

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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F 8a

MEMORANDUM

Date: January 7, 2009

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Robert S. Merrill, District Manager – North Coast District

Subject: **Addendum to Commission Meeting for Friday, January 9, 2009
North Coast District Item F8a, Appeal No. A-1-MEN-08-048 (Don & Jan Plenty)**

STAFF NOTES

This addendum responds to the letter submitted by Jared G. Carter on behalf of the appellants dated January 5, 2009 regarding the published staff recommendation on Appeal No. A-1-MEN-08-048 (Don & Jan Plenty). The letter is included in the separate green addendum containing letters received on the North Coast agenda items that has also been distributed for Friday's Commission meeting.

The appellants' letter contends that contrary to the viewpoint expressed in the staff recommendation, the visual resource protection policies of the Coastal Act and the certified LCP protect private views in addition to public views, and that therefore the Commission should reject the staff recommendation that the appeal raises no substantial issue.

Staff continues to recommend that the Commission find the appeal raises no substantial issue. The question before the Commission is not whether the LCP and Coastal Act policies serve to protect private views, but rather whether the appeal raises a substantial issue as to whether the project as approved by Mendocino County is consistent with the policies of the certified LCP and the public access policies of the Coastal Act. By stating that the "scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance," the visual protection policies of both the certified LCP and Coastal Act certainly focus on the protection of public views. Whether or not the policies address the protection of private views, staff still believes the appeal does not raise a substantial issue.

As discussed in the staff report, the public views of the coast from Ocean Drive and Gualala Point Regional Park are not significantly affected by the approved fence. In addition, private views are not significantly affected by the approved fence for several reasons. First, the local record contains no evidence that the appellants hold a view easement or other documented property rights to a view that extends across the applicants' property. Second, the approved fence will not block all view of the ocean from the appellants' three parcels that lie adjacent to the proposed fence. Although the fence clearly obstructs some of the view of the ocean from the applicants' two adjacent houses, based on Commission staff visit to the site and observations of the already constructed portions of the fence, the approved fence appears to be low enough and placed at a lower elevation relative to the houses to still afford some blue-water views of the ocean and horizon views over the top of the fence. In addition, the redwood stake style fence is also not completely solid, allowing filtered views through the gaps between the vertical split grape stakes that comprise the siding of the fence. Furthermore, any future house built on the applicant's vacant parcel could be built tall enough to afford completely unobstructed views over the top of the fence. Third, the County's approval of the fence will not deprive the appellants of the use of their adjoining property for residential purposes. Finally, the contentions about how the applicant's fence would interfere with alleged property rights of the appellant involve a private dispute between the two parties that is not the responsibility of the County or the Commission to resolve.

Thus, whether or not the visual resource protection policies of the LCP and the Coastal Act protect private views, the appeal does not raise a substantial issue of conformance of the project as approved with the visual resource protection policies of the LCP. Therefore, staff continues to recommend that the Commission find that Appeal No. A-1-HUM -08-048 raises No Substantial Issue regarding consistency with the certified LCP and/or the public access policies of the Coastal Act.

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F8a

Filed: November 17, 2008
49th Day: Waived
Staff: Robert S. Merrill
Staff Report: December 23, 2008
Hearing Date: January 9, 2009
Commission Action:

STAFF REPORT: APPEAL
NO SUBSTANTIAL ISSUE

APPEAL NO.: **A-1-MEN-08-048**

APPLICANTS: **Don & Jan Plenty**

LOCAL GOVERNMENT: **County of Mendocino**

DECISION: **Approval with Conditions**

PROJECT LOCATION: **39010 Ocean Drive, Gualala, Mendocino County
(APN 145-191-09).**

PROJECT DESCRIPTION
OF APPROVED
DEVELOPMENT: **Placement of a 230-foot-long, 6-foot-high, redwood
fence along the property line of a blufftop lot.**

APPELLANTS: **James & Judith Carter, Trustees of the James &
Judith Carter Revocable Trust of 1996**

AGENT: **Jared Carter, Carter & Momsen, LLP**

SUBSTANTIVE FILE
DOCUMENTS: **1) Mendocino County File No. CDP#68-2007
2) Mendocino County Local Coastal Program**

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE

The staff recommends that the Commission, after public hearing, determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed.

The project as approved by the County involves the placement of a 230-foot-long, 6-foot-high, redwood stake fence along the property line of a blufftop lot, west of Ocean Drive, approximately 200 feet west of the intersection of Highway One and Ocean Drive, at 39010 Ocean Drive, in the unincorporated community of Gualala, Mendocino County.

The subject parcel is a blufftop parcel that fronts on to the mouth of the Gualala River, across from a sand spit that is part of Gualala Point Regional Park. The property is located two blocks west of Highway One along the southwestern side of a residential neighborhood. The parcel was once part of an old lumber railroad right-of-way that was used in the late 1800s and early 1900's to transport lumber from a mill located along the river about a mile upstream to the south to a cable ship loading site along the ocean bluff to the north. As a result, the several-acre parcel is oddly shaped with a larger area to its north, where the applicants' house is located, and a narrower 25-foot-wide strip that extends approximately 300 feet to the south along the edge of the blufftop. The 230-foot-long fence would be built along the southern-most portions of the inland side of the subject parcel, adjacent to three lots owned by the appellants, including parcels 145-192-04, 05, and 06.

The appeal raises three principal contentions, only one of which alleges inconsistency of the approved project with the County's certified LCP or the public access policies of the Coastal Act. The appellants contend that the approval of the project by the County is inconsistent with LCP provisions regarding the protection of visual resources, contending that the approved fence will adversely affect both public views from Ocean Drive and the nearby Gualala Point Regional Park, as well as the appellants' personal private views from three parcels the appellants own adjacent to the approved fence. The appeal argues that the visual resource policies of the certified LCP must be interpreted as protecting private views as well as public views. In addition, the appellants contend that (a) the fence as approved by the County will adversely affect certain private and public views in a manner inconsistent with the visual resource protection policies of the Coastal Act and (b) the County took away the appellant's property rights to have a view through the applicants parcel in violation of Sections 30005.5 and 30010 of the Coastal Act.

Staff recommends that the Commission find that the contentions raised by the appellant that the approval of the project by the County is inconsistent with LCP provisions are based on valid grounds for an appeal, but do not raise a substantial issue of conformity of the approved development with the certified LCP. Both the Coastal Commission and Mendocino County have interpreted the visual resource protection policies of the Coastal Act and the LCP certified to carry out the Coastal Act in Mendocino County as protecting

public views and not private views. This interpretation is consistent with Section 30251 of the Coastal Act, the principal visual protection policy of Chapter 3 of the Coastal Act. The policy language of Section 30251 of the Coastal Act is mirrored in LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.020. Both of these policies begin similarly to Section 30251 of the Coastal Act by stating “*The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance.*” By referring to the public importance of scenic and visual qualities of coastal areas, the policies indicate that public views are to be protected. Nowhere do these provisions of the LCP or the other LUP policies cited by the applicant, including Gualala Town Plan Goal G2.1-1, Goal G2.2-3 and G3.1-3 refer specifically to the importance of protecting private views. Therefore, staff believes that the contentions of the appeal that the project as approved is inconsistent with the visual resource protection policies of the LCP because the project adversely affects the appellants’ private views do not raise a substantial issue.

With regard to the public view impacts, the appellant contends that the project as approved will adversely affect views from two public vantage points in a manner inconsistent with the visual resource protection policies of the LCP, including Ocean Drive and Gualala Point Regional Park across the Gualala River estuary from the subject property. Subsequent to the appeal being filed, staff visited the project site and its vicinity to assess the impact to public views from these and other public vantage points.

Ocean Drive is the first street inland from the subject property and is the street that provides access to both the applicants’ and the appellants’ parcels. The street is public and affords a view of the ocean across a portion of the vacant residential parcel owned by the appellants. A portion of the approved fence that has already been constructed extends across the rear, or ocean side of the vacant parcel but only affects a narrow band of view of the ocean relative to the total view of the ocean and horizon afforded from the street. In addition, the redwood stake style fence is a common fence style used in the area and along the Mendocino coast in general. As the fence style is common to the area and as conditioned will be of a color that blends with surrounding structures and landscaping, staff believes that the approved fence does not raise a substantial issue of compatibility with the character of its setting.

Gualala Point Regional Park lies approximately 300 feet south and west across the Gualala River estuary from the subject property. The Sonoma County Park occupies the point of land that extends approximately one mile north from Sea Ranch to the tip of the sand spit that partially defines the mouth of the Gualala River. Portions of the completed fence are barely visible along the bluff top and are set against a backdrop of existing residential buildings and tree-covered coastal hills. The approved fence will not block views to and along the coast from Gualala Point Regional Park and as the natural wood colored fence is set against a backdrop of other structures and the wooded landscape, the fence does not stand out prominently in the photographs. Therefore, staff believes that the effect on views to and along the ocean from this vantage point is not significant and

the approved fence does not raise a substantial issue of compatibility with the character of its setting as viewed from Gualala Point Regional Park.

As the effects of the approved development on public views are limited to a minor intrusion into a larger view of the ocean from a local residential street (Ocean Drive) and the appearance of the new natural wood-colored fence against an existing backdrop of other structures and a wooded landscape as viewed from Gualala Point Park, the significance of the coastal resources affected by the decision is low. In addition, the extent and scope of the development as approved by the County is minor as it consists solely of a split rail redwood fence within an existing developed residential neighborhood. Furthermore, the precedential value of the local government's decision for future interpretations of its LCP is low as other fences of the same style and scale have been approved within the area and the County's interpretation of the visual resource protection policies of the certified LCP as not protecting private views is consistent with the interpretation of those policies by both the County and the Coastal Commission. Finally, the appeal involves primarily a dispute between neighbors in the community of Gualala over the rights to block private views by building a fence and as such raises only local issues rather than issue of regional or statewide significance. Therefore, staff believes that the contentions raised by the appeal that the approved fence would adversely affect views do not raise a substantial issue of conformance of the approved project with applicable visual resource protection provisions of the LCP.

The Appellants assert that the fence as approved by the County will adversely affect certain private and public views and is therefore inconsistent with the visual resource protection policies of the Coastal Act. The Appellants also assert that the County's approval of the project was in violation of Sections 30005.5 and 30010 of the Coastal Act. The appeal asserts that by approving the fence with the fence's adverse effects on the appellants' private views, the County took away the appellants' view rights contrary to the directives of Section 30005.5 that nothing in the Coastal Act shall be construed to authorize a local government or the Commission to exercise any power that it does not already have. The appeal asserts that the appellants have a recognized right to a view and that the County's approval of the fence is an improper taking of private property inconsistent with Section 30010 of the Coastal Act as the fence takes away the appellants private view rights in a manner that does not further a legitimate purpose. As these contentions do not allege an inconsistency of the local approval with the certified LCP or the public access policies of the Coastal Act, staff recommends that the Commission find that these contentions do not raise valid grounds for appeal.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP.

The Motion to adopt the Staff Recommendation of No Substantial Issue is found on Pages 6-7.

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 100 feet of a wetland or stream or 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a 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 constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal of a local government action are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program and, if approved development is located between the first public road and the sea¹, the public access and public recreation policies set forth in the Coastal Act. The approved development is appealable to the Commission because (a) the development is located between the sea and the first public road paralleling the sea [*Section 30603(a)(1)*], (b) the development is located within 300 feet of a beach [*Section 30603(a)(1)*], and (c) within 300 feet of the top of the seaward face of any coastal bluff the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [*Section 30603(a)(2)*].

¹ Per Section 13011 of the California Code of Regulations, the “first public road paralleling the sea” means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code, which: (a) Is lawfully open to uninterrupted public use and is suitable for such use; (b) Is publicly maintained; (c) Is an improved, all-weather road open to motor vehicle traffic in at least one direction; (d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and (e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will 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. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant, and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

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 at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal

One appeal of the local government action was filed by James and Judith Carter, trustees of the James and Judith Carter Revocable Trust of 1996 (see Exhibit No.6). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission, on November 3, 2008, of the County's Notice of Final Local Action² (Exhibit No. 4). The appellant filed the appeal on November 17, 2008.

I. MOTION, STAFF RECOMMENDATION, & RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

² Pursuant to 14 CCR §13110, the appeal period commenced on November 4, 2008, the next working day following the receipt of the County's *Notice of Final Local Action* on November 3, 2008, and ran for the 10-working day period (excluding weekends and holidays) from November 4, 2008 through November 18, 2008.

MOTION:

*I move that the Commission determine that Appeal No. A-1-MEN-08-048 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 ON NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-1-HUM-08-048 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS & DECLARATIONS

The Commission hereby finds and declares the following:

A. APPELLANT'S CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to conditionally approve the development proposed by Don and Jan Plenty. The project as approved by the County involves the placement of a 230-foot-long, 6-foot-high, redwood fence along the property line of a blufftop lot, west of Ocean Drive, approximately 200 feet west of the intersection of Highway One and Ocean Drive, at 39010 Ocean Drive, in the unincorporated community of Gualala, Mendocino County.

The appellants raise three basic contentions in their appeal. First, the appeal raises contentions alleging inconsistency of the approved project with the certified Mendocino County LCP provisions that regulate development to protect coastal views, which in the appellants' opinion includes both public and private views. Second, the appeal also raises contentions alleging inconsistencies of the approved project with the Coastal Act provisions that regulate development to protect coastal views. Finally, the appeal raises a contention that in approving the project, the County took away the appellant's property rights to have a view through the applicants parcel in violation of Sections 30005.5 and

30010 of the Coastal Act. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 6.

Before describing the basis for these three main contentions, the appeal notes that the applicant's parcel was an old railroad easement that is oddly shaped with a larger area to its north, where the applicants' house is located, and a narrower 25-foot-wide strip that extends approximately 300 feet to the south along the edge of the blufftop. The appeal indicates that the approved fence would not be placed near the applicants' existing residence, but rather along the southern portion of the parcel in locations that are only along the western boundary of the appellant's parcels. The appeal states that "the fence is being built, despite Mr. Plenty's assertion to the contrary, for the sole purpose of blocking the Carters' view of the ocean, as a result of a dispute between these families about who has what right to a portion of Lot 9. Otherwise, a wire fence which would not obstruct views would have been chosen. This round of the dispute was precipitated by an incident during which the Carters' son, Joe, trimmed a large bush on Lot 9 without the Plenty's permission."

The specific contentions of the appeal are as follows:

1. Alleged Inconsistencies of Project as Approved with Certified LCP Visual Protection Policies.

a. Adverse Effects on Private View of Appellants. The appellants contend that the proposed fence will obstruct views from three parcels that they own adjacent to the applicants' parcel and that the visual resource protection policies of the certified Mendocino County LCP protect not just public views, but private views. The appellants cite Gualala Town Plan Goal G2.1-1, Goal G2.2-3 and G3.1-3 which are part of the certified Land Use Plan (LUP) for Mendocino County as evidence that the LCP protects both private and public views. The portions of the first two goals cited by the appellants are as follows:

Gualala Town Plan Goal G2.1-1: *"To preserve and enhance the rural, coastal character of the town of Gualala, to better integrate future development with the natural surroundings, to protect and restore coastal views, and to improve public access to the coast and to improve public access to the coast."*

Gualala Town Plan Goal G2.2-3: *"Preserve and protect land used for crop and timber production, and environmental resources, including wetlands, steep gulches, stream corridors and coastal views."*

The appeal indicates that Gualala Town Plan Goal G3.1-3 basically restates Goal G2.2-3 and characterizes the policy as making clear that preserving coastal views is an important consideration for Gualala when considering new development proposals.

The appeal states that nowhere in these and other provisions of the LCP is it stated that the LCP policies only protect public views. The appellant asserts that view corridors and height limitations are usually required in all residential subdivisions in the coastal zone and that these requirements are strong evidences that the LCP protects private views. By not taking into account the adverse effects of the development on the private views from the appellants' three properties, the appellants assert that the project as approved by the County is inconsistent with the certified LCP.

b. Adverse Effects on Public Views. The Appellants assert that the fence as approved by the County will adversely affect certain public views. These views include views through the appellants' vacant lot along Ocean Boulevard, a public road maintained by the County. In addition, the appellants note that the fence would also be visible from the Sonoma County Regional Park, approximately 300 feet directly south across the Gualala River estuary from the Carter's backyard and the proposed fence. The appeal alleges that the County determined that the approved fence would not adversely affect views from the Regional Park because the project was not opposed by the administrator of the Regional Park and the lack of such opposition from the administrator is an insufficient basis for concluding the project as approved would not affect views from the park.

2. Alleged Inconsistencies of Project as Approved with Coastal Act Visual Protection Policies.

a. Adverse Effects on Private View of Appellants. The appellants contend that the visual resource protection policies of the Coastal Act also protect not just public views, but private views. The appellants cite Sections 30001, 30010, and 30251 of the Coastal Act as evidence that the Coastal Act protects both private and public views. These sections are as follows:

Section 30001: ***Legislative findings and declarations; ecological balance***

The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

Section 30010: *Compensation for taking of private property; legislative declaration*
The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Section 30251: *The scenic and visual qualities of 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 such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The appeal states that the clear intent of the Legislature in enacting the Coastal Act is to protect the coast, and its views, for all, public and private persons and that nowhere does the Coastal Act limit its protection of coastal resources to being for the benefit of only the public, disregarding protections for the benefit of private persons. The appeal contends that to limit the Act's protections to the protection of only public views would be incompatible with the clear intent or PRC Section 30010 to protect private property. The appeal indicates that the fence as approved by the County adversely affects the private views from the appellants' three properties and is thus in direct violation of the Coastal Act.

b. Adverse Effects on Public Views. As discussed above, the Appellants assert that the fence as approved by the County will adversely affect certain public views as well and is therefore inconsistent with the visual resource protection policies of the Coastal Act and not just the visual resource protection policies of the certified LCP.

3. Alleged Inconsistencies of Project as Approved with Provisions of Coastal Act Sections 30005.5 and 30010 Protecting Private Property Rights.

