (emphasis added)*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Discussion:

The approved development is located between the first public road and the sea and is therefore subject to the public access policies of the Coastal Act. In its approval of the project, the County made findings of the project's consistency with the public access policies of the Mendocino County LCP, but did not address the project's consistency with the public access policies of the Coastal Act as required by Section 30604(C) of the Coastal Act and Coastal Zoning Code Section 20.532.095(B)(1).

As discussed above, the project site contains significant populations of several species of rare and endangered plants. The County's definition of Environmentally Sensitive Habitat Area (ESHA) set forth in the LCP includes habitats of rare and endangered plants. As approved by the County, the project would develop public access improvements adjacent to rare plant ESHA and several specimens of rare plants would be directly impacted by parking lot improvements. As cited above, Coastal Act Section 30210 requires that public access and recreational opportunities be provided in a manner that protects natural resource areas, such as ESHA, from overuse. Similarly, Coastal Act Section 30214 requires that public access be provided in a manner and place that takes into account the fragility of the natural resources in the area.

The County's findings for approval of the project indicate that the project site has been heavily used for informal public access in the past as evidenced by the eroded parking areas and visible footpaths. However, in its findings for approval of the public access improvements, the County did not demonstrate that the approved access parking and trail

improvements would be designed and configured in a manner that would fully protect the natural resources of the area from impacts related to overuse and fully take into account the fragility of the natural resources present at the site as required by Coastal Act Sections 30210 and 30214. The County's findings did not discuss alternative designs and configurations that could avoid or minimize impacts to sensitive plant resources.

Thus, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that the development is consistent with the public access policies of the Coastal Act. Furthermore, as Sections 30210 and 30214 of the Coastal Act require that public access be provided in a manner that protects natural resources, such as rare and endangered plants, and as the cumulative impact of the loss of rare and endangered plants over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the public access policies of the Coastal Act.

Conclusion of Part One - Substantial Issue:

The foregoing contentions raised by the appellants have been evaluated against the claim that the contentions raise a substantial issue in regard to conformance of the local approval with the certified LCP and the public access policies of the Coastal Act. The Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding the protection of ESHA, including, but not limited to, LUP Policies 3.1-7 and Coastal Zoning Code Section 20.496.020. In addition, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with Coastal Act public access policies, including, but not limited to, Coastal Act Sections 30210 and 30214. The Commission finds that for the reasons stated above, the project as approved by the County raises a substantial issue of conformance with the certified LCP and the public access policies of the Coastal Act with respect to all the contentions raised.

PART TWO—DE NOVO ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP and/or the public access policies of the Coastal Act, the local government's approval no longer governs, and the Commission must consider the merits of the project. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above into its findings on the *de novo* review of the project.

3. Amended Project Description Submitted by Applicant for de novo Review

For the purposes of *de novo* review by the Commission, the applicant submitted an amended project description dated March 16, 2007 that (1) eliminates the parking improvements, and (2) reduces the improvements to the existing beach access trail. As amended, the proposed project involves (1) making minor improvements to two existing public access trails, (2) installing a bollard and chain vehicle barrier adjacent to the existing, informal gravel vehicle pullout to prevent vehicles from encroaching into sensitive plant habitat, and (3) installing fencing and informational signs.

The amended project description addresses issues raised by the appeal where applicable, and provides additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Botanical Monitor During Project Implementation

A qualified botanical surveyor familiar with all of the sensitive plant species found on the property, including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom), shall monitor all project activities, including trail improvements and installation of fences and signs, to minimize adverse impacts to sensitive plants, such as trampling by volunteers, during construction of the proposed project.

2. Future Development Restrictions

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-06-052. Any future improvements to the public access facilities, including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, will require a permit amendment or a new coastal development permit.

3. Revised Management Plan

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a public access management plan that substantially conforms with the plan entitled "Redwood Coast Land Conservancy Hearn Gulch Headlands Preservation and Public Access Management Plan" dated July 2006, but is revised to accurately reflect the public access improvements authorized by CDP No. A-1-MEN-06-052. The applicant shall demonstrate that the revised plan has been reviewed and approved by Mendocino County.

B. The permittee shall undertake development in accordance with the approved final public access management plan. Any proposed changes to the approved final public access management plan shall be reported to the Executive Director. No changes to the approved final public access management plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Caltrans Encroachment Permit

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by Caltrans for the installation of the bollard and chain

vehicle barrier partially located within areas of Caltrans right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by Caltrans. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. County Use Permit

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director a copy of a new, or amended Conditional Use Permit approved by the County of Mendocino for the development authorized by CDP No. A-1-MEN-06-052, or evidence from the County that a Conditional Use Permit or permit amendment is not required. The applicant shall inform the Executive Director of any changes to the project required by the County. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby declares and finds as follows:

1. Project Site Background:

The Project Site Background finding of the Substantial Issue portion of this report is hereby incorporated by reference.

2. Site Description:

The project site, known as Hearn Gulch, is an approximately six-acre coastal terrace located in a designated “highly scenic” area approximately five miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road at 29720-29800 South Highway One, Mendocino County. (See Exhibit Nos. 1-2.)

The coastal terrace is elevated approximately 60 feet above the ocean with a general absence of tree cover that affords spectacular coastal views of offshore sea stacks, caves and dramatic rock formations. The Hearn Gulch area includes a large headland, a smaller finger-shaped headland to the north, and two small, wind-protected coves with a sandy

beach and a seasonal creek in the northern cove. The southern beach is known as Sea Cave Beach and the northern beach is known as Hearn Gulch Beach. A large Caltrans overlook and paved parking area is located approximately 1,000 feet north of Hearn Gulch. Schooner Gulch State Beach public access and parking area is located approximately 1.2 miles north of the project site.

Plant communities present at the site include: Coastal Terrace Prairie, Northern (Franciscan) Coastal Scrub, Northern Coastal Bluff Scrub, and Northern Bishop Pine Forest. The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered.

The project site also contains two drainages that support riparian vegetation. The southern drainage carries stormwater runoff from a culvert that emerges from under Highway One and drains to Sea Cave Beach below. The northern drainage, Hearn Gulch, emerges from the highway and drains down the steep slope to Hearn Gulch Beach.

The subject site contains three informal historic trails. One, created by past vehicle use, extends west from the highway to the middle of the large headland (Trail One). A second trail leads north down the wide northern depression to the sandy beach of Hearn Gulch Cove (Trail Two). The third is a footpath that extends from the beginning of the smaller, northern headland out to the edge of that headland's bluff top. The property has a long history of public use as evidenced by historic aerial photos. An existing gravel pullout currently used for parking is located just off the west shoulder of the highway partially within a 40-foot-wide Caltrans right-of-way as measured from the centerline of the highway.

3. Project Description:

For the purposes of *de novo* review by the Commission, the applicant submitted an amended project description dated March 16, 2007 that (1) eliminates the parking improvements, and (2) reduces the improvements to the existing beach access trail. The proposed project description amended for purposes of the Commission's *de novo* review involves (1) improving two existing trails for public access use, (2) installing a vehicle barrier adjacent to the existing informal gravel pullout, and (3) installing fencing and informational signs as described below:

Trail Improvements

Two main volunteer trails have been established on the property as a result of past pedestrian and vehicle use. Trail One extends westward from Highway One onto the main headland. Trail Two extends north parallel to the highway down to Hearn Gulch

Beach (see Exhibit No. 3). RCLC proposes to “formalize” the main headland trail (Trail One) by spreading a 2-inch-deep, 36-inch-wide layer of dark/duff colored crushed rock onto the surface of this existing trail. Trail Two to the cove beach is self-evident and does not require such surface treatment. The last approximately 25 feet of Trail Two descends down a steeply angled, brushy embankment to the beach. Historic foot traffic has established a series of firmly embedded rock steps over this last, narrow section of trail. RCLC proposes to improve, by hand, the last section of this trail by installing several milled redwood or split stock steps to ease public access (See Exhibit No. 5).

Vehicle Barrier

Past unauthorized off road vehicle use has caused considerable damage to the natural habitat and contours of the Hearn Gulch property. To prevent vehicles from continuing to drive beyond the existing gravel pullout and onto the headland, RCLC proposes to install approximately 120 linear feet of bollard and chain fencing adjacent to the western edge of the existing informal vehicle pullout (see Exhibit No. 3). Bollards would be 6-inch diameter, 3-foot-high, treated lodgepole pine and placed six feet on center. A 3/8-inch-diameter, hot dipped galvanized steel chain would be threaded through a hole bored four inches below the top of the bollards. Lag bolts would be screwed through the side of each bollard and through the chain to prevent sag. A 40-inch opening would be located in the vehicle barrier fence to provide a convenient pedestrian entrance to the trails.

A portion of the fencing at its southern and northern ends would encroach into the 40-foot-wide Caltrans right-of-way (ROW). The northern section of the barrier alignment has been sited to prevent vehicles from driving further north on an unpaved 28-foot-wide portion of the 40-foot-wide ROW easily accessed by unauthorized vehicles to: (1) prevent an “end run” around the barrier, and (2) protect a large cluster of one of the property’s sensitive plant species, purple stemmed checkerbloom, located in the ROW. A Caltrans Encroachment Permit is required for this portion of the vehicle barrier.

Signs

RCLC proposes to install approximately 13 informational signs in various locations throughout the property and four property boundary posts. A sign at the designated pedestrian entry would instruct the public as to the controlled nature of the access area and provide sponsorship information. Additional signage would be appropriately placed regarding general conditions of use, restrictions regarding littering, overnight camping prohibitions, and warnings regarding environmental sensitivities and hazardous bluffs. All signs are 18” x 12” except a single “Hearn Gulch Coastal Access” sign, which is 36” x 24”. All signs would be installed on 4” x 6” treated wood posts. To maintain a low profile, all signs except for a larger “Hearn Gulch Coastal Access” sign would be installed at an above grade height not to exceed 30 inches; the larger sign would be installed 38 inches above grade. (See Exhibit No. 6.)

Fencing

Two “sheep fences,” each approximately 2½ feet high and 15 feet long, would be installed along the northern bluff edge above Sea Cave Cove to discourage use of existing

volunteer trails that meander down this very steep bluff to ensure public safety, prevent erosion, and to protect populations of sensitive plants that inhabit this bluff face. The “sheep fences” are 4” split redwood posts sited 6’ on center with 2” redwood slats in between (see Exhibit No. 4).

Maintenance

Volunteers organized by RCLC would carry out maintenance of the property by monitoring the site monthly to gather litter, address any vandalism, and schedule repairs as necessary. No garbage cans or bathroom facilities are proposed.

4. Development Adjacent to Environmentally Sensitive Habitat

LCP Policies:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as

those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

2. *It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
3. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
4. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states (emphasis added):

(A) Buffer Areas. *A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(1) Width. *The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. *Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;

(iii) An assessment of the impact and activity levels of the proposed development on the resource.

(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

(e) Use of Existing Cultural Features to Locate Buffer Zones. *Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

(f) Lot Configuration and Location of Existing Development. *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is*

less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

(2) Configuration. *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

(3) Land Division. *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) Permitted Development. *Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the

buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

Discussion:

The proposed project involves (1) improving two existing trails to formalize public access, (2) installing a vehicle barrier adjacent to an existing gravel pullout to prevent vehicles from driving on the headland, (3) installing fencing to discourage use of volunteer trails, and (4) installing informational signs at various locations throughout the site.

The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered.

According to the botanical surveys conducted at the site, a small population of pacific gilia was found growing on the lower, south-facing bluff above Sea Cave Beach. Many stems of coastal bluff morning-glory were found adjacent to the east and west of the existing trail that leads to Hearn Gulch Beach. The existing headland trail (Trail One) terminates near a small population of Blasdale's bentgrass. The most abundant and widely scattered sensitive plant species at the site is the purple stemmed checkerbloom, which was found growing adjacent to the existing gravel pullout and scattered throughout the eastern portion of the coastal terrace. (See Exhibit No. 8.)

The project site also contains two drainages that support riparian vegetation. The southern drainage carries stormwater runoff from a culvert that emerges from under Highway One and drains to Sea Cave Beach below. The northern drainage, Hearn Gulch, emerges from the highway and drains down the steep slope to Hearn Gulch Beach.

As cited above, Coastal Zoning Code Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and includes habitats of rare and endangered plants and riparian areas. Therefore, as ESHA, rare plant habitat and riparian areas present at the site are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

Portions of the proposed project would be located closer than 50 feet from ESHA areas. Specifically, Trail One terminates approximately 20 feet from a population of Blasdale's bentgrass. Trail Two traverses a steep slope adjacent to coastal bluff morning glory growing on both sides. Additionally, the proposed vehicle barrier would be installed

adjacent to purple stemmed checkerbloom habitat. However, the proposed public access enhancement project does not propose any new development in areas where public access does not already occur. The proposed project involves improving two existing trails to facilitate and formalize the historic and current public use of the area. The proposed project would not expand existing or add new trails, or introduce a new use at the site in a manner that would encroach further into rare plant habitat or the riparian drainages or otherwise cause significant adverse impacts to these habitats. The buffer areas between the existing access facilities and ESHA, including Trail One and Trail Two and the existing gravel vehicle pullout, are already established and would not be decreased as a result of the proposed project. No sensitive plants or riparian vegetation would be removed or directly impacted by the proposed project.

Furthermore, the proposed project involves installing a bollard and chain vehicle barrier on the western edge of the existing gravel pullout that is currently used by the public to park and walk out on the trails, or to pullover and enjoy the view. The vehicle barrier would prevent vehicles from driving out onto the headland, which has been a significant problem at this site in the past and has resulted in adverse impacts to sensitive plant habitat from erosion and compaction. The proposed project would consolidate indiscriminate public use of the property by formalizing two existing trails for pedestrian use only and by preventing unauthorized vehicle use on the site. The project would reduce the number of unofficial trails and direct public use to designated areas by fencing off volunteer trails that traverse the steep bluff face, and by installing signs along the trail system as an educational and informational tool. Precluding public use of sensitive areas in this manner would minimize erosion and allow these areas to revegetate naturally and prevent trampling from off-trail use. Thus, the proposed project would result in greater protection of the sensitive plant habitat from degradation and ensure the continuance of the habitat. The biological report prepared for the site by Jon Thompson dated September 18, 2004 describes the benefits to the rare plant ESHA from the proposed project and states,

“...Prior to the most recent acquisition of the two most southern parcels by RCLC, there was rampant vehicle traffic on the very sensitive coastal terrace prairie habitat. The planned trails, signs and blockades that will discourage pedestrians from trampling and keep vehicles from entering the coastal terrace prairie habitat zone and other natural plant communities present on the RCLC property will enable the existing population of purple-stemmed checkerbloom and other special status species to persist and most likely benefit from these measures.”

Prior to the project being appealed to the Commission, and prior to the applicant's revision to the project description to eliminate all new development within ESHA or existing ESHA buffer areas, the Department of Fish and Game (DFG) visited the site and recommended that identified sensitive plant populations at the site be monitored and maintained in perpetuity. DFG recommended that RCLC volunteers actively eradicate invasive exotic plants from the headlands to ensure the continued success and

conservation of the rare and endangered plants on the site. DFG further recommended that a status report on the rare plant populations be prepared by December 31 of year three and year five following implementation of the proposed public access improvements, and that any recommended mitigation measures contained in the status reports be incorporated into the stewardship of the property for the preservation of rare or endangered plants. The botanical report prepared for the project similarly recommends that a monitoring plan be implemented to ensure continued protection of the rare plant ESHA. These recommendations for monitoring were made when the project included new development that would impact rare plants and encroach into ESHA buffer areas. As the project has been revised to eliminate any encroachment into ESHA or ESHA buffer areas, monitoring reports are not needed to ensure consistency with LCP ESHA policies.

The botanical report also recommends that a qualified botanical surveyor familiar with all of the special status plants found on the property monitor all project activities during construction to ensure the maximum amount of protection of the sensitive plants. Therefore, the Commission attaches Special Condition No. 1 that implements this recommendation by requiring that the proposed improvements to the existing trails, and installation of fences and signs be monitored by a qualified botanical surveyor to minimize adverse impacts to sensitive plants, such as trampling by volunteers, during construction of the proposed project.

The botanical report prepared for the site contained several other recommended mitigation measures that were specific to the project as proposed by RCLC prior to the project being appealed to the Commission and prior to the applicant amending the project description for the Commission's de novo review. These recommendations are not related to the project as revised.

