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DATE: Prepared June 24, 2010 for the July 7, 2010 hearing

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Robert Merrill, North Coast District Manager
Tamara L. Gedik, Coastal Program Analyst

SUBJECT: **Appeal No. A-1-MEN-10-022 (Yager**, local permit #CDB-22-2009), Appeal by Commissioners Sara Wan and Esther Sanchez of Mendocino County decision approving a coastal development boundary line adjustment on 62.9 acres to reconfigure four (4) existing lots from the current configurations of approximately 3.5 acres; 5.6 acres; 28.8 acres; and 25 acres, into a new configuration consisting of 4 acres; 6 acres; 10 acres; and 42.9 acres. The boundary line adjustment followed the issuance in 2008 of certificates of compliance by the County (CC 9-2008) that recognized the existing parcel configurations. The project site is located southwest of State Highway One adjacent to the south side of the Navarro River, approximately 6 miles north of Elk, at 1361 Cameron Road (CR# 516), APNs 126-060-14; 126-070-06; 126-080-03, -06, and -07.

Appeal filed: June 10, 2010; 49th day: July 29, 2010.

Recommendation:

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-10-022 has been filed and that the Commission hold a *de novo* hearing.

Staff recommends a NO vote on the following motion and resolution:

Motion & Resolution. *I move that the Commission determine and resolve that: Appeal No. A-1-MEN-10-022 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 with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings.

Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

The Coastal Act presumes that an appeal raises a substantial issue of conformity of the approved project with the certified LCP, unless the Commission decides to take public testimony and vote on the question of substantial issue.

IMPORTANT NOTE:
THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THE
SUBSTANTIAL ISSUE PHASE OF THE APPEAL HEARING UNLESS
THREE COMMISSIONERS REQUEST IT.

Findings:

On May 13, 2010 the County of Mendocino approved Coastal Development Permit #22-2009 for a coastal development boundary line adjustment on 62.9 acres to reconfigure four (4) existing lots from the current parcel configurations of approximately 3.5 acres, 5.6 acres, 28.8 acres, and 25 acres into new parcel configurations of 4 acres, 6 acres, 10 acres, and 42.9 acres. The boundary line adjustment follows the issuance in 2008 of certificates of compliance by the County (CC 9-2008) that recognize the existing parcel configurations. The County staff report notes that in the existing configuration, two of the four existing parcels (3.5 and 5.6 acres) are not buildable due to steep slopes, flood plain, and/or environmentally sensitive habitat area issues.

The property is forested with mostly grand fir (*Abies grandis*) and Bishop pine (*Pinus muricata*), with few hardwoods including tan oak (*Lithocarpus densiflorus* var. *densiflorus*) and red alder (*Alnus rubra*). The property is currently used for timber harvesting and is designated as a California Coastal Commission Special Treatment Area for timber management. The applicant has an approved timber harvest permit issued in 2009 (county THP #1-2009; CalFire THP #1-09-015MEN) to selectively harvest 22 acres within the subject parcel. The northeast edge of the property is adjacent to the Navarro River, and there are five unnamed Class II watercourses and related “wet areas” within the as-approved project area.

The approved development is located southwest of State Highway One adjacent to the south side of the Navarro River, approximately 6 miles north of Elk, at 1361 Cameron Road (CR# 516), APNs 126-060-14; 126-070-06; 126-080-03, -06, and -07. The property ground elevations vary from 20-440 feet above mean sea level and slope upward from the northern boundary to the southern boundary.

The subject parcels occur in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Open Space to the north; Timberland Production and Flood Plain (Navarro River) to the east; and Rural Residential (10 acre minimum) to the south and west. The subject parcels are designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Rural Residential, Ten Acre Minimum (RR-10), and some of the area has a combining district of Density Limitation (DL) because of the slopes exceeding 30%. Additionally, the Coastal Zoning Map indicates portions of the parcels are designated with Visitor Accommodations and Services Combining Districts (*2C and *4C) for future visitor-serving facilities conditioned upon limitations for use no more intense than a single-family residence, and only if it is sited in such a location and manner that a visitor-serving facility may still be placed on the site. The parcels are also designated as within a “Critical Water Resources” area.

The approved land division development is located southwest of State Highway One adjacent to the south side of the Navarro River, approximately 6 miles north of Elk, at 1361 Cameron Road (CR# 516), APNs 126-060-14; 126-070-06; 126-080-03, -06, and -07.

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because (1) the approved land division is a form of development that is not designated as the “principal permitted use” under the certified LCP; (2) the approved development is located within 100 feet of a wetland or stream; and (3) a portion of the approved development is located within a sensitive coastal resource area (“highly scenic area”) as described in Section 30603(a)(3) of the Coastal Act.

The appellants (Commissioners Sara Wan and Esther Sanchez) claim that the approved project is inconsistent with the policies and standards of the Mendocino County certified Local Coastal Program (LCP) relating to rural land divisions; Coastal Element policies for locating and planning new development; and protection of environmentally sensitive habitat areas (ESHAs).

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the County’s Final Local Action Notice for the development (Exhibit No. 9), appellant’s claims (Exhibit No. 8), and the relevant requirements of the LCP (Appendix B). Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the approved development with respect to the provisions of the certified LCP regarding coastal rural land divisions; locating and planning new development; and protection of ESHA policies as explained below.

¹ The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government’s decision; 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.

1. Substantial Issue With Respect to Adequacy of Water Supply Policies of the Certified LCP

The approved boundary line adjustment is a form of land division. The appellants claim that the approved land division is inconsistent with LCP water supply policies related to both coastal development projects in general and coastal land divisions in particular (see Appendix B). The subject parcel is in a designated critical water resources area.

LUP 3.8-9 states that approval of the creation of any new parcels shall be contingent upon an adequate water supply. Moreover, LUP Policy 3.8-1 and CZC Section 20.532.095(A)(2) require, in applicable part, that the granting of any coastal development permit shall be supported by findings which establish that the approved development will be provided with adequate utilities. Furthermore, both CZC Section 20.532.100(C)(1)(a) and CZC Section 20.524.010(B)(c) specify that no coastal lands shall be divided unless findings are made that the new lots have or will have adequate water. The County acknowledged the area is a critical water resources area and further acknowledged there were no existing water facilities on any of the existing parcels. However, the County findings did not justify approval of the development without any prior proof of water.

The County staff report indicates that County Division of Environmental Health (DEH) “recommended approval of the boundary line adjustment and noted that there are no septic or wells on any of the proposed parcels; Appendix 6 (Individual Water Supply Systems) of the County of Mendocino Coastal Element specifies that it is an objective:

To provide an individual water supply system which will assure; (a) adequate supply of safe and palatable water, (b) reasonable, durable and economical operation and maintenance, and (c) be located and constructed to avoid contamination by any existing or proposed sewage disposal systems, or other source of contamination. In order to meet these objectives, a subdivider shall submit evidence that water systems will comply with water quality requirements...”

County staff had recommended a condition requiring that the applicant submit proof to DEH that potable water on each parcel meets the quantity and quality requirements of DEH prior to recordation of the deeds for the parcels as approved. However, the condition was deleted from the approved project, without any findings justifying this action. Therefore, the County’s approval of the project was granted without factual support that the adjusted parcels will have adequate water supplies to serve future development and use of the parcels and thus without factual support that the approved project is consistent with the water supply policies of the certified LCP cited above.

Because the subject development was approved prior to submittal of proof of adequate water supply and without any findings demonstrating adequate water supply, the appeal raises a substantial issue of conformance of the project as approved with LCP water supply policies related to both coastal development projects in general and coastal land divisions in particular, including but not limited to, LUP Policies 3.8-1 and 3.8-9, and CZC Sections 20.524.010, 20.532.095, and 20.532.100.

2. Substantial Issue With Respect to ESHA Buffer Policies of the Certified LCP

The appellants allege that the approved land division is inconsistent with LCP provisions pertaining to ESHA buffers. The May 13, 2010 county staff report notes the subject property is predominantly comprised of Grand Fir Forest with components of Bishop Pine Forest, and acknowledges these community types are recognized as ESHAs. The County states that the tentative boundary line adjustment map submitted by the applicant “indicates building areas on the proposed parcels which are all outside of the ESHAs, however it is not clear that all building sites are outside of the 100 foot buffer areas of the Grand Fir Forest and the Bishop Pine Forest...” In apparent contrast, the County references the botanist’s report prepared for a 2009 timber harvest plan for the subject site which states the following: “with the exception of specific individual mature trees which may be removed to allow construction of roads and landings, the dominant and co-dominant components of the stand shall be retained, thereby maintaining the integrity of the plant community as a Grand Fir Forest.”

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

In addition, LUP Policy 3.1-32 limits land divisions, including lot line adjustments, which are located within ESHAs and does not permit such land divisions if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7. Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. The subject parcel occurs in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Open Space to the north; Timberland Production and Flood Plain (Navarro River) to the east; and Rural Residential (10 acre minimum) to the south and west.

Aside from the botanist’s notes that the timber harvest will maintain the integrity of the plant community as a Grand Fir Forest, thereby effectively suggesting the entire area will remain as ESHA, the March 2010 revised tentative map submitted by the applicant shows several watercourses and wet areas within the subject area, all of which are also designated

ESHAs. According to the CA Department of Fish and Game Natural Diversity Database (Rarefind 3.1.1), nests of the special-status Sonoma tree vole (*Arborimus pomo*) have been located on the subject parcel in the past. It is unclear from the tentative map whether the widest, most protective buffer zone feasible has been maintained as part of the boundary line adjustment as approved. While the County findings reference the lack of clarity as to whether the minimum buffers were maintained on the tentative map, the project was conditionally approved only to require additional surveys and biological assessments prior to each development on the newly-configured parcels.

Therefore, approval of the subject development raises a substantial issue of conformance with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7, 3.1-32 and CZC Section 20.496.020, because (a) the land division as approved does not appear to retain the widest and most protective buffer zone feasible as required by CZC 20.496.020(A)(1)(f); and (b) the County fails to address the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7, 3.1-32, and 3.1-18 and CZC Section 20.496.020, including how a buffer for watercourses; wetlands; and the rare Grand Fir Forest, Bishop Pine Forest, and Sonoma tree vole habitat that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3).

CZC Section 20.496.020(A)(3) explicitly disallows boundary line adjustments that create or provide for new parcels entirely within a buffer area. Even if the boundary line adjustments created parcels located entirely outside the buffer area, it is unclear from the tentative map whether there is sufficient room to accommodate building sites, septic, and water facilities outside the adjacent ESHA buffer areas. LUP Policy 3.1-32 expressly disallows lot line adjustments which create parcels without adequate building sites. LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4) require permitted development within an ESHA buffer to comply with several standards. These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that the development be sited and designed to prevent impacts that would significantly degrade the ESHA. Additionally, CZC Section 20.524.010(B)(g) requires that land divisions shall not have significant adverse effects, either individually or cumulatively, on ESHAs or on other coastal resources, and CZC Section 20.524.010(B)(m) requires that identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts. The County's findings do not analyze alternative sites or project designs or demonstrate that the land division as approved was configured on the parcel in a manner that would best protect the ESHA. Furthermore, although the County's findings acknowledge that future building sites may not include 100-foot buffer setbacks, inconsistent with CZC 20.496.020(A)(1)(f), the County did not evaluate whether the reduced buffer would be adequate, inconsistent with LUP 3.1-7.

Thus, because (1) boundary line adjustments are not allowed to create or provide for new parcels entirely within a buffer area; (2) the parcel is in a largely undeveloped area but does not appear to retain the widest and most protective ESHA buffers for future building sites; (3) the County acknowledges the boundary line adjustments may not provide building sites outside of 100-foot ESHA buffers but did not evaluate whether a reduced buffer would be adequate, and (4) the County approval does not adequately demonstrate

that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs, there is a low degree of factual support for the County's approval of the project and the appeal raises a substantial issue of conformance of the project as approved with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, 3.1-32, and CZC Sections 20.496.020 and 20.524.010(B).

3. Substantial Issue With Respect to Transportation Utilities and Public Services Policies of the Certified LCP, and Coastal Zoning Code Regulations Regarding Locating and Planning New Development

The appellants further allege that the approved project is inconsistent with the LCP because: (1) the County approval did not first demonstrate in their findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed; and (2) the County approval did not consider the effects of the development on Highway One capacity and the access and visitor-serving policies of the LCP for greater than one residential development, despite their conclusion suggesting the development as approved would result in an increase of developable lots and thus increased future density.

Land Divisions Limited Unless 50% of Existing Usable Parcels Are Developed

Land Use Plan (LUP) Policy 3.8-1 requires that Highway One capacity (among other public services) and consideration of 50 percent buildout be considered when considering applications for development permits. LUP Policy 3.9-2 (a) requires no new parcels be created unless 50 percent of the existing usable parcels within the surrounding area have been developed. CZC Section 20.524.010 (refer to Appendix B) requires that land divisions in coastal rural areas be permitted only if all of the listed conditions are satisfied, including but not limited to development of at least 50 percent of the existing usable parcels within the defined market area (CZC Section 20.524.010(B)(1); and availability of public services including roadway capacity to serve the proposed parcels without significant damage to coastal resources or interference with public access (CZC Section 20.524.010(B)(1)(k). In addition, CZC Section 20.532.100(C)(1) further requires that no coastal lands shall be divided unless findings can be made that include but are not limited to the following: (b) the new lots created will not have, individually or cumulatively, a significant adverse impact on ESHAs or on other coastal resources; and (d) Other public services, including but not limited to public roadway capacity, have been considered and are adequate to serve the proposed parcels.

The County staff report concludes the following:

The proposed boundary line adjustment will create four (4) newly configured lots that have building envelopes which would include home sites, access driveways, private sewage disposal systems and domestic water systems that would not be located on steep slopes, would not be located within a flood plain, would not be located in groundwater recharge areas as outlined in the recommended conservation measures, 1982 Mendocino County Coastal Groundwater Study, and would not be located in archaeologically sensitive areas. If the four (4) parcels that are recognized by CC 9-2008 were not reconfigured, it is staff's opinion that two (2) of those lots could not be developed under current land use regulations... (emphasis added)

The project as approved, therefore, includes a land division that results in a future increase in density because according to the County, two parcels are currently not developable but with the project as approved, four parcels are developable.

In addition, although the County staff report references that the current configuration of the parcels was recognized by a Certificate of Compliance (CoC) issued in 2008 (CC 9-2008), the County did not notify the Coastal Commission at the time of issuance of the certificates of compliance, and it is unclear from the County staff report what the basis for approval is for the certificates of compliance. Therefore, it is unclear whether the certificates of compliance are legally recognized under the Coastal Act and related LCP policies including LUP Section 3.9 that require coastal development permits for all land divisions. If the certificates of compliance are not valid, then the current project as approved does not just adjust boundaries between parcels but also de facto creates additional parcels, two of which (3.5 acres and 5.6 acres) are smaller than the 10-acre minimum parcel size allowed in the Rural Residential zoning district that applies to the subject property, as described in CZC Section 20.376.020(D) and LUP policy 3.9-2(a).