The appeal contends that in approving the project, the County took away the appellant's property rights to have a view through the applicants parcel in violation of Sections 30005.5 and 30010 of the Coastal Act. These sections state as follows:

Section 30005.5: Local governmental powers; construction

Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the Constitution and laws of this state or that is not specifically delegated pursuant to Section 30519.

Section 30010: Compensation for taking of private property; legislative declaration

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

The appeal asserts that by approving the fence with the fence's adverse effects on the appellants' private views, the County took away the appellants' view rights contrary to the directives of Section 30005.5 that nothing in the Coastal Act shall be construed to authorize a local government or the Commission to exercise any power that it does not already have. The appeal asserts that the appellants have a recognized right to a view and that the County's approval of the fence is an improper taking of private property inconsistent with Section 30010 of the Coastal Act as the fence takes away the appellants private view rights in a manner that does not further a legitimate purpose.

B. LOCAL GOVERNMENT ACTION

On May 22, 2008, the Mendocino County Coastal Permit Administrator opened the local hearing on Coastal Development Permit No. 68-2007 for the placement of an approximately 230-foot-long property line fence on the subject property. The hearing was continued by the Coastal Permit Administrator to allow County staff to provide further analysis and clarification of the project. On July 24, 2008, the Coastal Permit Administrator approved the coastal development permit with two special conditions of approval. Special Condition No. 1 requires that in the event that erosion undermines the subject fence, the owner shall remove the fence before it falls on the beach and prohibits the construction of a bluff retaining wall to protect the fence from erosion. Special Condition No. 2 requires the applicants to submit to the County a sample natural stain color for the fence that conforms with the grey earth tones of the natural surroundings. The condition further requires the color to be maintained over the life of the project unless a change is approved by the Coastal Permit Administrator.

The decision of the Coastal Permit Administrator was appealed to the Mendocino County Board of Supervisors by the same appellants who subsequently filed the appeal to the

Coastal Commission. At its hearing on the appeal on October 28, 2008, the Board of Supervisors denied the appeal and upheld the approval of the Coastal Permit Administrator.

The County then issued a Notice of Final Action, which was received by Commission staff on November 3, 2008. The project was appealed to the Commission in a timely manner by the appellants on November 17, 2008, within 10 working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The project as approved by the County involves the placement of a 230-foot-long, 6-foot-high, redwood stake fence along the property line of a blufftop lot, west of Ocean Drive, approximately 200 feet west of the intersection of Highway One and Ocean Drive, at 39010 Ocean Drive, in the unincorporated community of Gualala, Mendocino County (see Exhibit Nos.1-3).

The subject parcel is a blufftop parcel that fronts on to the mouth of the Gualala River, across from a sand spit that is part of Gualala Point Regional Park. The steep, near vertical bluff faces of the site rise approximately 75 feet high above the river mouth. The property is located two blocks west of Highway One along the southwestern side of a residential neighborhood zoned as rural residential. The parcel was once part of an old lumber railroad right-of-way that was used in the late 1800s and early 1900's to transport lumber from a mill located along the river about a mile upstream to the south to a cable ship loading site along the ocean bluff to the north. As a result, the several acre parcel is oddly shaped with a larger area to its north, where the applicants' house is located, and a narrower 25-foot-wide strip that extends approximately 300 feet to the south along the edge of the blufftop.

The southern portion of the lot is largely undeveloped except for segments of existing redwood stake fences along the northeast parcel line. The vegetation along this portion of the subject parcel consists of grasses, shrubs, and several trees. No known environmentally sensitive habitat is known to exist on the parcel. This subject parcel separates six residential parcels from the bluff edge, including three owned by the appellants. The project site is not located within a designated "highly scenic area."

The approved fence is a six-foot tall redwood split grape-stake fence with the stakes spaced with gaps at a density of 3 stakes per lineal feet (see Exhibit No.4). The fence style is typical of others in the area that are left unpainted and allowed to weather to a weathered earth tone gray. In approving the project the Coastal Permit Administrator imposed a condition requiring that the fence be stained with a stain color that conforms with the grey earth tones of the natural surroundings. The condition further requires the color to be maintained over the life of the project. A sample of the fence style is shown in Exhibit No. 7, Sheet 47 of 47.

The 230-foot-long fence would be built along the southern-most portions of the inland side of the subject parcel, adjacent to three lots owned by the appellants, including parcels 145-192-04, 05, and 06. The northern-most of these three parcels is vacant and the other two parcels are developed with single-family homes. The fence would be built to fill in gaps in the existing fencing along the northeastern property line. The fence would be built in two phases with the first phase consisting of an approximately 155-foot long segment of fencing that would be built along the northern two of the adjoining parcels owned by the appellants (see Exhibit No.3). The second phase would consist of the installation of approximately 75 feet of fencing at the southern end of the northeastern property line along a portion of the boundary separating the applicant's and the southern-most of the appellants' parcels. Portions of the approved fencing have already been constructed without benefit of a valid coastal development permit. In some of these locations, the fencing is complete and in others only the fence posts have been installed.

D. 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.

Some of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP and/or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County is inconsistent with LCP provisions regarding the protection of visual resources. The Commission finds that the other contentions raised in the appeal are not based on valid grounds for appeal.

1. Appellant's Contentions That Are Not Valid Grounds for Appeal

The appellant raises two contentions that are not valid grounds for appeal. As discussed below, the contentions that (a) the fence as approved by the County will adversely affect certain private and public views in a manner inconsistent with the visual resource protection policies of the Coastal Act and (b) the County took away the appellant's property rights to have a view through the applicants parcel in violation of Sections 30005.5 and 30010 of the Coastal Act do not allege the local approval's inconsistency with policies and standards of the certified LCP or the public access policies of the

Coastal Act and thus, are not potentially valid grounds for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

a. Alleged Inconsistencies of Project as Approved with Coastal Act Visual Protection Policies

The Appellants assert that the fence as approved by the County will adversely affect certain private and public views and is therefore inconsistent with the visual resource protection policies of the Coastal Act. As this contention does not allege an inconsistency of the local approval with the certified LCP or the public access policies of the Coastal Act, the Commission finds that this contention is not a valid ground for appeal. Even if the alleged inconsistencies with Coastal Act policies on visual resource protection were valid grounds for an appeal, the contentions raised would not be substantial for reasons similar to those discussed below in the section regarding the contention concerning alleged inconsistencies with certified LCP policies on visual resource protection. Rather than assert issues relating to the protection of public views as a coastal resource, the appeal focuses on a dispute between neighbors about the effect of the approved development on private views. Accordingly, even if the contention based on Coastal Act visual policies was valid, the contentions raised are not substantial as (a) the alleged adverse effects on coastal visual resources of the County's decision to approve the fence are not significant, (b) the extent and scope of the development as approved or denied by the local government is relatively small, (c) the precedential value of the local government's decision for future interpretations of its LCP is not substantial, and (d) the contention raises only local issues rather than those of regional or statewide significance.

b. Alleged Inconsistencies of Project as Approved with Provisions of Coastal Act Sections 30005.5 and 30010 Protecting Private Property Rights.

The Appellants assert that the County's approval of the project was in violation of Sections 30005.5 and 30010 of the Coastal Act. The appeal asserts that by approving the fence with the fence's adverse effects on the appellants' private views, the County took away the appellants' view rights contrary to the directives of Section 30005.5 that nothing in the Coastal Act shall be construed to authorize a local government or the Commission to exercise any power that it does not already have. The appeal asserts that the appellants have a recognized right to a view and that the County's approval of the fence is an improper taking of private property inconsistent with Section 30010 of the Coastal Act as the fence takes away the appellants private view rights in a manner that does not further a legitimate purpose.

As this contention does not allege an inconsistency of the local approval with the certified LCP or the public access policies of the Coastal Act, the Commission finds that this contention is not a valid ground for appeal. Even if alleged inconsistencies with the cited sections of the Coastal Act were valid grounds for appeal, the contentions raised

regarding inconsistencies with Sections 30005.5 and 300010 of the Coastal Act would not be substantial for several reasons. First, the local record contains no evidence that the appellants hold a view easement or other documented property rights to a view that extends across the applicants' property. Second, the approved fence will not block all view of the ocean from the appellants' three parcels that lie adjacent to the proposed fence for several reasons. Although the fence clearly obstructs some of the view of the ocean from the applicants' two adjacent houses, based on Commission staff visit to the site and observations of the already constructed portions of the fence, the approved fence appears to be low enough and placed at a lower elevation relative to the houses to still afford some blue-water views of the ocean and horizon views over the top of the fence. In addition, the redwood stake style fence is also not completely solid, allowing filtered views through the gaps between the vertical split grape stakes that comprise the siding of the fence. Furthermore, any future house built on the applicant's vacant parcel could be built tall enough to afford completely unobstructed views over the top of the fence. Third, the County's approval of the fence will not deprive the appellants of the use of their adjoining property for residential purposes. Finally, the contentions about how the applicant's fence would interfere with alleged property rights of the appellant involve a private dispute between the two parties that is not the responsibility of the County or the Commission to resolve.

2. Appellant's Contentions That Are Valid Grounds For Appeal

Several contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County is inconsistent with LCP provisions regarding the protection of visual resources.

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:

- 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;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- 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.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to all of the allegations below, the appeal raises **no substantial issue** with regard to the approved project's conformance with the certified Mendocino County LCP.

2. Allegations Raising No Substantial Issue:

- a. Alleged Inconsistencies of Project as Approved with Certified LCP Visual Protection Policies.
 - i. Adverse Effects on Private View of Appellants. The appellants contend that the proposed fence will obstruct views from three parcels that they own adjacent to the applicants' parcel and that the visual resource protection policies of the certified Mendocino County LCP protect not just public views, but private views. The appellants cite Gualala Town Plan Goal G2.1-1, Goal G2.2-3 and G3.1-3 which are part of the certified Land Use Plan (LUP) for Mendocino County as evidence that the LCP protects both private and public views. The appeal indicates that Gualala Town Plan Goal G3.1-3 basically restates Goal G2.2-3 and characterizes the policy as making clear that preserving coastal views is an important consideration for Gualala when considering new development proposals.

The appeal states that nowhere in these and other provisions of the LCP is it stated that the LCP policies only protect public views. The appellant asserts that view corridors and height limitations are usually required in all residential subdivisions in the coastal zone and that these requirements are strong evidences that the LCP protects private views. By

not taking into account the adverse effects of the development on the private views from the appellants' three properties, the appellants assert that the project as approved by the County is inconsistent with the certified LCP.

ii. Adverse Effects on Public Views. The Appellants assert that the fence as approved by the County will adversely affect certain public views. These views include views through the appellants' vacant lot along Ocean Boulevard, a public road maintained by the County. In addition, the appellants note that the fence would also be visible from the Sonoma County Regional Park, approximately 300 feet directly south across the Gualala River estuary from the Carter's backyard and the proposed fence. The appeal alleges that the County determined that the approved fence would not adversely affect views from the Regional Park because the project was not opposed by the administrator of the Regional Park and the lack of such opposition from the administrator is an insufficient basis for concluding the project as approved would not affect views from the park.

LCP Policies and Standards

Gualala Town Plan Goal G2.1-1 states: *"To preserve and enhance the rural, coastal character of the town of Gualala, to better integrate future development with the natural surroundings, to protect and restore coastal views, and to improve public access to the coast and to improve public access to the coast."*

Gualala Town Plan Goal G2.2-3 states: *"Preserve and protect land used for crop and timber production, and environmental resources, including wetlands, steep gulches, stream corridors and coastal views."*

Gualala Town Plan Goal G3.1-3 states: *"New development shall be located in areas where it will not conflict with the goal of preserving and protecting land used for timber and crop production outside of the Residential Reserve area, and environmental resources, including wetlands, steep gulches, stream corridors and coastal views."*

LUP Policy 3.5-1 states in applicable 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. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.*

Section 20.504.020 of the Coastal Zoning Code states in applicable part: *(D) 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.*

Discussion

The above-cited visual resource protection policies of the certified LCP require among other things, that permitted development be sited and designed to protect views to and along the coast and to be visually compatible with the character of its setting. In areas unlike the project vicinity that are designated as highly scenic, development must also be subordinate to the character of its setting.

The appellants contend that the visual resource protection policies of the certified LCP extend protection to private views as opposed to just views from public viewpoints. Both the Coastal Commission and Mendocino County have interpreted the visual resource protection policies of the Coastal Act and the LCP certified to carry out the Coastal Act in Mendocino County as protecting public views and not private views. This interpretation is consistent with Section 30251 of the Coastal Act, the principal visual protection policy of Chapter 3 of the Coastal Act which is the standard of review for development projects within the Commission's retained jurisdiction and which is also mirrored in policy language of the certified LCP. Section 30251 of the Coastal Act states:

The scenic and visual qualities of 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 such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting (emphasis added).

Section 30251 refers to the public importance of scenic and visual qualities of coastal areas, indicating that public views are to be protected. Nowhere does Section 30251 or any other section of the Coastal Act refer to the importance of protecting private views.

The policy language of Section 30251 of the Coastal Act is mirrored in LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.020, which as policies and standards of the certified LCP, are part of the standard of review for development proposed within the County's certified area. Both of these policies begin similarly to Section 30251 of the Coastal Act by stating "*The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance.*" This language differs from the parallel provision of Section 30251 only in that it includes a specific reference to the scenic and visual qualities of Mendocino County coastal areas as opposed to coastal areas in general. By referring to the public importance of scenic and visual qualities of coastal areas, the policies indicate that public views are to be protected. Nowhere do these provisions of the LCP or the other LUP policies cited by the applicant, including Gualala Town Plan Goal G2.1-1, Goal G2.2-3 and G3.1-3 refer specifically to the importance of protecting private views. Therefore, the Commission finds that the contentions of the appeal that the project as approved is inconsistent with the visual resource protection policies of the LCP because the project adversely affects the appellants private views do not raise a substantial issue.

The appellants contend that even if only public views are considered, the project as approved is inconsistent with the visual resource protection policies of the LCP. The appellant indicates that the project as approved will adversely affect views from two public vantage points in a manner inconsistent with the visual resource protection policies of the LCP, including Ocean Drive and Gualala Point Regional Park across the Gualala River estuary from the subject property. Subsequent to the appeal being filed, Commission staff visited the project site and its vicinity to assess the impact to public views from these and other public vantage points. The effects of the project as approved on each of these public vantage points is discussed below.

Ocean Drive is the first street inland from the subject property and is the street that provides access to both the applicants' and the appellants' parcels. The street is public and affords a view of the ocean across a portion of the vacant residential parcel owned by the appellants. The view from this vantage point is shown in Exhibit 8 (sheet 1 of 5), which is a Commission staff photograph. A portion of the approved fence that has already been constructed extends across the rear, or ocean side of the vacant parcel and is labeled in the exhibit. As can be seen in Exhibit 8 (sheet 1 of 5), the redwood stake fence only affects a narrow band of view of the ocean relative to the total view of the ocean and horizon afforded from the street. This narrow band of affected view of the ocean is already compromised to some degree by existing vegetation. The exhibit shows how even within this narrow band of view the redwood stake fence does not block all view from Ocean Drive as one can still see the ocean through the gaps between the redwood stakes. Although the approved fence is within view of Ocean Drive and obstructs portions of a narrow band of the total view afforded from this vantage point, the Commission finds that the effect on views to and along the ocean from this vantage point is not substantial. In addition, the redwood stake style fence is a common fence style used in the area and along the Mendocino coast in general. An example of another

redwood stake fence that exists on property to the south of the subject property is shown in Exhibit 7, Sheet 47 of 47. As conditioned by the County, the fence must be stained in a natural weathered grey color and maintained in that color over the life of the project unless an amendment is obtained. Many structures along this section of the coast utilize natural wood facades and the weathered wood color blends with forested landscape of the area. As the fence style is common to the area and as conditioned will be of a color that blends with surrounding structures and landscaping, the Commission finds that the approved fence does not raise a substantial issue of compatibility with the character of its setting.

Gualala Point Regional Park lies approximately 300 feet south and west across the Gualala River estuary from the subject property. The Sonoma County park occupies the point of land that extends approximately one mile north from Sea Ranch to the tip of the sand spit that partially defines the mouth of the Gualala River. Views from various vantage points within the park looking towards the subject property are shown in Exhibit 8 in sheets 3, 4, and 5, which are Commission staff photographs. Sheet 3 of 5 is a view looking toward the site near the park entry at the south end of the park, furthest away from the project site. Although various buildings within the Town of Gualala are visible in the photograph atop the bluff, the project site is not distinguishable to the naked eye from this vantage point. Sheet 4 of 5 is a view looking toward the site from a point about halfway along the sand spit. The location of the approved fence is marked in the photograph and portions of the completed fence are barely visible along the bluff top and are set against a backdrop of existing residential buildings and tree-covered coastal hills. Sheet 5 of 5 is a view looking across the river toward the project site from a point approximately 100 yards south of the tip of the sand spit. The location of the approved fence atop the bluff is marked in the photograph with portions of the completed fence shown. The photographs demonstrate that the approved fence will not block views to and along the coast from Gualala Point Regional Park. As the natural wood colored fence is set against a backdrop of other structures and the wooded landscape, the fence does not stand out prominently in the photographs. Therefore, the Commission finds that the effect on views to and along the ocean from this vantage point is not substantial and the approved fence does not raise a substantial issue of compatibility with the character of its setting as viewed from Gualala Point Regional Park.