The Commission finds that while the proposed project would not result in significant adverse impacts to ESHA, future development or further improvements to the existing public access facilities at the site could result in potential adverse impacts to ESHA if such new development or improvements are not properly sited and designed. The Commission further notes that Section 30610(b) of the Coastal Act and Chapter 20.532.020(D) of the County's Coastal Zoning Code exempt certain improvements to structures other than a single-family residence or a public works facility from coastal development permit requirements. Pursuant to this exemption, once a structure has been constructed, such as signs or trails, certain improvements that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, in this case because the project site is located within a highly scenic area, future improvements to the approved project would not be exempt from permit requirements pursuant to Section 30610(b) of the Coastal Act and Section 13253 of the Commission's regulations. Section 30610(b) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section

30610(b) of the Coastal Act, the Commission adopted Section 13253 of Title 14 of the California Code of Regulations. Section 13253 specifically authorizes the Commission to require a permit for improvements to structures other than single-family residences or public works facilities that could involve a risk of adverse environmental effect.

In addition, Section 13253(b)(1) indicates that improvements to a structure other than single-family residence or public works facility in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore, are not exempt. As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13253(b)(1) of the Commission's regulations, Special Condition No. 1 expressly requires all future improvements to the approved development including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements would not be sited or designed in a manner that would result in an adverse environmental impacts.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat areas, the project as conditioned would not significantly degrade adjacent ESHA and would be compatible with the continuance of the rare plant habitat and riparian drainages.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 because the project would (1) improve existing, established trails to facilitate an existing use and would not introduce any new use at the site, or encroach any closer to ESHA than existing established buffer widths, and (2) protect rare plant habitat by consolidating indiscriminate public use of the property by formalizing two existing trails for pedestrian use only and by preventing unauthorized vehicle use on the site.

4. Public Access and Recreation

1. Summary of Coastal Act and LCP Provisions

a. Coastal Act Access Policies

Section 30210 states:

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

Section 30211 states:

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

Section 30212 states, in applicable part:

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

Section 30214 states:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
 - (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and*

to protect the aesthetic values of the area by providing for the collection of litter.

- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*
- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

b. LCP Provisions

Section 4.10 (South Coast CAC Planning Area) of the Mendocino County Coastal Element describes the Hearn Gulch Area:

Location: Milepost 10.08, immediately north of Iversen Subdivision.

Ownership: Private; prescriptive rights may exist.

Characteristics: Small cove and sand beach.

Potential Development: Parking area and trail from north side; could serve recreational development adjoining Hearn Gulch east of highway as proposed by landowner.

LUP Policy 3.6-6 of states, in applicable part:

Shoreline access points shall be at frequent rather than infrequent intervals for the convenience of both residents and visitors and to minimize impacts on marine resources at any one point. Wherever appropriate and feasible, public access facilities, including parking areas, shall be distributed throughout the coastal area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area.

LUP Policy 3.6-13 states:

The County may seek agencies to accept accessways as prescribed in this section under "Managing and Maintaining Accessways". Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LUP Policy 3.6-14 states in pertinent part:

New and existing public accessways shall be conspicuously posted by the appropriate agency and shall have advance highway signs except those for which specific management provisions have been made and specified in Chapter 4. Additional signs shall designate parking areas and regulations for their use, and shall include regulations for protection of marine life and warning of hazards, including high tides that extend to the bluffs. Access shall not be signed until the responsibility for maintenance and liability is accepted and management established.

LUP Policy 3.6-16 states:

Access to the beach and to blufftop viewpoints shall be provided for handicapped persons where parking areas can be close enough to beach or viewing level to be reachable by wheelchair ramp. The wheelchair symbol shall be displayed on road signs designating these access points where the means of access is not obvious from the main road.

LUP Policy 3.6-22 states:

In carrying out the coastal access policies of this Coastal Element, the county or other appropriate designated management agency shall consider and encourage the utilization of innovative access management techniques including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

LUP Policy 3.6-25 reiterates Coastal Act Section 30214 cited above.

LUP Policy 3.6-26 states:

Prior to the opening, advertising or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property.

CZC Section 20.528.015 states in applicable part:

...

(B) Pass and Repass. *Public Use may be limited to pass and repass where:*

- (1) Topographic constraints of the site make use of the beach dangerous;*
- (2) Where habitat values would be adversely affected;*
- (3) Where the accessway may encroach closer than twenty (20) feet to an existing residence.*

(C) Privacy. *All accessways shall be located and designed to minimize the loss of privacy or other impacts on adjacent residences and residential parcels.*

(D) Posting. *Once the responsibility for maintenance and liability is accepted and management established, designated accessways may be posted by the managing agency. Additional signs shall designate parking areas and restrictions for their use, list off-road vehicle restrictions, as well as regulations for protection of marine life and designation of hazard areas. Handicapped access shall be posted. All signs shall conform to the regulations and standards of [Chapter 20.476](#) of this Division.*

(E) Safety. *All accessways shall be designed and constructed to safety standards adequate for their intended use. Barriers shall be constructed by the managing agency where necessary. Parking areas to adequately serve public access shall be considered in the permit review process. Bluff retreat/erosion shall be considered and provided for the life of the development when planning lateral accessways.*

(F) Handicapped Access. *Access to beach and blufftop viewpoints shall be provided and signed for handicapped persons where parking areas can be close enough to beach or viewing level to be reachable by wheelchair ramps. Barriers shall be placed marking wheelchair ramps and the limits to safe approach of a bluff. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.528.045 states:

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

(A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;

(B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;

(C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and

(D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).

Discussion:

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. To approve the proposed project, the Commission must find the project to be consistent with the public access policies outlined in Section 30210,

30211, 30212, and 30214 of the Coastal Act and the LCP policies listed above. The project's consistency with each of these policies is described below.

1. Consistency with Coastal Act Public Access and Recreation Policies

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. Section 30214 requires, in applicable part, that public access be provided in a manner that takes into account the fragility of the natural resources in the area.

a. Provision and Protection of Public Access

The Redwood Coast Land Conservancy, a non-profit land trust organization, acquired the subject property with grant funds from the Coastal Conservancy, Caltrans, and the local community. The Hearn Gulch Headlands Preservation and Public Access Management Plan was prepared in July 2006 and states the purpose for acquiring the property as "to permanently protect the scenic and environmental qualities of the land and maintain the public's access to the area."

The project site is a large uplifted marine terrace known as Hearn Gulch headlands. The property is crossed by several well-worn trails that have a history of public use as evidenced by historic aerial photos dating back to at least 1972. Trail One, created by past vehicle and pedestrian use, extends west from the highway to the middle of the large headland. Trail Two extends parallel to the highway and down a narrow gully to Hearn Gulch Beach. In addition, the steep bluff face above Sea Cave Beach shows evidence of past public use.

The proposed project would formalize and permanently protect the public access opportunities to the headland and beach that have historically occurred at the site in a manner consistent with the public access and recreation provisions of the Coastal Act that require the protection and provision of public access opportunities. Specifically, the proposed project involves (1) improving two existing trails for public access use, (2) installing a vehicle barrier adjacent to the existing gravel pullout, and (3) installing protective fencing and informational signs. The site would be conspicuously posted with a sign identifying the site as a coastal access location. Officially opening the public

access area as proposed by RCLC would benefit local residents and visitors alike. RCLC has accepted the responsibility of actively managing and maintaining the area.

b. Protection of Natural Resources

As cited above, Coastal Act Section 30210 requires that public access and recreational opportunities be provided in a manner that protects natural resource areas, such as ESHA, from overuse. Similarly, Coastal Act Sections 30212 and 30214 require that public access be provided in a manner that takes into account the fragility of the natural resources in the area.

The project site provides habitat for four sensitive plant species as identified in botanical surveys conducted at the site including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata ssp. saxicola* (coastal bluff morning-glory), *Gilia capitata ssp. pacifica* (Pacific gilia), and *Sidalcea malviflora ssp. purpurea* (purple-stemmed checkerbloom). These four species are listed on the California Native Plant Society List 1B, indicating that they are rare or endangered in California and elsewhere. These species are not state or federally listed as threatened or endangered.

As discussed above, the proposed project would formalize public access use of the site by improving two existing trails, installing a vehicle barrier adjacent to an existing gravel pullout, and installing signs and protective fencing. These proposed improvements would be located adjacent to areas that support rare plant habitat, a fragile coastal resource. However, the proposed public access enhancement project does not propose any new development in areas where public access does not already occur. The proposed project would not expand existing or add new trails, or introduce a new use at the site in a manner that would encroach further into rare plant habitat than existing, established uses. No sensitive plants would be removed or directly impacted by the proposed project.

The proposed project would consolidate the current indiscriminate public use of the property by formalizing the existing trails for pedestrian use only and by preventing unauthorized vehicle use on the site. The project would reduce the number of unofficial trails and direct public use to designated areas by fencing off volunteer trails that traverse the steep bluff face, and by installing signs along the trail system as an educational and informational tool. Precluding public use of sensitive areas in this manner would minimize erosion and allow these areas to revegetate naturally and prevent trampling of rare plant habitat. Thus, public access would be provided in a manner that protects the fragility of the natural resources of the site.

As described previously, an existing informal gravel pullout located adjacent to the southbound (western) shoulder of Highway One has been historically used by vehicles to park and walk out on the headland, or to enjoy the view across the site from the side of the road. This pullout is easily accessed by southbound traffic. Northbound traffic must continue past the site to the Caltrans access point located approximately 1,000 yards north of the site and turn around to approach the Hearn Gulch pullout headed southbound

to avoid crossing the line of traffic and having to illegally park facing the wrong direction. The existing pullout can accommodate approximately three or four small cars and fewer larger sized vehicles at one time, which inherently restricts the level and intensity of use that can occur at the site. The proposed bollard and chain fencing would further ensure that additional vehicles do not park or drive beyond the existing gravel pullout and exceed the current capacity of the parking area, thereby further protecting the habitat areas.

The Commission finds that future development or further improvements to the public access facilities at the site could result in potential adverse impacts to the fragile natural resources of the area if such development or improvements are not properly sited and designed. As discussed previously, any future development at the site would require a coastal development permit and associated review of the development's potential impact on coastal resources, including rare plant habitat. However, to ensure that the applicant is aware of this requirement, the Commission attaches Special Condition No. 1 that clarifies that this permit is only for the development described in Coastal Development Permit No. A-1-MEN-06-052 and any future improvements to the public access facilities, including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, would require a permit or permit amendment.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act, as the proposed project would (1) enhance and permanently protect public access to and along the coast, (2) protect natural resource areas from overuse, and (3) be sited and designed to account for the fragility of the natural resources in the area.

2. Consistency with LCP Public Access and Recreation Policies

a. Provision of Shoreline Access

Section 4.10 of the Mendocino County LUP specifically identifies the project site (Hearn Gulch) as a potential public access location. As discussed above, the site was acquired by RCLC for the intended purpose of enhancing and protecting public access opportunities that have historically occurred at the site. The proposed project is consistent with LUP Policy 3.6-6 that requires shoreline access points at frequent intervals for the convenience of residents and visitors and to avoid overcrowding of the access area at any one time. The proposed project would provide a significant public access location in the southern portion of Mendocino County where public access opportunities are more limited than in the northern portion of the County. The site is unique in that it would formalize public access to both an expansive coastal terrace and a sandy, protected cove beach.

b. Public Access Management Plan

LUP Policy 3.6-26 and CZC Section 20.528.045 require that prior to opening any public accessway, the responsible agency shall prepare a management plan for the accessway. The management plan is required to address issues including public safety, impacts to coastal resources, maintenance, signing, and use restrictions and must be acceptable to the County. Pursuant to these LCP requirements, the “Redwood Coast Land Conservancy Hearn Gulch Headlands Preservation and Public Access Management Plan” was prepared in July 2006 (Exhibit No. 8). However, the management plan was prepared prior to the applicant amending the proposed project to delete the paved parking area and eliminate encroachment into rare plant habitat and buffer areas for purposes of the Commission’s de novo review. Therefore, the management plan dated July 2006 does not accurately reflect the proposed project as amended by RCLC. To ensure that the public access management plan is consistent with the requirements of LUP Policy 3.6-26 and CZC Section 20.528.045, the Commission attaches Special Condition No. 3 that requires the applicant to submit a revised public access management plan for review and approval of the Executive Director. The plan shall substantially conform with the management plan dated July 2006, but shall be revised to accurately reflect the public access improvements authorized by CDP No. A-1-MEN-06-052. Special Condition No. 3 also requires the applicant to demonstrate that the revised public access management plan has been reviewed and approved by Mendocino County.

c. Access Standards

As cited above, LUP Policies 3.6-14 and 3.6-16 and CZC Section 20.528.015 set forth several standards for public accessways regarding use limitations, signs, safety, and handicapped access. The project’s consistency with the applicable standards is discussed below:

i. Signs

LUP Policy 3.6-14 and CZC Section 20.528.015(D) set forth standards for posting signs at designated public accessways. Specifically, these provisions require that once the responsibility for maintenance and liability is accepted and management of an accessway is established, the accessway shall be conspicuously posted by the appropriate agency along with signs regarding use restrictions, hazards, and protection of resources. The proposed project involves placing several informational and warning signs at various locations throughout the site, including a sign at the designated point of pedestrian entry from the parking area that would instruct the public as to the controlled nature of the shoreline access and provide sponsorship information. (See Exhibit No. 6.) Additional signage would be appropriately placed regarding general conditions of use, restrictions regarding littering, overnight camping prohibitions, RV prohibitions and warnings regarding environmentally sensitive habitats and hazardous bluffs.

CZC Section 20.528.015(D) further requires that all signs conform to the regulations and standards set forth in CZC Section 20.476. CZC Section 20.476.025 regarding on-site sign standards requires, in applicable part, that all signs shall (1) be made of wood where feasible, (2) not block public views of the ocean, (3) not project into a private or public right of way, (4) extend no higher than fifteen feet above the grade of any adjacent public road, and (5) not exceed forty square feet on any single sign face. As discussed further in the Visual Resources finding below, the proposed signs would be made of non-reflective, brown painted sheet metal and would be bolted to 4 x 4 wood posts installed approximately 2½ feet above ground level. All signs are 18'' x 12'' except the site identification sign, which is 36'' x 24.'' Thus, all signs are consistent with the height and size requirements of CZC Section 20.476.025. The applicant has indicated that metal signs are easier to maintain than wood signs. The proposed signs are consistent with the character and design of signs used at other public access areas along the Mendocino coast. The signs would be sited in a manner that would not block public views of the ocean, or project into the 40-foot-wide Caltrans right-of-way that extends westward from the centerline of the highway. The proposed signs would not be illuminated.

ii. Public Safety

CZC Section 20.528.015(E) requires that all accessways shall be designed and constructed to safety standards adequate for their intended use by incorporating barriers where necessary, and by considering parking areas and bluff retreat/erosion. As discussed previously, the proposed project has been designed to minimize public safety hazards by (1) not encroaching any closer to the bluff edge than the existing trail terminus located approximately 75 feet from the edge of the bluff, (2) installing sheep fencing at the edge of the bluff to discourage the public from traversing down the steep bluff face, and (3) installing signs that warn the public of hazardous surf and bluffs. Additionally, the proposed project involves installing several wooden steps at the base of the trail that leads to Hearn Gulch Beach to facilitate safer access down this steep section of trail.

As described previously, an existing informal gravel pullout located adjacent to the southbound (western) shoulder of Highway One has been historically used by vehicles to park and walk out on the headland, or to enjoy the view across the site from the side of the road. This pullout is easily accessed by southbound traffic. Northbound traffic can safely access the pullout by continuing past the site to the Caltrans access point located approximately 1,000 yards north of the site and turning around to approach the Hearn Gulch pullout headed southbound to avoid crossing the line of traffic and having to illegally park facing the wrong direction.

iii. Handicapped Access

LUP Policy 3.6-16 and CZC Section 20.528.015(F) require that access to beach and blufftop viewpoints shall be provided and signed for handicapped persons where parking areas can be close enough to beach or viewing level to be reachable by wheelchair ramp.