In addition, if the certificates of compliance are not valid and the development as approved de facto creates new parcels, the County has created new parcels without first demonstrating in its findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed, pursuant to the coastal rural land division criteria in CZC Section 20.524.010(B)(1). Therefore, there is a low degree of factual support for the consistency of the approved project with the rural land division criteria of the LCP and the appeal raises a substantial issue with regard to the conformance of the approved project with CZC Section 20.524.010(B)(1).

Highway One Traffic Capacity

Additionally, the County did not demonstrate consideration of Highway 1 capacity when approving increases to the density of land use as a result of the approved land division, pursuant to requirements of LUP Policy 3.8-1. Coastal Act Section 30254 states that it is the intent of the Legislature that State Highway One in rural areas of the coastal zone remain a scenic two-lane road, and that where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. LUP Policy 3.8-1 reflects the intent of Section 30254 of the Coastal Act that Highway One remain a two lane road and that new development not overwhelm the capacity of the highway with additional vehicles that exceed its capacity. LUP Policy 3.8-1 states in applicable part, "*Highway 1 capacity...shall be considered when considering applications for development permits.*"

Section 30250(a) of the Coastal Act also requires that new development not have significant adverse effects, either individually or cumulatively, on coastal resources. The LCP also contains policies that protect the public's ability to access the coast.

Policy 3.9-1 of the County's LUP states that:

An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:

- *Each community's desired amount and rate of growth.*
- *Providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.*

In addition to the considerations pertaining to the allocation of residential sites listed above, all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determinations of service capacity shall be made prior to the issuance of a coastal development permit. (Emphasis added)

CZC Section 20.532.095(A)(6) also requires the granting of any coastal development permit be supported by findings which establish that, among other requirements, public services including but not limited to public roadway capacity have been considered and are adequate to serve the proposed development.

Because the only north-south arterial in coastal Mendocino County is Highway One, the requirements of Section 30254, LUP Policy 3.8-1 and the access provisions of the LCP are a limiting factor on the potential for new development in Mendocino County because traffic congestion on Highway One interferes with the public's ability to access the coast and its visitor serving resources. In addition, Section 30254, LUP Policy 3.8-1, and the access and visitor-serving policies of the LCP require that high priority uses of the coast not be precluded by other, lower-priority uses when highway capacity is limited.

Highway capacity has been recognized by the Commission as a constraint that limits new development, as new development generates more traffic that uses more capacity and a lack of available capacity results in over-crowded highways for long periods of time. Moreover, whereas here there are no alternative routes to and along the coastline and traffic congestion can interfere with the public's ability to access the coast, land divisions must be carefully considered. When it certified the Mendocino County Land Use Plan with Suggested Modifications, the Commission found that too much buildout of the Mendocino coast would severely impact the recreational experience of Highway One and its availability for access to other recreational destination points. The Commission reduced by more than half the number of potential new parcels that could be created under the certified LUP, based on its conclusion that, given the information available at that time, approximately 1,500 new parcels was the maximum number of new parcels Highway One could accommodate while remaining a scenic, two-lane road.

The Commission recognized that in the future, a greater or smaller number of potential new parcels might be more appropriate, given that changes might occur that would affect

highway capacity, such as new road improvements, or that development might proceed at a faster or slower pace than anticipated.

When looked at in isolation, it may not appear that approving any particular proposal for a density increase would have much impact, when the potential for only a few new parcels is created by each such proposal. However, as discussed above, consistent with Section 30250(a) of the Coastal Act, LUP Policy 3.8-1, and the access provisions of the LCP, the cumulative impact of numerous coastal development permits allowing increases in residential density affecting highway capacity and the public's ability to access the coast must also be addressed. Looking at each new project in isolation fails to take into account the effect numerous projects would have if approved in this fashion.

The County's adopted findings for approval of the project state that "the cumulative effects of traffic resulting from development of a residence on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur." (emphasis added). The County's adopted findings therefore suggest a single residence was considered, not four separate residences on the subject site.

Although the County staff report states that the "boundary line adjustment will not create any new parcels," the County staff report also states that as approved, the adjustment reconfigures the existing four parcels to create four developable parcels where only two of the four are currently developable.

Furthermore, if the 2008 CoCs are not valid under the Coastal Act and the current project as approved does not just adjust boundaries between parcels but also de facto creates new parcels. The cumulative impacts of the creation of the newly created parcels on Highway One capacity has not been analyzed, thereby raising a substantial issue with regard to conformance with the access requirements of the certified LCP and the requirements of LUP Policy 3.8-1 which states in applicable part, "*Highway 1 capacity...shall be considered when considering applications for development permits.*"

Therefore, because the basis for the County's issuance of the COCs for the subject property is unclear and the record contains no evidence that the County in its action on the project considered the effects of the development on Highway One capacity for greater than one residential development, the appeal raises a substantial issue of conformance of the project as approved with the provisions of LUP Policy 3.8-1 that requires Highway One capacity to be considered when considering development permits as well as the access requirements of the LCP protecting the public's ability to access the coast.

Summary of Findings:

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved land division development with LCP policies regarding coastal rural land divisions; locating and planning new development; and ESHA buffer policies. The Commission finds a substantial issue exists because (1) the County approval did not include any findings demonstrating adequate water supply to support a land division; (2) the land division as approved does not appear to retain the widest and most protective ESHA buffer zone feasible; (3) the County approval fails to address the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7, 3.1-32, and 3.1-18 and CZC Section 20.496.020, including how a buffer that is less than the

minimum of 100 feet is allowable under the LCP; (4) the County approval did not first demonstrate in their findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed; and (5) The County approval did not consider the effects of the development on Highway One capacity for greater than one residential development, despite its conclusion suggesting the development as approved would result in an increase of developable lots and thus increased future density.

Information Needed for De Novo Review of Application

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

1. Evidence of Adequate Water Supply

As discussed previously, LUP Policy 3.8-1 requires that the adequacy of water services, among others, be evaluated when coastal development permit applications are granted or modified. LUP Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Additionally, LUP Policy 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. The Mendocino Coastal Groundwater study recommends that proof of water be provided for development in Critical Water Resource Areas, including the area where the subject property is located.

Therefore, a hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water is needed to evaluate whether adequate water will be available to serve future development of the adjusted parcels, consistent with the certified LCP.

2. Information on Designation of Visitor-Serving Areas

The boundary line adjustment would reconfigure the four parcels in a manner that alters the location and amount of potential future building sites and raises substantial issues of conformance of the project as approved with LCP policies addressing the protection of environmentally sensitive areas and locations appropriate for development of visitor-serving facilities. As discussed above, the Coastal Zoning Map indicates portions of the parcels are designated with Visitor Accommodations and Services Combining Districts (*2C and *4C). (Exhibit 3) The combining districts limit use of the portion of the parcels that are designated to no more intense than a single-family residence, and only if it is sited in such a location and manner that a visitor-serving facility may still be placed on the site. The County staff report fails to address how the visitor-serving designations were applied to the portions of the designated parcels that were reconfigured. The County staff report also fails to address how these designations could apply to the parcels subsequent to the County-approved land division without an LCP adjustment to reflect the change.

Therefore, the applicant must provide an analysis discussing which parcels are subject to the Visitor Accommodations and Services Combining Districts (*2C and *4C) and how the newly configured parcels conform to the combining district limitations.

3. Evidence of Road Access Easements for Each Parcel

According to the local record, a neighbor (Gallagher) expressed concern that the newly configured lots resulting from the subject County-approved land division would result in the creation of parcels that could not be served by the existing road access easement that is provided through their recently-divided lot (permit CDMS 7-2002). Although the County could not find evidence in permit CDMS 7-2002 that specified a limitation on number of parcels that could be served by the access easement, the County included a special condition #7 to the County-approved development requiring the applicant to provide proof to Mendocino County Department of Transportation that there is an access easement from Cameron Rd. (CR 516) that would serve the subject parcels.

CZC Section 20.532.095 requires that the granting or modification of any coastal development permit by the approving authority shall be supported by findings that include but are not limited to a determination that the proposed development will be provided with adequate access roads. CZC Section 20.532.100(C)(1)(a) requires that no coastal lands shall be divided unless the findings are made that include but are not limited to determination that the new lots created have or will have adequate roadway and other necessary services to serve them. Because the County did not make findings that verified the newly configured lots would have adequate access roads prior to approval of the subject land division, the appeal raises a substantial issue of conformance of the approved development with the above-described policies. Therefore, the applicant must submit evidence for the purposes of *de novo* review demonstrating that there is an access easement from Cameron Rd. (CR 516) to all of the newly configured parcels that provides the necessary property rights to the applicant to provide vehicular access to each of the newly configured parcels or that a feasible and sufficient alternative exists to provide access to the parcels.

4. Submittal of Biological Reports

As discussed previously, the appeal raises a substantial issue of conformance of the approved project with the environmentally sensitive area resource policies of the LCP. There is a significant question as to how the boundary line adjustments ensure that future development of the reconfigured parcels will have an adequate building site outside of ESHA and buffer areas in a manner consistent with LCP policies.

Biological Reports

According to the CA Department of Fish and Game Natural Diversity Database (Rarefind 3.1.1), nests of the special-status Sonoma tree vole (*Arborimus pomo*) have been located on the subject parcel in the past. The County staff report states the following:

The California Natural Diversity Database map for the project area indicated the possible presence of the Sonoma Tree Vole. A biological assessment for the Yager Timber Harvest Plan was prepared by Douglas Meekins, dated October 25, 2008, which concluded that there were no Sonoma Tree Voles observed on the property, however Mr. Meekins pointed out that habitat elements will be maintained for future tree vole use...

The biological assessment referred to by the County was not included as an exhibit to the County's staff report. Because there have been documented occurrences of Sonoma tree vole on the subject property in the past, and in order to demonstrate whether the biological assessment included adequate surveys, the applicant must submit a copy of the biological report(s) prepared for the subject property that includes survey and assessment methodology. If the submitted biological reports are determined by Commission staff to have not adequately surveyed the subject property for Sonoma tree vole, additional surveys may be required in order to demonstrate that the approved development is consistent with the ESHA provisions of the certified LCP.

Botanical Reports

In addition, the County staff report indicates a botanical survey was conducted by botanist Fred Schuler on 50 acres for the timber harvest plan. The botanical survey conducted by the applicant's botanist as part of an approved timber harvest plan does not appear to have covered the entire subject parcel, which constitutes nearly 63 acres. Because it is unclear whether the botanical survey adequately covered the entire project area, the applicant must submit a copy of the botanical report(s) prepared for the subject property that includes survey and assessment methodology, survey routes, and survey hours. If the submitted botanical surveys are determined by Commission staff to have not adequately surveyed the subject property to enable the proposed project to be evaluated for conformance with the ESHA provisions of the certified LCP, an additional botanical survey may be required.

Wetland Delineation

Furthermore, a map included as an exhibit to the local record (Exhibit X) shows at a coarse scale a "seasonally wet area" and "water and lake protection zones" but does not provide a detailed map of these features. There is no evidence in the local staff report that a definitive survey of wetlands was conducted. Although watercourses, "wet areas," and

plant species were identified, the local record does not provide evidence that the density and areal extent of hydrophytic vegetation was analyzed. In addition, there is no evidence that soil samples were taken or site hydrology evaluated, and a precise map of potential wetland areas prepared is absent from the local record. To properly determine the extent of any wetlands in the anticipated future development sites that would be accommodated by the proposed land division, a wetland evaluation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be prepared.

5. ESHA Buffer Analysis

LUP Policy 3.1-32 limits land divisions, including lot line adjustments, which are located within ESHAs and does not permit such land divisions if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7. Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. The subject parcel occurs in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Open Space to the north; Timberland Production and Flood Plain (Navarro River) to the east; and Rural Residential (10 acre minimum) to the south and west.

The County staff report states the following:

The applicant, by using an approved Timber Harvest Plan, has legally logged areas of Grand Fir Forest thus creating areas on the four proposed parcels where development can occur which is outside of Environmentally Sensitive Habitat Areas. If there had been no approved logging of this area, the subject property would have been entirely within an ESHA.

Aside from the botanist's notes that the timber harvest will maintain the integrity of the plant community as a Grand Fir Forest, thereby effectively suggesting the entire area will remain as ESHA, the March 2010 revised tentative map submitted by the applicant shows several watercourses and wet areas within the subject area, all of which are also designated ESHAs. Additionally, known occurrences of special-status Sonoma tree vole are documented on the subject property (Rarefind 3.1.1).

Therefore, in addition to uncertainty regarding whether the County has approved development within an ESHA, which would raise a substantial issue of conformance with LCP policies including but not limited to LUP 3.1-32; if development *has* occurred outside of ESHA it is nonetheless still unclear from the tentative map whether the approved boundary line adjustment has created parcels with the widest, most protective buffer zone feasible to ensure that future development of a residence has an adequate building site outside of ESHA and buffer areas in a manner consistent with LCP policies. Also, even though the County findings reference the lack of clarity as to whether the minimum buffers were maintained on the tentative map, the project was conditionally approved only to require additional surveys and biological assessments prior to each development on the newly-configured parcels.

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

To determine whether or not the proposed development is consistent with the ESHA buffer provisions of the LCP, the Commission needs to receive an analysis based on the standards of CZC Section 20.496.020 outlined above of the adequacy of any buffer between anticipated future development sites and adjacent ESHA that would be less than 100 feet. As part of this determination, it will be necessary for the submitted analysis to first address the presence of ESHA in the area (including rare plant and animal ESHA, riparian ESHA, wetlands, sensitive natural communities, and other types of ESHA) and where such ESHA is located on and/or adjacent to the subject property. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a minimum size of 11 inches by 17 inches. Additionally, significant site features also should be clearly shown in relation to the mapped ESHA types including existing roads and development; 100-foot ESHA buffer boundaries; proposed residential and accessory structures; proposed water facilities and septic system areas; and other proposed development.

6. Evidence of Lot Legality

The County-approved land division development is on property recognized by a County-issued Certificate of Compliance (CC 9-2008) as 4 separate legal lots. It is unclear whether the certificates of compliance are legally recognized under the Coastal Act and related LCP policies including LUP Section 3.9 that require coastal development permits for all land divisions. If the certificates of compliance are not valid, then the current project as approved does not just adjust boundaries between parcels but also de facto creates additional parcels, two of which (3.5 acres and 5.6 acres) are smaller than the 10-acre minimum parcel size allowed in the Rural Residential zoning district that applies to the subject property, as described in CZC Section 20.376.020(D) and LUP policy 3.9-2(a). Therefore, an analysis of the legality of the lots as separate parcels and related information is needed to determine the legal development potential of the subject property. This analysis must include, but is not limited to, the following:

- A. A copy of the County issued Certificates of Compliance and an explanation of the basis upon which the certificate was issued by the County;
- B. An analysis of how the real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto; and
- C. The historic chain of title for each of the affected parcels as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the applicant.