As the effects of the approved development on public views are limited to a minor intrusion into a larger view of the ocean from a local residential street (Ocean Drive) and the appearance of the new natural wood-colored fence against an existing backdrop of other structures and a wooded landscape as viewed from Gualala Point Park, the significance of the coastal resources affected by the decision is low. In addition, the extent and scope of the development as approved by the County is minor as it consists solely of a split rail redwood fence within an existing developed residential neighborhood. Furthermore, the precedential value of the local government's decision for future interpretations of its LCP is low as other fences of the same style and scale

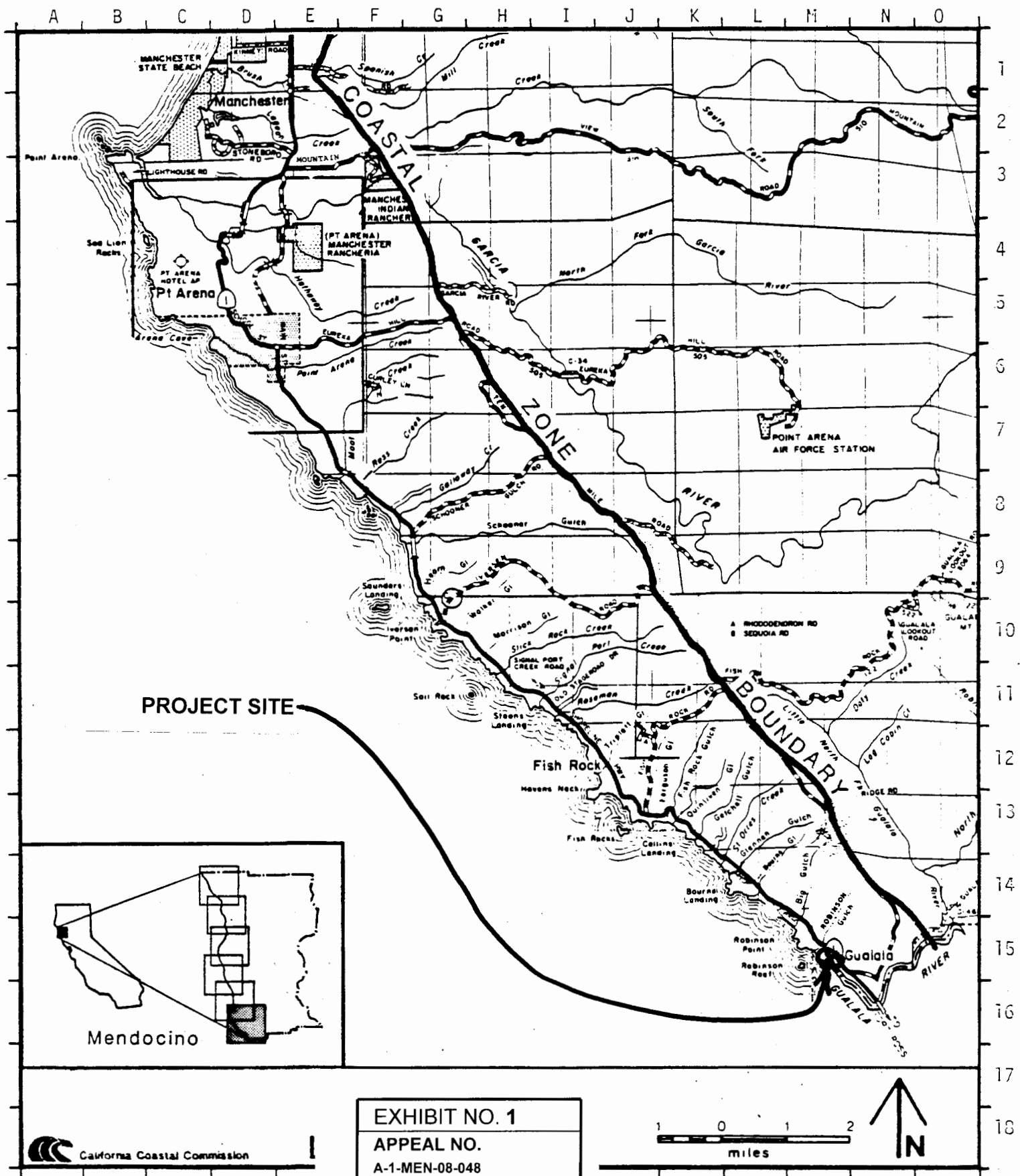
have been approved within the area and the County's interpretation of the visual resource protection policies of the certified LCP as not protecting private views is consistent with the interpretation of those policies by both the County and the Coastal Commission. Finally, the appeal involves primarily a dispute between neighbors in the community of Gualala over the rights to block private views by building a fence and as such raises only local issues rather than issue of regional or statewide significance. Therefore, the Commission finds that the contentions raised by the appeal that the approved fence would adversely affect views do not raise a substantial issue of conformance of the approved project with applicable visual resource protection provisions of the LCP.

3. Conclusion

The Commission finds that for the reasons stated above the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP and the public access policies of the Coastal Act.

EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Site Plan and Assessor's Parcel Map
4. Fence Elevation
5. Photo of Sample of Fence
6. Appeal
7. Notice of Final Local Action
8. Staff Pictures of Site
9. Applicant's Correspondence



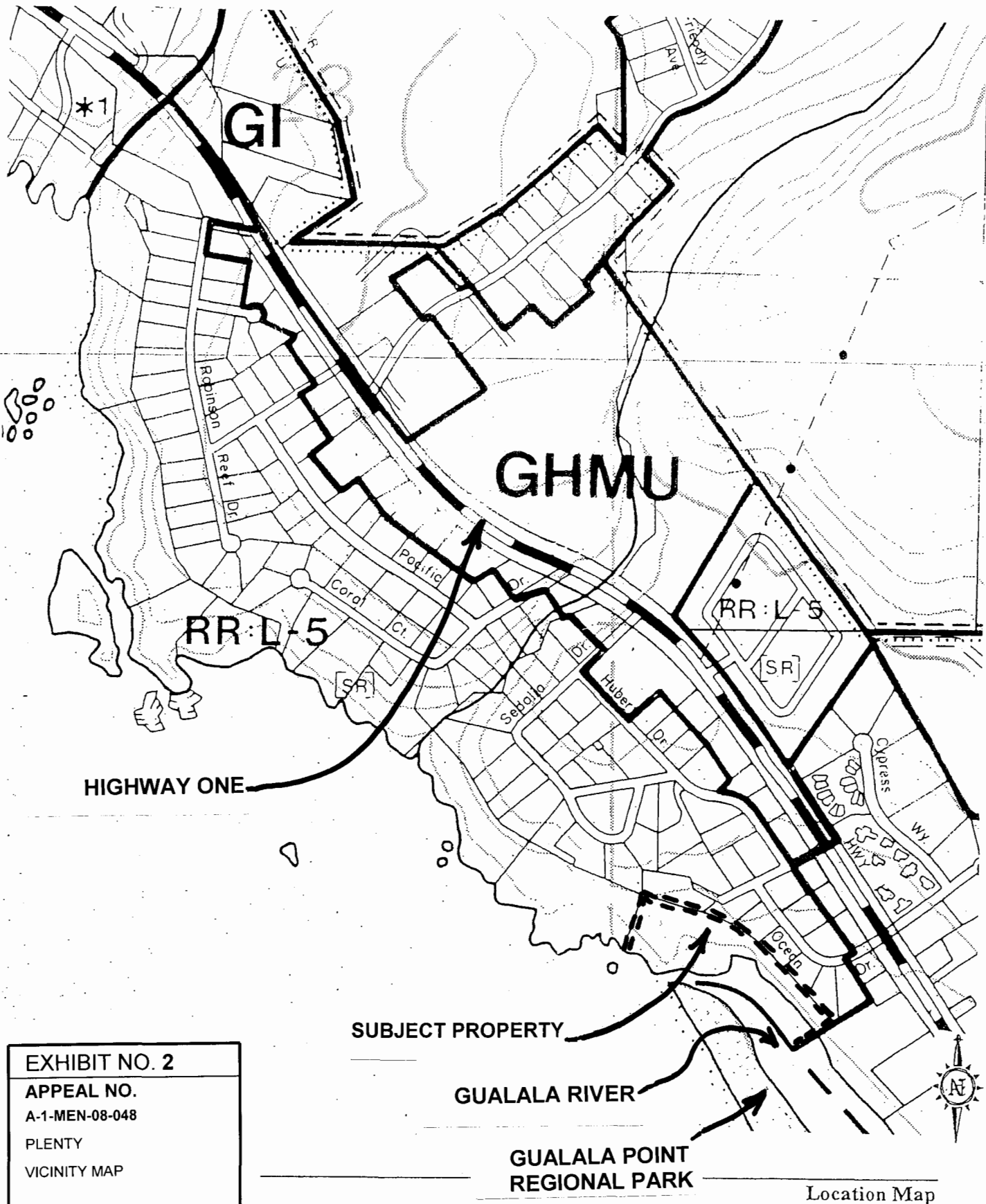


EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-08-048

PLENTY

VICINITY MAP

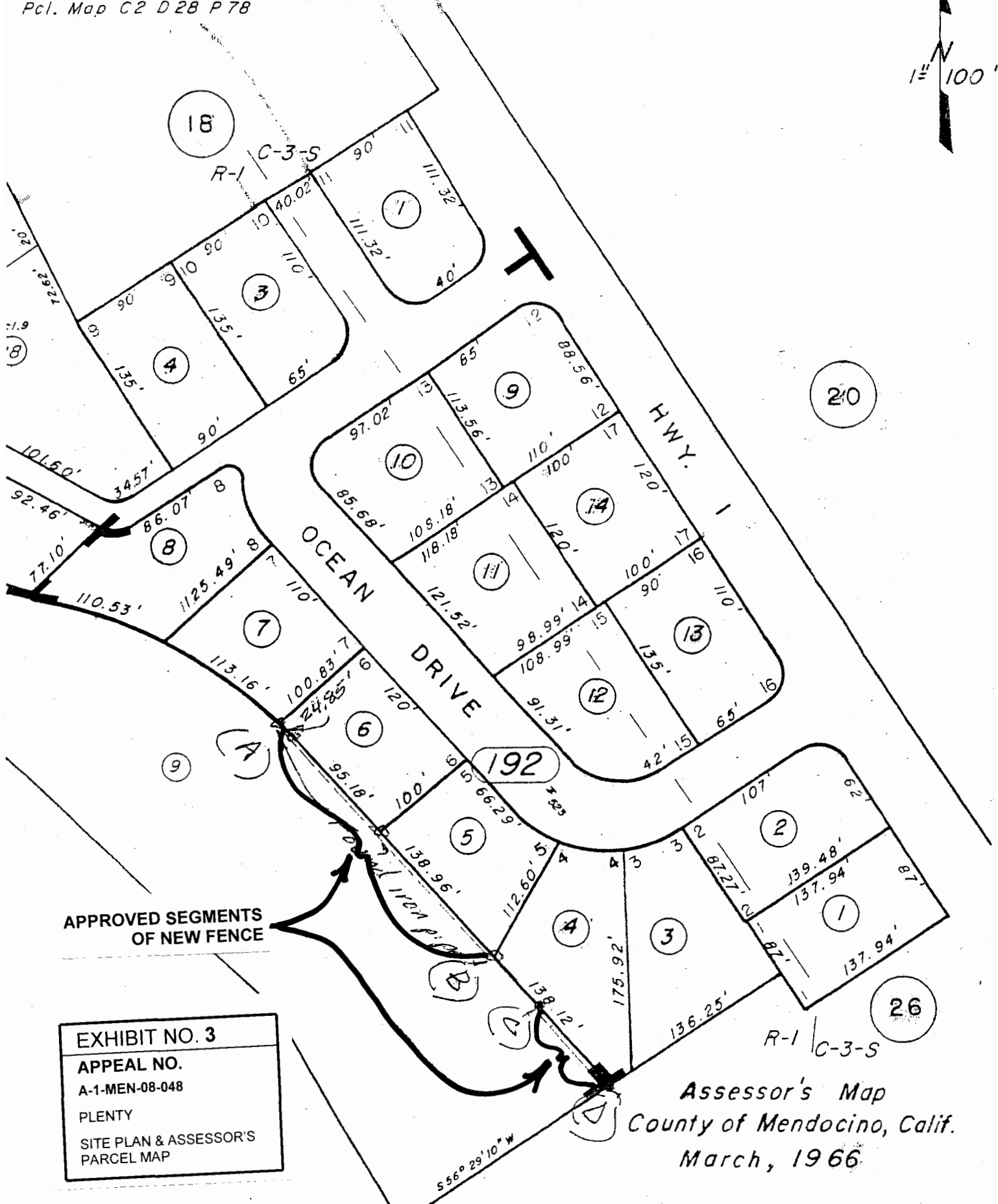
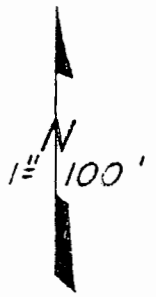
SUBJECT PROPERTY

GUALALA RIVER

GUALALA POINT
REGIONAL PARK

Location Map

Pcl. Map C2 D28 P78



FENCE CONSTRUCTION DETAIL

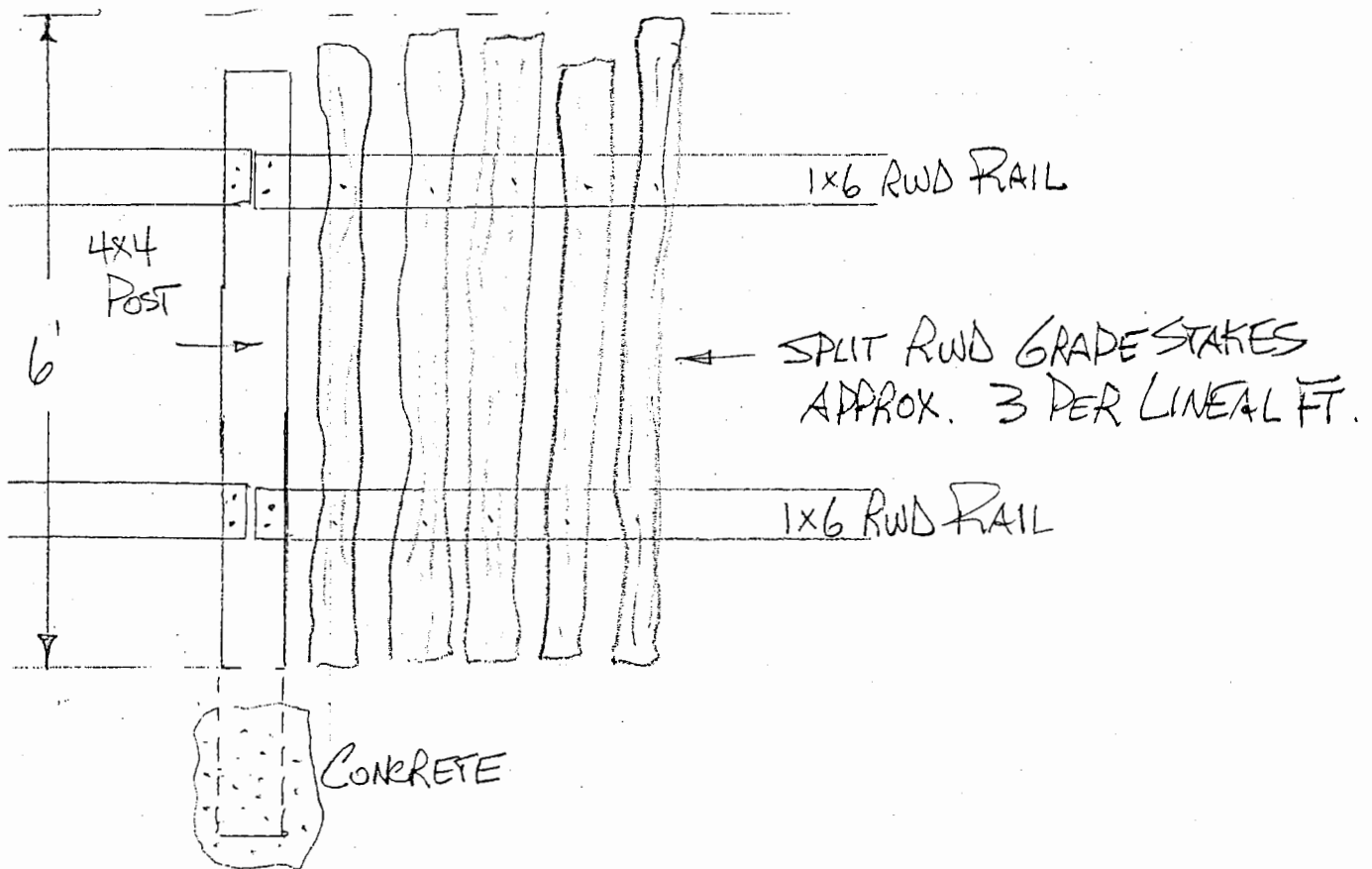


EXHIBIT NO. 4

APPEAL NO.

A-1-MEN-08-048

PLENTY

FENCE ELEVATION



EXHIBIT NO. 5

APPEAL NO.

A-1-MEN-08-048

PLENTY

PHOTO OF SAMPLE OF
FENCE

Example photo of adjacent fencing

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: James and Judith Carter, trustees of the James and Judy Carter Revocable Trust of 1996

Mailing Address: P.O. Box 800

City: West Sacramento

Zip Code: 95691

Phone: (707) 884-4644

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

CDP #68-07; Approval of a six foot high 230 foot fence on a blufftop parcel.

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

39010 Ocean Drive, Gualala (Mendocino County); AP #145-191-09

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

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

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CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-08-048

PLENTY

APPEAL (1 of 10)

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-08-048

DATE FILED: 11/17/08

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 28, 2008

7. Local government's file number (if any): CDP #68-2007

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:

Don and Jan Plenty
P.O. Box 328
Gualala, California 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) Don and Jan Plenty
P.O. Box 328
Gualala, California 95445

(2) Judith Carter
P.O. Box 800
West Sacramento, California 95691

(3) Jared Carter
Carter & Momsen, LLP
444 N. State Street
P.O. Box 1709
Ukiah, California 95482

(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 attached Section 4.

Section 4 Reasons Supporting This Appeal:

Summary:

The approval of this project by Mendocino County ("County") is appealable under PRC §30603(a)(1) because the project is seaward of the first road. The approval should be reversed by this commission because it violates requirements in the certified Local Coastal Program, PRC §30603(b)(1). The County's approval of this project violates the LCP because it violates both the specific terms of the LCP (the Gualala Town Plan) and the Coastal Act, which are considered a part of that plan.