As approved by the County, the project included developing a formal paved parking area. To meet various design standards and receive an encroachment permit from Caltrans, the parking lot would have extended beyond the informal existing pullout and encroached into rare plant habitat and ESHA buffer areas in a manner inconsistent with the ESHA protection policies of the LCP. Therefore, the parking lot could not be approved and the applicant revised the project description to delete the parking lot improvements. As a formal parking lot was considered, but cannot feasibly be provided at the present time close enough to the accessway to serve wheelchair users consistent with ESHA protection policies and Caltrans right-of-way constraints, LUP Policy 3.6-16 and CZC Section 20.528.015(F) do not require signed access improvements for handicapped persons. Nonetheless, the Public Access Management Plan prepared by RCLC for the project site indicates that the existing headland trail, proposed to be four feet wide and surfaced with crushed rock, would be suitable for handicapped access. Access to Hearn Gulch Beach is unsafe for persons with special needs, as at this particular site, the coastal terrace is elevated approximately 60 feet above the beach, which is accessed via a steep, narrow gully.

Conclusion

Therefore, the Commission find that the proposed project, as conditioned, is consistent with LUP Policies 3.6-6, 3.6-14, 3.6-16, 3.6-25, 3.6-26 and CZC Section 20.528.015, as the proposed project would (1) provide shoreline access at Hearn Gulch as contemplated in the LUP, (2) be managed and maintained by a responsible agency, RCLC, pursuant to a Public Access Management Plan, and (3) provide public access in a manner that conforms to the applicable access standards set forth in the LCP regarding safety, signage, and protection of sensitive habitat areas.

5. Geologic Hazards

Summary of LCP Policies:

LUP Policy 3.4-1 states the following in applicable part:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami run-up, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps, the County shall require a geologic investigation and report, prior to development to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site...

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.

LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that:

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

Section 20.500.010 of the Coastal Zoning Code states that development shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Discussion:

The proposed project involves improving two existing trails that provide public access (1) across the Hearn Gulch headland toward the bluff edge, and (2) down a narrow, steep gully to the beach. Section 20.500.010 of the Coastal Zoning Code requires in applicable part that new development shall minimize risk to life and property from geologic hazards and neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas.

A geotechnical investigation report was prepared for the project by David Paoli and dated August 21, 2003. According to the geologic report, sandstone, shales and conglomerates are the predominate rock types comprising the geologic character of the site. These base rocks are unusually overlain by several feet of topsoil with a sublayer of sand and cobbles. This particular area has defined terrace deposits and bedrock of Monterey group of Miocene age by the California Division of Mines and Geology. The report indicates that the closest identified onshore trace of the San Andreas Fault is approximately four miles northeast of the site. There are also several faults offshore; one may be about one-quarter mile offshore, while another that may have been active during the Quaternary period (this period began approximately 2 million years ago) is about four miles offshore. The Division of Mines and Geology has identified other faults, not known to be active during the Quaternary period, closer than the San Andreas Fault. One or more of these faults appears to pass within several hundred feet of the project site and one passes through the site itself. The USGS map indicates Saunders Reef and related shallow areas are located about 3,000 feet offshore and slightly north of the site. The reef rises to within twenty feet of the water's surface and provides protection from waves, particularly from the northwest. To the north end of the project site, the ground slopes downward to a sandy beach in a small cove. This beach is nearly 100 feet wide at normal high tide. The beaches in the immediate area are generally small and rocky, indicating that erosion and recession of the cliffs is occurring.

The geologic report indicates that amplification of seismic vibrations is not anticipated given the depth of the bedrock and soils type and liquefaction of the soil is not likely. Slides or rockfalls from the bluff face are likely to occur, given the steepness, height, and weathered condition of the bluff.

The proposed project does not involve developing any new use at the site, but rather, proposes only to improve two existing trails to facilitate and formalize the current public access use of the site. The headland trail would terminate approximately 75 feet from the bluff edge. The proposed improvements would not result in the existing trails, or any other new development, encroaching any closer to the edge of the bluff than existing setbacks. As such, the geologic investigation did not include a bluff retreat analysis.

Trail One, the main trail across the headland, would be four feet wide and outsloped to facilitate drainage and surfaced with crushed rock to minimize erosion. Trail Two has an established series of steep, naturally formed rock steps down the last narrow section of trail. RCLC proposes to improve, by hand, the last section of this trail by installing several milled redwood or split stock steps, to ease public access and further minimize erosion of the steep embankment.

The proposed project also involves installing a bollard and chain vehicle barrier on the western edge of the existing gravel pullout to prevent cars from driving out onto the headland. Additionally, sheep fencing and signage would be installed along the bluff edge in locations where volunteer trails have formed down the steep bluff face to reduce the number of unofficial trails and direct public use to designated areas. The proposed project would consolidate indiscriminate public use of the property by formalizing two existing trails for pedestrian use only and by preventing unauthorized vehicle use on the site, thereby minimizing erosion of the headland and bluffs. The proposed signs would include warnings of bluff edge dangers and direct visitors to stay on designated trails to minimize risk and ensure public safety and to further minimize potential erosion caused by off-trail use of the site.

The Commission finds that future development or further improvements to the public access facilities at the site could result in potential adverse impacts from geologic hazards if such development or improvements are not properly sited and designed, such as the construction of new trails down the bluff face. As discussed previously, any future development at the site would require a coastal development permit and associated review of the development's potential impact on coastal resources. However, to ensure that the applicant is aware of this requirement, the Commission attaches Special Condition No. 1 that clarifies that this permit is only for the development described in Coastal Development Permit No. A-1-MEN-06-052 and any future improvements to the public access facilities, including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, would require a permit or permit amendment.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with LUP Policies 3.4-1 and 3.4-7 and CZC Section 20.500.010, as the proposed project would (1) not result in public access use that would encroach any further toward the edge of the bluff than existing established setbacks, and (2) all trail improvements would be implemented in a manner that would be sited and designed to (a) minimize risk to life and property from geologic hazards, and (b) neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas.

6. Visual Resources

Summary of LCP Policies

Section 30251 of the Coastal Act has been specifically incorporated into LUP Policy 3.5-1 of the Mendocino LCP and states in part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its’ setting. Any new development permitted in these areas shall provide for protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

Portions of the coastal zone within the Highway Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

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

NOTE 1: The LUP Maps designate the area west of Highway One in the project vicinity as highly scenic.

NOTE 2: Coastal Zoning Ordinance 20.504.015(A) reiterates that this section of coastline is a “highly scenic area.”

Zoning Code Section 20.504.015(C)(1) states that:

Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

Zoning Code Section 20.504.015(C)(2) states that:

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

Zoning Code Section 20.504.015(C)(3) states that:

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

Discussion:

Policy 3.5-1 of the County's LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated "highly scenic areas" should be subordinate to the natural setting. The County's Zoning Ordinance reiterates these policies. Specifically, Coastal Zoning Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code requires an 18-foot height limit for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials blend in hue and brightness with their surroundings.

The subject site is a bluff top parcel located west of Highway One in an area designated as "highly scenic" in the Mendocino County LUP. The approximately six-acre coastal terrace is elevated approximately 60 feet above the ocean with a general absence of tree cover that affords spectacular coastal views of offshore sea stacks, caves and dramatic rock formations.

The proposed project involves installation of (1) bollard and chain fencing along the western edge of the existing gravel pullout, (2) sheep fencing along sections of the bluff edge, and (3) informational and property boundary signs located at various locations throughout the site. RCLC notes that the structural elements of the proposed project have

been sited and designed to avoid creating visual clutter in an otherwise vast, expansive viewshed. The fencing and signs have been designed to be low-profile, visually unobtrusive, and consistent with the character of the area. The proposed bollard and chain fence would be approximately three feet high and the sheep fencing would not exceed 2 ½ feet high. The proposed signs are non-reflective, brown metal mounted on wood posts and would not exceed 30" high with the exception of the main site identification sign, which would be 38" above ground level. The proposed signs are consistent with the character and design of signs used at other public access areas along the Mendocino coast, including Belinda Point, Navarro Point, and Mendocino Bay Overlook. State Parks also routinely uses this type of brown metal sign on wooden posts in coastal parks. The headland trail would be surfaced with dark, crushed rock and the beach trail would be improved with several wood steps at the base of the trail. The use of dark, earthtone colors, non-reflective signs, and natural trail materials would be visually compatible with the character of the surrounding area and subordinate to the natural setting.

The proposed structural elements of the project would not block views to or along the coast. The project would facilitate formal public access to the Hearn Gulch headlands and beach in a manner that would allow visitors to enjoy the spectacular views afforded by the site from the headland, beach, and existing vehicle pullout. Furthermore, as the proposed project involves improving existing trails rather than constructing new trails, no significant grading, or any other alteration of natural landforms would occur.

The Commission finds that future development or further improvements to the public access facilities at the site could result in potential adverse impacts to visual resources if such development or improvements are not properly sited and designed, such as the installation of larger, and/or reflective signs or fencing. As discussed previously, any future development at the site would require a coastal development permit and associated review of the development's potential impact on coastal resources, including visual resources. However, to ensure that the applicant is aware of this requirement, the Commission attaches Special Condition No. 1 that clarifies that this permit is only for the development described in Coastal Development Permit No. A-1-MEN-06-052 and any future improvements to the public access facilities, including, but not limited to, installation of additional informational signs or fencing, changes in the location and/or alignment of trails, or construction of new trails or parking facilities, would require a permit or permit amendment.

Therefore, the Commission finds that as conditioned, the proposed project is consistent with LUP Policies 3.5-1 and 3.5-3 and with CZC Section 20.504.015, as the proposed development would (1) be sited and designed to protect coastal views from public areas, (2) be visually compatible with the character of surrounding areas, (3) be subordinate to the natural setting, and (4) minimize alteration of natural landforms.

7. California Environmental Quality Act

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 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. Mendocino County is the lead agency for purposes of CEQA review. The County prepared a Negative Declaration for the proposed project pursuant to CEQA requirements.

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

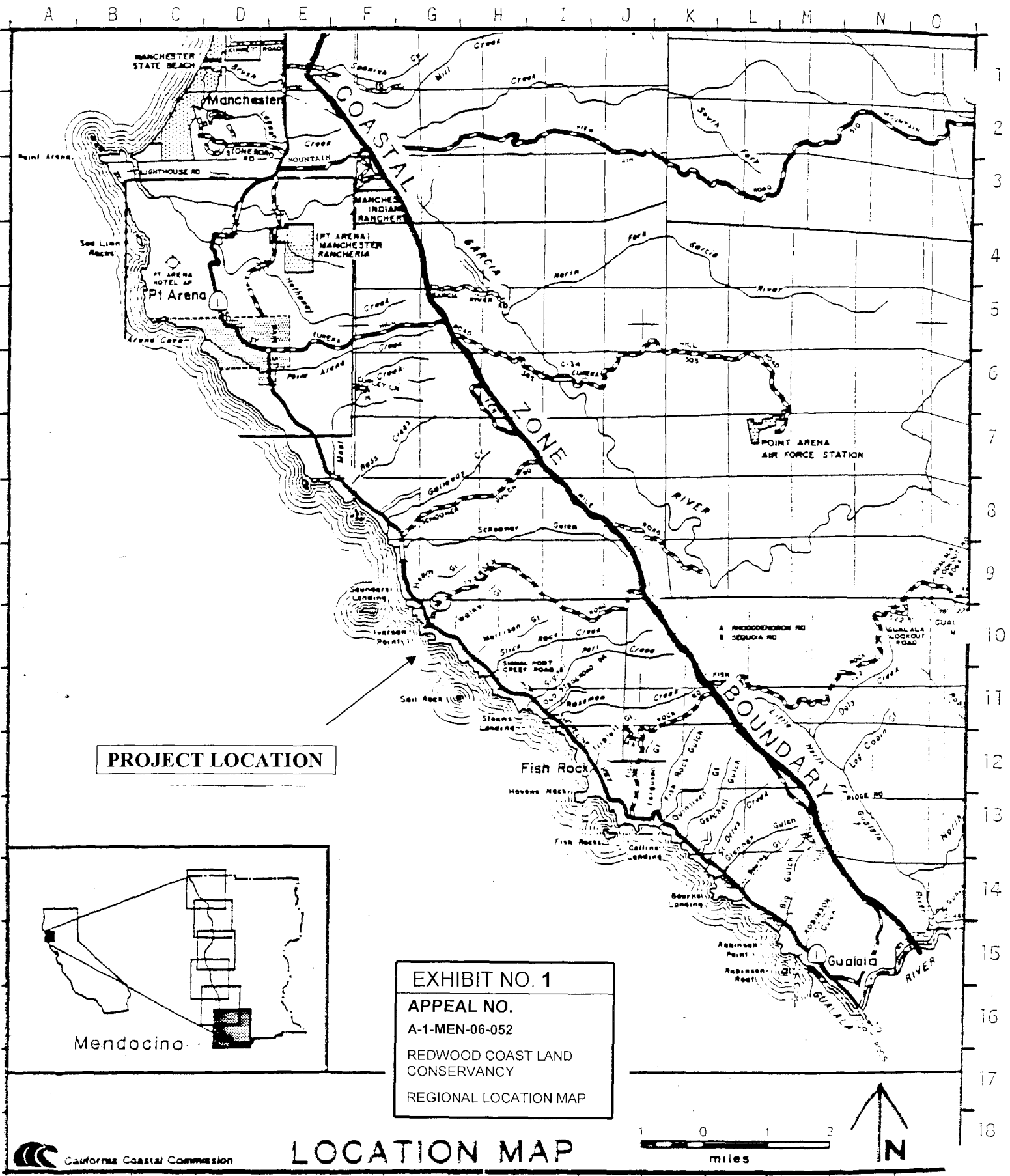
EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Proposed Site Plan
4. Sheep Fence Typical
5. Beach Trail Steps Typical
6. Sign Plans
7. Public Access Management Plan
8. Botanical Survey Map
9. Appeal from Martin Kitzel
10. Appeal from Commissioners Sara Wan and Meg Caldwell
11. Notice of Final Action & County Staff Report

ATTACHMENT A

Standard Conditions:

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



PROJECT LOCATION

EXHIBIT NO. 1
APPEAL NO.
A-1-MEN-06-052
REDWOOD COAST LAND
CONSERVANCY
REGIONAL LOCATION MAP

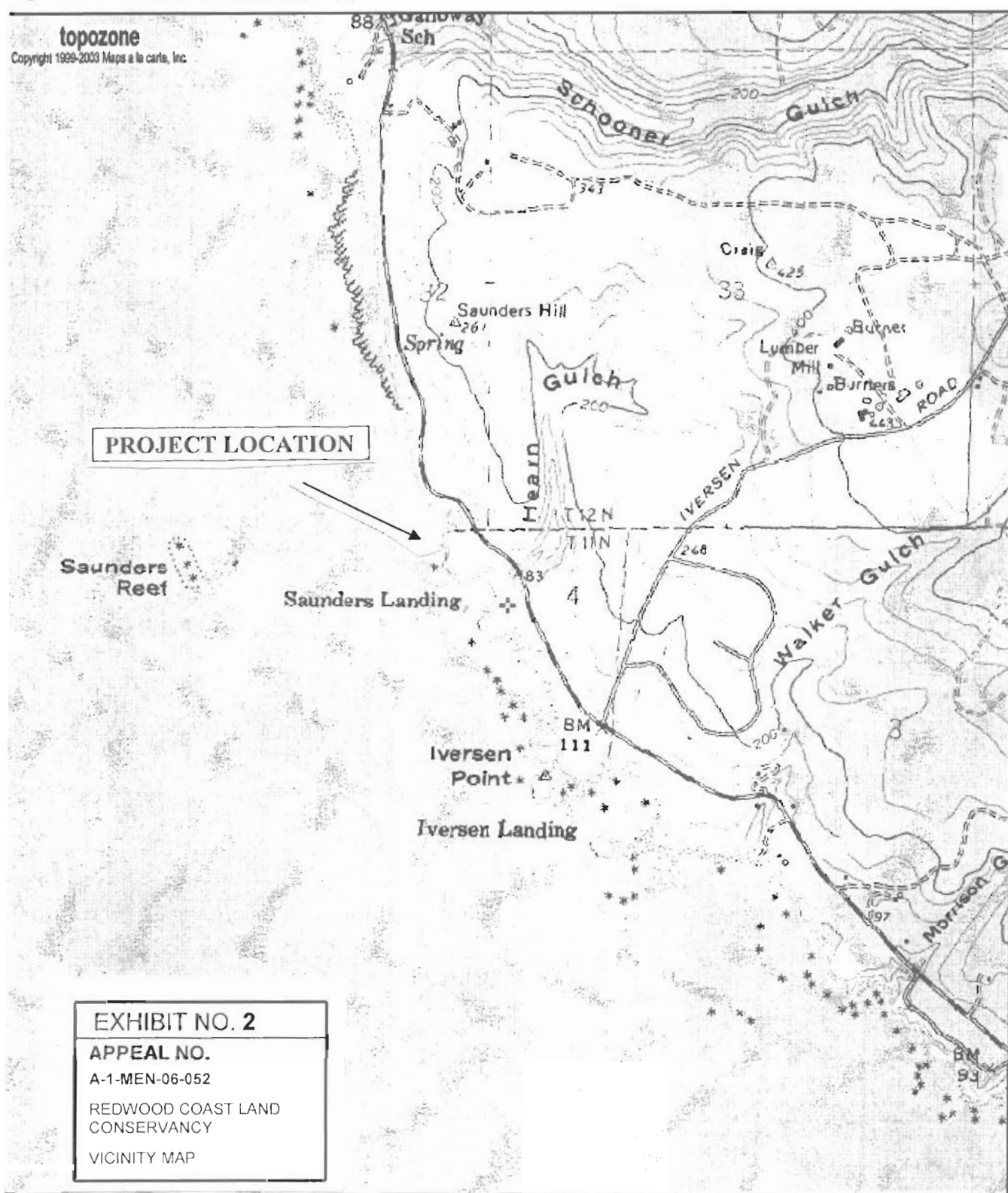


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

VICINITY MAP

0 0.3 0.6 0.9 1.2 1.5 km

0 0.2 0.4 0.6 0.8 1 mi

UTM 10 443849E 4300262N (NAD27)