If it is determined that the proposed project would create additional parcels rather than adjust existing legal parcels, the applicant shall submit the information identified below.

a. **Highway Capacity Analysis if Proposed Project would Create Additional Parcels**

As discussed above, the project raises a substantial issue with respect to conformance of the approved project with LCP policies regarding impacts to Highway One, including, but not limited to, LUP Policy 3.8-1, and CZC Sections 20.524.010(B)(1)(k), 20.532.095(A)(6), and 20.532.100(C)(1)(d). If the proposed project would create additional parcels rather than adjust existing legal parcels, the approved development raises a substantial issue as to whether the roadway capacity is adequate to serve the proposed land division development as well as the access requirements of the LCP protecting the public's ability to access the coast.

Additionally, LUP Policy 3.9-1 requires all development proposals be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources, and CZC Section 20.524.010(B)(1)(g) further requires that land division in rural areas be permitted only if all of the conditions of subsection (1) are satisfied, including but not limited to the land division resulting in no significant adverse effects, either individually or cumulatively, on environmentally sensitive habitat areas or on other coastal resources.

If the proposed project would create additional parcels rather than adjust existing legal parcels, to determine the potential individual and cumulative impacts to Highway One and to the public's ability to access the coast as a result of the proposed project, the applicant must provide a cumulative impact analysis that evaluates existing and cumulative effects to (1) peak hour traffic; (2) traffic levels of service; and (3) the associated impacts on use of Highway One in the project area. Because both individual and cumulative impacts must be addressed pursuant to the LCP policies described above, the analysis should consider the proposed project and any reasonably foreseeable land division projects in the future, which may be determined by considering pending and recently-approved development permits submitted to Mendocino County and/or the California Coastal Commission. Lastly, because the local record indicates the applicant's desire to further subdivide the subject parcel in the future, the cumulative impacts analysis should include consideration of impacts resulting from this reasonably-foreseeable future development.

b. Determination of Surrounding Development if Proposed Project would Create Additional Parcels

LUP Policy 3.9-2 (a) requires no new parcels be created unless 50 percent of the existing usable parcels within the surrounding area have been developed. CZC Section 20.524.010 (refer to Appendix B) requires that land divisions in coastal rural areas be permitted only if all of the listed conditions are satisfied, including but not limited to development of at least 50 percent of the existing usable parcels within the defined market area (CZC Section 20.524.010(B)(1)). If the proposed project would create additional parcels rather than adjust existing legal parcels, the land division development as approved by the County raises a substantial issue of conformance with these LCP policies because the County has created new parcels without first demonstrating in its findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed, pursuant to the coastal rural land division criteria in CZC Section 20.524.010(B)(1).

Therefore, the applicant must provide a copy of the most recent analysis prepared by the County of percent of usable parcels that have been developed within Market Area 4, as described in CZC Section 20.524.010(C)(1)(d), and following the methodology pursuant to CZC Section 20.524.010(C)(2).

Without the above information, the Commission cannot reach a final determination concerning the appropriateness of the configuration of the proposed boundary line adjustment to accommodate future development consistent with the provisions in the LCP that protect critical water resources, environmentally sensitive habitat areas, and impacts to Highway One capacity and the public's ability to access the coast.

APPENDICES

APPENDIX A: Commission's Appeal Jurisdiction Over Project

APPENDIX B: Excerpts from the Humboldt County Local Coastal Program

EXHIBITS

1. Regional Location Map
2. Coastal Plan Land Use Map
3. Zoning Display Map
4. Natural Diversity Database Map
5. Flood Zone Map
6. Tentative Map
7. Existing and Proposed Parcel Configuration
8. Appeal
9. Notice of Final Local Action and Findings for Approval

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On May 13, 2010 the County of Mendocino approved Coastal Development Permit CDB-22-2009 for a coastal development boundary line adjustment on 62.9 acres to reconfigure four (4) existing lots from the current parcel configurations of approximately 3.5 acres, 5.6 acres, 28.8 acres, and 25 acres into new parcel configurations consisting of 4 acres, 6 acres, 10 acres, and 42.9 acres. The boundary line adjustment followed the issuance in 2008 of certificates of compliance by the County (CC 9-2008) that recognize the existing parcel configurations.

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 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved land division is a form of development that is not designated as the "principal permitted use" under the certified LCP; (2) the approved development is located within 100 feet of a wetland or stream; and (3) a portion of the approved development is located within a sensitive coastal resource area ("highly scenic area") pursuant to Section 30603(a)(3) of the Coastal Act as discussed below.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received at the Commission's North Coast District Office on May 26, 2010 (Exhibit No. 9). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

One appeal was filed with the Commission's North Coast District Office on June 10, 2010 from Commissioners Sara Wan and Esther Sanchez (Exhibit No. 8). The appeal was filed

in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

Sensitive Coastal Resource Area Appeal Jurisdiction

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

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

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

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

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

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

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

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

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

The appeal of Mendocino County boundary line adjustment Coastal Development Permit CDB-22-2009 was accepted by the Commission in part, on the basis that a portion of the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the

Mendocino County Coastal Zoning Code (CZC), both define “Sensitive Coastal Resource Areas” to mean “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.” Subparts (c) of these sections include “highly scenic areas.” This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, “those [areas] identified on the Land Use Maps as they are adopted.” Adopted Land Use Map No. 19 designates an area that is inclusive of a portion of the site that is the subject of Mendocino County CDB-22-2009 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “located in a sensitive coastal resource area” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDB-22-2009 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

APPENDIX B

EXCERPTS FROM THE MENDOCINO COUNTY CERTIFIED LOCAL COASTAL PROGRAM

Summary of Applicable LCP Policies Relating to Required Conditions for Rural Land Divisions:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

...

Land Use Plan (LUP) Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

CZC Section 20.524.010, "Coastal Rural Land Divisions," of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

(A) Applicability. *This section shall apply to lands located in the County's coastal zone outside of the urban/rural boundaries as designated on the land use/zoning maps.*

(B) Required Conditions for Approval of Rural Land Divisions. *Land division in rural areas may be permitted only if all of the following conditions are satisfied:*

...

(c) *Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas. For proof of water definition, see Section 20.308.095.*

...

CZC Section 20.532.095 “*Required Findings for all Coastal Development Permits*” states, in applicable part, the following (emphasis added):

- (A) *The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*
- (1) *The proposed development is in conformity with the certified local coastal program; and*
 - (2) *The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...*

CZC Section 20.532.100(C) “*Land Division Findings*” states, in applicable part, the following (emphasis added):

- (1) ***All Coastal Land Divisions.** No coastal lands shall be divided unless the following findings are made:*
- (a) *The new lots have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them...*

Summary of Applicable LCP Policies Relating to Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

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

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

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

LUP Policy 3.1-7 states the following (emphasis added):

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the

environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

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

LUP Policy 3.1-18 states the following (emphasis added):

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states the following (emphasis added):

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

(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred

(100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

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

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

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

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

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.

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

(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from

ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

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

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

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

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

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

CZC Section 20.524.010 “Coastal Rural Land Divisions” states the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions. Land division in rural areas may be permitted only if all of the following conditions are satisfied:

(1)(g) The division will not have significant adverse effects, either individually or cumulatively, on environmentally sensitive habitat areas or on other coastal resources.

(1)(m) Identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts.

Summary of Applicable LCP Policies Relating to Locating and Planning New Development:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

CZC Section 20.524.010 “Coastal Rural Land Divisions” states the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions. *Land division in rural areas may be permitted only if all of the following conditions are satisfied:*

(I) At least fifty (50) percent of the existing usable parcels within the market area, as defined in Subsection (C) of this section, have been developed. Usable parcels shall be those parcels that can be physically developed under applicable land use regulations.

(a) The new parcels to be created shall be no smaller than the minimum parcel sizes designated on the land use maps unless provided for under other applicable provisions of this Division which may include Clustering, Chapter 20.412, Planned Unit Development, Chapter 20.428 and General Provisions, Chapter 20.444.

...

(c) Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas...

(d) Groundwater shall be developed that is consistent with the Mendocino County Groundwater Development Guidelines.

...

(C) Determination of Surrounding Development.

The following steps shall be taken to determine whether or not fifty (50) percent or more of the market area, outside rural/urban boundaries, is developed.

(1) Determine the market area as defined below:

...

(d) Market Area 4. *All of that area within the Coastal Zone from Hearn Gulch and Iversen Road south to the Gualala River, including Iversen Landing Subdivision, and excluding those lands within the Rural Village land use classification.*

...

- (2) *Determine the percent of usable parcels that have been developed within the applicable market area using the methodology delineated below. For purposes of analysis, “usable” shall mean parcels that can be developed using applicable land use regulations, and “developed” shall mean that a parcel has on it a habitable dwelling or substantial commercial or industrial structure. If the percent of parcels developed is equal to or in excess of fifty (50) percent, then further parcelization may be allowed consistent with the land use maps and applicable policies of the coastal Element and provisions of the Division.*

Information on the percentage of parcels developed in each market area will be compiled as follows:

- (a) Count all parcels in the Coastal Zone using County Assessor’s records, including any recently recorded parcels and including any parcels bisected by the coastal zone boundary. All parcels under the same ownership with deeds recorded on the same day will be considered one parcel for purposes of this analysis.*
- (b) Parcels on the urban side of the urban-rural boundary line will be excluded from the total count as will State and Federal land, cemeteries, and public utility lands. Rural Village parcels will also be excluded as will any parcels within an incorporated area.*
- (c) Count the number of developed parcels by adding the number of issued coastal permits and building permits and by reviewing the Assessor rolls and counting the number of parcels developed with a dwelling or substantial commercial or industrial structure. A substantial structure is any commercial or industrial structure valued by the Assessor for at least five thousand dollars (\$5,000) excluding agricultural outbuildings. (Ord. No. 3785 (part), adopted 1991).*

Land Use Plan (LUP) Policy 3.9-2 states, in applicable part, as follows (Emphasis added):

The criteria for new land divisions permitted by the land use plan, outside of the urban/rural boundaries, shall be consistent with each of the following standards:

- a. The new parcels to be created shall be no smaller than the minimum parcel sizes designated on the Land Use Maps. The parcel sizes designated on the maps are equal to or larger than the existing modal, or most common size in the same land use classification consistent with parcel size requirements of Section 30250(a) of the Act, thereby eliminating the need for determination of allowable parcel size on a case by case basis.*

It is the express intent of this policy that all considerations for compliance with Section 30250(a) of the Act have been met at the time of adoption of the Land Use Maps.

- b. No new parcels shall be created unless 50% of the existing usable parcels within the surrounding area have been developed. Usable in this context shall be determined on the basis of parcels that can be physically developed under applicable land use regulations. For purposes of this provision the “surrounding area(s)” are defined below:*

...

4. All of that area within the Coastal Zone from the Navarro River south to Hearn Gulch and Iversen Road excluding Iversen Landing Subdivision, lands within the Rural Village land use classification and lands within the city limits of Point Arena.

...

In using the criteria for each land division, the area used in each case shall be the area in which the land division falls.

In addition to meeting the above criteria, it is understood that land divisions must comply with all other applicable policies of the Land Use Plan and Section 30250(a) of the Coastal Act.

CZC Section 20.376.020 “Minimum Lot Area for RR Districts” states, in applicable part, the following (emphasis added):

(D) RR:L-10: Ten (10) acres (Ord. No. 3785 (part), adopted 1991)

...

CZC Section 20.524.010 “Coastal Land Division Regulations” states, in applicable part, the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions

(k) Other required public services including but not limited to solid waste and roadway capacity are available or can be made adequate to serve the proposed parcels without significant damage to coastal resources or interference with public access.

CZC Section 20.532.095 “Required Findings for All Coastal Development Permits” states, in applicable part, the following (emphasis added):

(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

...

(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.

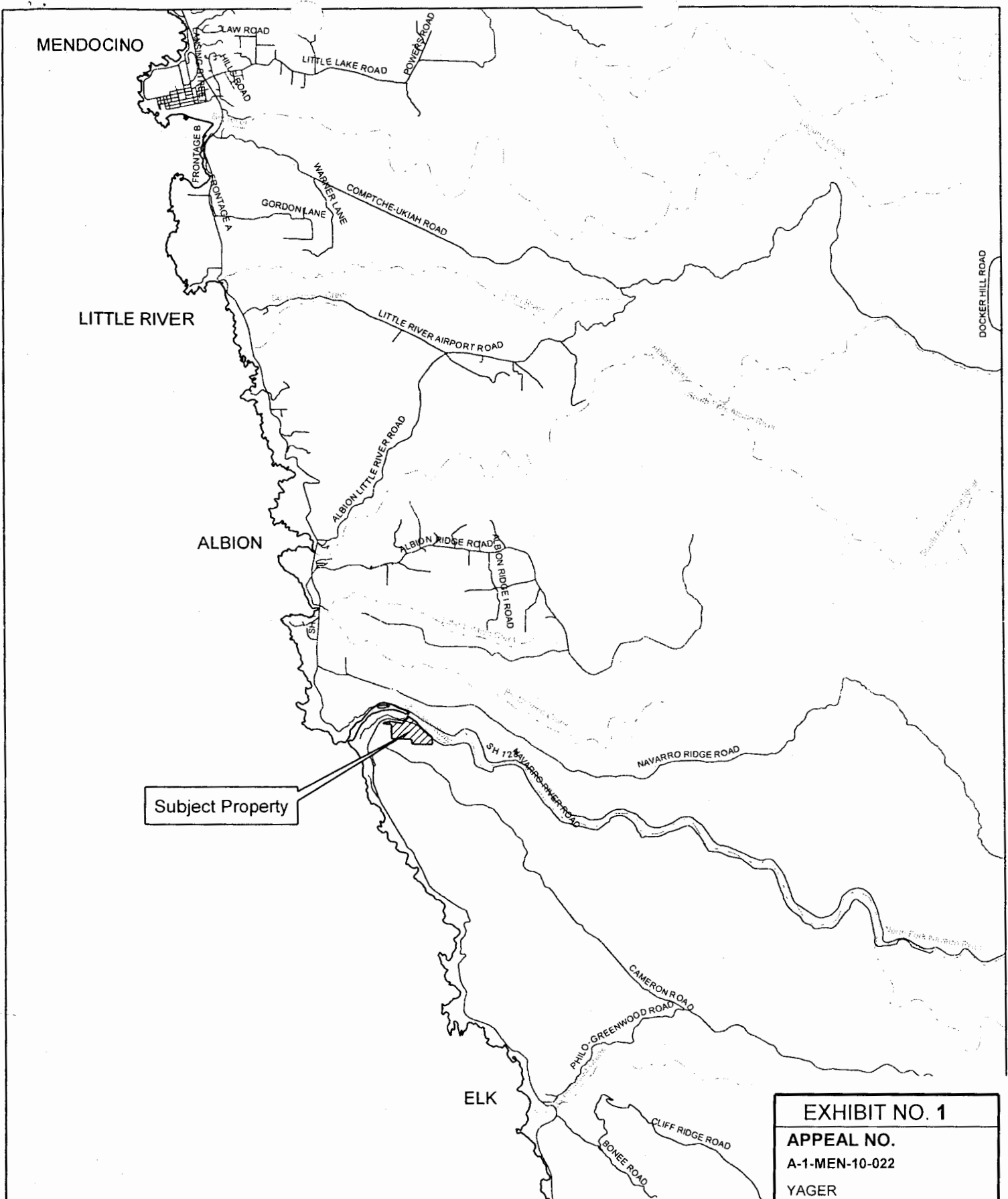
CZC Section 20.532.100 “Supplemental Findings” states, in applicable part, the following (emphasis added):

(C) Land Division Findings.