1. Approval violates the Gualala Town Plan for the following reasons:
 - a. Gualala's goal of protecting and restoring all coastal views was ignored and violated by the approval of this permit, directly contrary to Gualala Town Plan Goal G2.1-1.
 - b. One of the guiding principals of the Gualala Town Plan, that all coastal views, public and private, be protected, was also ignored and violated by the approval of this project, directly contrary to Gualala Town Plan Goal G2.2-3.
 - c. Gualala's policy that the preservation of all such coastal views be an important consideration when considering any development, was also clearly ignored with the approval of this permit and is therefore directly contrary to Gualala Town Plan Goal 3.1-3.
2. Approval violates the Coastal Act for the following reasons:
 - a. The scenic and visual qualities of coastal areas were not considered in, nor protected by, the approval of this permit, as is required by PRC §30001.
 - b. Approval of this permit violated the basic goal of protecting the overall quality of the coastal zone and its natural resources, as detailed in PRC §30251.
 - c. The overall goal of the Coastal Act, in resolving any conflicting policies, to endorse the broader policy to protect coastal resources was ignored by the approval of this permit, in direct violation of PRC §30007.5.
 - d. Mendocino County, in violation of the Coastal Act (PRC §30010), took away a recognized property right of the Carters by approval of a project that accomplished no substantial governmental purpose.

Discussion:

A. Facts.

On October 28, 2008, the Mendocino County Board of Supervisors ("County") approved Coastal Development Permit #68-07, permitting the erection of approximately 230 feet of six foot tall redwood fencing with a special condition that it be painted a natural color. The proposed fence is to be built on property owned by the applicants, Don and Jan Plenty, on AP # 145-191-09 ("Lot 9"). Lot 9 is an old railroad easement and is oddly shaped. Lot 9 has a larger area to its north, where the Plenty's have their residence, and it narrows into a strip approximately twenty-five feet wide and 300 feet long that runs south along the western edge of the bluff top, between several properties, including those that belong to the appellants, Judith and James Carter, and the ocean. The Carter's vacation residence is at 39060 Ocean Drive (AP # 145-192-04), they own a rental property at 39080 Ocean Drive (AP # 145-192-05), and currently maintain their third lot as vacant (AP # 145-192-06).

The fence that the Plentys plan to construct would be built along the western boundary of only the Carter's parcels, a portion of the eastern edge of Lot 9¹. The Plentys do not intend to place any portion of this new fence within 300 feet of their own residence or between any part of their parcel and the ocean. The Carters have already placed a three-foot tall fence in this exact location, between their parcels that have residences on them and Lot 9. The fence is being built, despite Mr. Plenty's assertion to the contrary, for the sole purpose of blocking the Carters' view of the ocean, as a result of a dispute between these families about who has what right to a portion of Lot 9. Otherwise, a wire fence which would not obstruct views would have been chosen. This round of the dispute was precipitated by an incident during which the Carters' son, Joe, trimmed a large bush on Lot 9 without the Plentys' permission.

In approving this fence, County completely ignored numerous provisions of the Gualala Town Plan, the Coastal Act, and the fact that this fence will block the public's view of the ocean through the Carter's vacant lot by any person traveling down Ocean Boulevard. This fence would also be visible from the Sonoma County Regional Park directly across the Gualala River estuary from the Carter's backyard and the proposed fence.

County's approval of this fence is in direct and clear violation of the Gualala Town Plan, the Coastal Act, and would violate the Carters' property right to an ocean view while advancing no legitimate governmental interest.

B. Approval of the Plentys Fence Violates the Gualala Town Plan and The Coastal Act.

¹ The Carters believe that they have a prescriptive right to the portion of Lot 9 in front of the parcel on which they reside based upon the manner and extent of their usage of it. This contention is not at issue in this appeal, but it does provide background to the incident precipitating the Plenty's proposed construction of this fence.

The overarching goal of the Gualala Town Plan is Goal G2.1-1: "To preserve and enhance the rural, coastal character of the town of Gualala, to better integrate future development with the natural surroundings, *to protect and restore coastal views*, and to improve public access to the coast." [Emphasis added.] County believes that the Town Plan and the Coastal Act protect only public views; but nowhere is such a position stated, and such an interpretation makes no sense, since a primary purpose of the Coastal Act is to protect private property rights. (See, e.g., PRC §30010.) It is important to Gualala, and its residents, that coastal views for everyone, the public and private residents, are protected and restored. The fact that height limitations and view corridors are usually required in all residential subdivisions in the coastal zone is strong evidence of the truth of this fundamental point.

The fence that the Plentys intend to build has no purpose but to eliminate an otherwise unobstructed view of the ocean from any one of the Carters' three coastal properties.

Goal G2.1-1 is not the only Goal in the Gualala Town Plan that demonstrates the clear intent of Gualala to protect coastal views for all of its citizens. Goal G2.2-3 lists the three guiding principles that have been established to determine appropriate locations for future residential development. The second guiding principle is: "Preserve and protect land used for crop and timber production, and environmental resources, including wetlands, steep gulches, stream corridors and coastal views." Goal 3.1-3 is located in Chapter 3 which deals with Policies and basically restates Goal G2.2-3, making clear that preserving coastal views is an important consideration for Gualala when considering new development proposals.

In a Memorandum of July 8, 2008, from Neal Leitner, Project Coordinator, to the Coastal Permit Administrator, Mr. Leitner stated that Gualala Goal 2.7-2 does not apply to this situation because that goal only applies to views in the commercial district. Mr. Leitner then goes on to state that, "[nonetheless], as stated the project would not be out of compliance with several provisions of visual resource protection policies provided by the LCP." In making this comment, Mr. Leitner fails to state how many goals the proposed fence *would* be out of compliance with. Though the proposed development does not need to be a direct match with the entirety of the Local Coastal Plan, it must be compatible with the objectives, policies and general land uses specified in it. See Sequoiah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704 at 717-718 ("to be consistent, the subdivision map must be compatible with the objectives, policies, general land uses, and programs specified in the applicable plan."); Greenebaum v. City of Los Angeles (1984) 153 Cal.App.3d 391 at 406-407 ("A general plan or policy...serves to provide a standing consistent answer to recurring questions and to act as a guide for specific plans or programs").

In approving construction of the Plentys fence, the Coastal Administrator has acted directly contrary to the Coastal Act as well. Public Resources Code ("PRC") §30001 explains

the value of the coastal zone and states, in part, that the Legislature finds and declares:

“That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to *all the people*...That the permanent protection of the state’s natural and *scenic resources* is a paramount concern to *present and future residents* of the state and nation...to protect *public and private property*, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. That...future developments that are carefully planned and developed consistent with the policies of this division, are essential.” [Emphasis added.]

The clear intent of the Legislature in enacting the Coastal Act is to protect the coast, and its views, for all, public and private, persons. Nowhere does the Coastal Act limit its protections of coastal resources to being for the benefit of only the public, disregarding protections for the benefit of private persons. Section §30010 implies directly to the contrary. To limit the Act’s protections to the protection of only “public” views would be incompatible with the clear intent of PRC §30010 to protect “private property.” Moreover, such a distinction would be difficult to define and apply: i.e., would ocean views from small, publicly owned businesses or pieces of property be protected while ocean views from large, privately owned resorts would not, or would it depend upon quantity and quality (paying or non-paying) or the views?

Public Resources Code §30251 specifically deals with development along the coast and its impact on views. §30251 states, in part: “The scenic and visual qualities of 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.”

Nowhere in the Coastal Act is the preservation of coastal views limited to views of the ocean by the public or from publicly owned property. Instead, it is the clear intent of the Legislature that views and coastal resources be protected for all, private and public. The County’s approval of the Plenty’s fence is a clear disregard for the right of the Carter’s to an ocean view and is in direct violation of the Coastal Act itself, because, as was clearly explained to the County, approval of this fence furthered no governmental, or even private, propose that the County should exercise its authority to approve.

But, even if only “public” views are protected, the application must still be denied. At the hearing on this application it was established beyond a doubt that this fence will be visible by the public from the Regional Park located across the estuary directly south, about 300 feet, of the Carters’ house and the fence. The County apparently accepted County Staffs view that this would not violate the Coastal Act or the Gualala Town Plan because the Administrator of the

Regional Park was not opposed and because County adopted a condition that the fence be a natural color. However, nowhere does the Coastal Act say that County need only protect ocean views if someone tells them that they should. Rather, it is the duty of County to ensure that the Coastal Act and the local coastal plan are complied with. Therefore, regardless of whether the Regional Park was opposed, such impairments of coastal views should have been considered.

Moreover, this fence will also be viewable from Ocean Drive and obstruct the view of those who reside on the east side of the street, such as Mrs. Carter's mother, or members of the public as they travel down Ocean Drive.

Though proposed development in Gualala need not meet the specifics of every part of the Town Plan, it is clear that an important goal in Gualala is to maintain coastal views, *public or private*. The approval of this fence not only contradicts specific goals of the Gualala Town Plan; it clearly not compatible with the objectives, policies and general land uses specified in the Town Plan and the Coastal Act.

C. The Carters Have a Valid and Enforceable Property Right to a View , Protected by the Coastal Act, that This Fence Will Improperly Restrict Without Demonstrating a Legitimate Purpose.

PRC §30005.5 states that nothing in the Coastal Act shall be construed to authorize any local government or commission to exercise any power it does not already have. A property owner's view can only be taken away or denied by another private property owner if ordinary care is exercised to prevent unnecessary injury to the adjoining land owner. A property owners view can only be taken away or denied by the government if the granting of approval is for an impinging project that furthers a legitimate purpose.

Haehlen v. Wilson (1936) 11 Cal.App.2d 437, 441-442, makes clear that one private property owner can erect a fence on his property only if that individual exercises reasonable and ordinary care to prevent unnecessary injury to the adjoining landowner. The fence that the Plentys intend to build, because of its location and height, has no possible purpose but to cause injury to the adjoining landowner. Because the Plentys and Carters live within the coastal zone the construction of this fence had to be approved and condoned by the County before it could be built. The County stated in the numerous hearings held on this project that though the Plentys' intent for erecting the fence is clearly suspect based on its proposed location, they mistakenly believed that they could not deny the application based on the clear fact that the Plentys have chosen to erect this fence for the sole reason of harassing and being a nuisance to the Carters with no legitimate benefit to the Plentys themselves. This improper belief of County is in clear disregard of County's duty to uphold the provisions of the Coastal Act, including PRC §30005.5 which does not authorize County to openly condone one private property owner's actions that are

clearly an improper nuisance to another private property owner.

Ultimately, the Plentys have been permitted to build this fence because County told them that they could. Therefore, the Carters' view was improperly taken by County. There is absolutely no legitimate purpose for the Plentys to build a fence 300 feet from their home, alongside an already existing fence, that accomplishes absolutely nothing except the elimination of the Carters' ocean view. A governmental agency cannot take the property right of a view away unless there is a legitimate purpose. County's approval of this fence is such an improper taking of the Carters' recognized right to a view, which violates PRC §30010.

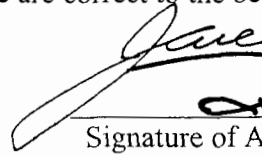
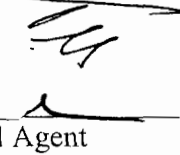
"Upon the strength of universal custom, conduct, and tacit consent and understanding individuals and communities have acquired properties and rights, and have located lands, built homes and cities along the seashore, because not alone for its commercial advantages, but for the permanent and indestructible beauty of the environment. Unlike the location of the interior, where the incidents of private ownership may permit encroachments by way of unsightly and disagreeable structure, the prospect of ocean view is sacred from individual obstruction and contamination." (San Francisco Savings Union v. R.G.R. Petroleum & Mining Co. (1904) 144 Cal. 134, 136.) Not only do the Carters have a protected property right to an ocean view, but the Gualala Town Plan, as described above, repeatedly seeks to recognize and protect that right. Section 30010 of the Coastal Act recognizes that this right has constitutional protection.

In the case of Nollan v. California Coastal Commission (1987) 483 U.S. 825, and in subsequent cases, the Supreme Court has recognized that the property right of a land owner can not be taken from him/her or seriously impaired unless the restriction being imposed furthers a legitimate governmental purpose. (Nollan at 838.) Here, County has provided absolutely no explanation of any purpose that will be furthered by permitting the Plentys to simply remove the Carters' view.

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 Agent

Date:

11/12/08

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

Section VI. Agent Authorization

I/We hereby

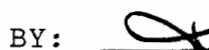
authorize

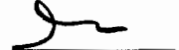
Carter & Momsen, LLP

to act as my/our representative and to bind me/us in all matters concerning this appeal.

JAMES AND JUDY CARTER REVOCABLE TRUST
OF 1996

BY:



Signature on File 

Signature of Appellant(s) or Authorized Agent

Date:

11/12/08



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
www.co.mendocino.ca.us/planning

RECEIVED

NOV 03 2008

October 30, 2008

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#: CDP #68-2007

OWNER: Don & Jan Plenty

REQUEST: Rectify the unpermitted placement of an approximately 230 foot long property line fence on a blufftop lot. The fence is a six foot high redwood fence. The fence is placed along an old railroad easement that has multiple existing fences along it.

LOCATION: In the coastal zone, west of Ocean Drive approximately 200 feet west of the intersection of Highway One and Ocean Drive. Located in Gualala at the mouth of the Gualala River at 39010 Ocean Drive (APN 145-191-09).

PROJECT COORDINATOR: Neal Leitner

HEARING DATE: July 24, 2008

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was appealed at the local level. At its October 28, 2008 meeting, the Mendocino County Board of Supervisors denied the appeal and upheld the approval of the Coastal Permit Administrator.

The 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.

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-08-048

PLENTY

NOTICE OF FINAL ACTION
(1 of 47)



MENDOCINO COUNTY BOARD OF SUPERVISORS
ONLINE AGENDA SUMMARY

BOARD AGENDA # 7d4

-Electronic Agenda Transmission Checklist: ☐ Agenda Summary ☐ Records ☐ If applicable, list other online information below

TO: Board of Supervisors DATE: October 17, 2008

FROM: ☒ Planning and Building Services MEETING DATE: October 28, 2008

DEPARTMENT RESOURCE/CONTACT: PBS PHONE: 4281 Present ☒ On Call ☐
Frank Lynch PHONE: 4281

Consent Agenda ☐ Regular Agenda ☒ Noticed Public Hearing ☒ Time Allocated for Item: 1 hour

■ **AGENDA TITLE:** Discussion and possible action regarding appeal of Coastal Permit Administrator (CPA) decision to approve Coastal Development Permit number CDP 68-2007 (Plenty)

■ **PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:** None

■ **SUMMARY OF REQUEST:** The project involves the installation of an approximately 230 feet of six foot tall redwood fencing on a residential parcel in Gualala. The fence posts were placed without benefit of permit. The fence would be completed along an old railroad easement (above the Gualala River) which extends south of the Plenty residence and west of the aggrieved party's houses.

The County conducted a thorough review of the project including a referral and hearing by the GMAC, contact with Sonoma County Parks regarding visual resources from the Regional Park, documentation of the projects consistency with the LCP and Gualala Town Plan specifically. The CPA held a public hearing on May 22, 2008 and continued the case until July 24 requesting further analysis and clarification of the project from staff. The project was approved on July 24, 2008 per staff report, addendum dated July 8, 2008 and an additional special condition for the fence color.

The appellant continues to claim that the analysis is inaccurate or faulty which is not supported by evidence in the record. The case boils down to a private dispute between adjacent property owners.

■ **SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT:** www.co.mendocino.ca.us/planningfb

FISCAL IMPACT:			
Source of Funding	Current F/Y Cost	Annual Recurring Cost	Budgeted in Current F/Y
N/A	N/A	N/A	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

■ **RECOMMENDED ACTION/MOTION:** That the Board of Supervisors deny the appeal and uphold the action of the CPA approving CDP # 68-2007.

■ **ALTERNATIVES:** The Board could overturn the action of the CPA and deny the request (with findings justifying such action), approve the project with additional mitigating conditions, or uphold the action of the CPA.