Saunders Landing, USGS SAUNDERS REEF (CA) Quadrangle

Projection is UTM Zone 10 NAD83 Datum



M=15.605

G=-0.407

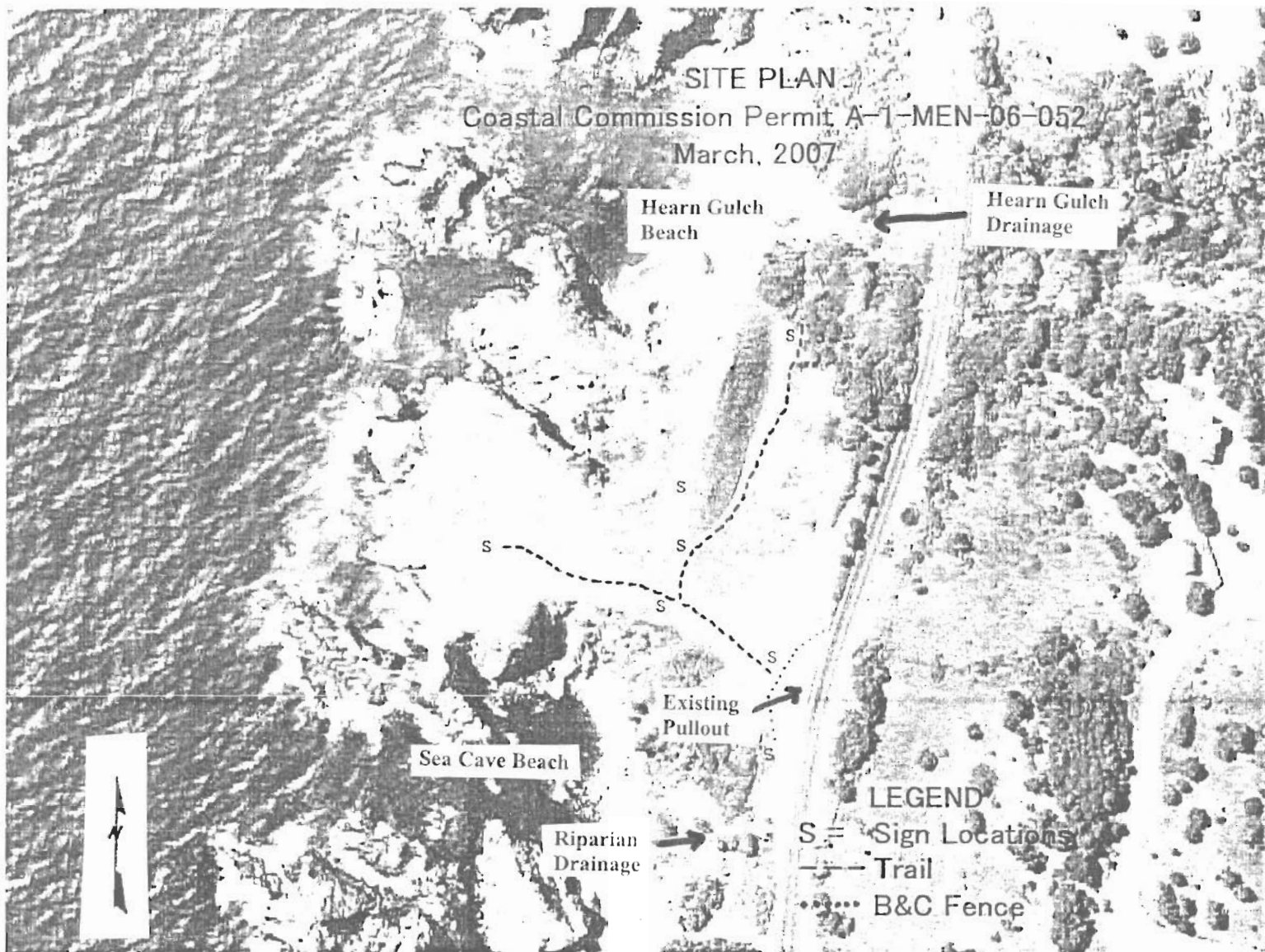


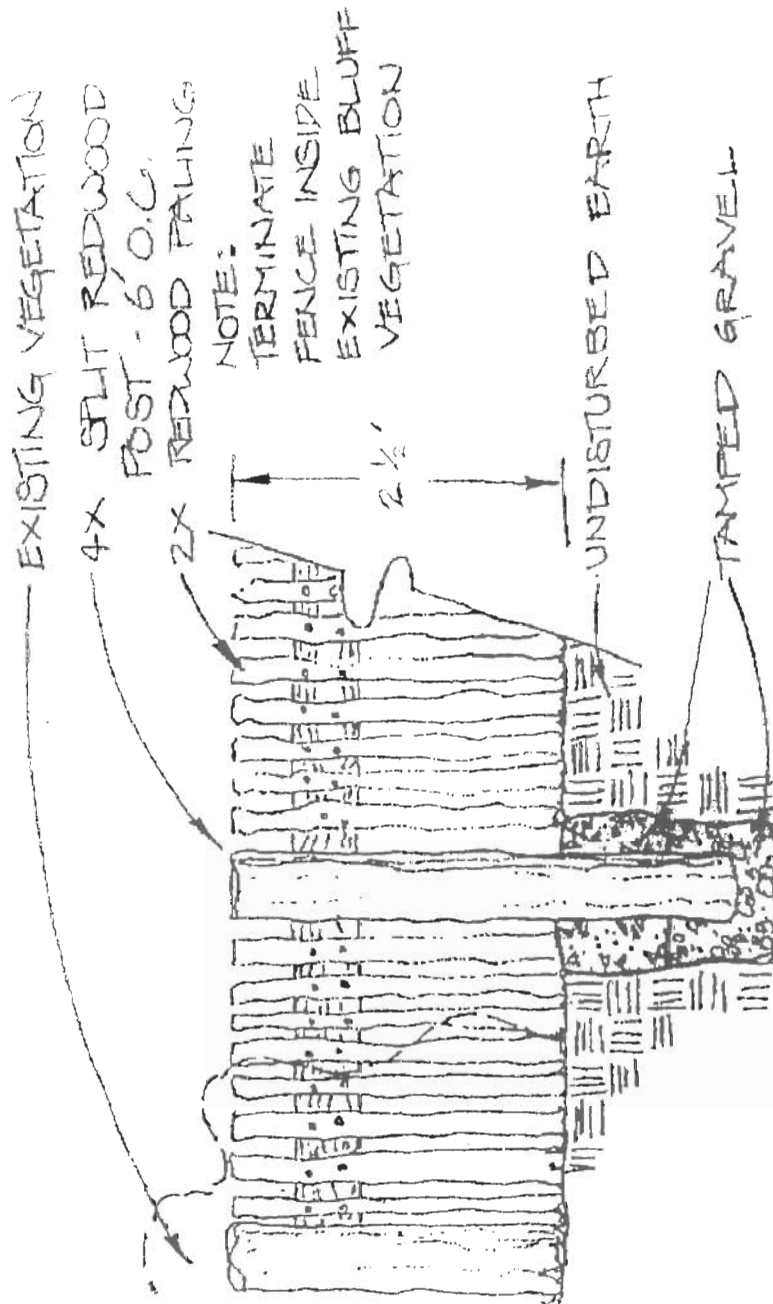
EXHIBIT NO. 3

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

PROPOSED SITE PLAN



TYPICAL SHEEP FENCE DETAIL

Exhibit J

EXHIBIT NO. 4

APPEAL NO.

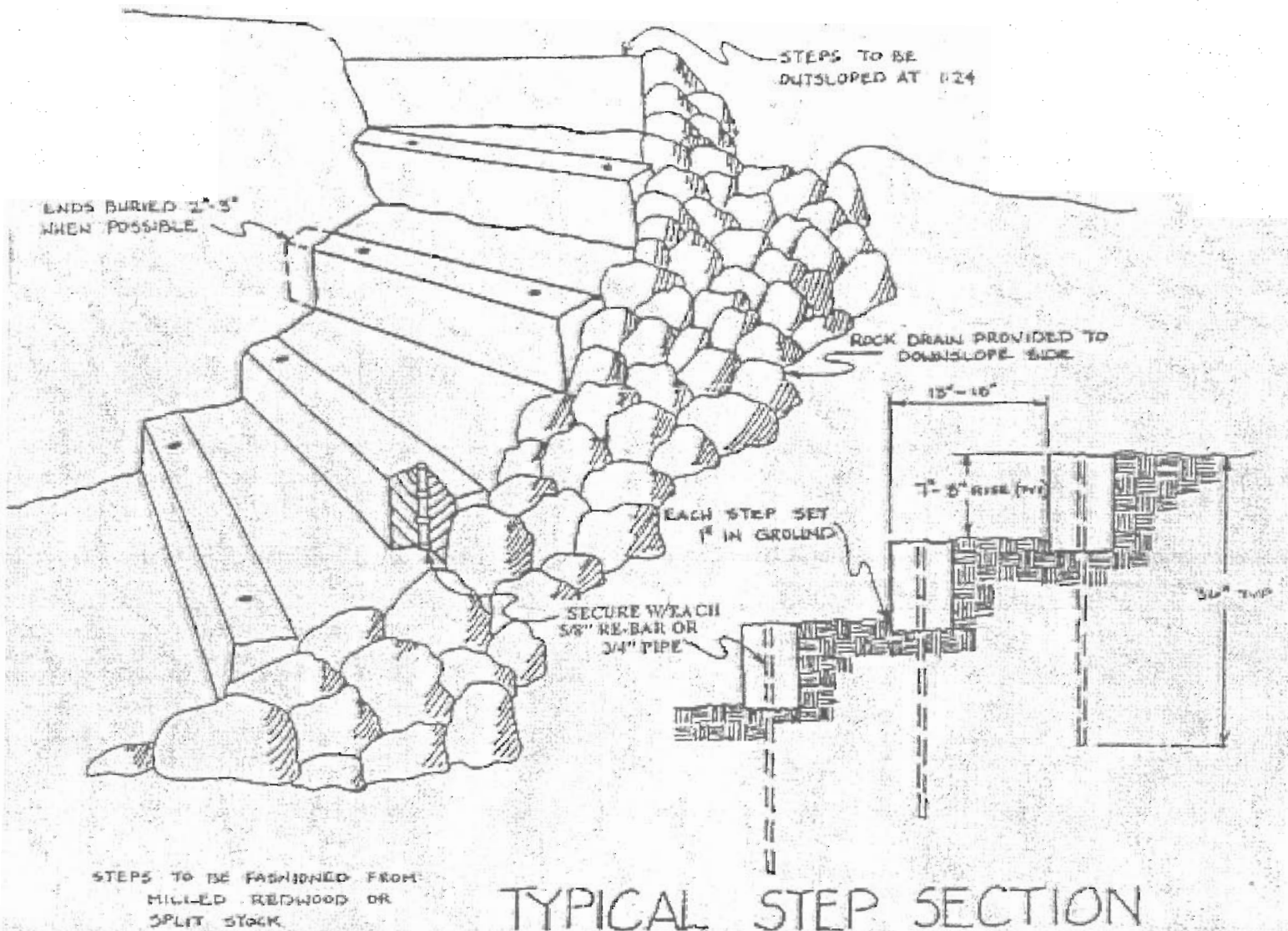
A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

SHEEP FENCE TYPICAL

Sheep Fence Detail

Redwood Coast Land Conservancy



NOT TO SCALE

A-1-MEN-06-052

EXHIBIT A

EXHIBIT NO. 5

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

BEACH TRAIL STEPS TYPICAL

SIGN PLAN FOR HEARN GULCH SITE

There are four types of signs proposed for the Hearn Gulch site: a sign to identify the site and acknowledge funding; signs to prevent vehicular access, warn of hazards and indicate presence of protected species. The following describes the sign type, number of signs, sign size and proposed wording. Signs shown are approximately to scale.

A. Project Identification Sign (one sign 36"x 24")


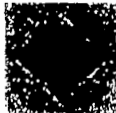
Hearn Gulch Coastal Access		
	A cooperative venture of the State Coastal Conservancy and the Redwood Coast Land Conservancy	<div style="border: 1px solid black; padding: 5px;"> RCLC Logo </div>
Day Use Only No Fires or Camping Please Pack It In/Pack It Out		
Warning! Hazardous Bluffs and Surf		
Managed by the Redwood Coast Land Conservancy P.O. Box 1511, Gualala, CA 95445 www.rc-lc.org		
<i>...Another project to improve California coastal access and trails funded by the 2000 Parks Bond and Caltrans</i>		
		

Exhibit K

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

SIGN PLAN (1 of 2)

Identification Sign Copy

SIGN PLAN FOR HEARN GULCH SITE (continued)

B. Vehicular Access Signs (Three 18"x 12" signs plus one replacement)

Fragile Area
No Vehicular Access

C. Hazard Signs (Four 18"x 12" signs plus two replacement signs)

Danger!
Eroding Bluff Edge

D. Protected Plant Signs (Three 18"x 12" signs plus one replacement)

Sensitive Plant Area
Please Stay on Path

Management Plan

Hearn Gulch Beach and Headlands Park

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

PUBLIC ACCESS
MANAGEMENT PLAN (1 of 4)

The Redwood Coast Land Conservancy (RCLC), a California non-profit, public benefit corporation, undertakes this plan to define, preserve and manage this property as a day-use area for public ocean access. The park lies between State Highway 1 and the Pacific Ocean approximately five miles south of the town of Point Arena at Mendocino County Post Mile 10.02. The physical address is 29750-29800 South Highway 1. The land is comprised of five-parcels, Assessor's Parcels 142-010-03 through 142-010-07, (Exhibit A) totaling about 6+ acres. The area is initially unimproved, consisting of one large headland, one smaller finger-type headland and two small wind-protected coves with a sandy beach in the northern cove and a seasonal creek at the southern cove.

Purpose

The purpose of acquiring this undeveloped oceanfront property is to permanently protect the scenic and environmental qualities of the land and maintain the public's access to the area. For years, despite private ownership, these parcels were used by the public for picnics, whale watching, ocean access, etc. The RCLC will now be able to provide public, legal access to the scenic beauty of the bluffs, coves, and beach of this spectacular section of the California coast. This project will also give the public opportunities for walking, birding, photography and the study of native flora and fauna. In addition, the unobstructed ocean view from Highway 1 will now be maintained in perpetuity in an area the county has designated a "highly scenic corridor."

Existing Site Conditions

The five undeveloped oceanfront parcels are within the Iversen Landing No. 1 Subdivision. The wind-swept parcels are situated on an elevated coastal terrace with broad bluffs approximately 60 feet above the ocean surf. On one of the parcels, a wide, gradual drainage channel leads to a sandy beach in the cove area. The absence of tree cover on the parcels affords dramatic whitewater views of sea stacks and rock formations.

Observations and several studies have documented environmental conditions requiring consideration prior to planned development.