(I) All Coastal Land Divisions. No coastal lands shall be divided unless the following findings are made:

...

(d) Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels



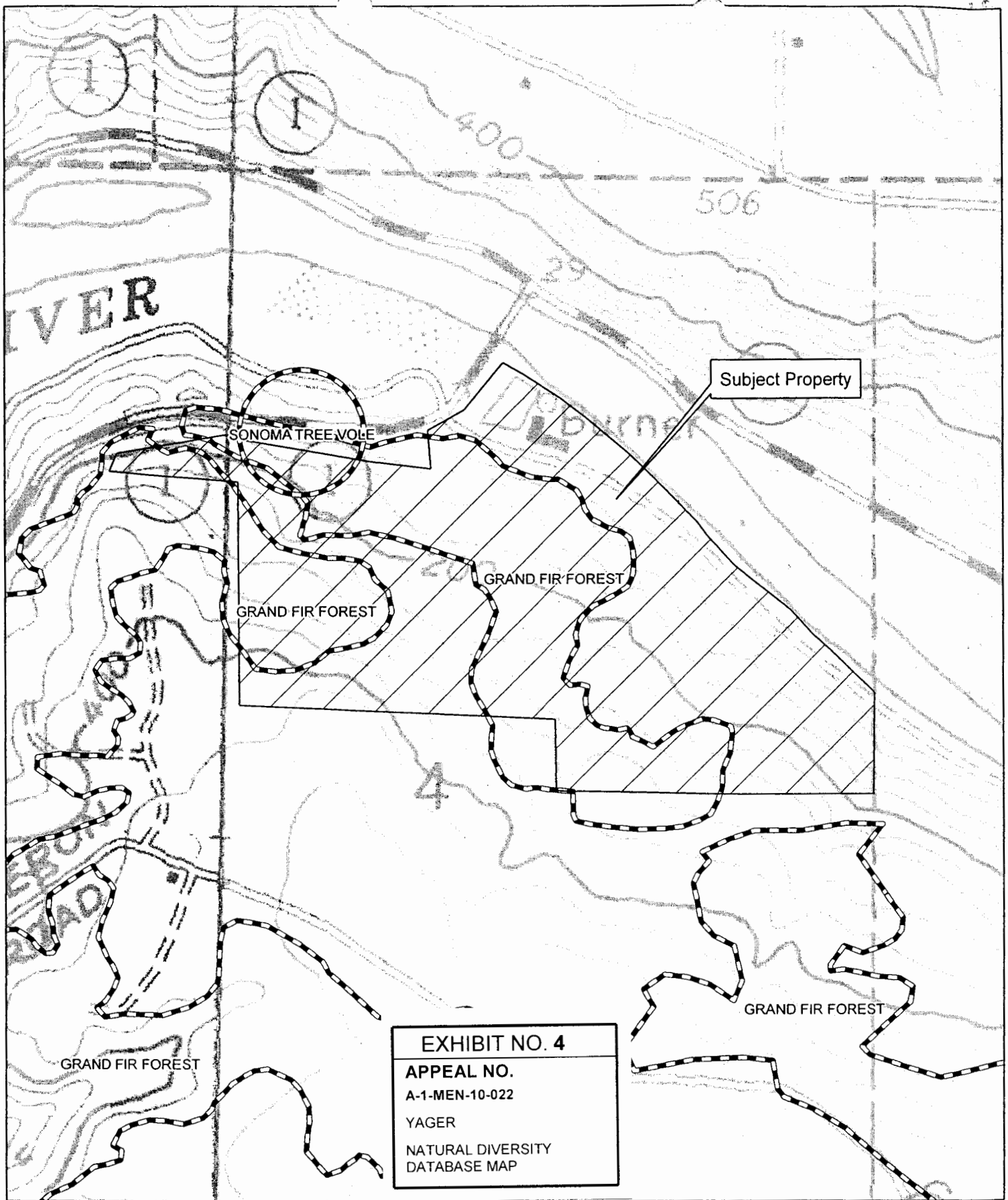
OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

EXHIBIT NO. 1
APPEAL NO.
A-1-MEN-10-022
YAGER
REGIONAL LOCATION MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)

5,000 2,500 0 5,000
Feet





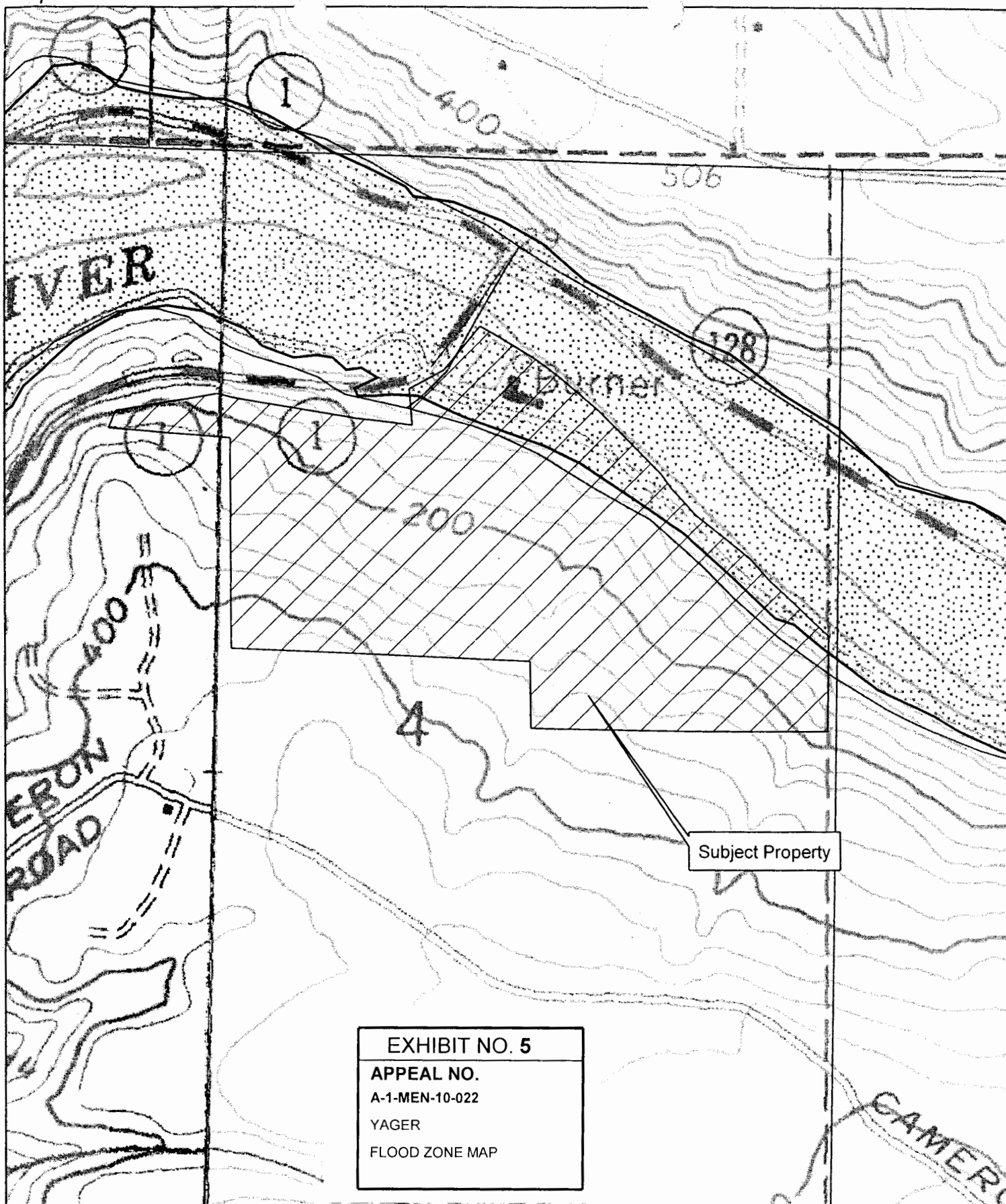
OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

**CALIFORNIA NATURAL DIVERSITY
DATABASE RAREFIND** (July 2009)

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)

300 150 0 300
Feet



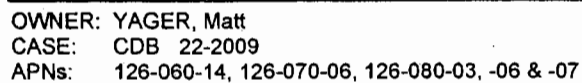


OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

 100 YEAR FLOOD ZONE

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)





TENTATIVE MAP

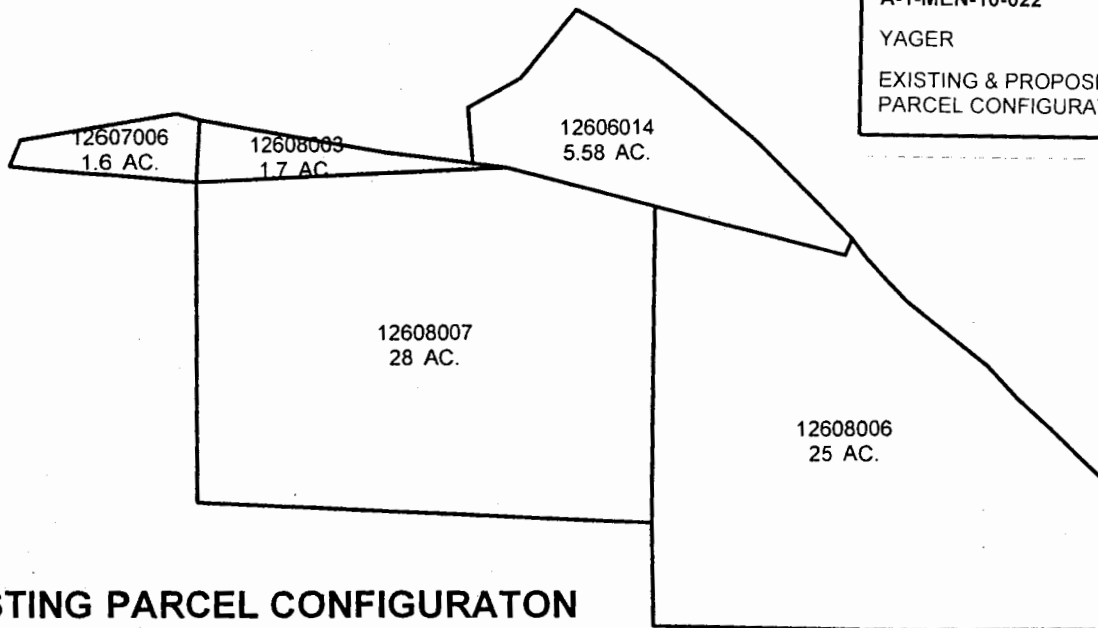
EXHIBIT NO. 7

APPEAL NO.

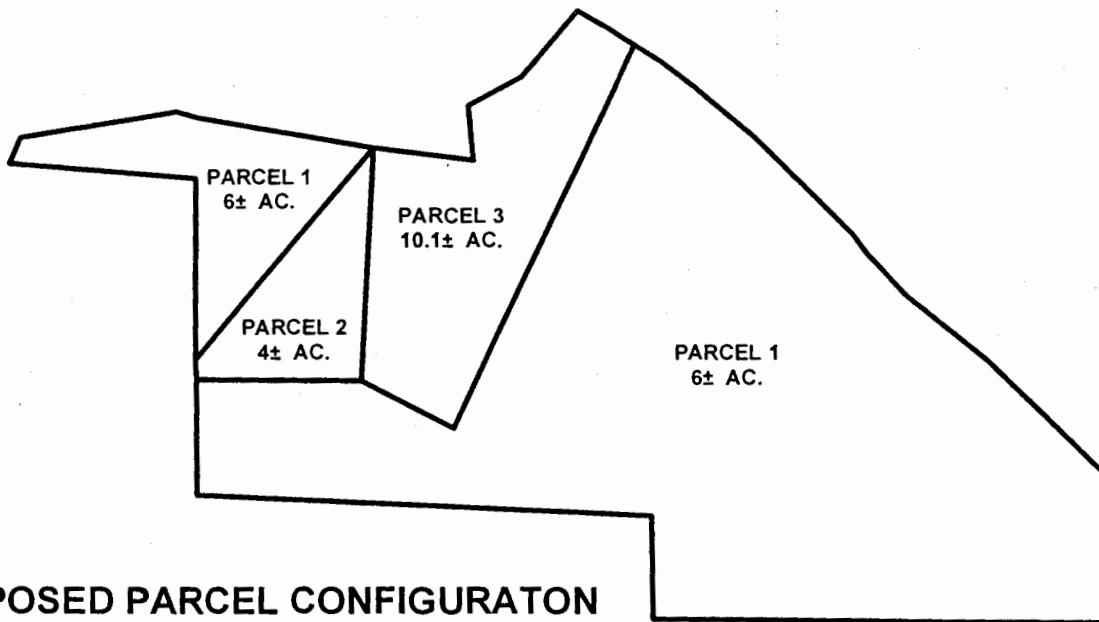
A-1-MEN-10-022

YAGER

**EXISTING & PROPOSED
PARCEL CONFIGURATION**



EXISTING PARCEL CONFIGURATON



PROPOSED PARCEL CONFIGURATON

OWNER: YAGER, Matt

CASE #: CDB 22-2009

APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

EXISTING & PROPOSED PARCEL CONFIGURATION

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)

400 200 0 400
Feet



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:

SEE ATTACHMENT A

Mailing Address:

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Coastal Development Boundary Line adjustment to reconfigure four (4) existing lots from existing configuration of 3.5, 5.6, 28.8, and 25 acres into 4±, 6±, 10± & 42.9± acres on parcels designated and zoned Rural Residential, 10-acre minimum.