■ **CEO REVIEW (NAME):** Alison Glassey PHONE: 463-4441

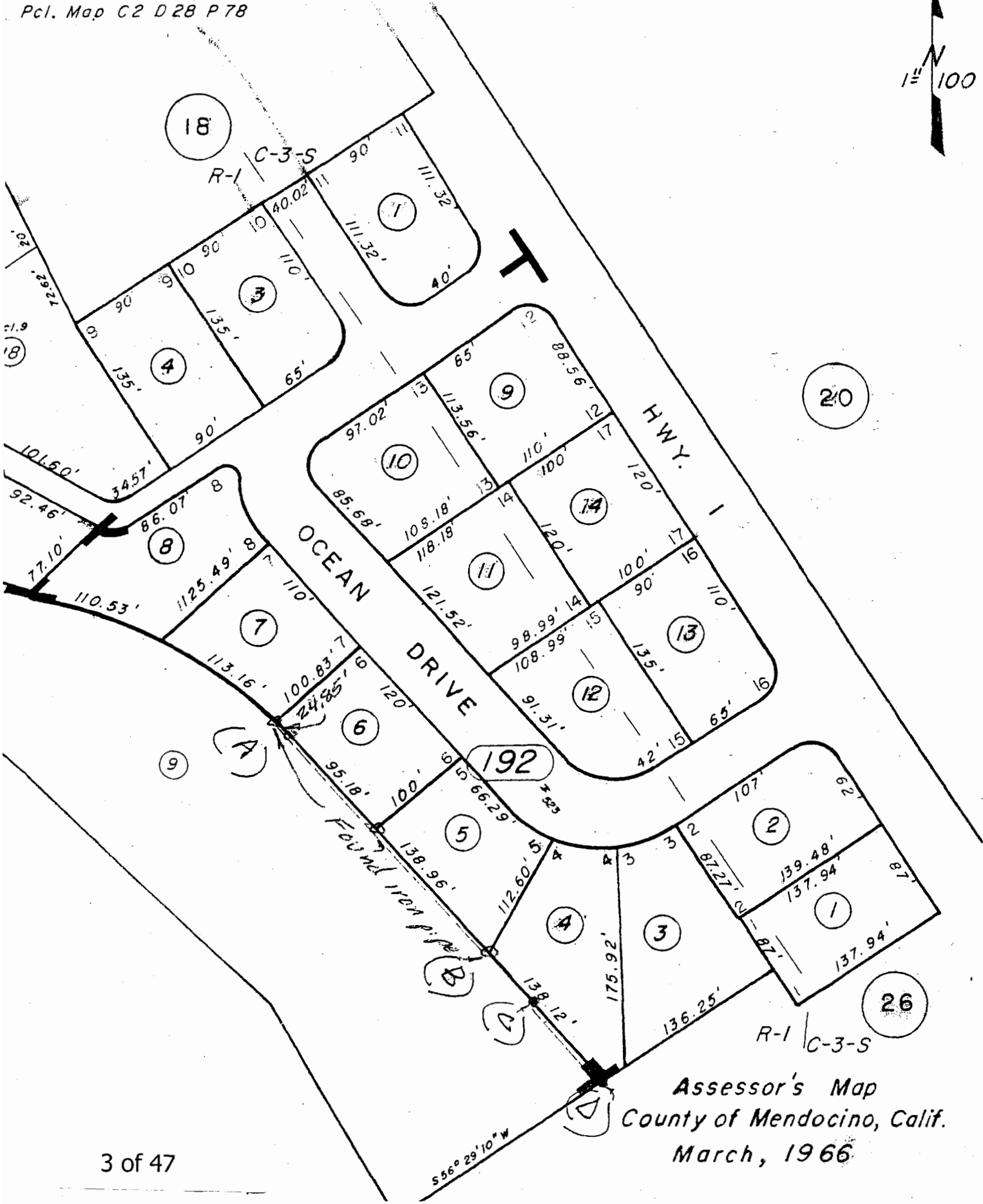
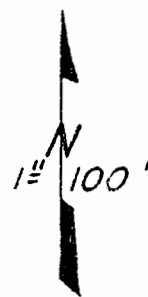
RECOMMENDATION: Agree ☒ Disagree ☐ No Opinion ☐ Alternate ☐ Staff Report Attached ☐

BOARD ACTION (DATE: 10-28-08): ☒ Approved ☐ Referred to Recommended Action - Uphold action of CPA ☐ Other

RECORDS EXECUTED: ☐ Agreement: ☐ Resolution: ☐ Ordinance: ☐ Proclamation ☐ Other

11 N. R. 15 W., M.D.B. & M.
 North Gualala Sub.
 Pcl. Map C2 D28 P78

R-1
 C-3-S
 Z



FENCE CONSTRUCTION DETAIL

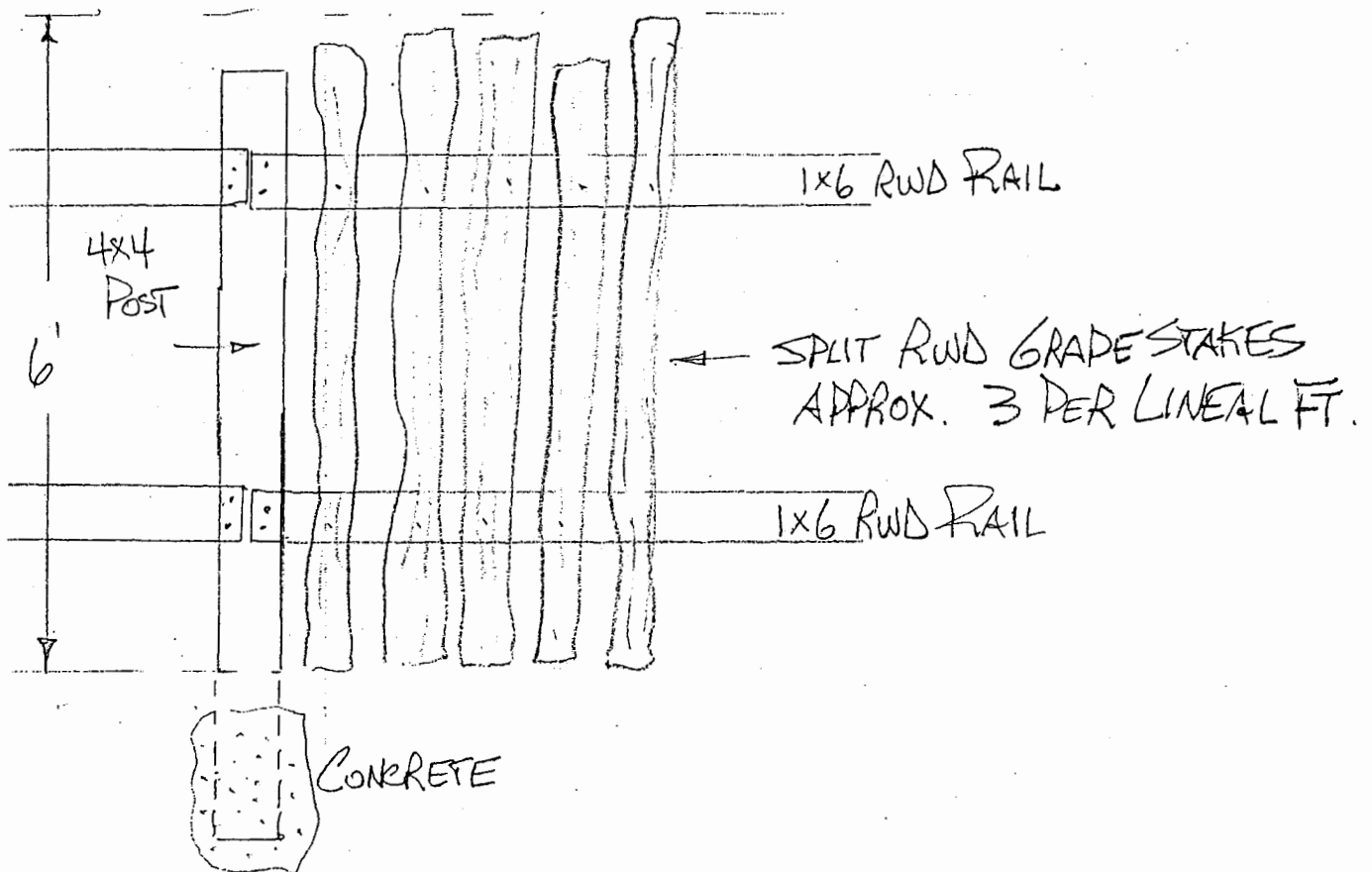




Exhibit D

Example photo of adjacent fencing



COUNTY OF MENDOCINO

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RECEIVED
AUG 07 2008
CALIFORNIA
COASTAL COMMISSION

August 4, 2008

NOTICE OF FINAL ACTION

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

CASE#: CDP #68-2007

OWNER: Don & Jan Plenty

REQUEST: Rectify the unpermitted placement of an approximately 230 foot long property line fence on a blufftop lot. The fence is a six foot high redwood fence. The fence is placed along an old railroad easement that has multiple existing fences along it.

LOCATION: In the coastal zone, west of Ocean Drive approximately 200 feet west of the intersection of Highway One and Ocean Drive. Located in Gualala at the mouth of the Gualala River at 39010 Ocean Drive (APN 145-191-09).

PROJECT COORDINATOR: Neal Leitner

HEARING DATE: July 24, 2008

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The 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.

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #68-2007 HEARING DATE: 7/24/2008

OWNER: Plenty

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt
☐ Negative Declaration
☐ EIR

FINDINGS:

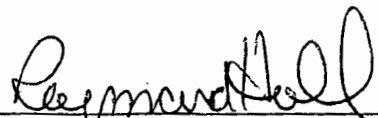
☒ Per staff report *& addendum dated July 8, 2008*
☐ Modifications and/or additions

ACTION:

☒ Approved
☐ Denied
☐ Continued _____

CONDITIONS:

☒ Per staff report *plus special condition added re: color of fence in perpetuity.*
☐ Modifications and/or additions



Signed: Coastal Permit Administrator

Bob Merrill

From: Richard Miller [millerr@co.mendocino.ca.us]
Sent: Monday, December 22, 2008 11:09 AM
To: Bob Merrill
Subject: Plenty fence color condition

Mendocino County Dept. of Planning & Building Services
Coastal Planning Division
790 South Franklin Street
Fort Bragg, CA 95437
707 964-5379 (tel) • 707 961-2427 (fax)

MEMORANDUM

TO: Coastal Permit Administrator
FROM: Neal Leitner, Project Coordinator
DATE: July 24, 2008
SUBJECT: Addendum to CDP 68-07 Plenty

This addendum to CDP 68-07 recommends a modification to Special Condition #2.

2. Prior to issuance of the coastal permit, the applicant shall submit for the review and approval a sample natural stain color for the fence that conforms with the grey earth tones of the natural surroundings. All fencing materials and finishes, shall match those specified in the coastal development permit. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.

Transcript of July 24, 2008
Hearing of the Mendocino County Planning & Building Department.

Ray Hall: This is a permit administrator hearing for July 24, 2008. First item on the agenda is CDP 68-2007. My name is Ray Hall, I am the director with the County Planning and Building Services Department. Today I wear the hat of Coastal Permit Administrator. Any action that is taken today can be appealed depending on where the project is located or the type of project to the appeal who either holds the commission and/or to the Board of Supervisors. And so the first item is CDP 68-2007, the owners are Don and Jan Plenty. This is a request to rectify the unpermitted placement of a fence and this was furthered two months ago and at that time there were several different issues that we left it with - visual impact was the issue for the reason for continuance. There is an addendum that was prepared. At the May 2nd meeting I asked for some clarification to the project: some photographs of the fence from the Gualala Point Park, the project be referred to Sonoma County Parks for further comments and asked to address the visual impact from these public areas, clarify the project exhibited and also examine a policy in the Gualala Plan Goal G27-2. Project coordinator Neil Leitner has done so and provided his analysis as well as photographs. His conclusion is that based upon the analysis of visual resource discussion in the CDP the Staff finds the initial research completed and the visual resources is consistent with policy of the coastal law and county zoning code. So Staff is continuing to recommend approval of this project. There is a subsequent response from the attorney representing the neighbor that is immediately to the east of the fence and so with that I'll open it up to the applicants Mr. Plenty for any comments.

Mr Plenty, is there anything that you wanted to comment upon? Did you get a copy of the addendum from Neil?

Mr. Plenty: (Must have indicated yes.)

Ray Hall: Okay. So have you seen a copy of the letter from Mr. Carter?

Mr. Plenty: Do we have time to read this? (I am thinking this was a board member)

Ray Hall: Yeah, let's go ahead and why don't you take a couple minutes to read it.

Mr. Plenty: I guess my only comment is that ..

Ray Hall: Can I get your name for the record?

Don Plenty: Don Plenty.

Ray Hall: Let me make one comment before you do it and that is that I've read the letter from Mr. Carter dated July 23rd in response to that I ask that Neil Leitner , the staff planner, to carry draft addition addressing the color of the fence in perpetuity so that is the other piece of paper you just received and that was prepared probably 20 minutes ago. So now, you know, if there is any comment

Mr. Plenty: I guess I don't understand

Ray Hall: Can I get your name?

Don Plenty: Don Plenty

Ray Hall: Okay

Don Plenty: There wouldn't be anything or anything - it is weathered redwood. Redwood doesn't need to be painted. It will weather a grey color. I'm not sure if _____. And, you know this tactic of submitting these letters you know in the eleventh hour, I called yesterday to find out if there was anything we needed to be apprised of and Neil said no and apparently that was the case yesterday afternoon. So

Ray Hall: Okay but that doesn't help me with the decision, it the people, this is a public hearing, people can submit things today, you know if they want. What I need to do is focus on the project itself, you know, and is it consistent or inconsistent under a coastal plan we've all identified.

Don Plenty: Okay. I think the staff report was quite clear that, you know, the objections to it are _____ event.

Ray Hall: I'll open it up then to the public for any comments.

Mr. Carter: Yes, I think

Ray Hall: Your name for the record.

Mr. Carter: My name is Jared Carter, I am representing the Carters, James and Judith. Judith has some materials, she was unfortunately not able to join us last time, that I think she would like to share with you and explain to you that might give you a little better perspective on this project. And I have some comments. Judith why don't you.

Judith Carter: I'd like to show a visual. This (pointing to an enlarged picture) is our guest vacation home, this is our home, this is my mother's house and this is her view corridor. And shows impact is evident through the years with the vegetation and growth of the plants here blocking out with their clear view of the coast. This is the park,

Ray Hall: This, for the record, I assume that someone was in an airplane or helicopter. There is quite a debate whether that was taken from the air and not from the ground.

Lots of mumbling. (I don't know who said what here)

Judith Carter: To refer back to them (the photos), this is consistent with the fences in the area. Along this area (pointing to overhead photo), there are some small fences along, down in the gully. I stood at a point in this area, which I'll show you the picture, and make an attempt to show this fence, this one in particular, is just adjacent to our home.

Ray Hall: Wait. If you want to take a look at these, you certainly can.

Judith Carter: Just around the block, behind a bed and breakfast sort of motel establishment, which I can't see without glasses unless I'm close down but it should be right in here. And it is 35 inches high at its highest point. And I would like to leave a "thought of the week" - we don't object to a fence like this. We don't object to this at all, as a matter of fact, if the Plentys want to put a fence behind our house that looks like this with a gate or an easement, we'd be agreeable. I think it is attractive and it is consistent with the coast line and it is not offensive in any way.

Mr. Carter: I am Jared Carter. I think that any time a person in your position, Mr. Administrator, has to make a decision, you have got to deal with the realities of the situation if it is going to be accepted, and it is going to not exacerbate any problems that already exist. What you have here, for good reasons or bad, is a person whose home is here (pointing to picture) happens to own a piece of ground that is undevelopable, an old railroad right of way actually, that runs along the bluff and he wants to build a fence over here. A six foot high fence. There isn't another six foot high fence, despite what Mr. Leitner says, on the coastal bluff that we know of anywhere in the area. Certainly not one that is going to block the view of the landowners out to the ocean. And this is blocking the view of landowners other than the person building the fence. Its only purpose is to block the view from the Carter's house. There can't be another purpose; and as we indicated to you last time, the facts are such that it is clear that is its purpose.

So you don't have a valid property right of the Plenty's that you are trying to protect. If the Plenty's wanted to build this fence between their house and the ocean because people were

walking along the bluff and irritating them or one thing or another, we'd be the first people here saying they have a property right to enjoy their property and the state ought to accommodate that by letting them build whatever kind of fence they can build. It doesn't hurt anybody else.

That is not what they are trying to do. They are trying to build a fence that they will never see, doesn't affect them in any way except to stick it in the eye of the Carter's whose adult son unreasonably and wrongfully went out and cut a tree on their land without talking to them about it. We are probably going to have a lawsuit at some stage over who has what rights to that property, but that is not your problem. Your problem is to accommodate private property interests of everybody involved with the general interest of the public in running a coastal act and its administration. And those interests conflict all the time.

If the Carters wanted to build a fence between their property and the ocean bluff and they wanted to build a six foot high orange fence do you think there is a chance in the world that the public would allow that to happen? Do you think there is a chance in the world the public would allow six foot high orange or white fences all along the California coast just because a property owner said I want to? No, no. Your staff report accommodates this six foot high fence when there isn't another one in the area only because of its color and the slate width apparently. Apparently a solid fence wouldn't work because that's visual from somewhere else. But how wide? There are no standards on this. And if you try to solve the problem with conditions that you put on a fence what you are doing is you encourage ten times the amount of attention that brought to this by applicants and opponents as are necessary.

Society spends much too much time and money on these kinds of conflicts in any event, but when it is to accommodate a spiteful purpose because two individual families are having a problem not only should you not get involved in deciding who is right or wrong in that but you shouldn't accommodate this kind of an application. You are not serving a property right of the Plenty's that society has any interest in serving. They may well be making themselves a bigger problem in a civil lawsuit than they think they are making and probably I am the only guy in the room that will ever benefit from that or some other lawyer and that is too bad. But you can't help that and the rest of us can't help that, but what you can do is ask yourself do you want to encourage this kind of spite fence construction all up and down the coast and have the answer turn on whether or not the color is reasonable or the height is the same as other fences around or the distance between the slates is the same?

The Carter's already have about a three foot high little wood fence between their property and the Plenty's property. That is already out there. They built it; and as Mrs. Carter just said, if the Plenty's want to build an additional three foot high fence with nice slates that are the same distance that she showed you in the picture she will tear down her fence and use their fence. But we still going to probably have a fight over whose got the right to use that property because that is a civil dispute that has grown up over the years. But there is no social purpose for the six foot high spite fence and I strongly recommend you deny this application. I think that even your latest staff report admits that it violates a policy and goal of the Gualala Plan which is a part of the LCP.

I continue to maintain that private views are protected by the Coastal Act. It makes zero sense to

say in a country and in a state, and in a statute that says we are protecting private property rights to the maximum extent, that is in the Coastal Act, that's not the exact words, but one of the private property rights protected is the Carter's view of the ocean. And to say that the Coastal Act doesn't protect the Carter's view of the ocean when it says it protects private property rights is preposterous. Of course it protects public rights, it protects the rights of people in the parkway but it also protects the Carter's right and by approving this you are going to force the Carters to have to go litigate this obvious point. Why? What are you giving the Plentys that people ought to give them? There is no interest in a spite fence.

So our recommendation is that you deny this application and stop this silly matter right here. And, I would hope that the Carters and the Plentys would both go off, without me around, and figure out how to solve this problem. This is the way it ought to be solved. We'd be happy to try to answer any questions.