- **Identification of Sensitive Resources and Habitat Types:** An initial botanical survey of a portion of the property was done in 1994. Additional botanical studies were conducted in 2004 and 2005. These surveys showed a variety of native and exotic plants.
- **Cultural Resources Survey:** An archaeological survey and onsite evaluation was conducted in 2004. No prehistoric or historic-period

cultural resources were discovered; therefore, no resource-specific recommendations were made.

- **Geologic Evaluation:** A registered California geologist did a geological evaluation of the property in 2004. From a geologic standpoint, the highway access, parking and public trail areas appear to be on land suitable for these improvements and use.
- **Geologic and Soils Investigation:** A licensed engineer developed an additional report with schematic drawings in 2004. These detailed documents cover the construction and siting of the planned trail to Hearn Gulch Beach.
- **Existing Trails:** Basically three existing, unofficial pathways currently exist on the property. One path consists of deep vehicle ruts leading out from the highway midway on to the large headland. Another leads down the wide drainage channel to the cove and beach at the north end of the property. A small foot trail also runs from the beginning of the smaller headland out to the edge of the bluff top. The steep face of Sea Cave Cove also shows evidence of past occasional use.
- **Vehicular Damage:** Past vehicle use has not only created unsightly rut-like "roads" out to the headlands, but also has created erosion areas near the highway. This erosion occurred because random vehicle trespass has denuded the native grasses and other plants to bare soil.
- **Safety Concerns:** The western face of both headlands is extremely steep and subject to unpredictable erosion. Warning signs will be installed to notify the public of this hazard.

Development Plans

All development shall be done in accordance with a Mendocino County Coastal Development Permit and to protect the conservation values of the property.

- **Parking:** The natural scene, to include native plant life, should be preserved. To that end, pedestrian-access-only will be allowed from a small parking area adjacent to Highway 1. A vehicle highway access approach meeting Caltrans specifications will be installed. A Caltrans Encroachment Permit has been obtained. A suitable barrier to prohibit vehicular traffic onto the coastal terrace will be erected.

The parking area will be restricted to four vehicles with one space designated for handicapped parking. The parking area and a short driveway from the Caltrans specified asphalt highway approach will have a packed gravel surface. No recreational vehicle (RV) or over-night

parking will be permitted. An existing Caltrans overlook and parking area suitable for all types of vehicles is located immediately to the north of Hearn Gulch.

- **Environmentally Sensitive Habitat Area (ESHA):** The highway access approach, proposed driveway, parking area and trail(s) will be located and constructed to avoid or minimize impact on the existing ESHA. Of particular interest is the abundant presence of purple-stemmed Checker Bloom (*Sidalcea malvaeflora* ssp. *malvaeflora*) some of which are located near the planned parking area. If necessary, plants can be transplanted to other appropriate, viable locations on the property.

In addition, by choosing the option of widening the west side cut of Highway 1 to permit the designated vehicle access point, the RCLC will essentially avoid any negative impact on Drainage #1 & 2 (ref. 9/15/04 botanical report).

- **Trail Improvement:**

Trail One will be constructed to take visitors, including the handicapped, from the parking area out to the large headland. In accordance with recommendations from the Geologic and Soils Investigation, the land where the existing "road" of vehicle ruts (with resulting erosion) is located will be restored to the land's natural contours by using native soil obtained from the parking area grading and expansion of the Highway 1 cut. The proposed trail itself will be crushed rock, approximately four feet wide, out-sloped to minimize the concentration of rainfall runoff, and will extend only as far as deemed prudent and safe given the nature of this headland.

Trail Two, the trail to Hearn Gulch beach, will be constructed to follow the plans as outlined and drawn in the Geologic and Soils Investigation. The proposed trail alignment, trail excavation, composition and stair construction will follow the topographical location and detailed drawings developed July 21, 2003. (Exhibits B, C, and D)

- **Signage:**

A sign at the designated point of pedestrian entry from the parking area will instruct the public as to the controlled nature of shoreline access as well as provide sponsorship information. Additional signage will be appropriately placed regarding general conditions of use, possible minimum restrictions regarding dogs, littering, overnight camping prohibitions, RV prohibitions, and warnings regarding hazardous bluffs and eco-sensitivities. Metal signs will be professionally prepared and

bolted to 4x4 posts sunk in concrete with an overall height above ground level of approximately 2 ½ feet. (Exhibit E and F)

Maintenance

Volunteer work parties organized by the RCLC will carry out maintenance of the property to include the parking lot, trails and improvements. The RCLC will monitor the site monthly, gather litter, address any vandalism, and schedule repairs as necessary. As a non-profit public benefit corporation, the RCLC will maintain liability insurance meeting generally accepted standards. Any safety or erosion problems will be addressed immediately and reported to the State Coastal Commission and/or Mendocino County. Currently litter does not seem to be a major problem at the site, but monitoring of trash will be an essential on-going project. Signage will admonish all visitors to "pack it in / pack it out." No garbage cans, rest room facilities, or port-a-potties will be provided.

Stewardship and Other Funding

RCLC is well known in the Mendocino coastal area and the RCLC Board is confident that adequate funding can be raised from the general community and local property owners to provide for small maintenance and repair costs. Community and State Coastal Conservancy grant funds were procured in 2004 and 2005 for the initial purchase of the property and some of the development costs. Additional grant funding for the proposed improvements are being pursued from public agencies and private and community foundations.

Amendment and Severability

This plan may be amended, as needed, with the concurrence of all appropriate funding and public agencies. Amendments may be considered for subsequent phases of development or any other reason. In the event that the RCLC disbands or otherwise ceases to exist, title to the property and the public access will revert to the State Coastal Conservancy or other appropriate entity considered acceptable to the Coastal Conservancy.

Shirley Eberly, President
Redwood Coast Land Conservancy

Date: _____

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOV.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

716 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Martin Kitzel

Mailing Address: 307 Ross Drive,

City: Mill Valley

Zip Code: 94941

Phone: 415-383-2322

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County Planning

2. Brief description of development being appealed:

Placement of a parking lot and other improvements on a bluff top location. Develop facilities for a formal public access to the coastal bluff and beach known as Hearn Gulch.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

29720-29800 South Highway One APN 142-010-03, -04, -05, -06, & -07

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

DATE FILED:

DISTRICT:

A-1-MEN-06-052

12/19/06

North Coast

RECEIVED

OCT 30 2006

CALIFORNIA
COASTAL COMMISSIONAPPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☒ Planning Commission
- ☐ Other

6. Date of local government's decision: 10/19/06

7. Local government's file number (if any): CDU-16-2005

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

EXHIBIT NO. 8

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCYAPPEAL FROM MARTIN
KITZEL (1 of 11)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Attached, please find all correspondence sent to county planning addressing concerns with the proposed development dating back to the spring of 2005.


Principally, the proposed parking lot for the project forever removes habitat for threatened and endangered flora, and is within 100 to 50 feet and an environmentally sensitive habitat area (ESHA). Proposed grading to improve site lines for the parking egress, will forever alter landforms with threatened and endangered flora directly adjacent. Policy 3.1-7 of the Mendocino County Coastal Element states that the minimum buffer shall be 100 feet and can be set to 50 foot minimum with consultation and consensus with California Department of Fish and Game. "Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel". The proposed parking area constitutes a structure as it has the same aggregate effect on the environment. County Planning did not investigate alternative locations or configurations for the parking lot. County Planning relied on field study data generated by consultants hired by the applicant, in an obvious conflict of interest.

Any private project for which county, state or federal dollars (used to secure the land), is predicated upon, should be subject to the highest level review. In the support for this plan, county has failed in balancing the access objectives and the environmental objectives of the Coastal Act.

I am not opposed to the objectives of the Redwood Coast Land Conservancy has for the site, simply the manner in which it is proposed and the complacency on the part of the county. A balanced plan would propose parking closer and parallel to the road shoulder, saving additional valuable habitat and negating the need for Cal Trans encroachment. I support the other aspects of this proposed development.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

Signature on File _____
Signature of Appellant(s) or Authorized AgentDate: 10.23.06

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

3 of 11

Linda and Marty Kitzel

From: "Linda and Marty Kitzel" <kitzelfamily@comcast.net>
To: "Richard Miller" <millerr@co.mendocino.ca.us>
Cc: "Frank Lynch" <lynchf@co.mendocino.ca.us>; <jmcelroy@mcn.org>
Sent: Wednesday, October 18, 2006 8:47 PM
Subject: Re: Hearn Gulch Public Access CDU 16-2005

Mr. Miller,

Thank you for your reply and the mention of tone as it applies to email. I agree, building consensus is like building anything else. It requires a nearly clinical demeanor in order to achieve any real progress.

Just to clarify, during the permitting process for our home, we knew that the RCLC purchased the land, but no development of the site was known at that time. What we did know of the RCLC is that they had a strong commitment to conservation as well as access. And, although not that many endangered plants will be destroyed by this development, **it is the land which the new parking lot will occupy which will no longer be available as habitat for the protected species found on site.** I have volunteered hundreds of hours in the Golden Gate National Recreation Area doing restoration, preservation and trail maintenance work. I know first hand about habitat loss and balancing the outcomes of access.

As you have mentioned our new home, I would like to stress that we went to great lengths and considerable cost to ensure the protection of **all** threatened or endangered plant specimens on our property as directed by the county. It is my profound hope that the county is even-handed with all types of development in matters of environmental protection.

To be utterly frank, at this point you have given every indication that no additional constructive dialogue or alternative suggestions will neither have any bearing on this development nor indeed the disposition of the planning departments forthcoming approval. Had I known this from the outset, I wouldn't have bothered expressing what I thought were reasonable considerations for a lower impact development, wasting your time. Your work, and the work of the RCLC is largely complete, so you feel no need to revisit it. This is understandable given the overall nature of the CDU and the often reported work load facing county planning.

Lastly, I appreciate what an accomplishment it was to secure the land in perpetuity, the enormity of the act shouldn't be sold short. Although this project is intended for a greater good, there are better solutions that require a level of challenge for which there is no appetite.

Thank you again for the time spent on your replies.

Best Wishes,

Martin Kitzel

----- Original Message -----

From: Richard Miller
To: kitzelfamily@comcast.net
Cc: Frank Lynch ; jmcelroy@mcn.org
Sent: Tuesday, October 17, 2006 9:58 AM
Subject: Re: Hearn Gulch Public Access CDU 16-2005

Mr. Kitzel,

First, while I like to communicate via email I find that both tone and attitude can be mis-read so let me say that your interest and query on the project is both appropriate and expected - that is why we hold public hearings and send out notices. I appreciate your interest and hope the response is acceptable and useful.

I would not agree that the "larger goal of coastal preservation" has already been achieved simply because RCLC has used public (and private funds?) to purchase these parcels. Section 30001.5 of the Coastal Act states one of the goals for the coastal zone is to "Maximize public access to an along the coast and maximize public recreational opportunities

10/22/2006

in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners." Without active and proper management of this area by RCLC it would not be open to the public pursuant to the requirements of the County General Plan. In order to allow the public to access this property the coastal permit/management plan is required.

Regarding the Caltrans turnout to the north - one day the County, the Coastal Commission, Coastal Conservancy and a significant section of the public hope that a continuous coastal trail will finally become reality. The connection of these two areas would facilitate this goal. I do not see it as one or the other although I can see that this suggestion would result in no parking area/public access being established directly across the highway from your newly constructed residence.

The parking area layout was reviewed by a civil engineer and has been "approved" by Caltrans through the encroachment permit process. A great deal of thought and design has gone into the parking area. Providing four spaces is modest and appropriate for the project. I fail to see how a wide "pullout" (similar to Schooner Gulch) is preferable from a safety or resource protection standpoint.

Finally, I think it is worth pointing out that when the coastal permit was processed for your new residence which overlooks this proposed access area, we "debated" at length the potential visual impact your project could have on a future public access area at Hearn Gulch. I point this out only to clarify that you were aware of RCLC's proposed plan to develop formal access at this site.

The development of this area for public access is consistent with the County General Plan. I sincerely hope that the resulting project (if approved) will be beneficial to your family and other residents of the area. I firmly believe the resources on the site will be maintained and protected. I believe Caltrans and RCLC have worked together to develop a safe encroachment and parking area. I hope I have adequately responded to our questions.

Thank you.

Rick Miller, Senior Planner
County of Mendocino
Planning & Building Services Department
790 S. Franklin Street, Fort Bragg, CA 95437
phone: (707) 964-5379
fax: (707) 961-2427
email: millerr@co.mendocino.ca.us
website: www.co.mendocino.ca.us/planning

>>> "Linda and Marty Kitzel" <kitzelfamily@comcast.net> 10/16/2006 8:07 PM >>>

LINDA AND MARTIN KITZEL
307 ROSS DRIVE
MILL VALLEY, CALIFORNIA 94941

October 13, 2006

Sent Via Facsimile

Ray Hall, Director,
Mendocino County Planning Commission
County of Mendocino Planning and Building Services
501 Low Gap Road,
Ukiah, California 95482

Mr. Hall,

The staff report that was made available to the public for CDU-16-2005 contains an illegible site map. Without a proper site map it is impossible to determine where parking and fences will be install and the orientation of any planned development. I would ask that the public review period for the project be extended to give the public the opportunity for a full proper review of staff recommendations, amendments, and alterations to the original application.

The placement of the parking is key to determining adequate buffer zones between the development and ESHA's found on the property. The parking area and related signage is contrary to the environmental goals established in the Coastal Act. The goal of maintaining the highly scenic nature of the area and preserving the environmental resources found on the site has, largely, already been achieved through the acquisition of the land. Minor alterations to prevent vehicle traffic would be the proper, minimal impact approach. A turn-out similar to Schooner Gulch would be a better solution.

The area is already well served by the ample parking area to the north of Hearn Gulch. To date, I know of no alternative plan has been developed linking the parking to the north to the beach below. A trail could more easily be installed along the already disturbed existing Cal Trans easement to the north, than a new trail at the south. This would be a suitable alternative as the parking is already in place.

Attached, is a copy of the original letter I sent to the Fort Bragg Planning and Building office on April 28th, 2005. Please take a moment to review it as my original concerns regarding the specifics of the project are still applicable. My concerns are based upon the fact that I am the closest resident to this project.

Please consider the following:

1. The proposed grading and excavation designed to improve sight lines, will destroy endangered plants and their habitat permanently. Please see the botanical report and flagging on site.
2. The rocks off of Hearn Gulch beach are a nesting site for pelicans and cormorants. The staff report contains no reports or professional assessment on the fauna in this area.
3. The site is not a good fit for the needs of the handicapped. Any proposed trail would be steep and could not be made ADA compliant. A trail from the north already has a graded slope and a broader flatter trail could be used by one and all. Therefore, the existing paved parking lot to the north would be a better location to serve the handicapped.
4. Living across the street, I have seen people camping, littering and driving out toward the bluffs. Although the current plan may mitigate these issues with fencing and signage, visitors will continue to do as they see fit. So, unless RCLC is prepared to enforce it's rights as the property owner, the planned improvements will be useless, the current misuse of the site will continue. Eventually, public safety will likely need to become involved, taxing county resources.

In sum, if the area has been preserved, parking already exists to the north, and the addition of new parking would damage the environment, why is this development necessary? A paved turn-out like Schooner Gulch (with no gravel, see attached 4/28/05 letter) and low fencing, modest signage from the RCLC addressing usage, and a bluff trail is a more suitable solution for this site.

Although this project is a win/win for the RCLC and the county as it resolves the status of a difficult site, I would ask that the same rigorous standard should apply to any and all proposed development. The planning commission is charged with interpreting the Local Coastal Plan for each project in the coastal zone. Please take a conservative approach for this location.

Thank you,

Signature on File

Martin Kitzel

7 of 11

April 28, 2005

Sent Via Facsimile

Mendocino County Building and Permit Office
790 S. Franklin
Fort Bragg, California 95437

To Whom It May Concern:

Please add us to the list of persons and parties being notified for any proposed development of Hearn Gulch Headlands by the Redwood Coast Land Conservancy.

In creating a destination at Hearn Gulch Headlands by providing parking and increased accessibility to the beach will have a deleterious effect on the environment. The overall impact to this area would be contrary to the mission of the Redwood Coast Land Conservancy "to preserve for future generations the natural environment and sustainable land use".