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

Southwest of State Highway One adjacent to the south side of the Navarro River, approximately 6 miles north of Elk, at 1361 Cameron Road (CR# 516), APNs 126-060-14; 126-070-06; 126-080-03, -06, and -07

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

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

RECEIVED

JUN 10 2010

CALIFORNIA
COASTAL COMMISSION**EXHIBIT NO. 8****APPEAL NO.**

A-1-MEN-10-022

YAGER

APPEAL (1 of 21)

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-10-022

DATE FILED:

6/10/10

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: May 13, 2010

7. Local government's file number (if any): CDB 22-2009

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:

Matt, Josh, and Rhonda Yager
39500 Comptche Road
Mendocino CA 95460

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) Corinne Gallagher
64 Antelope Ct.
Clayton, CA 94517

(2) Roger and Georgia Collin
1361 Cameron Rd.
Elk, CA 95432

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See Attachment B.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

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

Signed: Signature on File
Appellant or Agent

Date: June 10, 2010

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

Signed:

Date:

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

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

Signed: _____
Appellant or _____

Signature on File

Date: June 10, 2010

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

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

1. Sara J. Wan
22350 Carbon Mesa Road
Malibu, CA 90265

(415) 904-5200

2. Esther Sanchez
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

(760) 435-0971

ATTACHMENT B

APPEALABLE PROJECT:

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved land division is a form of development that is not designated as the "principal permitted use" under the certified LCP; (2) the approved development is located within 100 feet of a wetland or stream; and (3) a portion of the approved development is located within a sensitive coastal resource area ("highly scenic area") pursuant to Section 30603(a)(3) of the Coastal Act.

BACKGROUND:

The County of Mendocino approved Coastal Development Permit #22-2009 for a coastal develop boundary line adjustment on 62.9 acres to reconfigure four (4) existing lots from the current configurations of approximately 3.5 acres; 5.6 acres; 28.8 acres; and 25 acres, into a new configuration consisting of 4 acres; 6 acres; 10 acres; and 42.9 acres. The boundary line adjustment followed the issuance in 2008 of certificates of compliance by the County (CC 9-2008) that recognized the existing parcel configurations. The County staff report notes that in the existing configuration, two of the four existing parcels (3.5 and 5.6 acres) are not buildable due to steep slopes, flood plain, and/or environmentally sensitive habitat area issues.

The property is forested with mostly grand fir (*Abies grandis*) and Bishop pine (*Pinus muricata*), with few hardwoods including tan oak (*Lithocarpus densiflorus* var. *densiflorus*) and red alder (*Alnus rubra*). The property is currently used for timber harvesting and is designated as a California Coastal Commission Special Treatment Area for timber management. The applicant has an approved timber harvest permit issued in 2009 (county THP #1-2009; CalFire THP #1-09-015MEN) to selectively harvest 22 acres within the subject parcel. The northeast edge of the property is adjacent to the Navarro River, and there are five unnamed Class II watercourses and related "wet areas" within the as-approved project area.

The approved development is located southwest of State Highway One adjacent to the south side of the Navarro River, approximately 6 miles north of Elk, at 1361 Cameron Road (CR# 516), APNs 126-060-14; 126-070-06; 126-080-03, -06, and -07. The property ground elevations vary from 20-440 feet above mean sea level and slopes upward from the northern boundary to the southern boundary.

The parcels are designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Rural Residential, Ten Acre Minimum (RR-10), and some of the area has a combining district of Density Limitation (DL) because of the slopes exceeding 30%. Additionally, the Coastal Zoning Map indicates portions of the parcels are designated with Visitor Accommodations and Services Combining Districts (*2C and *4C) for future visitor-serving facilities conditioned upon limitations for use no more intense than a single-family residence, and only if it is sited in such a location and manner that a visitor-serving facility may still be placed on the site. The parcels are also designated as within a "Critical Water Resources" area.

REASONS FOR APPEAL:

The approved boundary line adjustment development is inconsistent with the policies of the certified LCP, including but not limited to the policies contained in the "Coastal Element Policies for Locating and Planning New Development;" "Transportation Utilities and Public Services;" and "Habitats and Natural Resources" sub-sections of Section 3: Resources and Development Issues and Policies of the Land Use Plan, and the development regulations and standards of Sections 20.496; 20.524; 20.532; and Section 20.376.020 of the Mendocino County Coastal Zoning Code (herein "Coastal Zoning Code" or "CZC"), for the following reasons:

A. Inconsistencies with LUP Transportation Utilities and Public Services Policies and Coastal Zoning Code Regulations Regarding Coastal Rural Land Divisions

LCP Policies on Required Conditions for Rural Land Divisions:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

...

Land Use Plan (LUP) Policy 3.8-9 states the following (Emphasis added):

Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal

Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

CZC Section 20.524.010, "Coastal Rural Land Divisions," of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

(A) Applicability. This section shall apply to lands located in the County's coastal zone outside of the urban/rural boundaries as designated on the land use/zoning maps.

(B) Required Conditions for Approval of Rural Land Divisions. Land division in rural areas may be permitted only if all of the following conditions are satisfied:

...

(c) Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas. For proof of water definition, see Section 20.308.095.

...

CZC Section 20.532.095 "Required Findings for all Coastal Development Permits" states, in applicable part, the following (emphasis added):

(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

- (1) The proposed development is in conformity with the certified local coastal program; and*
- (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities...*

CZC Section 20.532.100(C) "Land Division Findings" states, in applicable part, the following (emphasis added):

(1) All Coastal Land Divisions. No coastal lands shall be divided unless the following findings are made:

- (a) The new lots have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them...*

Discussion:

The subject parcel is in a critical water resources area. The County staff report indicates that County Division of Environmental Health (DEH) "recommended approval of the boundary line adjustment and noted that there are no septic or wells on any of the proposed parcels; Appendix

6 (Individual Water Supply Systems) of the County of Mendocino Coastal Element specifies that it is an objective:

To provide an individual water supply system which will assure; (a) adequate supply of safe and palatable water, (b) reasonable, durable and economical operation and maintenance, and (c) be located and constructed to avoid contamination by any existing or proposed sewage disposal systems, or other source of contamination. In order to meet these objectives, a subdivider shall submit evidence that water systems will comply with water quality requirements..."

County staff had recommended a condition requiring that the applicant submit proof to DEH that potable water on each parcel meets the quantity and quality requirements of DEH prior to recordation of the deeds for the parcels as approved. However, the condition was deleted from the approved project, without any findings justifying this action.

LUP 3.8-9 states that approval of the creation of any new parcels shall be contingent upon an adequate water supply. Moreover, LUP Policy 3.8-1 and CZC Section 20.532.095(A)(2) require, in applicable part, that the granting of any coastal development permit shall be supported by findings which establish that the proposed development will be provided with adequate utilities. Furthermore, both CZC Section 20.532.100(C)(1)(a) and CZC Section 20.524.010(B)(c) specify that no coastal lands shall be divided unless findings are made that the new lots have or will have adequate water. The County acknowledged the area is a critical water resources area and further acknowledged there were no existing water facilities on any of the existing parcels, without any findings justifying approval of the development without any prior proof of water.

Because the subject development was approved prior to submittal of proof of adequate water supply and without any findings demonstrating adequate water supply, the project as approved is inconsistent with LCP policies regarding both coastal development projects in general and coastal land divisions in particular related to adequate water supply including, but not limited to LUP Policies 3.8-1 and 3.8-9, and CZC Sections 20.524.010, 20.532.095, and 20.532.100.

B. Inconsistencies with Coastal Zoning Code Regulations for the Protection of Environmentally Sensitive Habitat Areas (ESHAs).

LCP Policies on Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

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

Coastal Zoning Code (CZC) Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states the following (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy

vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states the following (emphasis added):

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

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

LUP Policy 3.1-18 states the following (emphasis added):

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally

Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states the following (emphasis added):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CZC Section 20.524.010 "Coastal Rural Land Divisions" states the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions. *Land division in rural areas may be permitted only if all of the following conditions are satisfied:*

(g) The division will not have significant adverse effects, either individually or cumulatively, on environmentally sensitive habitat areas or on other coastal resources.

(m) Identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts.

Discussion:

The May 13, 2010 county staff report notes the parcel is predominantly comprised of Grand Fir Forest with components of Bishop Pine Forest, and acknowledges these community types are recognized as ESHAs. The County states that the tentative boundary line adjustment map submitted by the applicant "indicates building areas on the proposed parcels which are all outside of the ESHAs, however it is not clear that all building sites are outside of the 100 foot buffer areas of the Grand Fir Forest and the Bishop Pine Forest..." In apparent contrast, the County references the botanist's report prepared for a timber harvest plan for the subject site which states the following: "with the exception of specific individual mature trees which may be removed to allow construction of roads and landings, the dominant and co-dominant components of the stand shall be retained, thereby maintaining the integrity of the plant community as a Grand Fir Forest."

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

In addition, LUP Policy 3.1-32 limits land divisions, including lot line adjustments, which are located within ESHAs and does not permit such land divisions if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7. Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required. The subject parcel occurs in a largely undeveloped area surrounded by parcels designated and zoned on the County general plan Coastal Plan Map and Coastal Zoning Map as Open Space to the north; Timberland Production and Flood Plain (Navarro River) to the east; and Rural Residential (10 acre minimum) to the south and west.

Aside from the botanist's notes that the timber harvest will maintain the integrity of the plant community as a Grand Fir Forest, thereby effectively suggesting the entire area will remain as ESHA, the March 2010 revised tentative map submitted by the applicant shows several watercourses and wet areas within the subject area, all of which are also designated ESHAs. According to the CA Department of Fish and Game Natural Diversity Database (Rarefind 3.1.1), nests of the special-status Sonoma tree vole (*Arborimus pomo*) have been located on the subject parcel in the past. It is unclear from the tentative map whether the widest, most protective buffer zone feasible has been maintained as part of the boundary line adjustment as approved. While the County findings reference the lack of clarity as to whether the minimum buffers were maintained on the tentative map, the project was conditionally approved only to require additional surveys and biological assessments prior to each development on the newly-configured parcels.

Therefore, approval of the subject development is inconsistent with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7, 3.1-32 and CZC Section 20.496.020, because (a) the land division as approved does not appear to retain the widest and most protective buffer zone feasible as required by CZC 20.496.020(A)(1)(f); and (b) the County fails to address the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7, 3.1-32, and 3.1-18 and CZC Section 20.496.020, including how a buffer for watercourses; wetlands; and the rare Grand Fir Forest, Bishop Pine Forest, and Sonoma tree vole habitat that is less than the minimum of 100 feet is consistent with the requirements of LUP Policy 3.1-7 and CZC Sections 20.496.020(A)(1) and (3).

CZC Section 20.496.020(A)(3) explicitly disallows boundary line adjustments that create or provide for new parcels entirely within a buffer area. Even if the boundary line adjustments created parcels located entirely outside the buffer area, it is unclear from the tentative map whether there is sufficient room to accommodate building sites, septic, and water facilities outside the adjacent ESHA buffer areas. LUP Policy 3.1-32 expressly disallows lot line adjustments which create parcels without adequate building sites. LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4) require permitted development within an ESHA buffer to comply with several standards. These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that the development be sited and designed to prevent impacts that would significantly degrade the ESHA. Additionally, CZC Section 20.524.010(B)(g) requires that land divisions shall not have significant adverse effects, either individually or cumulatively, on ESHAs or on other coastal resources, and CZC Section 20.524.010(B)(m) requires that identified coastal resources within the proposed area to be divided are protected from significant adverse environmental impacts. The County's findings do not analyze alternative sites or project designs or demonstrate that the land division as approved was configured on the parcel in a manner that would best protect the ESHA. Furthermore, although the County's findings acknowledge that future building sites may not include 100-foot buffer setbacks, inconsistent with CZC 20.496.020(A)(1)(f), the County did not evaluate whether the reduced buffer would be adequate, inconsistent with LUP 3.1-7.

Thus, because (1) boundary line adjustments are not allowed to create or provide for new parcels entirely within a buffer area; (2) the parcel is in a largely undeveloped area but does not appear to retain the widest and most protective ESHA buffers for future building sites; (3) the County acknowledges the boundary line adjustments may not provide building sites outside of 100-foot

ESHA buffers but did not evaluate whether a reduced buffer would be adequate, and (4) the County approval does not adequately demonstrate that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs, the project, as approved by the County, is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-18, 3.1-32, and CZC Sections 20.496.020 and 20.524.010(B).

C. Inconsistencies with LUP Transportation Utilities and Public Services Policies and Coastal Zoning Code Regulations Regarding Locating and Planning New Development

LCP Policies on Locating and Planning New Development:

Land Use Plan (LUP) Policy 3.8-1 states, in applicable part, as follows (Emphasis added):

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

CZC Section 20.524.010 "Coastal Rural Land Divisions" states the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions. Land division in rural areas may be permitted only if all of the following conditions are satisfied:

(1) At least fifty (50) percent of the existing usable parcels within the market area, as defined in Subsection (C) of this section, have been developed. Usable parcels shall be those parcels that can be physically developed under applicable land use regulations.

(a) The new parcels to be created shall be no smaller than the minimum parcel sizes designated on the land use maps unless provided for under other applicable provisions of this Division which may include Clustering, Chapter 20.412, Planned Unit Development, Chapter 20.428 and General Provisions, Chapter 20.444.

...

(c) Proof is provided that adequate water and sewage service is available and an adequate water supply exists during dry months to accommodate proposed parcels without adversely affecting the groundwater table of contiguous or surrounding areas...

(d) Groundwater shall be developed that is consistent with the Mendocino County Groundwater Development Guidelines.

...

(C) Determination of Surrounding Development.

The following steps shall be taken to determine whether or not fifty (50) percent or more of the market area, outside rural/urban boundaries, is developed.

(1) Determine the market area as defined below:

...

(d) Market Area 4. All of that area within the Coastal Zone from Hearn Gulch and Iversen Road south to the Gualala River, including Iversen Landing Subdivision, and excluding those lands within the Rural Village land use classification.

...

(2) Determine the percent of usable parcels that have been developed within the applicable market area using the methodology delineated below. For purposes of analysis, "usable" shall mean parcels that can be developed using applicable land use regulations, and "developed" shall mean that a parcel has on it a habitable dwelling or substantial commercial or industrial structure. If the percent of parcels developed is equal to or in excess of fifty (50) percent, then further parcelization may be allowed consistent with the land use maps and applicable policies of the coastal Element and provisions of the Division.