Ray Hall: Anyone else from the public that wants to comment?

Judith Carter: I'd like to comment on behalf of the Plentys' shock that they just received a letter from Mr. Carter. We didn't

Ray Hall: Again, I just want this to be to the merits of the project.

Judith Carter: We didn't receive our staff report until, was it Wednesday Jared?

Jared Carter: There has been a confusion here. The staff thought they sent it to me, it didn't get to me, we've tried to cooperate; and within 15 minutes of getting the staff report I wrote this letter. There is nobody illintentioned here, it's just a series of events.

Ray Hall: Just for the record, I think I had emailed back to Neil probably Monday or so of this week saying hey make sure that the addendum gets out to the Plentys, to Mr. Carter, etc., so you know, I mean I don't see any conspiracy in trying to dump last minute stuff into the record brought on by the Carters.

Judith Carter: Okay, and then I'd like to point out, we think the only portion the Plentys intend to fence of their strip of property is behind our two pieces of property.

Ray Hall: Anyone else from the public that would like to comment? Okay, I'll return it to the Plentys for wrap up. Any wrap up comments that you have?

Don Plenty: Well, these are, I mean most of these points are rehashed of what happened in the first meeting. However, what hasn't been mentioned at all is the primary purpose of this fence is a liability and trespass protection measure. The fact is that railroad easement has roughly 600 feet of bluff edge, there is a very steep drop to the river down below and it is in our interest to keep stray public people off of that strip just for the very fact that they could walk off the edge of that bluff. And of the six parcels that border that, that make up that, there is fence on three of them. So for them to claim that there is no other fence around there and particularly that there is no other six foot fence is, is, I mean just take a look at some of the pictures from last time, there

are six foot fences and they've constructed, they've got lateral fences next to their property that are seven feet or eight feet tall. So, anyway.

Ray Hall: Okay, I am going to close the public meeting and find that proper notice has been given.

With respect to the precedence of this issue I think the whole railroad line in Gualala is unique in and of itself, frankly it has caused us a lot of grief, you know, over the years in terms of is it developable, is it not, what rights can accrue with that, probably never intended to be a lot but it has kinda become that. So taking an action to approve this fence in my opinion does not establish a precedent or the entirety of Mendocino County or California or Northern California or whatever unique circumstance in this case with an easement along the old railroad or the ownership of that which creates that narrow strip that is unique to the Gualala area.

Regarding entering into, again I'll go back to my role is to determine whether or not the request is consistent or inconsistent with the goal, a town plan, and Mendocino County Global Coastal Program, my purpose is not to judge the social benefits or detriments of some particular project other than consistency with adopted plans. There are lots of projects that come forward that you know I don't get into social purpose of someone wanting to add an art studio to their property and is that good or bad for the community, it's solely is inconsistent is that development inconsistent or consistent with the plans? Given the original staff report, given the addendum to that staff report, the photographs that have been submitted that I have reviewed was exactly the information that I was requesting. Photographs, pictures so that I could see what this would look

like, it is my conclusion that I concur with the staff's position on this, so I will be approving the project. Finding the project is categorically exempt from the California Environmental Quality Act, I'll make the findings contained in the staff report, include the addendum, approve the project with the condition that the original staff report plus the added condition that was circulated this morning.

So the project is approved with the conditions in staff report plus the added condition that was circulated this morning. My decision can be appealed I believe either to the Board of Supervisors and or the California Coastal Commission.

Jared Carter: Are you going to keep those pictures there?

Ray Hall: Normally I wouldn't but they have some value, I mean I'm

Jared Carter: Do you want to take one back, or keep in the record?

Ray Hall: I'll leave that up to you if you want to leave them in the record. Frankly these sorts of

Jared Carter: We will be appealing this.. Maybe we should take them and substitute something that can be easily folded or .. So we'll do that.

Ray Hall: Okay.

Jared Carter: Okay, Thank you.

Ray Hall: Thank you.

Mendocino County Dept. of Planning & Building Services
Coastal Planning Division
790 South Franklin Street
Fort Bragg, CA 95437
707 964-5379 (tel) • 707 961-2427 (fax)

MEMORANDUM

TO: Coastal Permit Administrator
FROM: Neal Leitner, Project Coordinator
DATE: July 8, 2008
SUBJECT: Addendum to CDP 68-07 Plenty

This addendum to CDP 68-07 further analyzes and clarifies the visual impacts of a proposed fence as requested by the CPA at the May 22, 2008 CPA hearing. At the meeting, staff was instructed to address the following points:

- 1) Clarify the project
- 2) Photograph the fence from Gualala River Point Park
- 3) Refer the CDP to Sonoma County Parks
- 4) Address the visual impact from public areas
- 5) Clarify the project exhibit
- 6) Examine Gualala Goal G2.7-2:

The project site is not located within a designated "highly scenic area." The proposal does not include any exterior lighting. The subject property is only visible to the public from the Gualala Bluff Trail and briefly from Ocean Drive if viewed through parcel APN 145-192-06. (see Exhibit C). The trail begins on the parcel just south of the subject property. Since the fence is not a solid fence, but rather a split rail redwood fence, the proposed fence would blend with the landscape and with other redwood fences on the bluff. The fence would not obstruct public views.

Upon conducting a visit to the Gualala River Point Park, staff found that the existing fence posts that were erected by the applicant are only visible against the backdrop of the single family residence on APN 145-192-05 while photographed with a 16 X telephoto on a digital camera. (see exhibit A) If viewed with the naked eye or through a 35 millimeter camera without a telephoto lens, the project is not visible from the Gualala River Point Park. (see exhibit B) Additionally, the fence is visible through a 16 X telephoto only from the far northern point of the Gualala River Point. The fence is not visible at all from any other portion of the Sonoma County park. A fairly long existing redwood fence is slightly noticeable from the park. The fence appears to be located along the northern portion of the Gualala Bluff Trail. The redwood fence has turned a weathered earth tone grey, typical of unpainted redwood fences on the coast after a year of weathering. The existing fence matches the grey coloration of the rock in the bluff face.

Mark Cleveland in the Planning Division of Sonoma County Parks received a referral of CDP 68-07 following the May 22, 2008 CPA hearing for comment. Staff did not receive a written comment back from Sonoma County Parks. On June 18, 2008, staff contacted Mark Cleveland. Mr. Mark Cleveland stated that he received the referral yet did not formally respond since the fence was a non-issue for the park system. He mentioned that the proposed redwood fence would

not be particularly visible and if it is visible, it would blend with the existing redwood fences along the Gualala River Bluff.

The existing fencing in the subdivision on Ocean Drive is subordinate to its setting. Fencing throughout the subdivision is not particularly noticeable due to the placement, colors and materials of the fences. Fencing in the subdivision is comprised of wooden fences and deer fencing. Since the existing fences in the subdivision are subordinate to the landscape, any additional fencing would need to be subordinate in character as well. The existing fence is made up of split redwood stakes, with approximately three stakes per linear foot. The remainder of the fence that is proposed would be of the same style of fence. Upon conducting the site visit, a portion of the fence was complete. The fencing that was completed blended with the landscape and was not particularly noticeable. (see Exhibit C) Although it is noticeable from the adjacent private homes located to the east of the subject property, the LCP does not contain private view protection policies.

The proposed fence is located in the Gualala Town Plan Area. The Mendocino County Coastal Element discusses the Gualala Town Plan. In Chapter 2.7 of Section 4.14 of the Coastal Element, Protection of Environmental Resources, a set of goals are established. Goal G2.7-2 was briefly discussed at the May 22, 2008 CPA hearing. It was stated that this goal ensures the protection of private views on Ocean Drive.

The proposed fence would be placed along the eastern property line of the subject parcel, adjacent to parcels 145-192-04,05 & 06. The northernmost parcel is vacant, which is the parcel that was not identified as an adjacent parcel in the original CDP exhibits. Staff revised the exhibit to include all of the affected parcels. The exhibit is available online with the CDP staff report at <http://www.co.mendocino.ca.us/planningfb/cpa.htm>.

Goal 2.7-2 states: *To restore, enhance and protect coastal views in the Gualala Commercial District.*

The proposed fence is not located in the Gualala Commercial District, or the Gualala Village Mixed Use (GVMU) district. Rather, the fence and the adjoining parcels are located in the Rural Residential Zoning District with a Suburban Residential overlay. Therefore, the proposed fence does not need to meet the requirements of Chapter 2.7-2 of the Gualala Town Plan. Nonetheless, as stated the project would not be out of compliance with several provisions of visual resource protection policies provided by the LCP.

Therefore, based on the above analysis and the Visual Resource discussion in the CDP, staff finds that the initial research completed on visual resources is consistent with the policies of the Coastal Element and the MCCZC.

Exhibit A



16 X ZOOM FROM SONOMA COUNTY PARK

Exhibit B

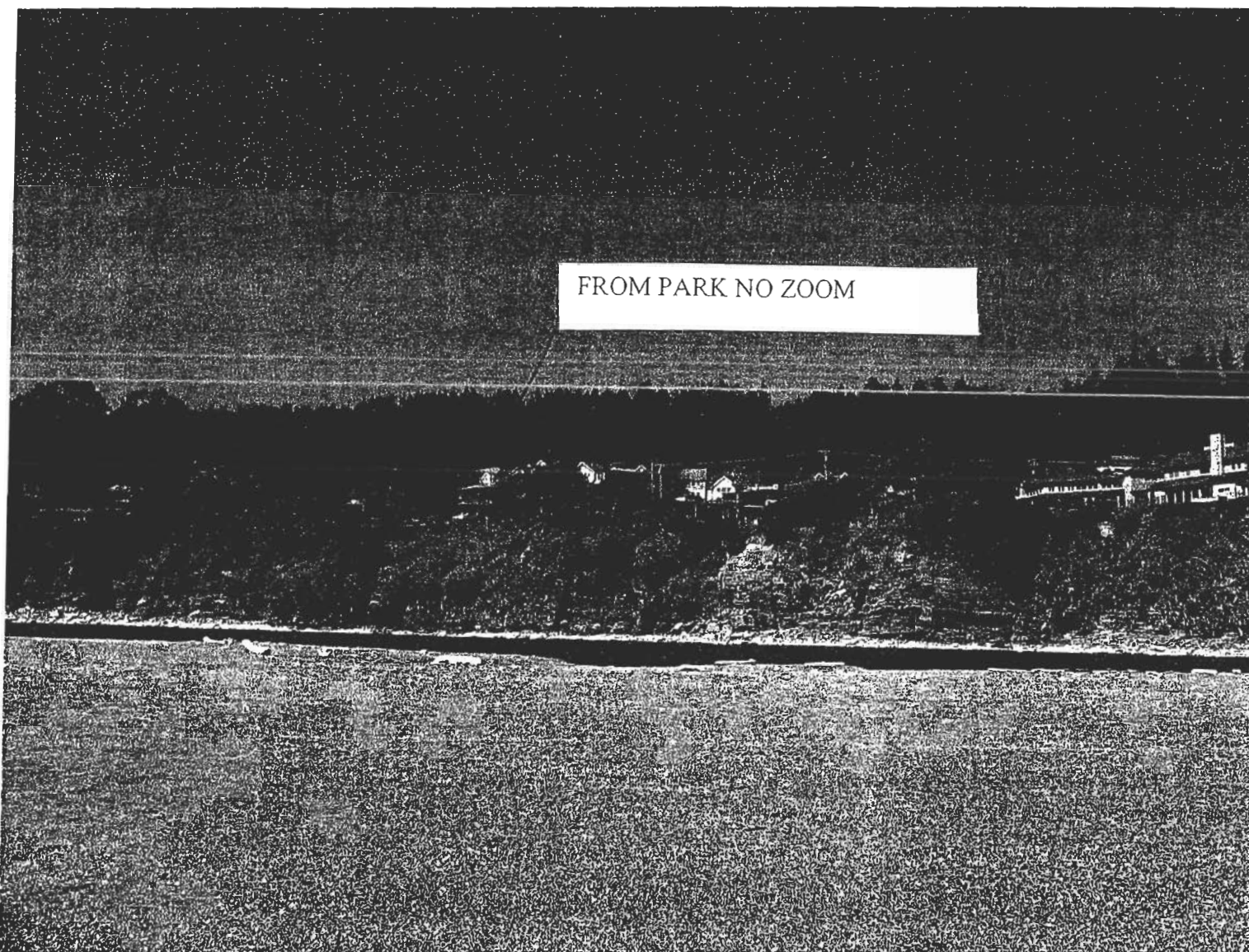
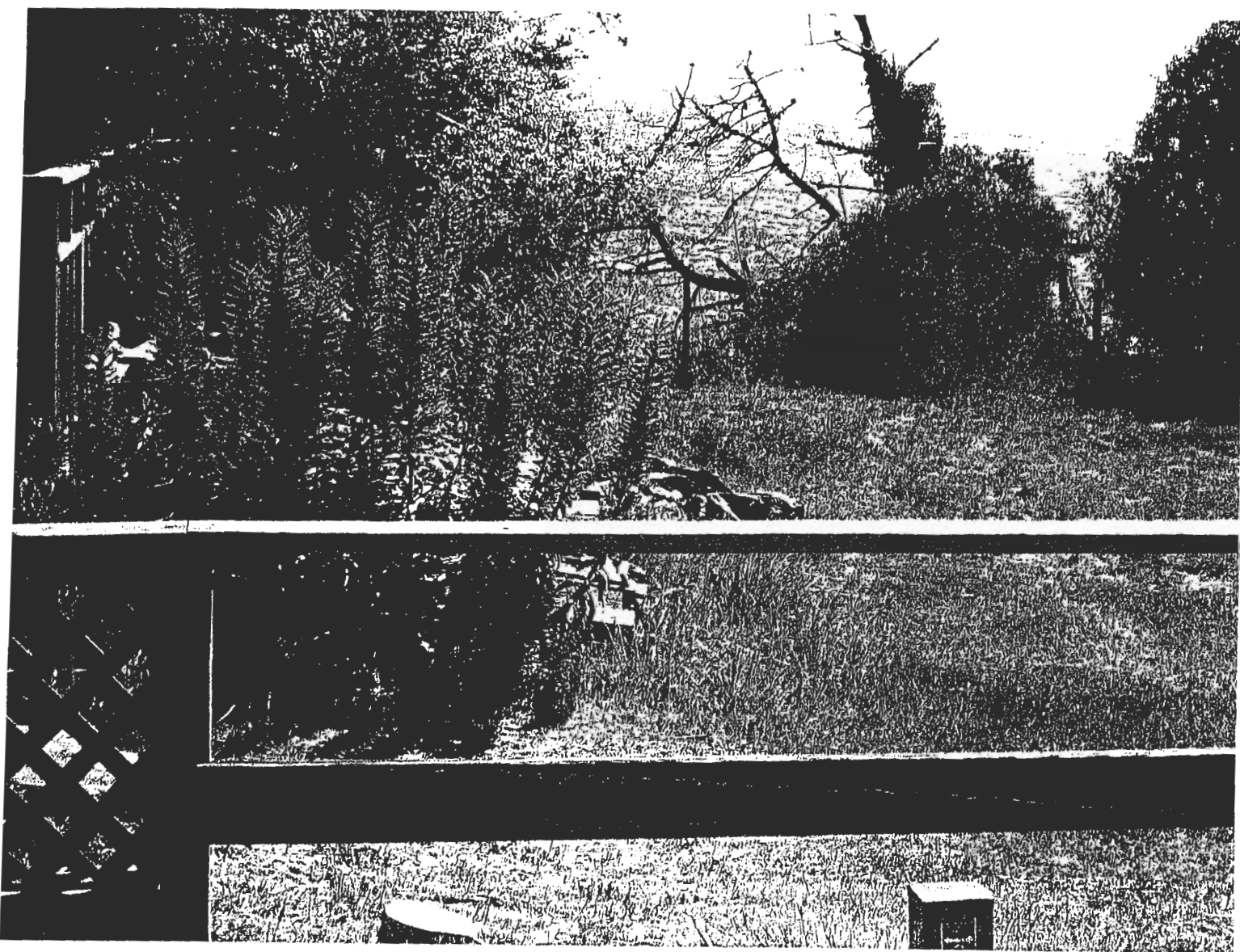


Exhibit C



FROM OCEAN DRIVE

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 6B-2007 HEARING DATE: 6/26/08

OWNER: Plenty

ENVIRONMENTAL CONSIDERATIONS:

☐ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☐ Per staff report

☐ Modifications and/or additions

ACTION:

☐ Approved

☐ Denied

☒ Continued to 7/24/08 CPA

CONDITIONS:

☐ Per staff report

☐ Modifications and/or additions

Signed: Coastal Permit Administrator

May 22, 2008 Coastal Permit Administrator Hearing

**CDP68-2007 Request of Don and Jan Plenty to Rectify the Unpermitted Placement of
Approximately 230 foot long Property Line Fence on the Bluff Top Lot.**

Ray Hall: I'm the coastal permitted administrator today. I'm also the planning and building services director.

Let me give you this first. What this is, is, there was a letter, I don't know if you have seen the letter from Jared Carter. Why don't I go ahead and let you look at the file so you are aware of that so you can read it, I'll go ahead and continue your case till after the next case so it'll probably give you an opportunity to take a look through that. So with that, we'll continue CDP68-2007 until after CDP63-2007 my estimation is that it will be about 10 minutes or so until we get back to the Plenty case.

Continued...