Our concerns are primarily focused on any proposed parking sites at the Headland area across from the Iversen Lane subdivision. There are several issues to consider:

Environmental Issues

1. **Erosion**- Increased foot traffic and site work to create and maintain parking will hasten erosion, putting additional sediments into the surrounding tide pools. There is a fragile layer of sandstone on those bluffs and any channeling of water will quickly cut right through it.
2. **Pollution** -Any hard surface drainage and the related pollutants associated with auto traffic (petroleum based products and antifreeze), will have hazardous waste going into the ocean. If there is to be a trash bin who will empty it? How Often?
3. **Visual Resources**- Creating a designated parking strip and installing any perimeter barrier as well as a kiosk, garbage cans and trail markers will be at eye level of any passing traffic forever altering what is now pristine.

Traffic Issues

1. Cars going in and out of the area would create potential traffic problems due to site line restriction of the adjacent cut bank. Will the bank then be excavated to make it safer, how is that preserving the resource?
2. Will cars be able to make a left turn out of the area?
3. What is the disposition of Cal Trans on this project?
4. Will there be weight limitations if the parking area is unpaved?

Public Safety Issues

1. If it is to be a day use area only, who will monitor and enforce the laws? We don't want headlights flashing into our homes as it is discourteous and intrusive to our privacy.
2. The bluffs are inherently dangerous; inviting cars to stop is inviting a situation where statistically speaking an emergency is inevitable. Who will be liable, the county or Redwood Coast Land Conservancy. Unfortunately we live in a world where if someone walks off a cliff, they will look for someone else to blame.

Taking some measures to ensure no one drives on the headlands is a good idea to preserve the bluff, but don't love the area to death. Protecting resource and increasing accessibility are contrary goals at this location. We appreciate the efforts of the Redwood Coast Land Conservancy to protect our beloved coastline and wish they could be satisfied with what has already been accomplished in this area.

Thank you!

Sincerely,



Signature on File



Martin and Linda Kitzel

in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners." Without active and proper management of this area by RCLC it would not be open to the public pursuant to the requirements of the County General Plan. In order to allow the public to access this property the coastal permit/management plan is required.

Regarding the Caltrans turnout to the north - one day the County, the Coastal Commission, Coastal Conservancy and a significant section of the public hope that a continuous coastal trail will finally become reality. The connection of these two areas would facilitate this goal. I do not see it as one or the other although I can see that this suggestion would result in no parking area/public access being established directly across the highway from your newly constructed residence.

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Finally, I think it is worth pointing out that when the coastal permit was processed for your new residence which overlooks this proposed access area, we "debated" at length the potential visual impact your project could have on a future public access area at Hearn Gulch. I point this out only to clarify that you were aware of RCLC's proposed plan to develop formal access at this site.

The development of this area for public access is consistent with the County General Plan. I sincerely hope that the resulting project (if approved) will be beneficial to your family and other residents of the area. I firmly believe the resources on the site will be maintained and protected. I believe Caltrans and RCLC have worked together to develop a safe encroachment and parking area. I hope I have adequately responded to our questions.

Thank you.

Rick Miller, Senior Planner
County of Mendocino
Planning & Building Services Department
790 S. Franklin Street, Fort Bragg, CA 95437
phone: (707) 964-5379
fax: (707) 961-2427
email: rmiller@co.mendocino.ca.us
website: www.co.mendocino.ca.us/planning

>>> "Linda and Marty Kitzel" <kitzelfamily@comcast.net> 10/16/2006 8:07 PM >>>

Mr. Miller,

Thank you for the site map. We requested the site report via email as the link on the county web page was disabled. We didn't know we were asking for anything out of the ordinary. I appreciate your comments too my letter, and the need to move the application forward.

Please know we fully support the idea of improved access and the efforts the RCLC is making. I do have a few remaining questions prior to the hearing, if you wouldn't mind replying to this email.

Would you agree that the larger goal of coastal preservation for this location has already been achieved? Secondly, since you are familiar with the site, has anyone ever considered a trail from the parking area to the north? In the time since the application has been filed, Cal Trans has dramatically graded and denuded the causeway and the area just north of the causeway. Since native plants and any potential ESHA there has been significantly degraded, would you agree that the existing paved parking and a new trail from the north would do less damage to the environment than the proposed plan? The north side has a much gentler grade than the south side of the beach, so the trail would provide better access for people with mobility issues and children. Lastly, has anyone considered parking similar to

Page 1 of 3

Linda and Marty Kitzel

From: "Linda and Marty Kitzel" <kitzelfamily@comcast.net>
To: "Richard Miller" <rmiller@co.mendocino.ca.us>
Cc: "Frank Lynch" <lynchf@co.mendocino.ca.us>; <jmcclroy@mcn.org>
Sent: Wednesday, October 18, 2006 8:47 PM
Subject: Re: Hearn Gulch Public Access CDU 16-2005

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Just to clarify, during the permitting process for our home, we knew that the RCLC purchased the land, but no development of the site was known at that time. What we did know of the RCLC is that they had a strong commitment to conservation as well as access. And, although not that many endangered plants will be destroyed by this development, it is the land which the new parking lot will occupy which will no longer be available as habitat for the protected species found on site. I have volunteered hundreds of hours in the Golden Gate National Recreation Area doing restoration, preservation and trail maintenance work. I know first hand about habitat loss and balancing the outcomes of access.

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To be utterly frank, at this point you have given every indication that no additional constructive dialogue or alternative suggestions will either have any bearing on this development or be considered.

parking lot is state owned?

Thank you,

Marty Kitzel

----- Original Message -----

From: Richard Miller

To: kitselfamily@comcast.net

Cc: Frank Lynch

Sent: Monday, October 16, 2006 3:58 PM

Subject: Hearn Gulch Public Access CDU 16-2005

Mr. & Mrs. Kitzel,

I received a copy of your request for a more legible site plan for this project, CDU 16-2005. Please see the attached electronic, color version of this site plan.

Most neighbors receive only a one page notice for the project with the location and project description; however, upon written request you were provided with a copy of the entire staff report and the attached exhibits. If you need anything else out of the file I would recommend that you go to our Ukiah office prior to the hearing **and** review the material in person.

The noticing of the project was done in compliance with the applicable section of County Code and we will not be extending the public review process as requested.

The report explains the handling of most of your expressed concerns regarding the protection of natural resources and ADA accessibility. It is staff's opinion that those concerns are adequately addressed by the report and recommended conditions. We appreciate your input in the permit process and would be happy to answer any other questions you may have prior to the public hearing.

Rick Miller, Senior Planner

County of Mendocino

Planning & Building Services Department

790 S. Franklin Street, Fort Bragg, CA 95437

phone: (707) 964-5379

fax: (707) 961-2427

email: milleri@co.mendocino.ca.us

website: www.co.mendocino.ca.us/planning

10/22/2006

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name:

Mailing Address: SEE ATTACHMENT 1

City:

Zip Code:

Phone:

RECEIVED

JAN 03 2007

CALIFORNIA
COASTAL COMMISSIONSECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Develop public access facilities including (1) two walking trails, (2) a new encroachment onto Highway 1 with a 4-car parking area, and (3) informational signage and symbolic fencing. The project also includes the restoration of erosion caused by vehicles.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Approximately 5 miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road on blufftop parcels on the south side of Saunders Landing at 29720-29800 South Highway One (APNs 142-010-03, -04, -05, -06, & -07).

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

EXHIBIT NO. 9

APPEAL NO.

A-1-MEN-06-052 - REDWOOD
COAST LAND CONSERVANCYAPPEAL FROM
COMMISSIONERS SARA WAN
AND MEG CALDWELL (1 of 9)

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-MEN-06-052

DATE FILED:

1/3/07

DISTRICT:

North Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☒ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: October 19, 2006

7. Local government's file number (if any): CDU #16-2005

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Redwood Coast Land Conservancy
Attn: David Scholz
P.O. Box 1511
Gualala, CA 95445

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

Martin Kitzel
307 Ross Drive
Mill Valley, CA 94941

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See ATTACHMENT 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: [Signature] Signature on File
Appellant or Agent [Signature]

Date: January 3, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

599

ATTACHMENT 1

SECTION I. Appellant(s)

1. Meg Caldwell
Stanford Law School
559 Nathan Abbott Way
Owen House, Room 6
Stanford, CA 94305-8610

Phone: (650) 723-4057

2. Sara J. Wan
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Phone: (415) 904-5201

ATTACHMENT 2

Appealable Project:

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is (a) located between the first public road paralleling the sea, (2) located within three hundred feet of the top of a seaward facing coastal bluff, and (3) not designated the "principal permitted use" under the certified LCP.

Reasons for Appeal:

The County of Mendocino approved Coastal Development Permit #16-2005 for the development of public access facilities including (1) two walking trails, (2) an encroachment onto Highway One with a four-car parking area, and (3) informational signage and symbolic fencing. The project also includes the restoration of erosion caused by indiscriminate parking of vehicles on the side of the highway.

The approved development is located on the west side of Highway One, the first public road paralleling the sea. Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. However, the County's findings for approval of the subject development do not include a discussion of the project's consistency with the public access policies of the Coastal Act including,

specifically, policies requiring that the provision of public access and recreational opportunities be provided in a manner that is protective of natural resource areas.

1. **Coastal Act Public Access Policies:**

Coastal Act Section 30210 states:

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

Coastal Act Section 30214 states in applicable part:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
 - (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.* (emphasis added)
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

...

Discussion:

As noted above, the approved development is located between the first public road and the sea and is therefore subject to the public access policies of the Coastal Act. In its approval of the project, the County made findings of the project's consistency with the public access policies of the Mendocino County LCP, but did not address the project's

consistency with the public access policies of the Coastal Act as required by Section 30604(C) of the Coastal Act and Coastal Zoning Code Section 20.532.095(B)(1).

The project site contains significant populations of several species of rare and endangered plants. The County's definition of Environmentally Sensitive Habitat Area (ESHA) set forth in the LCP includes habitats of rare and endangered plants. As approved, the project would develop public access improvements adjacent to rare plant ESHA and several specimens of rare plants would be obliterated by parking lot improvements. As cited above, Coastal Act Section 30210 requires that public access and recreational opportunities be provided in a manner that protects natural resource areas, such as ESHA, from overuse. Similarly, Coastal Act Section 30214 requires that public access be provided in a manner and place that takes into account the fragility of the natural resources in the area.

The County's findings for approval of the project indicate that the project site has been heavily used for informal public access in the past as evidenced by the eroded parking areas and visible footpaths. However, in its findings for approval of the public access improvements, the County did not demonstrate that the approved access parking and trail improvements would be designed and configured in a manner that would fully protect the natural resources of the area from impacts related to overuse and fully take into account the fragility of the natural resources as required by Coastal Act Sections 30210 and 30214. The County's findings did not discuss alternative designs and configurations that could avoid or minimize impacts to sensitive plant resources.

Therefore, the project as approved by the County is inconsistent with Coastal Act Sections 30210 and 30214.



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

December 13, 2006

RECEIVED

DEC 18 2006

CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDU 16-2005

OWNER/APPLICANT: REDWOOD COAST LAND CONSERVANCY

AGENT: DAVID SCHOLZ

REQUEST: Coastal Development Use Permit for the development of public access at a coastal bluff area known as Hearn Gulch. The project includes the development of foot trails (one along the top of the bluff and another descending down to the beach), an encroachment onto Highway One and a parking area for four vehicles (one handicapped accessible space), correction of vehicle-caused erosion and installation of identification and informational signage.

APPEALABLE AREA: Yes

LOCATION: In the Coastal Zone, approximately 2 miles south of Point Arena, on the west side of Highway One, approximately 1,100 feet north of the intersection of Highway One and Iversen Road (CR #503), on bluff top parcels located at 29720, 29750, 29770, and 29800 South Highway One; AP# 142-010-03, 142-010-04, 142-010-05, 142-010-06, 142-010-07.

PROJECT COORDINATOR: Rick Miller

ACTION TAKEN:

The Planning Commission, on October 19, 2006, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: COASTAL COMMISSION
ASSESSOR

EXHIBIT NO. 10

APPEAL NO.

**A-1-MEN-06-052 - REDWOOD
COAST LAND CONSERVANCY
NOTICE OF FINAL ACTION &
COUNTY STAFF REPORT
(1 of 18)**

**MENDOCINO COUNTY
PLANNING COMMISSION ACTION SHEET
NOTICE OF FINAL ACTION**

HEARING DATE: October 19, 2006

CASE NUMBER: CDU 16-2005

ENVIRONMENTAL CONSIDERATIONS:

_____ Categorically Exempt
 X Negative Declaration
_____ Environmental Impact Report

ACTION:

Approved X (vote 7-0) Denied _____ Continued to _____

FINDINGS:

Adopted per staff report X Modifications and/or additions _____

CONDITIONS:

Adopted per staff report _____ Modifications and/or additions X

Added Special Condition No. 1 to state:

✕

1. An amended management plan shall be prepared to the satisfaction of the Department of Planning and Building Services that limits public access to day use only, and further prohibits parking of oversized vehicles that would compromise use by other vehicles.

Signature on File Chief Planner 12/13/06
Signature _____ Title _____ Date _____
Mendocino County Department of Planning and Building Services

2918

STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

**CDU 16-2005 (RCLC)
October 19, 2006
Page PC-1**

OWNER/APPLICANT: Redwood Coast Land Conservancy (RCLC)
P. O. Box 1511
Gualala, CA 95445

AGENT: David Scholz
1548 Klamath Drive
Sunnyvale, CA 94087

REQUEST: Develop facilities to provide formal public access to the coastal bluff and beach area known as Hearn Gulch. The Redwood Coast Land Conservancy (RCLC), a California non-profit, public benefit corporation, would manage the Hearn Gulch public access area. Proposed improvements include two walking trails (one along the top of the bluff and another descending down to the beach), a new encroachment onto Highway 1 with a small parking area to accommodate four vehicles (one accessible space), install identification and informational signage and correct past vehicle caused erosion.

LOCATION: In the coastal zone, approximately 5 miles south of Point Arena, on the west side of Highway one, approximately 1,100 feet north of the intersection of Highway 1 and Iversen Road (CR 503) on blufftop parcels on the south side of Saunders Landing at 29720 – 29800 South Highway 1 (APNs 142-010-03, -04, -05, -06 & -07).

TOTAL ACREAGE: 6 ± acres.

GENERAL PLAN: Rural Residential RR – 5 [RR – 1]

ZONING: RR: L - 5 [RR: L -1]

EXISTING USES: Undeveloped coastal headlands and informal trails and vehicle pullout.

ADJACENT ZONING: North: RL
East & South: RR
West: Ocean

SURROUNDING LAND USES: North & south: Undeveloped
East: Residential
West: Ocean

SUPERVISORY DISTRICT: Fifth

CALIFORNIA COASTAL RECORDS IMAGE: 200504006

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:

- The Coastal Permit Administrator denied CDP 44-96 (Bell) for a single-family residential development on parcels 142-010-04, -05 on April 27, 2000. The request was denied without prejudice based on findings that the project was inconsistent with LCP visual resource policies, it required manipulation of the bluff face/edge, potential for impacts to rare or endangered plant(s) and the proposed driveway approach encroached within the bluff top geotechnical setback. The applicant (Bell) appealed the denial to the Board of Supervisors but prior to a hearing before the Board he began serious conversations with RCLC

for the purchase of the property for public access. Based on the eventual agreement for sale of the land to RCLC, the appeal was dropped by the applicant and was never heard by the Board of Supervisors.

- Caltrans encroachment permit number 0104-N-RC-0528.

BACKGROUND: Policy 3.6-26 of the Coastal Element of the General Plan states:

Prior to the opening, advertising or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property.

The Redwood Coast Land Conservancy Hearn Gulch Headlands Preservation and Public Access Management Plan, revised in July 2006, provides the following overview of the project:

The purpose for acquiring this undeveloped oceanfront property is to permanently protect the scenic and abundant natural qualities of the land and maintain the public's access to the area. For years, despite private ownership, these parcels were used by the public for picnics, whale watching, ocean access, etc. The RCLC will now be able to provide legal public access to the scenic beauty of this spectacular section of the California coast. This project will provide the public opportunities for walking, birding, photography and the study of native flora and fauna. In addition, the unobstructed ocean view from Highway 1, in an area the county has designated "highly scenic corridor," will now be maintained in perpetuity.

The Management Plan describes the current condition of public access at the subject site:

Basically three unofficial trails currently exist on the property. One, created by past vehicle use, leads out from the highway to a midway point on the large headland. Another leads down the wide northern depression to the Hearn Gulch Cove, Creek and sandy beach. The third is a footpath that runs from the beginning of the smaller, most northern headland out to the edge of that headland's bluff top. In addition, the steep face of Sea Cave Cove shows evidence of past occasional use.