Information on the percentage of parcels developed in each market area will be compiled as follows:

- (a) Count all parcels in the Coastal Zone using County Assessor's records, including any recently recorded parcels and including any parcels bisected by the coastal zone boundary. All parcels under the same ownership with deeds recorded on the same day will be considered one parcel for purposes of this analysis.*
- (b) Parcels on the urban side of the urban-rural boundary line will be excluded from the total count as will State and Federal land, cemeteries, and public utility lands. Rural Village parcels will also be excluded as will any parcels within an incorporated area.*
- (c) Count the number of developed parcels by adding the number of issued coastal permits and building permits and by reviewing the Assessor rolls and counting the number of parcels developed with a dwelling or substantial commercial or industrial structure. A substantial structure is any commercial or industrial structure valued by the Assessor for at least five thousand dollars (\$5,000) excluding agricultural outbuildings. (Ord. No. 3785 (part), adopted 1991).*

Land Use Plan (LUP) Policy 3.9-2 states, in applicable part, as follows (Emphasis added):

The criteria for new land divisions permitted by the land use plan, outside of the urban/rural boundaries, shall be consistent with each of the following standards:

- a. The new parcels to be created shall be no smaller than the minimum parcel sizes designated on the Land Use Maps. The parcel sizes designated on the maps are equal to or larger than the existing modal, or most common size in the same land use classification consistent with parcel size requirements of Section 30250(a) of the Act,*

thereby eliminating the need for determination of allowable parcel size on a case by case basis.

It is the express intent of this policy that all considerations for compliance with Section 30250(a) of the Act have been met at the time of adoption of the Land Use Maps.

- b. No new parcels shall be created unless 50% of the existing usable parcels within the surrounding area have been developed. Usable in this context shall be determined on the basis of parcels that can be physically developed under applicable land use regulations. For purposes of this provision the "surrounding area(s)" are defined below:

...

4. All of that area within the Coastal Zone from the Navarro River south to Hearn Gulch and Iversen Road excluding Iversen Landing Subdivision, lands within the Rural Village land use classification and lands within the city limits of Point Arena.

...

In using the criteria for each land division, the area used in each case shall be the area in which the land division falls.

In addition to meeting the above criteria, it is understood that land divisions must comply with all other applicable policies of the Land Use Plan and Section 30250(a) of the Coastal Act.

CZC Section 20.376.020 "Minimum Lot Area for RR Districts" states, in applicable part, the following (emphasis added):

(D) RR:L-10: Ten (10) acres (Ord. No. 3785 (part), adopted 1991)

...

CZC Section 20.524.010 "Coastal Land Division Regulations" states, in applicable part, the following (emphasis added):

(B) Required Conditions for Approval of Rural Land Divisions

- (k) Other required public services including but not limited to solid waste and roadway capacity are available or can be made adequate to serve the proposed parcels without significant damage to coastal resources or interference with public access.

CZC Section 20.532.095 "Required Findings for All Coastal Development Permits" states, in applicable part, the following (emphasis added):

- (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

...

- (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.

CZC Section 20.532.100 “*Supplemental Findings*” states, in applicable part, the following (emphasis added):

(C) Land Division Findings.

(1) All Coastal Land Divisions. No coastal lands shall be divided unless the following findings are made:

...

(d) Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels

Discussion:

The County staff report concludes the following:

The proposed boundary line adjustment will create four (4) newly configured lots that have building envelopes which would include home sites, access driveways, private sewage disposal systems and domestic water systems that would not be located on steep slopes, would not be located within a flood plain, would not be located in groundwater recharge areas as outlined in the recommended conservation measures, 1982 Mendocino County Coastal Groundwater Study, and would not be located in archaeologically sensitive areas. If the four (4) parcels that are recognized by CC 9-2008 were not reconfigured, it is staff's opinion that two (2) of those lots could not be developed under current land use regulations...” (emphasis added)

The project as approved, therefore, includes a land division that results in a future increase in density because according to the County, two parcels are currently not developable but with the project as approved, four parcels are developable.

In addition, the County staff report references that the current configuration of the parcels was recognized by a Certificate of Compliance (CoC) issued in 2008 (CC 9-2008). The County did not notify the Coastal Commission at the time of issuance of the certificates of compliance, and it is unclear from the County staff report what the basis for approval is for the certificates of compliance. Therefore, it is unclear whether the certificates of compliance are legally recognized under the Coastal Act and related LCP policies including LUP Section 3.9 that require coastal development permits for all land divisions. If the certificates of compliance are not valid, then the current project as approved does not just adjust boundaries between parcels but also de facto creates new parcels, two of which (3.5 acres and 5.6 acres) are smaller than the 10-acre minimum parcel size allowed in the Rural Residential zoning district that applies to the subject property, inconsistent with CZC Section 20.376.020(D) and LUP policy 3.9-2(a).

In addition, if the certificates of compliance are not valid and the development as approved de facto creates new parcels, the County has created new parcels without first demonstrating in its findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed, pursuant to the coastal rural land division criteria in CZC Section 20.524.010(B)(1). Additionally, the County did not demonstrate consideration of Highway 1 capacity when approving increases to the density of land use as a result of the approved land division, inconsistent with LUP Policy 3.8-1.

- *Each community's desired amount and rate of growth.*
- *Providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.*

In addition to the considerations pertaining to the allocation of residential sites listed above, all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determinations of service capacity shall be made prior to the issuance of a coastal development permit. (Emphasis added)

When looked at in isolation, it may not appear that approving any particular proposal for a density increase would have much impact, when the potential for only a few new parcels is created by each such proposal. However, as discussed above, consistent with Section 30250(a) of the Coastal Act, LUP Policy 3.8-1, and the access provisions of the LCP, the cumulative impact of numerous coastal development permits allowing increases in residential density affecting highway capacity and the public's ability to access the coast must also be addressed. Looking at each new project in isolation fails to take into account the effect numerous projects would have if approved in this fashion.

The County's adopted findings for approval of the project state that "the cumulative effects of traffic resulting from development of a residence on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur." (emphasis added). The County's adopted findings therefore suggest a single residence was considered, not four separate residences on the subject site.

Although the County staff report states that the "boundary line adjustment will not create any new parcels," the County staff report also states that as approved, the adjustment reconfigures the existing four parcels to create four developable parcels where only two of the four are currently developable.

In the case of the subject parcel, whether or not the CoCs issued in 2008 are valid, the fact that the parcel consisted of two undevelopable parcels prior to the County-approved development, then four developable parcels after County approval, results in a net increase of density of land use, and therefore an increase in density on highway capacity. Furthermore, if the 2008 CoCs are not valid under the Coastal Act and the current project as approved does not just adjust boundaries between parcels but also de facto creates new parcels, the cumulative impacts of the creation of the newly created parcels on Highway One capacity has not been analyzed, inconsistent with the access requirements of the certified LCP and the requirements of LUP Policy 3.8-1 which states in applicable part, "*Highway 1 capacity...shall be considered when considering applications for development permits.*"

Therefore, because the record contains no evidence that the County in its action on the project considered the effects of the development on Highway One capacity for greater than one residential development, the project as approved is inconsistent with the provisions of LUP Policy 3.8-1 that requires Highway One capacity to be considered when considering

development permits as well as the access requirements of the LCP protecting the public's ability to access the coast.

CONCLUSION:

The project as approved therefore is inconsistent with the certified LCP because (1) the County approval did not include any findings demonstrating adequate water supply to support a land division; (2) the land division as approved does not appear to retain the widest and most protective ESHA buffer zone feasible; (3) the County approval fails to address the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7, 3.1-32, and 3.1-18 and CZC Section 20.496.020, including how a buffer that is less than the minimum of 100 feet is allowable under the LCP; (4) the County approval did not first demonstrate in their findings that at least fifty (50) percent of the existing usable parcels within the market area have been developed; and (5) The County approval did not consider the effects of the development on Highway One capacity for greater than one residential development, despite their conclusion suggesting the development as approved would result in an increase of developable lots and thus increased future density.

As a result, the project as approved is inconsistent with the policies of the certified LCP, including but not limited to LUP Policies 3.1; 3.8; and 3.9, and Sections 20.496.020, 20.376.020, 20.524, and 20.532 of the Mendocino County Coastal Zoning Code.



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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RECEIVED

MAY 26 2010

**CALIFORNIA
COASTAL COMMISSION**

May 23, 2010

NOTICE OF FINAL ACTION

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

CASE#: CDB 22-2009

DATE FILED: 4/14/2009

OWNER: MATT, JOSH & RHONDA YAGER

APPLICANT: MATT YAGER

REQUEST: Coastal Development Boundary Line adjustment to reconfigure four (4) existing lots into 4+/-, 6+/-, 10.1+/- & 46+/- acres.

LOCATION: In the Coastal Zone southwest of State Highway 1 on the south side of the Navarro River, 6+/-miles north of Elk, located at 1361 Cameron Road: AP#'s 126-060-14, 126-070-06, 126-080-03, 126-080-06 & 126-080-07.

PROJECT COORDINATOR: FRED TARR

ACTION TAKEN:

The Coastal Permit Administrator, on May 13, 2010, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

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

Attachments

cc: Coastal Commission
Assessor

EXHIBIT NO. 9

APPEAL NO.

A-1-MEN-10-022

YAGER

NOTICE OF FINAL LOCAL
ACTION & FINDINGS OF
APPROVAL (1 of 39)



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE # CDB 22-2009 – MATT, JOSH & RHONDA YAGER
MAY 13, 2010

The Coastal Permit Administrator approves CDB 22-2009 per the findings and conditions of approval contained in the staff report further finding;

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

COASTAL ELEMENT CONSISTENCY RECOMMENDATIONS: The proposed project is consistent with applicable goals and policies of the Mendocino County General Plan/Coastal Element.

RECOMMENDED MOTION: The Coastal Permit Administrator, making the environmental and General Plan findings above, approves Coastal Development Boundary Line Adjustment #CDB 22-2009, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities; and,
3. The proposed boundary line adjustment is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and,
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA); and,
5. The boundary line adjustment 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 the Coastal Element of the General Plan;
and,
8. Potential Environmentally Sensitive Habitat Areas will not be significantly degraded by the proposed development and there is no feasible less environmentally damaging alternative. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted;
and,
9. The proposed use is compatible with the long-term protection of resource lands.

CONDITIONS OF APPROVAL:

- **1.** The subdivider shall acknowledge in writing to the Department of Planning and Building Services that all grading activities and site preparation, at a minimum, shall adhere to the following "Best Management Practices". The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
- a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks
 - d. Temporary erosion control measures shall be in place at the end of each day's work and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to : seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion and installment of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year.
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations, a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 cubic meters) on any lot and does not obstruct a drainage.
- **2.** A notation shall be placed on the deed stating that, "Future development of building site(s), access roads or driveways may be subject to the grading requirements and drainage control measures identified in the conditions of approval"
- **3.** When Coastal Development Permits are required for development of the individual parcels, in an effort to minimize erosion, a soils engineer shall prepare grading plans and oversee grading operations when the sites are developed.
- ~~****4.** Prior to the recordation of the deeds for the proposed parcels, the applicant shall provide proof to the Mendocino County Division of Environmental Health (DEH) that the potable water on each of the proposed parcels meets the quantity and quality requirements of DEH.~~
- **5.** Botanical surveys and biological assessments shall be required with each plan for development of each proposed parcel. Proper buffers must be provided between private roads, driveways, septic systems and building sites and the riparian habitat areas.
- **6.** This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2060.25 or current fee shall be made

payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to the expiration of the appeal period for this CDB. Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied.) Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

- **7. The applicant shall provide proof to the Mendocino County Department of Transportation that there is an access easement from Cameron Rd. (CR 516) to the subject parcels.
- **8. Legal descriptions shall include a minimum 40 foot wide access easement to allow access to, and for the benefit of the proposed 4.0, 6.0, 10.0, and 42.9 acre parcels to the satisfaction of the Mendocino County Department of Transportation.
- **9. The applicant shall comply with those recommendations in the **Elk Community Services District** letter of March 12, 2010, or other alternatives as acceptable to the Fire District. Written verification shall be submitted from the **Fire District** to the Department of Planning and Building Services that this condition(s) has been met to the satisfaction of the **Fire District**.
- **10. Prior to recordation of the deeds for the proposed parcels, the applicant shall provide proof to the Mendocino County Division of Environmental Health (DEH) that the sanitary septic sewer system(s) on each of the proposed parcels meets the DEH requirements.
- **11. A note shall appear on each deed for the proposed parcels that in the event that archaeological resources are encountered during development of the parcels, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- 12. 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. This application is valid for 24 months from the effective date. No extensions can be granted.
- 13. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
- 14. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property" (perimeter description of the adjusted parcel(s).)

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line adjustment #CDB 22-2009 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have the documents and accepted them as correct, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING.**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

15. Per Mendocino County Code Section 17-17.5(l)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustments have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

The enclosed Certificate of the Official Redeeming Officer must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

16. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
17. A note shall be placed on the deeds and/or legal descriptions stating that "Future development may require additional studies and/or may be subject to restrictions" and that "Future development shall be in conformance with the criteria for development within Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code."
18. A note shall be placed on the deed and/or legal descriptions stating "The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties."

SPECIAL CONDITIONS OF APPROVAL:

- **1. A note shall appear on the deeds that: "All future external lighting, whether installed for security, safety or landscape design purposes, shall be shielded, downcast or shall be positioned in a manner that will not shine or allow light glare to exceed the boundaries of the parcel on which it is placed."

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

THIS BOUNDARY LINE ADJUSTMENT IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED LOT DESCRIPTIONS ARE RECORDED BY THE COUNTY RECORDER.

**COUNTY OF MENDOCINO
ENVIRONMENTAL REVIEW GUIDELINES
NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT.

DATE: April 19, 2010

CASE#: CDB 22-2009

DATE FILED: 4/14/2009

OWNER: MATT, JOSH & RHONDA YAGER

APPLICANT: MATT YAGER

REQUEST: Coastal Development Boundary Line adjustment to reconfigure four (4) existing lots into 4+/-, 6+/-, 10.1+/- & 46+/- acres.

LOCATION: In the Coastal Zone southwest of State Highway 1 on the south side of the Navarro River, 6+/-miles north of Elk, located at 1361 Cameron Road: AP#'s 126-060-14, 126-070-06, 126-080-03, 126-080-06 & 126-080-07.

PROJECT COORDINATOR: FRED TARR

II. DETERMINATION.

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, a **NEGATIVE DECLARATION** is adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

REPORT FOR COASTAL DEVELOPMENT BOUNDARY LINE ADJUSTMENT

**#CDB 22-2009
MAY 13, 2010
PAGE CPA-1**

OWNER: MATT YAGER & JOSH AND RHONDA YAGER
39500 COMPTCHE ROAD
MENDOCINO CA 95460

APPLICANT: MATT YAGER
39500 COMPTCHE ROAD
MENDOCINO CA 95460

REQUEST: Coastal Development Boundary Line Adjustment to reconfigure four legal lots recognized by Certificate of Compliance #CC 9-2008. In the existing configuration, the lot sizes are 3.5+/- acres, 5.6+/- acres, 28.8+/- acres and 25+/- acres. The proposed configuration will consist of 4.0+/- acres, 6.0+/- acres, 10.0+/- acres and 42.9+/- acres.