Ray Hall: This is a request to rectify the unpermitted placement of approximately 230 foot long property line fence on a bluff top lot. Its located in the town of Gualala. Its west of the highway, it is a bluff top parcel. The zoning is suburban residential. According the project description the fence completes and matches adjacent fences that currently exist along the old railroad, easement. The fence is proposed in two phases. The first phase is approximately 155 feet of fencing while the second phase is approximately 75 feet. GMAC recommended approval of the development as written at their February 7th meeting, it was discussed and agreed upon the construction of the fence would not impact views of the public nor from public space. GMAC also found that the fence alleviates safety liability and trespassing concerns. The project sites

located west of Highway 1's bluff top site but is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site although the parcel immediately south has a Gualala Bluff trail on it. The Bluff trail terminates at the southerly property line of the subject property. Staff is unaware of any potential for the trail to be expanded to the North and staff is also under the impression that no trail easement exists on the subject parcel. Project site is not located within a designated highly scenic area, the subject property is only visible to the public from the Gualala Bluff trail. The trail begins on the parcel just south of the subject property. Since the fence is not a solid fence but rather a split rail redwood fence, the proposed fence would blend not obstruct public views. The proposed fence would not block the public's view of or along the ocean pursuant in Mendocino County Code. Mendocino Coastal Element section talks about protecting scenic and visual qualities of the county. The existing fencing in the subdivision on Ocean Drive is subordinate to its setting. Fencing throughout the subdivision is not particularly noticeable due to the placement, colors, and materials of those fences. A portion of the fence is complete, the fencing was completed blended with the landscape, it was not particularly noticeable although it is noticeable from adjacent private homes located east of the subject property. Staff has recommended approval of the project.

There has been a letter received from Jared Carter representing the Carters, no relationship, owners of three parcels to the south. I read that letter, reading that letter I sent an email to Neal the Staff planner asking him to consult with the counsel to see how to address to Mr. Carters letter and we do have a response dated May 21, 2008 from Frank Zotter, Chief Deputy County Counsel. First I'll just disclose that I know Jared Carter. Jared's grandson and my son play on the same baseball team in the summer time and we both share the same stands and a

baseball game and talk about whether he should have thrown a curve ball or a fastball in a particular situation. That's usually about the depth of the conversation. I know I can be objective in this matter and so I will hear the case but I feel that I do need to disclose that to you. County Counsel has responded and I'll just read the question and the answer. And making a decision on this application should the Coastal Permit Administrator consider the information provided by the Carters such as the possibility that the fence if approved as built, as requested by the Plenty's may encroach into the areas where the Carters claim a prescriptive right of access.

The response from counsel is "this precise issue was presented some years ago, to which this office responded with an opinion, the response we provided then summarizes the position we reemphasize here while the coastal permit administrator could take such issues into consideration in deciding this application, the basis of traditional land use principles designed high volt construction materials, visual impacts, and relevant policies in the LCP and not the basis of a legal dispute outside of the CPA's coastal permit administrator's jurisdiction." We will also provide more detailed responses to this specific issue presented on pages 2 and 4 in his letter on behalf of his clients and this dispute.

And so again I'll state that I have read the letter from Mr. Carter, read the response from County Counsel, County Counsel's advice is that that is a private issue between two property owners and is not necessarily an issue of nuisance fence or a spite fence, it is not an issue for the County of Mendocino to decide. So with that I'll ask if you have any questions, concerns, comments, and if you could state your name for the record.

Don Plenty: I'm Don Plenty and this is Jan. We were not aware of any of this correspondence from Mr. Carter or the County Counsel's thing, this is the first time that we have read it, so we

are at a little bit of a disadvantage here, anyway, I don't really have any other comments, I think was set forth speaks for it, and I'd be happy to answer any questions.

Ray Hall: Ok, what I'll do is, after I've opened it up for public comment then I'll return it to you to see if you have any other comments, if you'd like to make comments based on comments made. With that I'll open up to the public for comments.

Jared Carter: I'm Jared Carter, I am a lawyer from Ukiah. I'm representing James and Judith Carter who are objecting to this project. Let me give you a couple of bundles of pictures. The first one is two pictures that are kind of a collage. The one on top is a picture from the back door of the Carter's house. It shows an existing three foot fence. And it also shows the posts that had been put in by Mr. Plenty beyond that. And you can see right beyond those two fences, the state park along the ocean, that the little spit that exist there between the ocean and the Gualala River, where members of the public can and do often frequent. The second picture in that group is the same tree that you see in the first picture and it really has no relevance to your decision and I just didn't want to go through the trouble of pulling it out. The second group of pictures have to do, they're just an assemblage of pictures taken from the Carter's residence. The first one there is a picture from the front of their vacant lot, and you can see the fence post in the back that now exist, which show where that fence would be. I am a little confused about whether or not the Plenty's intend to build a fence in front of the vacant lot, but they have posts up there. If I correctly read the application it seems just to build a fence in front of the two existing residences that they have. And as you go through these pictures, the second one is basically the other picture that I showed you. Its from their backyard. You see their existing fence, and you see the fence

posts and you see the state park beyond it, and more of the same as you go along.

I don't think I am going to add a lot of detail that you don't get from the first picture from any of this. So I just put those in the record. I agree with the county counsel's basic opinion. I am going to state it a little more bluntly than he does. It's really none of the county's business that this unfortunate dispute is going on between these neighbors. You can take that into account in making your decision, says the county counsel. I'm not sure if I would have even said that. But to the extent you can to take it into account, the account to take is that in the absence of some function being served for the Plenty's residence, which is a hundred yards to the north or east of where this fence is going to be, this fence does not serve any function that meets the eye other than to keep the Carter's from going out on their property, which is to the southwest, in this uninhabitable lot that the Plenty's own behind the Carter's property, between the Carter's property and the Gualala River.

As you look at the attachment to the staff report, you see that the Plenty's property is a hundred yards away. They are concerned the Carter's are trespassing, they think, on their uninhabitable lot number 9, getting mad about it. They're mad because the Carter's son recently, without discussing it with them, cut down a couple of limbs off of a tree, and so they went out and built a bunch of posts. And when it was brought to their attention that you can't build a fence without a coastal permit, they've applied for this coastal permit. There is no function for this fence other than as a means of becoming involved in this civil dispute. It doesn't fence in their backyard; it doesn't fence anyone out of their backyard; it fences somebody off of an area where there's a dispute as to who has what rights there.

Why does the coastal administrator care about this? The most obvious reason that he cares is that if you are down there on the state park and you're looking up at the Gualala Bluffs,

right now you don't see any fences. If you put a six foot fence along every lot along the Gualala Bluff, you change dramatically the perception of the Gualala Bluff from the state park. And the staff report I think is woefully inadequate in not pointing that fact out.

The other thing it does, this fence certainly impairs the Carter's view of the ocean. The Coastal Act and the Gualala plan and the county's local coastal plan, talk about impairing views, there are places where they talk about public views, and there are places where they talk about impairing views. Now, an ABC rule of law is that if you say public view in one place and you say view in another, then, where you say view, it doesn't have to be a public view, because if you know how to use the English language and you've used it one way one time and you don't use it the same way another time you must mean something different. And, we say building this fence here, that the Plenty's propose, impairs the Carter's view of the ocean. That violates the Gualala Plan; it violates the Coastal Act; and because it does nothing but get involved in an unfortunate civil dispute, there's no reason for the coastal administrator to approve this fence.

What the coastal administrator should do is leave these disputing neighbors where he finds them. If you approve this fence, you're giving a leg up to one of them in a dispute, you're not doing anything that a person normally wants to accomplish by building a fence. If the Plenty's want a build a fence along their lot, the Carter's aren't going to object.

I suspect, you may wind up with somebody from the park once they think about it, objecting. I don't know whether the park receives a distribution of this, but if you read as I'm sure you have seven hundred times, the Gualala local plan, it talks about how important the views to and from the river and the ocean are in this area. And what we are doing for the first time so far as we know, there may be other six foot fences in the area, but the only one that we know of are ones that run perpendicular to the coast between lots, on the assumptions I suppose

that good fences make good neighbors. We know of no six foot fence that would be between a lot and the ocean, certainly not a six foot fence between a lot and a state park. And if you are going to approve this one, you have to be, it seems to me, you have to be prepared to approve six foot fences all along the coastal bluff of Mendocino County. And I don't think that is smart, I don't think its necessary, and I don't think its legal. Because it impairs views to and from the ocean, and here we have the additional fact of to and from a state park.

The Carter's are here, at least Mr. James Carter and his son is here, and they'll answer any question you have, but that is about all that I've got to make on the point, unless you have some questions of me.

Ray Hall: No, I didn't have questions, I have some for staff. Can we get clarification on where this fence is being constructed because I think this is the vacant lot, and there was some question of whether or not it extends up to the vacant lot as well.

Staff 1: A, B, through D, where it is highlighted, that's the fence.

Ray Hall: So the two developed parcels.

Staff 1: Right, the vacant parcel, no plans for a fence.

Ray Hall: Is there posts.

Jared Carter: But the fence is now, the post is in front of the vacant lot.

Staff 2: You better check with the applicant.

Staff 1: Carter's house is block five.

Don Plenty: Yes

Staff 2: Sir, Why don't you, Mr. Plenty,...

Ray Hall: Why don't you come over here, so we can get you on ____

Staff 2: So you can show Ray, to see what you're talking about.

Don Plenty: I don't know who drew this one, the vacant lot is this one, and this was my original point A. This is the Carter's lot. There is an existing fence between B and C already. And so the additional was C to D, because there is no fence on that one. This is a developed lot, this is developed, this is vacant.

Ray Hall: Ok. Again, my question though is the same of, is this request, and I think this mirrors what I see in the application.

Don Plenty: I think the application had it correct.

Staff 2: We didn't change that. That's the same thing that was submitted.

Ray Hall: Well, except that, my point A here was moved. Take a look at that. So this is the original application.

Jared Carter: But would you ask him Mr. Administrator if it isn't true that there now exist posts in front of the vacant lot.

Ray Hall: So its your intention then, that you would be fencing also in front of the vacant lot.

Don Plenty: The vacant lot is a concern. Its liability.

Ray Hall: It's a very simple question, its either yes or no, then I'll let you go ahead and expand upon it.

Don Plenty: Yes.

Ray Hall: Ok, now go ahead and expand upon it if you'd like to.

Don Plenty: I'm kind of reluctant, I mean, I don't know. The fences, one of the problems is when you own bluff top property if someone trespasses across any vacant property...

(Missing Material)

Jan Plenty: ...We've got summer vacation plans to go through with. It feels like there ought to be a reasonable length of time to disclose the _____ on the property.

Ray Hall: Ok, well does June 26th not work for you?

Jan Plenty: Well, it will work for me.

Ray Hall: Ok, I mean, if there is another date, I would certainly entertain that.

Don Plenty: This is only the beginning, because then it goes to the planning commission.

Ray Hall: No, it does not go to the Planning Commission, it could be appealed to the Coastal Commission, it could be appealed to the Board of Supervisors, and those, typically those then would frankly take it beyond the summer probably for if its appealed and heard by either the Board or the Coastal Commission, it probably wouldn't even be in the summer time.

Ok, so with that then the item is continued to June 26, 2008 and I have emphasized what the focus of my review on June 26th.

Jan Plenty: If you should get more legal documents or anything like that, can we get them in advance rather than on the day of the meeting?

Jared Carter: If I send you anything anymore, I'll send them to you if I have your address.

Jan Plenty: Because it would be a little more fair to us..

Ray Hall: Ok, with that, the item is continued to June 26, 2008.

Jan Plenty: Thank you very much.

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 68-07
May 22, 2008
CPA-1

OWNER/APPLICANT:

Don & Jan Plenty
P.O. Box 328
Gualala, CA 95445

REQUEST:

RECEIVED
MAY 19 2008
CALIFORNIA
COASTAL COMMISSION

Rectify the unpermitted placement of an approximately 230 foot long property line fence on a blufftop lot. The fence is a six foot high redwood fence. The fence is placed along an old railroad easement that has multiple existing fences along it.

LOCATION:

In the coastal zone, west of Ocean Drive approximately 200 feet west of the intersection of Highway One and Ocean Drive. Located in Gualala at the mouth of the Gualala River at 39010 Ocean Drive. (APN 145-191-09)

APPEALABLE AREA:

Yes, west of Hwy 1 & blufftop parcel

PERMIT TYPE:

Standard

TOTAL ACREAGE:

2+ acres

ZONING:

SR

GENERAL PLAN:

Suburban Residential

EXISTING USES:

Single Family Residential

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION:

Categorically Exempt, Class 3 (e) - fences

CALIFORNIA COASTAL RECORDS PROJECT #: 200504160

OTHER RELATED APPLICATIONS: F4784 building permit for residence

PROJECT DESCRIPTION: The applicant is requesting a Coastal Development Permit to rectify the unpermitted placement of a 230 foot long property line fence. The fence is located on a blufftop parcel and is a six foot high redwood fence. The fence is placed along an old railroad easement. The fence completes and matches adjacent fences that currently exist along the old railroad easement. The fence is proposed in two phases. The first phase is approximately 155 feet of fencing, while the second phase is approximately 75 feet of fencing.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

GMAC

The Gualala Municipal Advisory Committee approved the residential development as written at their February 7, 2008 meeting. It was discussed and agreed upon that the construction of the fence will not impact views of the public, nor from a public space. GMAC also found that the fence also alleviates safety, liability and trespassing concerns.

Land Use

The proposed perimeter fencing around the single family residence is compatible with the Suburban Residential zoning district. Typically, fencing under 6 feet in height in the coastal zone does not require a Coastal Development Permit. However, Section 20.532.020(c) of the MCCZC and specifically California Code of Regulations Subchapter 7.5, Improvements to Structures other than Single-Family Residences and Public Works Facilities That Require Permits states: (emphasis added)

Improvements That Require Permits. (4) On property not included in subsection (b)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the main high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the commission or regional commission an improvement that would result in an increase of 10 percent or more internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to Public Resources Code Section 30610(b), and/or increase in height by more than 10 percent of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

Therefore, since the subject property is a blufftop property, it is subject to a Coastal Development Permit.

Public Access

The project site is located west of Highway 1 and is a blufftop site, but is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site. Although, the parcel immediately south of the subject property has the Gualala Bluff Trail on it. The bluff trail terminates at the southerly property line of the subject property. Staff is unaware of any potential for the trail to be expanded to the north and staff is also under the impression that no trail easement exists on the subject parcel.

Hazards

The project site is a bluff top parcel which is subject to natural coastal erosion and bluff retreat. A geotechnical report was not submitted for this project due to the fact that the project is not for a substantial structure such as a single family house or addition. Although, the natural erosion process of the coastal bluff is likely to continue. The proposed fence is consistent with similar fences in design and location. It is the policy of the Coastal Commission and the County to

require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. However, as the only development proposed is a simple fence, staff has determined that this is unnecessary and onerous. Although, staff recommends Special Condition #1 to ensure that the fence is removed if it becomes undermined by erosion and that no seawall be allowed in the future to protect it from erosion.

Visual Resources

The project site is not located within a designated "highly scenic area." The proposal does not include any exterior lighting. The subject property is only visible to the public from the Gualala Bluff Trail. The trail begins on the parcel just south of the subject property. Since the fence is not a solid fence, but rather a split rail redwood fence, the proposed fence would blend not obstruct public views. Furthermore, the fence would be constructed east of the termination point of the Gualala Bluff Trail. The proposed fence would not block the public's view of or along the ocean. Mendocino County Coastal Element Section 3.5-1 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 landforms, 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.

The existing fencing in the subdivision on Ocean Drive is subordinate to its setting. Fencing throughout the subdivision is not particularly noticeable due to the placement, colors and materials of the fences. Fencing in the subdivision is comprised of wooden fences and deer fencing. Since the existing fences in the subdivision are subordinate to the landscape, any additional fencing would need to be subordinate in character as well. The existing fence is made up of split redwood stakes, with approximately three stakes per linear foot. The remainder of the fence that is proposed would be of the same style of fence. Upon conducting the site visit, a portion of the fence was complete. The fencing that was completed blended with the landscape and was not particularly noticeable. Although it is noticeable from the adjacent private homes located to the east of the subject property, the LCP does not contain private view protection policies.

Based on the above analysis, staff finds the proposed development to be consistent with the visual resource policies of the Coastal Element.

Natural Resources

The California Natural Diversity Database (CNNDDB) includes a record of Mendocino Paintbrush, *Castilleja mendocinensis*, a rare and endangered plant species. The Mendocino Paintbrush is generally found on grassy coastal bluffs. Completion of the proposed fence would not have a

significant impact on any potential rare plants growing on the steep bluff face. Further, upon conducting a site view, the bluff is heavily populated with Pampas Grass.

The project will have no adverse effects on natural resources.

Archaeological/Cultural Resources

There are no archeological or paleontological resources on the project site. The proposed project site is presently developed with a single family residence. Although the proposed fence would require some minor earthwork, such activities would be confined primarily to existing disturbed areas on the site. Nevertheless, Standard Condition #8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources

The site is located within an area mapped as Critical Water Resources. The proposed fence would not result in increased water demands.

Transportation/Circulation

The project would not contribute incrementally to local or regional roadways.

Zoning Requirements

The project complies with the zoning requirements for the Suburban Residential (SR) District set forth in Section 20.384.005, et. seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, and adopts the following findings and conditions.

FINDINGS:

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 applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and

5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
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; and
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.

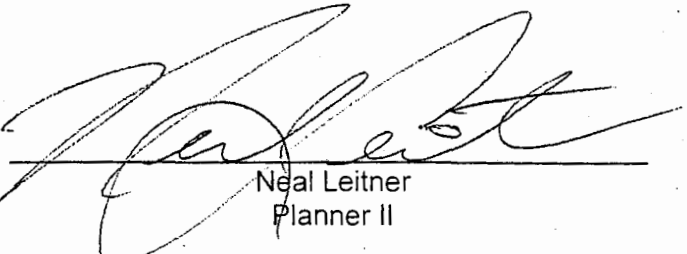
- c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. 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.

SPECIAL CONDITIONS:

- 1. In the event that erosion undermines the subject fence, the owner shall remove it before it falls on the beach. No bluff retaining wall shall be permitted to protect the subject fence from erosion.

Staff Report Prepared By:

May 13, 2007



Neal Leitner
Planner II

Attachments: Exhibit A- Location Map
 Exhibit B- Site Plan
 Exhibit C- Elevations
 Exhibit D- Example photo of adjacent fencing

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: \$825.00 (For an appeal to the Mendocino County Board of Supervisors.)