Volunteer work parties organized by the RCLC will carry out maintenance of the property, to include parking lot, trails and improvements. RCLC volunteers would monitor the site monthly, gather litter, address any vandalism, and schedule repairs as necessary. As a non-profit public benefit corporation, the RCLC maintains liability insurance that meets generally accepted standards. Any safety or erosion problems will be addressed promptly and reported to the State Coastal Commission and/or Mendocino County. According to RCLC, currently litter does not seem to be a problem at the site, but monitoring of trash will be an essential on-going project. Signage will admonish all visitors to "pack it in / pack it out." No garbage cans or toilet facilities would be provided.

RCLC has a 13-year presence in the southern Mendocino coastal area and the RCLC Board is confident that adequate funding can be raised from the general community and local property owners to provide for small maintenance and repair costs. Community, State Coastal Conservancy and Caltrans grant funds were procured for the initial purchase of the property and some of the development costs. Additional grant funding for the proposed improvements are being pursued from public agencies and private and community foundations.

PROJECT DESCRIPTION: RCLC proposes to preserve, manage and construct public access facilities on a 6± acre parcel located between State Highway 1 and the Pacific Ocean approximately five miles south of the town of Point Arena at Mendocino County Post Mile 10.02. The physical address is 29750-29800 South Highway 1. The five undeveloped oceanfront parcels are within the Iversen Landing No. 1 Subdivision. The wind swept parcels are situated on an elevated coastal terrace with broad bluffs approximately 60 feet above the sea. The general absence of tree cover affords spectacular whitewater views of sea stacks, caves and dramatic rock formations. The Hearn Gulch area includes a large headland, one smaller finger-type headland and two small wind-protected coves with a sandy beach and seasonal creek in the northern cove. The primary features of the project will be improved pedestrian footpaths to the bluff top headlands area, a trail down a gradual depression that leads to a small cove and sandy beach, a formal parking area (with a space accessible to visitors with disabilities) and encroachment onto the highway, identification and informational signage and correction of past

vehicle caused erosion on the headlands. The parcel has a long history of use by the south county community and visitors as evidenced by aerial photography through the years.

Development of access trails will primarily entail minor improvement, mowing, and maintenance of existing dirt trails. Crushed rock surfacing may be applied as necessary to prevent wear and erosion. Trail One would be constructed to take visitors from the parking area to a large headland. The trail would be approximately four feet wide and outsloped to minimize the concentration of rainfall runoff. The trail would be terminated at a safe distance from the bluff edge to ensure safety. Trail Two would be constructed down Hearn Gulch to the beach. David E. Paoli, P.E. has provided a geologic and soils investigation for this trail dated August 21, 2003. Trail construction would follow the recommendations of the report. Construction of Trail Two would be done almost exclusively with hand labor: pick and shovel work. The trail would exceed 12 percent for its entire length so special provisions would be made to minimize potential erosion. Towards the end of the trail would be a series of continuous steps. The step system was developed by the California State Parks System to minimize erosion and has been used by Parks in similar settings. The last 10 – 15 feet of the steps are in a zone where ocean waves and driftwood would batter and erode the steps. In this area a special step design would be employed tying the steps together with cable. The idea is to allow the steps to be displaced during large storm events, but the step material would still remain at the site for rebuilding and reuse. Mr. Paoli summarizes the impact of the trail (emphasis added):

The trail will be built largely or completely by hand with volunteer labor. If the vertical and horizontal alignment shown of the plan is followed, an estimated 15 yards of excavation will be made. All of the excavation will be used on site to either build part of the trail or to fill some of the erosion holes previously discussed. Cuts and fills will be measured in inches, for the most part, with maximum excavation of less than 18 inches in the stairway section. The impact of the trail will be small, and can even be positive if the recommendations are followed.

Pedestrian only access would be provided from a small parking area adjacent to Highway 1. A new paved vehicle approach would be located and installed in compliance with Caltrans' encroachment permit process. A suitable low barrier fence would be erected to prohibit vehicles from going beyond the parking area into the coastal terrace. The parking area would have a packed gravel surface large enough to accommodate four vehicles. No recreational vehicle (RV) or over night parking would be permitted. As a side note, a large Caltrans overlook and paved parking area suitable for all types of vehicles is available approximately 1000 feet north of Hearn Gulch.

Thirteen information and warning signs and four property boundary posts are proposed. A sign at the designated point of pedestrian entry from the parking area would instruct the public as to the controlled nature of the shoreline access as well as provide sponsorship information. Additional signage would be appropriately placed regarding general conditions of use, restrictions regarding littering, overnight camping prohibitions, RV prohibitions and warnings regarding environmentally sensitive habitats and plants and hazardous bluff locations. Signs would be made of non-reflective painted sheet metal and would be bolted to 4 x 4 posts sunk in concrete with an approximately 2½ foot height above ground level.

To prevent vehicles from going out onto the headlands, approximately 200 linear feet of bollard and chain fencing would be installed along the boundaries of the parking area. In addition, two "sheep fences", each approximately 15 linear feet in length, would be located along the north bluff top of Sea Cave Cove to discourage use of old trails down this very steep cliff. In an effort to maintain a sense of low profile improvements at the site, all the sheep fencing would have an approximate height of 2½ feet.

RCLC's project includes restoration of the site from previous misuse. Except for a portion of one old "vehicle trail" that will be converted to a footpath (Trail One), those areas of the property that have been severely scarred and/or eroded either directly or indirectly by past vehicle use will be restored to their natural contours. On-site native soil from the parking area grading and the expansion of the highway cut will be used in the restoration of these areas. In addition, an old bulldozer cut will have to be partially filled as part of the highway access approach / parking area construction. Wherever possible, top soil from the aforementioned grading and cut expansion will be used for the last (top) 12 inches of those areas needing restoration. Lesser quality native soil, where needed, will be mechanically blended with the underlying (eroded) base to develop a proper bond. Biodegradable matting and native plantings will be utilized to stabilize the remedial soil.

Gualala Municipal Advisory Council (GMAC): The use permit application was sent to the Gualala Municipal Advisory Council for their review and recommendation. The project was unanimously recommended for approval without qualifications at their September 1, 2005 public meeting.

ENVIRONMENTAL REVIEW:

Earth (Items 1E, erosion and 1G, geologic hazards): The applicant proposes to construct trails providing access to the bluff top, and a series of steps down a gully to the beach. Steep slopes rising about 90 feet above the Pacific Ocean characterize the coastal zone in this area, then a generally flat marine terrace extends several hundred feet inland, then rapidly rises to a series of ridges in the Coastal Range. Sandstone, shales and conglomerates are the predominate rock types. These base rocks are unusually overlain by several feet of topsoil with a sublayer of sand and cobbles. This particular area has a structure defined as terrace deposits and bedrock of Monterey group of Miocene age by the California Division of Mines and Geology.

Policy 3.4-1 of the Coastal Element of the General Plan states:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

Policy 3.4-7 of the Coastal Element of the General Plan states:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report

Policy 3.4-10 of the Coastal Element of the General Plan states:

No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

RCLC employed David E. Paoli, P.E. to conduct a geotechnical investigation of the site. The results of the investigation are presented in a report dated February August 21, 2003. The report explains that the closest identified on shore trace of the San Andreas Fault is approximately four miles northeast of the site. There are also

several faults offshore; one may be about one-quarter mile offshore, while another that may have been active during the Quaternary period (this period began approximately 2 million years ago) is about four miles offshore. The Division of Mines and Geology has identified other faults, not known to be active during the Quaternary period, closer than the San Andreas Fault. One or more of them appears to pass within several hundred feet of the proposed trail site and one through the lot itself. Beaches in the immediate area are generally small and rocky, indicating that erosion and recession of the cliffs is occurring.

This location first appears to be unprotected from the full force of the ocean. However, one soon observes waves breaking several thousand feet offshore with an extensive line of kelp well out and a buoy to mark shoals. USGS map indicates Saunders Reef and related shallow areas are about three thousand feet off shore and slightly north of the site. The reef rises to within twenty feet of the water's surface and provides shelter, particularly from waves from the northwest. To the north end of the project site, the ground slopes downward to a sandy beach in a small cove. This beach is nearly 100 feet wide at normal high tide.

Mr. Paoli states that no amplification of seismic vibrations is anticipated to occur, given the depth of the bedrock and soils type above. He summarized that liquefaction of the soil is not likely. Slides or rockfalls from the cliff face are likely to occur, given the steepness of the cliff, its height and weathered condition. Damage to the trail from an earthquake should be negligible.

The geological report provides specific horizontal and vertical alignments and treatments for the construction of the trails. David Paoli, P.E. states that it is feasible to construct the trails shown on the plans, including the trail to the beach. The typical trail is four feet wide, outsloped to minimize concentration of rainfall runoff. The bottom section of the steps to the beach would be a cable style design made to withstand normal wave action and driftwood hammering. This section of steps may need to be periodically repaired. Condition Number 3 is added to require that project construction is done in accordance with the recommendations of the geological report prepared by David Paoli, P.E. dated August 21, 2003.

In conjunction with new structures proposed on or near an ocean bluff, it is standard practice for the Coastal Commission and the County to require recordation of a deed restriction that prohibits the construction of seawalls or other protective structures to protect new development, and to require that any structures threatened by bluff retreat be removed from the property. The deed restriction also requires that the landowner agree to remove the remains of any structure that may fall onto the beach as a result of bluff erosion or collapse. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. In keeping with the County's and the Commission's standard practice, Condition Number 4 is recommended to require that a deed restriction be recorded.

Air (Items 2A-2C, air quality): The project will produce no air emissions or odors and will have no impact on air quality.

Water (Items 3A-3I): No consumption or disposal of water is proposed by the project. No water courses will be altered. The site is not designated as a tsunami hazard zone. The site is not subject to flooding.

Plant Life (Item 4A & 4B, environmentally sensitive habitat areas): The project includes the construction of a parking area, coastal trails on the headlands and down a gully to the beach below. Coastal bluffs may provide habitat for rare or endangered plant species which are afforded protection by policies in the Coastal Plan. Riparian corridors along drainage courses are also environmentally sensitive habitat areas and are subject to protection. The Coastal Plan and Zoning Code call for the establishment of buffers around environmentally sensitive habitat areas (ESHAs), and establish specific criteria for development to be constructed within a buffer or within the environmentally sensitive habitat area itself.

Several botanical field surveys were prepared in conjunction with the proposed project to identify the presence of any ESHAs, their physical location and to propose any mitigation measures needed to reduce potential impacts. APNs 142-010-03, -04, 05 were reviewed and a corresponding report prepared by Dorothy T. Scherer dated September 9, 2003. A survey was also conducted for APNs 142-010-06, -07 and a corresponding report prepared by Jon Thompson dated September 18, 2004. Both surveyors explained the plant communities that are

represented on the study area and they include: Coastal Terrace Prairie, Northern (Franciscan) Coastal Scrub, Northern Coastal Bluff Scrub, and Northern Bishop Pine Forest.

Policy 3.1-2 of the Mendocino County Coastal Element states, in applicable part:

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource.

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

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. ... Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

1. *It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
2. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
3. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Chapter 20.496 and Section 20.532.060, et. seq. of the MCCZC codify Policy 3.1-7 and contain specific requirements for protection of ESHAs and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA's from disturbances related to proposed development.

Dorothy T. Scherer spent 27 hours in the field studying a portion of the site (APNs 142-010-03, -04, -05) in the spring and summer of 2003 for the presence of ESHAs. She identified four sensitive plants including: *Agrostis blasdalei* (Blasdale's bent grass), *Calystegia purpurata* ssp. *saxicola* (coastal bluff morning-glory) *Hesperis matronalis* var. *breviflora* (short-leaved evax) and *Sidalcea malviflora* ssp. *purpurea* (purple-stemmed checkerbloom). The location of the plants was marked in the field with flagging and on an exhibit map in the report. She determined that the purple-stemmed checkerbloom would probably be impacted regardless of where the parking area was sited. She said that purple-stemmed checkerbloom was widely scattered across the eastern half of the RCLC property and in sufficiently large numbers, so that installing a more formal parking area would not compromise its continued existence at Hearn Gulch. She also identified drainage areas that would be further studied in subsequent reports.

Jon Thompson spent 15 hours in the field studying a portion of the site (APNs 142-010-06, 07) in the spring, summer and fall of 2004 for the presence of ESHAs. He noted the presence of *Gilia capitata* ssp. *pacifica* (Pacific gilia) and *Sidalcea malviflora* ssp. *purpurea* (purple-stemmed checkerbloom) on the portion of the site that he surveyed. He also identified three drainage areas, two of which he determined met the definition of an ESHA. Mr. Thompson stated, "Further degradation of the headlands to associated ESHAs and other sensitive habitat will occur if vehicles are allowed to continue to damage vegetation and compacting soil by freely driving all over the headlands." He explained that the overall mitigation strategy for the protection of the wide spread ESHAs on the site were to reduce the impacts over time by preservation and maintenance operations and minimizing impacts by

limiting the degree or magnitude of the proposed project. In order to protect the riparian drainage areas, Mr. Thompson recommends the installation of silt fencing to prevent erosion from soil disturbance activities and to prevent construction equipment and vehicles from entering the sensitive areas. He also recommended seeding and covering with jute netting any bare or exposed soil areas during and after construction.

The only rare plant that cannot be avoided by the project is the purple-stemmed checkerbloom that occurs in the vicinity of the proposed parking area. Mr. Thompson summarized that the plant would be impacted no matter where the parking area was sited. He said the population is currently being severely impacted in all the possible sites for the parking area. In an effort to deal with the presence of the purple-stemmed checkerbloom population on the site and to refine the proposed mitigation, Mr. Thompson prepared an addendum to the botanical reports dated December 15, 2005. He said that on April 27, 2005, Dorothy T. Scherer and he went back to the site and flagged the plants growing in the vicinity of the parking area. They did not attempt to flag all individuals growing in the coastal terrace prairie plant community due to the great number of occurrences. On August 25, 2005 Mr. Thompson met with RCLC board members David Scholz and George Anderson and with David Paoli, P.E. The location of the approach apron, short driveway and parking area were located on the ground. There were four individuals observed directly within the footprint of the parking area and five were located within five feet to the north of the driveway. There were not any individuals of this taxon observed within the proposed footprint of the driveway apron or driveway. Mr. Thompson stated:

"This project will not have a significant adverse impact on the local population of this taxon. Prior to the most recent acquisition of the two most southern parcels by RCLC, there was rampant vehicle traffic on the very sensitive coastal terrace prairie habitat. The planned trails, signs and blockades that will discourage pedestrians from trampling and keep vehicles from entering the coastal terrace prairie habitat zone and other natural plant communities present on the RCLC property will enable the existing population of purple-stemmed checkerbloom and other special status species to persist and most likely benefit from these measures."

The addendum recommends that a qualified botanical surveyor familiar with all the special status plants found on the property during previous surveys should supervise all project activities at the time they take place on the ground to ensure maximum amount of protection. Mr. Thompson said all efforts should be taken to protect individual checkerblooms in the vicinity of the parking area and driveway. He said the few individuals of the taxon that grow within the development area could be transplanted to appropriate locations on the subject property.

The Headland Trail (the trail which leads due west from the parking area along the existing dirt road) terminates near a population of Blasdale's bentgrass. He recommended that a qualified botanical surveyor should be involved with the planned terminus of this trail to avoid the plant. He said the terminus should be at least 20 feet away from the boundary of the Blasdale's bentgrass population.

Mr. Thompson's addendum report also stated that many stems of the coastal bluff morning-glory are located east and west of the trail that goes to the beach area. However, trail construction would not disturb these individuals. He said they are not in danger of erosion or other direct or indirect impacts if simple precautions and measures are taken to avoid them during construction.

Regarding the protection of the two sensitive drainage areas (referred to as Drainage #1 & #2 on the site plan) Jon Thompson stated that RCLC has already taken steps to reduce potential impacts to these area by moving the driveway apron and driveway approximately 40 feet north of its originally proposed position. He said this relocation would greatly reduce impacts on these sensitive drainage areas. He said the mitigation to protect the closer drainage should be followed. The recommended mitigation measures were to install silt fencing and control erosion from exposed, bare soil.