LOCATION: In the Coastal Zone southwest of State Highway 1 on the south side of the Navarro River, 6+/- miles north of Elk, located at 1361 Cameron Road (CR# 516); AP#'s 126-060-14, 126-070-06, 126-080-03, 06 & 07.

TOTAL ACREAGE: 62.9+/- acres

ZONING: Rural Residential: 10 acre minimum (RR:10), Rural Residential: 10 acre minimum Development Limitations Combining District ((RR:10 / DL)
Flood Plain (FP)

ADJACENT ZONING: North: Open Space (OS)
East: TP: 160 / FP
South: RR: 10 / DL
West: RR: 10 / DL

GENERAL PLAN: RR-10 & RR-10 (DL)

SURROUNDING LOT SIZES: North: 18.4+/- acres
East: 35.45+/- acres
South: 4+/- acres; 20+/- acres
West: 10+/- acres

EXISTING USES: Timber Production

SURROUNDING LAND USES: North: State Highway 1
East: Navarro River and Timberland
South: Rural Residential
West: Rural Residential

SUPERVISORIAL DISTRICT: 5

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:

- CC 9-2008-The Certificate of Compliance that created the existing parcel configurations
- MD 114-73- Minor Division of property to the south of Cameron Rd. that created four (4) lots of five (5) acres each.
- CDP 100-2001- A Coastal Development Permit requesting the construction on an approximately 230 foot long, twelve (12) feet wide driveway on a forty (40) foot wide easement which would originate on

the Highway 1 Cal Trans right of way. This driveway was to serve the Cake property which is now one of the properties recognized as a legal parcel through CC 9-2008. The driveway was proposed to serve a residence that was to be constructed at a later time. The Cakes did not proceed with this CDP. This property was purchased by the Yagers in July of 2008.

- **CDMS 7-2002**-Coastal Development Minor Subdivision of property to the west of the subject property that created two (2) lots of 10 +/- acres and 3.9 +/- acres.
- **CDP 8-2009**- A Coastal Development Permit for the development a 640 square foot single family dwelling on Parcel # 2 of CDMS 7-2002 (APN 126-070-21) The project has been put on hold for over a year.
- **THP #1-2009**-The applicant has received approval of a Timber Harvest Plan for much of the property included in this Coastal Development Boundary Line Adjustment and as of March, 2010, he had forested approximately half of the property following the mitigation measures set forth in the Biological Assessment prepared by Douglas Meekins and the Botanical Survey and Impact Assessment Report prepared by Fred C. Schuler.

PROJECT DESCRIPTION: The applicant is proposing this Coastal Development Boundary Line Adjustment to reconfigure four (4) parcels recognized by CC 9-2008. In the existing configuration the parcel sizes are 3.5+/- acres, 5.6+/- acres, 28.8+/- acres and 25+/- acres. The proposed reconfiguration will consist of 4.0+/- acres, 6.0+/- acres, 10.0+/- acres and 42.9+/- acres.

The subject property is located to the South of State Highway 1 near its intersection with the Navarro River. The property ground elevations vary from 20-440 feet above mean sea level and slopes upward from the northern boundary to the southern boundary. The property consists of second growth timber with mostly Grand Fir and Bishop Pine with few hardwoods (tan oaks and red alder). The north east edge of the property is adjacent to the Navarro River and there are five unnamed Class II watercourses (riparian habitat) within the proposed project area.

Access to the subject property is over a private road through APN 126-070-21(Gallagher) off of Cameron Road (CR 516). This private road currently serves six (6) properties and staff encourages that the applicant enter into a road maintenance agreement with the other property owners being served by this private road.

The applicant has prepared a Timber Harvest Plan and a Timber Harvest Permit was approved for the harvesting of approximately twenty-eight (28) acres of the total sixty-two (62) acres project parcel. According to the Biological Assessment prepared by Douglas Meekins, consulting wildlife biologist, there appeared to be no record of past harvest, the subject property may have been harvested in the late 1960's and/or early 1970's and before then, the area was originally harvested and burned near the turn of the century supposedly for sheep ranching.

The applicant has attempted to utilize the old logging roads for the current timber harvesting project and will widen and improve these roads for the development of the proposed parcels. This CDP does not cover or authorize such road development.

APPLICANT'S COMMENTS: The applicant, Matt Yager, has provided the following comments about the Timber Harvest Plan and the proposed Coastal Development Boundary Line Adjustment:

"As I told you in person, all of our property was surveyed for biological assessment and botanical survey. After reading our timber harvest plan again, I found that the botanical survey was done on the entire ownership except for the flood plain adjacent to Navarro River and the eastern most portion. This eastern portion of our ownership has not yet been surveyed due to very heavy brush that makes it almost un-navigable. This area is directly under PG&E right of way and to the east. PG&E has some very large electrical wire overhead and they have not cleared their right of way for quite some time and this area is very thick with sticker bushes and heavy brush. We fully intend on grinding up this brush with a forestry mulcher, but we will not be able to get that far this year. We have a time constraint of November 15th as our cut off date for our timber operation. We are currently working on the other proposed parcels.

We have no desire to develop the flood plain area along the Navarro River. I believe that it would be foolish to build anything on a flood plain, not to mention that it would be like "living in a fish bowl". Everyone who drives along Coast Hwy 1 or Hwy 128 would be "looking into the living room". Add to that there have been deed restrictions issued by the Archaeological Commission. Much more hassle than it is worth, in my opinion.

The best building sites are on and around the 200 foot elevation of our land. Our access road to these parcels is plenty wide and easily navigable. As much as possible, I am trying to develop easily accessible parcels of land with house sites located on the flattest places available. As I'm sure you know, we are attempting to do the BLA's and then when finances are available, do a minor subdivision on the remaining 40+ acre parcel."

Mr. Yager also noted that the selective harvesting of the trees would make the property much more fire safe and that they were eliminating the need for large burn piles to deal with the logging slash by utilizing a forestry mulching machine.

PUBLIC COMMENTS: Staff has been contacted by two adjacent property owners with concerns about this four (4) lot Coastal Development Boundary Line Adjustment:

- Mrs. Corinne Gallagher contacted me on June 4, 2009, to tell me that she and her husband had recently divided an adjacent lot, through CDMS 7-2002, into two lots. She was concerned that the four (4) lots being proposed by this CDB would gain access from Cameron Road over their newly created lots by way of an access easement. She said that she was of the understanding that there were limits on the number of parcels that would be served by this access easement. Staff has reviewed the CDMS 7-2002 file and has found that the access easement over the Gallagher's property serves one of the parcels recognized through CC 9-2008 but that there is no mention of a limit on the number of parcels that could be served. (**Condition # 7** has been included to assure that there is an access easement from Cameron Rd. to serve the proposed parcels).
- I have also spoken to Mr. Roger Collin who owns the parcel to the south of the Yager parcels and he has indicated a concern over the increase in density that would result from this CDB. He has submitted a letter (see attached) in which he has referenced a County of Mendocino rule (policy) whereby applicants must prove the "buildability" of existing (or grandfathered in through certificate of compliance) non-conforming parcels, which developers were attempting to re-locate through the BLA. It is Mr. Collin's contention that there are two parcels that were recognized by CC 9-08 which would not be developable because of slopes, flood plain, and/or Environmentally Sensitive Habitat Area concerns. One of the parcels is 3.2 acres and has steep slopes and a Class 2 watercourse on it and the second parcel is 5.58 acres and has steep slopes, a Class 2 watercourse, is in the flood plain and is part of the Navarro River wetlands/wildlife habitat. Mr. Collins notes that there are also two historic-period buildings and one tee-pee burner site on this parcel.

The policy that Mr. Collins cited was one that Division of Environmental Health and the Planning and Building Services began utilizing as on January 1, 2009 for off-site water and/or septic easements which read as follows:

- Boundary line adjustments will not be considered to allow development for lots recognized by a Certificate of Compliance, land patent, or other instrument that may establish the lands as legally separate unless currently developed or able to be developed in the lands existing configuration.

After this policy, among others, were reviewed by the Board of Supervisor's Public Resources Committee, the Committee debated numerous issues and eventually decided to send a draft policy, prepared by staff, in accordance with the conclusions of the Committee, to the full Board for review and adoption. The Board considered the staff recommendations on November 9, 2009, and again on March 23, 2010, but has since referred the recommendations to an ad hoc committee composed of Supervisor Colfax and Brown with direction to report back to the Board in late May, 2010. As of this writing, no policies or ordinances for off-site water and/or septic easements have been adopted.

Planning staff has demonstrated its support of more stringent restrictions to boundary line adjustments of parcels with site constraints that could not meet water and sewer standards.

ENVIRONMENTAL REVIEW: Section 15305 of the California Environmental Quality Act allows for categorical exemption for minor alterations in land use limitations including "minor lot line adjustments" in areas with an average slope of less than 20%. Staff does not consider this project to be a minor lot line adjustment and it appears that the average slope is over 20%. The DL Combining District designation indicates that the slopes are over 30%.

In completing the Initial Study Environmental Review Checklist, the following items merit mention

Earth (Item 1)

B and C: The applicant has recently completed the first phase of the Cal-Fire approved Timber Harvest Plan (THP) #1-2009 and as part of that operation, existing logging roads were utilized and a new road of approximately six hundred (600) feet in length was built as part of the THP. When the lots are developed and the roads and driveways are improved, there will be additional grading requirements and compliance with recommended **Conditions 1 and 2** (best grading management practices) will mitigate potential adverse impacts which might have resulted in soil disruption, displacements, compaction or over-covering of the soil or in changes in topography or ground surface relief features.

E and F: It is very likely that some increase in water erosion will occur when the proposed parcel and access roads are developed. This erosion could be substantial if not mitigated at the time of construction. There could also be a substantial impact to the torpidity of the Class 2 streams if there is no erosion control at the time of development. Staff recommends that a qualified engineer prepare and oversee erosion control plan(s) when road grading and construction takes place and when building pads are developed. The erosion control plan(s) should include mitigation of run-off from roofs and hard-scape. **See Conditions 1, 2 and 3.**

Water (Item 3)

G: The subject property is in a critical water resources area and although the Division of Environmental Health recommended approval of the boundary line adjustment and noted that there are no septic or wells on any of the proposed parcels; Appendix 6 (Individual Water Supply Systems) of the County of Mendocino Coastal Element specifies that it is an objective:

To provide an individual water supply system which will assure; (a) adequate supply of safe and palatable water, (b) reasonable, durable and economical operation and maintenance, and (c) be located and constructed to avoid contamination by any existing or proposed sewage disposal systems, or other source of contamination. In order to meet these objectives, a subdivider shall submit evidence that water systems will comply with water quality requirements...

Planning Staff recommends that well water testing be conducted on each of the proposed parcels prior to final approval of CDB 22-2009; water quality and quantity must meet the Mendocino County Division of Environmental Health approval. **See Condition # 4**

I: The northern portion of the subject property is within the flood plain of the Navarro River but there is no proposal of building within this area, therefore no exposure of people or property to water related hazards such as flooding or tsunamis will result and no mitigation is necessary.

Plant Life (Item 4)

A and B: The applicant, by using an approved Timber Harvest Plan, has legally logged areas of Grand Fir Forest thus creating areas on the four proposed parcels where development can occur which is outside of Environmentally Sensitive Habitat Areas. If there had been no approved logging of this area, the subject property would have been entirely within an ESHA. County of Mendocino Coastal Element Policy 3.1-32 states the following:

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be

permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which allow for the development of the building site consistent with Policy 3.1-7(adequate buffer areas from ESHAs)

Coastal Element Policy 3.1.7 states:

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

Approximately fifty (50) acres of the property were surveyed by Fred C. Schuler, botanist. The survey was conducted for the Timber Harvest Plan Permit and included all of the area where possible development would take place on the proposed parcels. The Botanical Survey identified approximately 500 *Mitella caulescens* plants (leafy-stemmed mitreworts) which are considered threatened or endangered in the northern portion of the property near the flood plain which is outside of the proposed development area.

The applicant has submitted a tentative boundary line adjustment map which was prepared by Zachary M. Jones, a registered professional forester. This map indicates building areas on the proposed parcels which are all outside of the ESHAs, however it is not clear that all building sites are outside of the 100 foot buffer areas of the Grand Fir Forest and the Bishop Pine Forest, which can be considered ESHA, themselves. The Botanical Survey identified forty-two (42) acres of Grand Fir Forest and approximately eight (8) acres of Bishop Pine Forest. The botanist notes that: "with the exception of specific individual mature trees which may be removed to allow construction of roads and landings, the dominant and co-dominant components of the stand shall be retained, thereby maintaining the integrity of the plant community as a Grand Fir Forest." After the first stage of logging has occurred, the proposed building sites will be outside of the Grand Fir Forest and the Bishop Pine Forests. As it is not clear at this time when development will occur on the individual parcels to be re-configured by this application, further mitigation to protect the Grand Fir Forests and the Bishop Pine Forests may be warranted at that time. Staff recommends that additional botanical surveys be prepared when building permits are requested so that proper buffers will be provided for these ESHA areas. **See Condition Number 5.**

The proposed project will result in the removal of vegetation for the development of home sites, accessory structures, driveways and landscaping. The project may result in changes to fish and wildlife resources and therefore the project is subject to the California Department of Fish and Game fee. **See Condition Number 6.**

C and D: It is very likely that, with future development on the proposed parcels, will come the introduction of new plant species into the area. Staff does not anticipate that this will result in significant impacts to the existing flora in the area. Most persons developing parcels in this area would be prone to leave the natural setting alone without a need to introduce new plant species.

There will be no reduction in acreage of any agricultural crop in the area. The area has been used for timber production.

Animal Life (Item 5)

A, B and D: The California Natural Diversity Database map for the project area indicated the possible presence of the Sonoma Tree Vole. A biological assessment for the Yager Timber Harvest Plan was prepared by Douglas Meekins, dated October 25, 2008, which concluded that there were no Sonoma Tree Voles observed on the property, however Mr. Meekins pointed out that habitat elements will be maintained for future tree vole use. This assessment also addressed this wooded area, which is adjacent to the Navarro River, as a habitat area for the following raptors; Coopers Hawks, Northern Goshawk, Sharp-shinned hawk, Golden Eagle, Peregrine Falcon, Bald Eagle and Osprey. The conclusion was that no nesting areas were discovered on the property, however Mr. Meekins concluded that the property will maintain various conifers and hardwoods and adequate under story to

provide future nesting opportunities. He also noted that there is a minimum 250 foot no cut/no build buffer for the Navarro River and the maintenance of snags in suitable nest/roost trees to provide areas for Bald Eagle habitat. The assessment noted that there was one osprey nest observed approximately 900 feet from the eastern boundary of the THP and within 100 feet of an existing County Road and the conclusion was that the ospreys found here were somewhat habituated to human disturbance and wouldn't be impacted. Most importantly, the assessment concluded that there were no Northern Spotted Owls found on the subject property and that the locations of the spotted owls within the assessment area are well known due to monitoring efforts. Three spotted owl areas are known to occur equal distance approximately 1 mile from the subject property. Mr. Meekins concluded that no impact to the northern spotted owl is anticipated from development of the subject property.