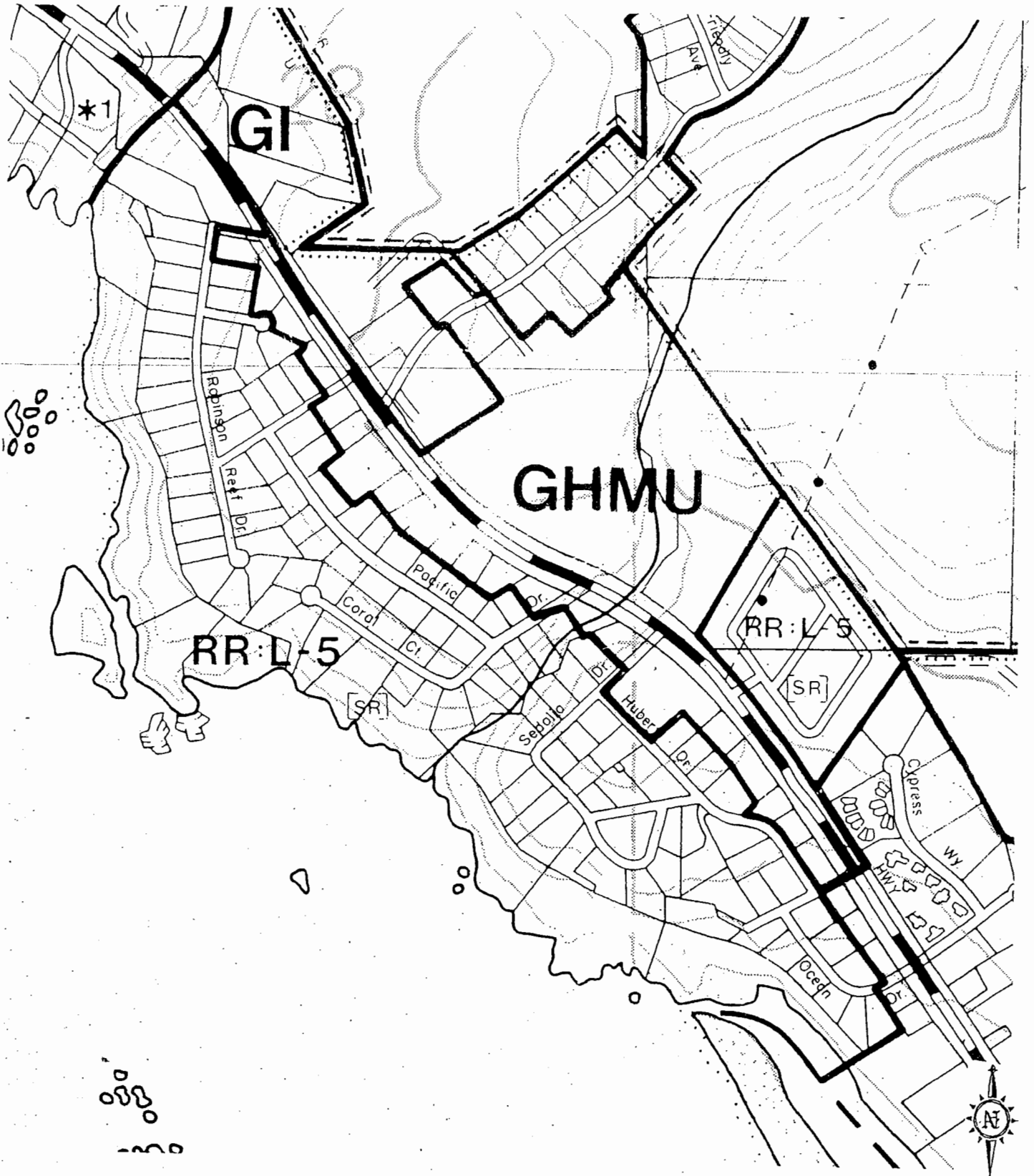


Exhibit A

Location Map

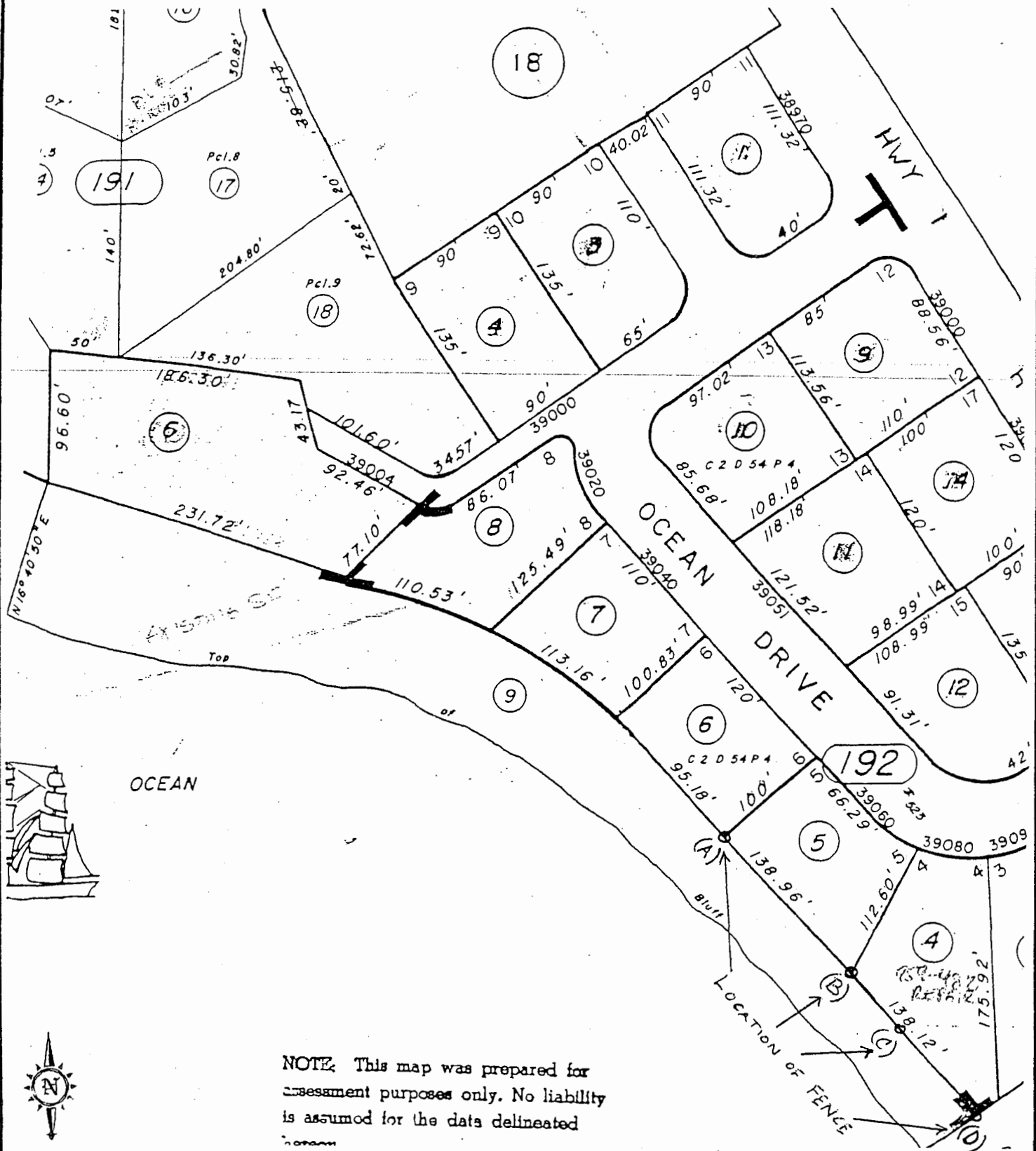


Exhibit B

Site Plan

FENCE CONSTRUCTION DETAIL

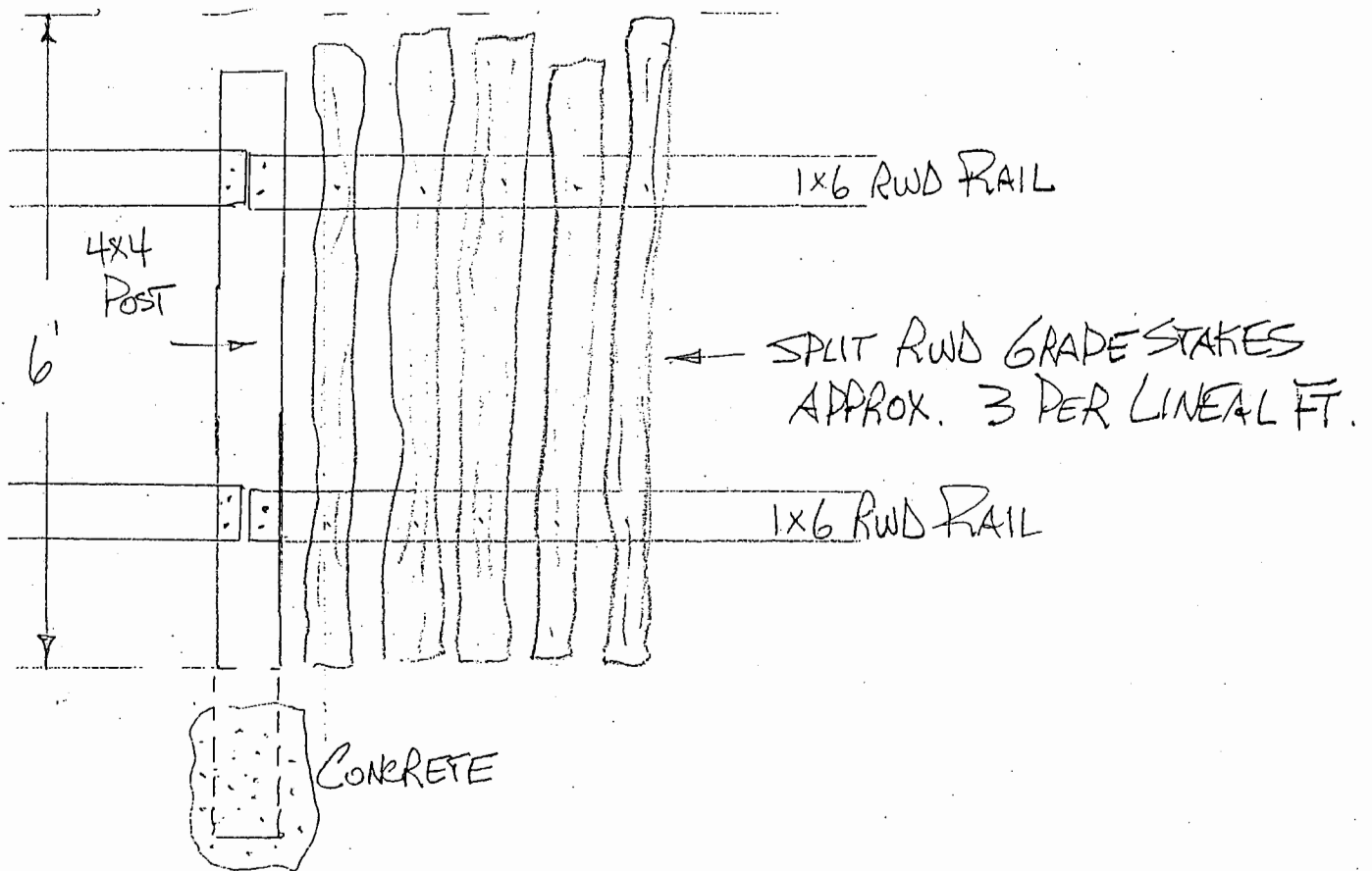




Exhibit D

Example photo of adjacent fencing



CONSTRUCTED
FENCE APPROVED BY
COUNTY

CONSTRUCTED FENCE AS VIEWED
FROM OCEAN DRIVE THROUGH
VACANT PARCEL

EXHIBIT NO. 8

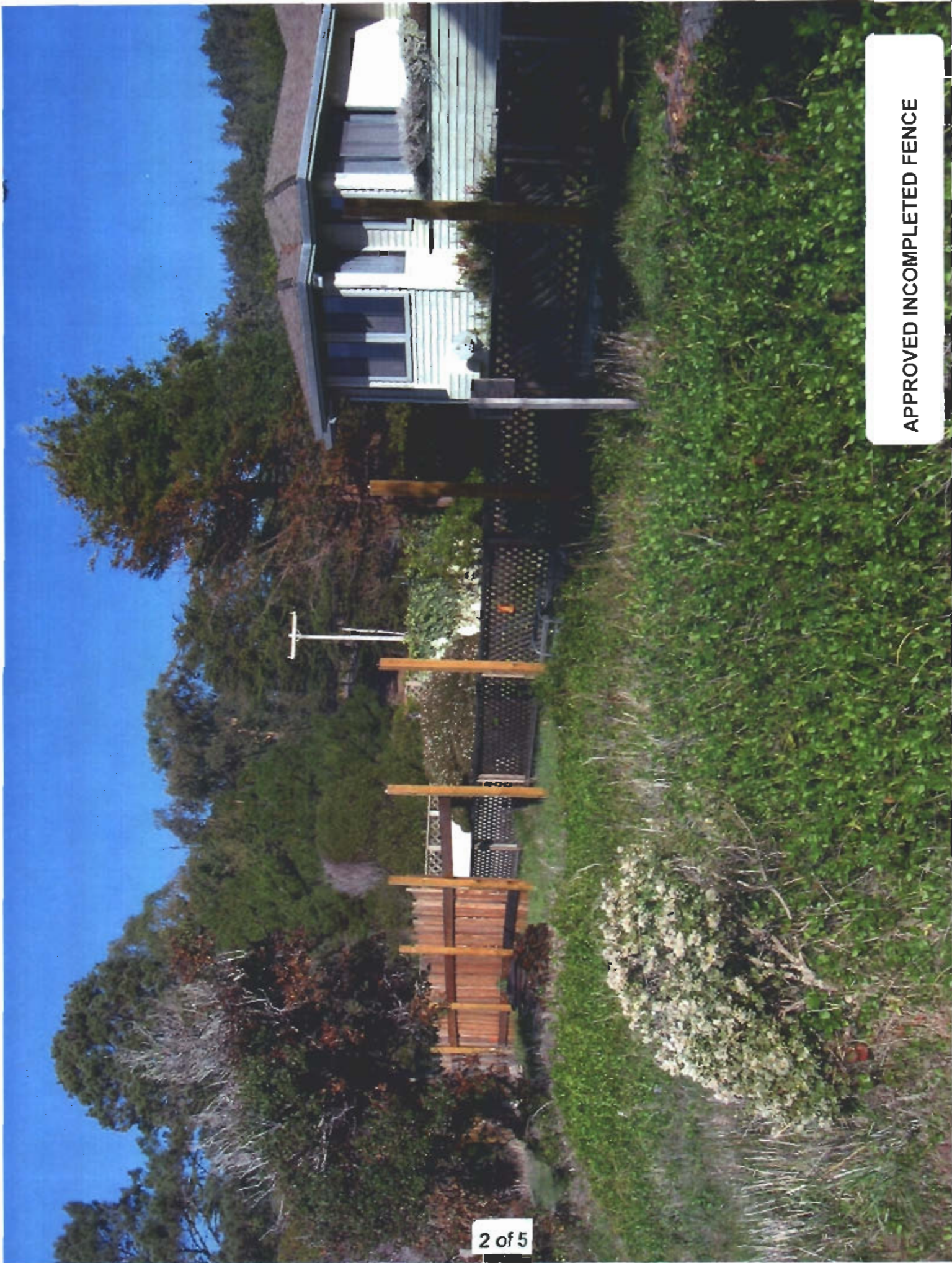
APPEAL NO.

A-1-MEN-08-048

PLENTY

STAFF PICTURES OF SITE
(1 OF 5)

APPROVED INCOMPLETED FENCE





PROJECT SITE

PROJECT SITE AS VIEWED FROM
SOUTH END OF GUALALA POINT
REGIONAL PARK



FENCE LOCATION

PROJECT SITE AS VIEWED FROM
NORTH END OF GUALALA POINT
REGIONAL PARK

CONSTRUCTED
FENCE

PROPOSED
ADDITIONAL FENCING

CONSTRUCTED AND PROPOSED
FENCE AS VIEWED FROM NORTH END
OF GUALALA POINT REGIONAL PARK

Don & Jan Plenty
PO Box 328
Gualala, CA 95445

December 18, 2008

California Coastal Commission
710 E. Street, Ste 200
Eureka, CA 955041

Attn: Mr. Robert Merrill

RECEIVED

DEC 19 2008

CALIFORNIA
COASTAL COMMISSION

Dear Coastal Commssion:

Reasons for not supporting Appeal of CDP #68-2007

This project is to fill in the gaps of existing fencing extending from the northern boundary of our property, Parcel 9, to the southern end. Construction materials, height and color are compatible with existing portions of the fence. The alleged violations of both the Gualala Town Plan and the Coastal Act, enumerated in the appeal, involve the creative conflation of "public" and "private" views. It is perhaps worth noting that in four (4) public hearings to date on this project, not one member of the public whose name was not Carter or Plenty, spoke for or against this project. After a year on consideration, the county has determined this to be a private dispute between property owners. Any public view impacts were exhaustively examined and determined to be minimal.

Appellants make several untrue statements in their discussion. They claim a "recognized property right of the Carters," which is certainly not recognized by us. They assert that the "sole purpose" of the fence is to block the Carters' view, which we reject. In any case, our motives or intentions are not the concern of the county or the Coastal Commission. The Commission's role is to review the county's decision that the project does not violate any pertinent policies.

As is the case with many documents, the footnotes provide the real story. The note on page 2, tells you what this dispute is really about and ironically, also tells you why this appeal should be denied.

Signature on File

Don & Jan Plenty

EXHIBIT NO. 9

APPEAL NO.

A-1-MEN-08-048

PLENTY

APPLICANT'S
CORRESPONDENCE