Mr. Thompson's original botanical report dated September 18, 2004 proposed some final mitigation measures. He said a civil engineer should design the driveway, parking area and drainage facilities associated with the project. He said the finished project must be able to handle the runoff and minimize erosion of soil into the area that contains the purple-stemmed checkerbloom as well as Drainage #2. Finally, he recommends that a monitoring plan be implemented to ensure continued protection of the ESHAs in perpetuity.

Because portions of the proposed development are within 100 feet of environmentally sensitive habitat areas, consultation with the Department of Fish and Game is required. Corrine Gray, Environmental Scientist for the Department of Fish and Game, reviewed the project, visited the site and commented that the reduced ESHA buffers were acceptable for this type of project. She noted in the field the amount of plant diversity on the site. As evidenced by the botanical surveys the site contains many rare or endangered plant species and would be actively managed for their preservation. Corrine Gray recommended ensuring the successful conservation of the rare and endangered plants on the site identified plant populations should be monitored and maintained in perpetuity. She recommended that RCLC volunteers actively eradicate invasive exotic plants from the headlands. A status report on the rare plant populations should be provided to the County at years 3 and 5 by December 31 of each year. Any recommended mitigation measures at that time should be incorporated into the stewardship of the property for the preservation of rare or endangered plants.

Condition Numbers 5, 6 & 7 are recommended to ensure the proposed mitigation measures for the protection of ESHAs on the subject property are incorporated into the project. The proposed project is consistent with the intent of the LCP for the protection of ESHAs and staff has included the required findings (Finding 8) for development in an ESHA. The above discussion, project design, consultation with CDFG and proposed mitigation measures support those findings. Although the site is sensitive, the proposed project is a perfect fit for two of the most important goals of the Coastal Act and County LCP, protection of the natural environment and access to the coast.

Animal Life (Items 5A-5C, diversity): The project will not impact the diversity of wildlife species inhabiting the site. No rare or endangered animal species are known on the site. No new species of animals will be introduced.

Animal Life (Item 5D, habitat): A small amount of natural habitat will be lost as a result of the proposed project. The previous informal dirt encroachment would be brought up to Caltrans' standards with asphalt/concrete overlay and a packed gravel parking area would replace the dirt parking area that exists today. The trails would be armored with crushed rock and small signs would be installed. None of the area proposed for these developments provide unique or rare habitat and all the areas have been historically used in a less formal manner. The total area affected is not significant when considered in relation to the entire six-acre parcel, which will be maintained in a predominantly natural state. Staff recommends that the Planning Commission find the project to be "de minimis" and therefore exempt from the Department of Fish and Game filing fee. Condition Number 1 is recommended.

Noise (Item 6A & 6B): The only noise generated by the project will be that of construction activity, which will be of limited duration, and occasional maintenance. Noise impacts will not be significant.

Light and Glare (Item 7): No lighting is proposed as part of the project.

Land Use (Item 8): RCLC acquired the property with the objective of managing it for public use. The primary objective of the project is to improve public pedestrian access to the bluff top and shoreline, with provisions for public safety and protection of sensitive resources. Activities such as hiking, sight seeing, fishing, bird watching, whale watching, picnicking, boating, and photography are the kinds of uses anticipated on the site, and are encompassed within the Passive Recreation use type defined in the Coastal Zoning Code (Section 20.340.015). Passive Recreation is listed among the Principal Permitted Uses allowed in a Rural Residential zone (Section 20.376.010(C)), and in most cases, only a coastal development permit would be required for such a project. However, because the project includes a trail (with cable steps) down the to the beach, a coastal development use permit is required (Section 20.500.020(B)(4)).

Natural Resources (Item 9): The site is not a source of natural resources, and the project will not consume any significant quantities of natural resources.

Population (Item 10): The facility will provide no local jobs or have any other attribute that would affect population distribution.

Housing (Item 11): The project will neither provide additional housing nor generate demand for additional housing.

Transportation/Circulation (Item 12A, additional vehicles & Item 12B, parking): The existing informal dirt pullout and parking area would be improved and brought up to Caltrans' standards. The paved encroachment would include improvements for sight distance to the north by shaving back the existing bank on the west side of the highway. The parking area would accommodate a total of four cars and would be surfaced with packed gravel. One space would be ADA compliant. It is not anticipated that the project will generate significant demand for parking, except possibly during peak tourist times of the year. The benefits of maintaining the site in its undeveloped natural state are anticipated to outweigh the disadvantages resulting from a lack of on-site parking. The parking area generally is located in a disturbed area where cars frequently pull off the highway. Evidence of this past use can be seen by reviewing aerial photos of the site and by the denuded nature of the parking area.

RCLC has already obtained an encroachment permit from Caltrans (0104-N-RC-0528). RCLC has been in a holding pattern for the installation of the encroachment until the coastal permit could be approved. Condition Number 8 is recommended to require that any work proposed within the State Highway 1 right-of-way be completed in accordance with encroachment procedures administered by Caltrans.

Public Services (Item 13, fire protection): The property is in an area with a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention, and is in a State Responsibility Area for fire safety review. AS with similar public access trail projects, CDF has determined that the project is exempt from CDF fire safe regulations. No response was received from the Redwood Coast Fire District.

Energy (Item 14): There will be no significant consumption of energy as a result of the proposed project. No lighting is proposed. The only energy use will occur during construction and maintenance.

Utilities (Item 15): The proposed facility will neither consume water nor generate sewage. No restrooms are proposed.

Human Health (Item 16): Inevitably, a project designed to provide public access to the bluff top and shoreline entails an unknown increase in exposure of the public to risk. Access to the blufftop poses the risk that visitors may get too close and fall over the edge. Access to the shoreline exposes people to the risk of being struck by waves and possibly being washed into the ocean.

Section 20.528.015 of the Coastal Zoning Code states in part:

All accessways shall be designed and constructed to safety standards adequate for their intended use. Barriers shall be constructed by the managing agency where necessary. ...

The management plan and preliminary drawings prepared for the project indicate that public safety has been taken into account in the design of the project. One existing trail would be to be abandoned or blocked to reduce exposure of the public to safety hazards. Input from two licensed geologist (Tom Cochran and Mike Lane) recommended that the short trail to a sea cave overlook spot was determined not to be sufficiently stable over the long term. Since there is already a volunteer trail in this spot, RCLC will actively discourage future use by signs and appropriate low scrub plantings. A number of signs are proposed to warn visitors of hazardous conditions. In staff's opinion, a reasonable balance between public access to the coast and public safety will be incorporated in the design and operation of the project.

Aesthetics (Item 17, views and appearance): The six-acre site located between Highway 1 and the ocean is designated as a highly scenic area on the Coastal Plan Maps.

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

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded

areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

No buildings are proposed as part of the project. Proposed improvements include a new paved encroachment onto Highway 1 which would require cutting the existing road side bank on the west side of the highway immediately north of the site to increase site distance per Caltrans encroachment permit requirements. A small gravel parking area would be developed in an already disturbed area where informal parking occurs. Approximately thirteen 2.5 foot tall informational and warning signs would be installed. The proposed signs are in compliance with Chapter 20.476 of the Coastal Zoning Code. The project includes a combination of bollard and chain fencing and 2 ½ foot tall sheep fencing. The rocky walking trails would be approximately four foot wide with a short series of steps and a smaller section of cable stairway down to the beach at the very bottom of the trail. Trails, being at ground level with grass or other natural surfaces, will have little visual impact. Existing disturbed areas from past vehicle use would be restored to a more natural state. On site soil from the parking area grading and the expansion of the highway cut would be used in the restoration of these areas. Additionally, an old bulldozer cut will be partially filled as part of the highway access approach/ parking area construction. Biodegradable matting and native plantings would be utilized to stabilize the remedial soil.

Recreation (Item 18): Maximum public access to the coast is one of the goals stated in the Coastal Act. Numerous policies in Chapter 3.6 of the County's Coastal Plan and the provisions of Chapter 20.528 of the Coastal Zoning Code also promote development of public access to the shoreline. Now, under the RCLC ownership of the site, the primary use of the parcel will be for public access. The project proposed by the RCLC is consistent with public access policies as outlined below.

Chapter 4 (South Coast CAC Planning Area) of the Mendocino County Coastal Element describes the Hearn Gulch Area:

Location: Milepost 10.08, immediately north of Iversen Subdivision.

Ownership: Private; prescriptive rights may exist.

Characteristics: Small cove and sand beach.

Potential Development: Parking area and trail from north side; could serve recreational development adjoining Hearn Gulch east of highway as proposed by landowner.

Policy:

4.11-20 Accessway dedication shall be obtained consistent with policy 3.6-5; purchase parking area.

Policy 3.6-6 of the Mendocino County Coastal Element states, in applicable part:

Shoreline access points shall be at frequent rather than infrequent intervals for the convenience of both residents and visitors and to minimize impacts on marine resources at any one point. Wherever appropriate and feasible, public access facilities, including parking areas, shall be distributed throughout the coastal area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area. Specific proposals of this plan reflect this goal.

Policy 3.6-13 states: *The County may seek agencies to accept accessways as prescribed in this section under "Managing and Maintaining Accessways". Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Policy 3.6-14 states in pertinent part: *New and existing public accessways shall be conspicuously posted by the appropriate agency and shall have advance highway signs except those for which specific management provisions have been made and specified in Chapter 4. Additional signs shall designate parking areas and regulations for their use, and shall include regulations for protection of marine life and warning of hazards,*

including high tides that extend to the bluffs. Access shall not be signed until the responsibility for maintenance and liability is accepted and management established.

Policy 3.6-22 states: In carrying out the coastal access policies of this Coastal Element, the county or other appropriate designated management agency shall consider and encourage the utilization of innovative access management techniques including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Policy 3.6-26 states: Prior to the opening, advertising or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property.

The above policy would be implemented through Section 20.528.045 of the MCCZC:

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

- (A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;*
- (B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;*
- (C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and*
- (D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).*

Officially opening the Hearn Gulch shoreline access by a local non-profit (RCLC) would be consistent with these policies of the Coastal Element and would achieve their implementation. County Code requires that the Planning and Building Services Director approve the management plan. Staff has no suggested modification for the submitted plan and finds it ready for acceptance by the Director. The management plan addresses the minimum requires of the MCCZC. Therefore, Condition Number 9 is added requiring RCLC to have the Director approve the submitted plan dated July 2006 and any subsequent amendments to the plan in the future.

The proposed project is the fruition of the LCP policies for the development of public access in the Hearn Gulch area. RCLCs efforts will benefit local residents and visitors alike. RCLC has accepted the responsibility of actively managing this resource of public importance to the benefit of the county and the state. The detailed and organized manner in which RCLC both acquired the separate parcels and the manner in which they proceeded with the coastal permit process is a great indication of RCLCs commitment to this project.

Cultural Resources (Item 19): The parcel is located on a bluff overlooking the ocean, with possible access to the shoreline and beach. Archaeological sites have been recorded in similar environmental settings. An archaeological survey of the property was conducted in July 2004. No prehistoric or archaeological resources were discovered. The survey was reviewed and accepted by the County Archaeological Commission on August 10, 2005. Regardless of the results of the survey, the applicant is advised by Condition Number 10 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

ENVIRONMENTAL RECOMMENDATION:

No significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Negative Declaration is recommended.

GENERAL PLAN CONSISTENCY RECOMMENDATION: The proposed project is consistent with applicable goals and policies of the General Plan.

RECOMMENDED MOTION:

General Plan Consistency Finding: As discussed under preceding sections of this report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

Department of Fish and Game Findings: The Planning Commission has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing and proposed development on the subject parcel, the project will not have any adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Commission has rebutted the presumption set forth in subdivision (d) of Section 753.5.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. Environmentally Sensitive Habitat Areas.
 - (a) The resource as identified will not be significantly degraded by the proposed development.
 - (b) There is no feasible less environmentally damaging alternative.
 - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

Project Findings: The Planning Commission making the above findings, approves #CDU 16-2005 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS:

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$25.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to November 19, 2004. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
2. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
- ** 3. The trails shall be designed and constructed in accordance with the recommendations contained in the geotechnical report dated August 21, 2003, prepared by David E. Paoli, P.E.
- ** 4. Prior to the issuance of the Coastal Development Permit, the landowner, RCLC shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide as follows:
 - a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and the landowner assumes the risk from such hazards.
 - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project, including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project.
 - c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant.
 - d. The landowner shall not construct any bluff or shoreline protective devices to protect the improvements in the event that these structures are subject to damage, or other erosional hazards in the future.
 - e. The landowner shall remove the trail and associated developments when bluff retreat reaches the point at which the structure is threatened. In the event that improvements associated with the trail fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowner shall bear all costs associated with the removal.
 - f. The document shall run with the land, bind all successors and assignees, and shall be recorded free of all prior liens and encumbrances, except for tax liens
- ** (5.) Construction and operation of the project shall incorporate all of the recommended mitigation measures summarized (or referenced) in the botanical survey addendum dated December 27,

2005 prepared by Jon Thompson. Prior to construction, a civil engineer should design the driveway, parking area and drainage facilities associated with the project in an effort to protect the rare habitat and associated plants.

- ** 6. A status report on the rare plant populations should be provided to the County at years 3 and 5 by December 31 of each year. Any recommended mitigation measures at that time should be incorporated into the stewardship of the property for the preservation of rare or endangered plants. A copy of the required reports shall be provided to the Department of Fish and Game for their review and recommendations.
- ** 7. A copy of the staff report and coastal permit for CDU 16-2005 must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site. This requirement is intended to ensure that the project construction is done in a manner consistent with the submitted application and all other supplemental information contained in the staff report.
- ** 8. Any work within the Highway 1 right of way shall be completed in accordance with encroachment procedures administered by California Department of Transportation.
- ** 9. Prior to issuance of the coastal permit, the submitted Management Plan dated July 2006, shall be signed and approved by the County Planning and Services Director. No changes or amendments shall be made to the approved plan without the written approval of the County Planning Director as required by Section 20.528.045 of the MCCZC.
- ** 10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
- ** 11. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- ** 12. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.
- ** 13. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
- 14. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted has been violated.
 - c. The use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

15. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

DATE

Rick Miller
Senior Planner

Attachments: Exhibit A: Location Map
Exhibit B: Assessors Parcel Page
Exhibit C: Orthophoto - 2005
Exhibit D: Site Plan
Exhibit E: LUP Map Number 28
Exhibit F: Zoning Display Map
Exhibit G: CNDDDB Map
Exhibit H: Topographic Survey Map
Exhibit I: Trail Topo, Typical Steps and Trail Section
Exhibit J: Sheep Fence Detail
Exhibit K: Identification Sign Copy
Exhibit L: Various Sign Copies
Exhibit M: Management Plan (4 pages)

Negative Declaration

Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee: \$840.00 (For an appeal to the Mendocino County Board of Supervisors.)

** Indicates conditions relating to Environmental Considerations - deletion of these conditions may effect the issuance of a Negative Declaration.

SUMMARY OF COMMENTS:

Planning – Ukiah	APNs 142-010-04, -05, 06, 07 were noted as unbuildable per California Coastal Commission letter dated 9/10/75.
Environmental Health – Fort Bragg	No comment.
Building Inspection – Fort Bragg	No comment.
Assessor	No response.
Archaeological Commission	Survey accepted.
Caltrans	No response – already have obtained an encroachment permit and met with Caltrans technician regarding the placement of the egress off highway.
Department of Fish and Game	Reduced buffers are ok. Monitoring reports to be prepared.
Coastal Commission	No response.

STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

CDU16-2005 (RCLC)

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Coastal Conservancy	No response to referral, Deborah Hirst, Project Manager for Conservancy attended our site view with the Department of Fish and Game.
Department of Parks and Recreation	No response.
Point Arena City Planning Department	No response – application made available for public review.
Redwood Coast Fire District	No response.
GMAC	Unanimous recommendation of approval.
Friends of Schooner Gulch	No response.

APPENDIX II: BOTANICAL SURVEY LOCATION OF ESHA S

EXHIBIT NO. 11

APPEAL NO.

A-1-MEN-06-052

REDWOOD COAST LAND
CONSERVANCY

BOTANICAL SURVEY MAP



Agrostis blasdalei (Blasdale's bent grass)

Calystegia purpurata ssp. *saxicola* (Coastal bluff morning-glory)

Hesperis matronalis var. *sparsifolia* (short-leaved evax)

Sidalcea malviflora ssp. *purpurea* (purple-stemmed checkerbloom)

Actostaphylos uva-ursi (bearberry) (not an ESHA)

Parcel boundary lines are approximated
1 inch = approx. 200ft.

A-7 Addendum