The assessment also concluded that other threatened and endangered birds including the Tricolored Blackbird, the Purple martin, the Great Blue Heron and the Marbled murrelet were not observed but that by preserving the riparian areas, most of the forest habitat and maintaining a 250 buffer from the Navarro, the habitat areas for these birds will be preserved.

The assessment noted that there are five unnamed Class II water courses (riparian areas) within the project area. These water courses provide habitat areas for numerous species of flora and also many amphibian stream breeding animals. Mr. Meekins has concluded that these riparian areas will be protected by an inner 25-foot no cut buffer, an additional outer 50-foot light selection harvest buffer, the maintenance of streamside canopy cover and more importantly will be protected by a 100 foot buffer from future development of the property. The assessment concludes that no significant adverse impacts are expected.

Coho Salmon, Steelhead Trout and King Salmon are found in the Navarro River even though their runs are declining for a variety of reasons, primarily through warming of river waters from the loss of shading in riparian areas, siltation of spawning areas and pollution. The assessment concludes that due to the proposed 250-foot no cut along the Navarro River and due to the protection of the riparian areas along the Class II water courses, no significant adverse impacts to these species or habitat are expected.

Staff recommends that best management practices for grading be utilized when improving roads, driveways and building sites on the proposed parcels and that to further protect the animal life on and adjacent to the proposed parcels, additional botanical surveys and biological assessment will be required when development is proposed. **See Conditions 1, 2, 3 and 5.**

C: Although new species of animals will be introduced into the area, staff does not expect this to be significant.

Noise (Items A and B)

The only significant noise will be associated with construction activity with road, driveway, and building site development. This will be for a limited time period. Otherwise the noise levels will be those associated with residential development. Noise impacts are not expected to be significant.

Light and Glare (Item A)

A: This proposed boundary line adjustment will result in four (4) new lots and if the proposed 42.9 +/- acre is further divided at a later date, seven (7) new lots will be created. Exterior lights will be installed at the time of residential development and is likely to be minimal, however in a rural area, the effects on night sky should be mitigated. Section 20.504.035 of the Mendocino Coastal Zoning Code provides exterior lighting regulations. **See Special Condition 1.**

Land Use (Item 8)

A: The parcels are classified on the Coastal Plan Map and Coastal Zoning Map as Rural Residential, Ten Acre Minimum (RR-10) and some of the area has a combining district of Density Limitation (DL) because of the slopes exceeding 30 %. The proposed boundary line adjustment would create four legal parcels sized 4, 6, 10, and 42 acres, of which two would be legal non-conforming parcels. There are no improvements on project parcels.

The majority of the developed parcels in this area are five (5) acres in size or less so the proposed boundary line adjustments is consistent with the existing land use of the area.

Housing (Item 9)

A: This proposed boundary line adjustment would result in a density of one dwelling unit per 15 acres, however the proposed forty-two (42) acre parcel could further be divided (under the RR-10 zoning) into four (4) additional lots, resulting in an overall density for the project area of one dwelling unit per 8.7 acres. Staff does not consider this as a significant impact to existing housing and it will not create a demand for new housing.

Transportation/Circulation (Item 12)

A and C: Generation of substantial additional vehicular movement? Substantial impact upon existing transportation systems? The Mendocino County Department of Transportation (DOT) has reviewed the proposed project and has recommended the following:

The applicant is required to provide copies of the easement deeds which show his proposed legal access to the proposed parcels. (Condition #7)

As described in the Grant Deed, dated July 4, 2007, from Matt Yager to Josh Yager and Rhonda Yager, a 40 foot wide access easement is proposed to serve the newly configured parcels. To ensure adequate access easements are created as part of the boundary line adjustment, we recommend the following condition of approval:

Legal descriptions shall include a minimum 40 foot wide access easement to allow access to, and for the benefit of the proposed 4.0, 6.0, 10.0, and 42.9 acre parcels to the satisfaction of the Mendocino County Department of Transportation. (Condition #8)

The cumulative effects of traffic resulting from development of a residence on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur.

In the narrative, submitted with the application, the applicant acknowledged that it is the owner's intent, in the future, to subdivide the proposed 42.9 acre parcel into four parcels. Staff is advising the applicant at this time that a future subdivision of the 42.9 acre parcel will necessitate that the private access road through the 4.0, 6.0, and 10.0 acre parcels will have to be improved to County private road standards at the time of a future subdivision. Staff recommends that the improvements be made at this time even if not recommended by DoT.

Public Services (Item 13)

A: The proposed project could have a significant impact on fire protection. The property is in an area with a high fire hazard severity rating as determined by the California Department of Forestry and Fire Protection (Cal Fire), and is in a State Responsibility Area for fire safety review. The area is being logged under THP 1-2009 MEN and, according to applicant, the timber harvest plan is substantially lowering the probability of a "ravaging" fire. The timber harvest plan provides for selective harvesting of the trees by thinning thick stands of pine trees and heavy brush. The proposed boundary line adjustment will provide for future parcel development with single family dwelling units as well as accessory structures which will provide for human habitation and the greater probability of "ravaging" fires thereby increasing the need for fire protection.

Cal Fire notes that the project is exempt from PRC 4290 because boundary line adjustments are not part of the regulations. However Cal Fire will require investigation and conditions in the future when applications for Coastal Development Permits and building permits are made.

The property is also within the jurisdiction of the Elk Community Services District. The Elk CSD recommended the following conditional approval of this project at the March 11, 2010, meeting of the Board of Directors:

- The properties lie within the State Responsibility Area of the California Department of Forestry and Fire Protection (Cal Fire). As such, the District noted that the applicant must comply with all aspects of Cal Fire's regulations relating to (a) fire clearance, (b) roadways and vehicular access needed by emergency vehicles and (c) water storage necessary for fire protection. These requirements must separately apply to each parcel specified in the application. **(See Condition #9)**

Staff does not anticipate that the project will have significant impacts on police protection, schools, parks and other recreational facilities, maintenance of public facilities and roads, or other governmental services.

Utilities (Item 15)

A: The project will result in a need for new systems to the potable water and sewerage.

Potable water: The project would result in the need for a potable water system on each new parcel. Staff recommends that Mendocino County Division of Environmental Health approve the proposed water system for each proposed parcel prior to final approval of CDB 22-2009. Recommended (**Condition #4**) will mitigate any significant impacts associated with providing potable water systems.

Sewerage: Carl Ritteman, the applicant's soils engineer, has completed septic system design work on the proposed 4 acre, 6 acre and 10 acre lots to the satisfaction of the Division of Environmental Health and has submitted a letter indicating that there are sites on the proposed 42.9 acre lot that will be able to support septic systems. Staff recommends that Mendocino County Division of Environmental Health approve the proposed septic disposal systems for each proposed parcel prior to final approval of CDB 22-2009. Recommended (**Condition # 10**) will mitigate any significant impact associated with provided sanitary septic sewer systems.

Cultural Resources (Item 19)

A and B: Alteration or destruction of prehistoric or historic archaeological sites and adverse physical or aesthetic effects to prehistoric or historic buildings or structures? The site was surveyed by Zachary M. Jones from November 1, 2008 through December 20, 2008. The survey was accepted at the County Archaeological Commission hearing held June 10, 2009.

There are no known archaeological sites recorded on the proposed project area. However, there are two historic period buildings and one burner associated with a past lumber mill on the project area adjacent to the Navarro River. No development is proposed for this area of the project site. None-the-less, the applicant and future property owners are advised by **Standard Condition # 11** of the County's discovery "clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

STAFF CONCLUSION: The proposed boundary line adjustment will create four (4) newly configured lots that have building envelopes which would include home sites, access driveways, private sewage disposal systems and domestic water systems that **would not** be located on steep slopes, **would not** be located within a flood plain, **would not** be located in groundwater recharge areas as outlined in the recommended conservation measures, 1982 Mendocino County Coastal Groundwater Study, and **would not** be located in archaeologically sensitive areas. If the four (4) parcels that are recognized by CC 9-2008 were not reconfigured, it is staff's opinion that two (2) of those lots could not be developed under current land use regulations. (see the discussion above under the second bullet of public comment). However, currently there are no County of Mendocino ordinances or policies restricting the boundary line adjustment.

The proposed configuration could allow for closer clustering of approved building envelopes which would reduce overall environmental impacts; such as runoff from impervious surfaces and greenhouse gasses from transportation impacts. Further it is likely that the boundary line adjustment would result in a better configuration of parcels in terms of planning for protection of resources. Although Section 20.496.020 (A)(3) of the Mendocino County Coastal Zoning Code notes that parcels cannot be created entirely within a buffer area, since the proposed parcels are already entirely within ESHAs, the re-configuration would result in the opposite effect. In this case, it can be argued that the boundary line adjustment would promote the intent of the Coastal Act in furthering the protection of resources by reducing potential environmental conflicts and impacts over the existing configuration.

COASTAL POLICY CONSISTENCY REVIEW: Staff reviewed the project relative to coastal issues and determined the following:

1. The boundary line adjustment will not result in a change in density. (There are four legal parcel recognized by CC 9-2008.);
2. The boundary line adjustment will not create any new parcels;

3. The botanical survey and biological assessment revealed that the subject site was entirely within Grand Fir Forests, Bishop Pine Forests, riparian areas, habitat areas for endangered animal species including raptors, and amphibians, however even though the subject site is totally within ESHAs, the proposed development areas have recently been created after the site was logged under THP 1-2009 Men. The boundary line adjustment tentative map indicates that a 100 foot buffer will be provided between the riparian habitat areas and the proposed development site. Any future development, however, would still be subject to the Coastal Development Permit regulations identified in Coastal Zoning Code Chapter 20.532. **Conditions # 5** requires additional botanical surveys and biological assessments with every future development of the proposed parcels;
4. The adjustment will not result in parcels having an inadequate building site. The transfer will not impact existing or future development area on any of the proposed parcels.
5. No substandard lot will result from the adjustment;
6. The property subject to the adjustment is in an area designated CWR (Critical Water Resources) as identified in the Mendocino County Groundwater Study and is consistent with the Mendocino County Coastal Groundwater Study; The County Division of Environmental Health has recommended approval of the project and staff recommends that **Conditions # 4 and 12** be included to assure a source of potable water and an acceptable sanitary septic sewer system on each of the proposed parcels;
7. The boundary line adjustment is not located on property containing pygmy vegetation;
8. The property subject to the adjustment is not located in a designated "Highly Scenic" area;
9. The boundary line adjustment is located in an appealable area.

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

COASTAL ELEMENT CONSISTENCY RECOMMENDATIONS: The proposed project is consistent with applicable goals and policies of the Mendocino County General Plan/Coastal Element.

RECOMMENDED MOTION: The Coastal Permit Administrator, making the environmental and General Plan findings above, approves Coastal Development Boundary Line Adjustment #CDB 22-2009, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities; and,
3. The proposed boundary line adjustment is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district; and,
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA); and,
5. The boundary line adjustment 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 the Coastal Element of the General Plan; and,
8. Potential Environmentally Sensitive Habitat Areas will not be significantly degraded by the proposed development and there is no feasible less environmentally damaging alternative. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted; and,
9. The proposed use is compatible with the long-term protection of resource lands.

CONDITIONS OF APPROVAL:

- **1. The subdivider shall acknowledge in writing to the Department of Planning and Building Services that all grading activities and site preparation, at a minimum, shall adhere to the following "Best Management Practices". The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
 - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks
 - d. Temporary erosion control measures shall be in place at the end of each day's work and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion and installment of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year.
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations, a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope Greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 cubic meters) on any lot and does not obstruct a drainage.
- **2. A notation shall be placed on the deed stating that, "Future development of building site(s), access roads or driveways may be subject to the grading requirements and drainage control measures identified in the conditions of approval"
- **3. When Coastal Development Permits are required for development of the individual parcels, in an effort to minimize erosion, a soils engineer shall prepare grading plans and oversee grading operations when the sites are developed.

- **4. Prior to the recordation of the deeds for the proposed parcels, the applicant shall provide proof to the Mendocino County Division of Environmental Health (DEH) that the potable water on each of the proposed parcels meets the quantity and quality requirements of DEH.
- **5. Botanical surveys and biological assessments shall be required with each plan for development of each proposed parcel. Proper buffers must be provided between private roads, driveways, septic systems and building sites and the riparian habitat areas.
- **6. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2060.25 or current fee shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to the expiration of the appeal period for this CDB. Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied.) Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**
- **7. The applicant shall provide proof to the Mendocino County Department of Transportation that there is an access easement from Cameron Rd. (CR 516) to the subject parcels.
- **8. Legal descriptions shall include a minimum 40 foot wide access easement to allow access to, and for the benefit of the proposed 4.0, 6.0, 10.0, and 42.9 acre parcels to the satisfaction of the Mendocino County Department of Transportation.
- **9. The applicant shall comply with those recommendations in the **Elk Community Services District** letter of March 12, 2010, or other alternatives as acceptable to the Fire District. Written verification shall be submitted from the **Fire District** to the Department of Planning and Building Services that this condition(s) has been met to the satisfaction of the **Fire District**.
- **10. Prior to recordation of the deeds for the proposed parcels, the applicant shall provide proof to the Mendocino County Division of Environmental Health (DEH) that the sanitary septic sewer system(s) on each of the proposed parcels meets the DEH requirements.
- **11. A note shall appear on each deed for the proposed parcels that in the event that archaeological resources are encountered during development of the parcels, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied:
12. 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. This application is valid for 24 months from the effective date. No extensions can be granted.
13. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
14. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

"Any and all lands and any and all interest thereto lying within the following described real property"
(perimeter description of the adjusted parcel(s).)

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line adjustment #CDB 22-2009 and is intended to create no new parcel."

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have the documents and accepted them as correct, we will notify you. DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S) BY THIS DEPARTMENT IN WRITING.

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

15. Per Mendocino County Code Section 17-17.5(l)(2):

"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustments have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."

The enclosed Certificate of the Official Redeeming Officer must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

16. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
17. A note shall be placed on the deeds and/or legal descriptions stating that "Future development may require additional studies and/or may be subject to restrictions" and that "Future development shall be in conformance with the criteria for development within Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code."
18. A note shall be placed on the deed and/or legal descriptions stating "The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties."

SPECIAL CONDITIONS OF APPROVAL:

- **1. A note shall appear on the deeds that: "All future external lighting, whether installed for security, safety or landscape design purposes, shall be shielded, downcast or shall be positioned in a manner that will not shine or allow light glare to exceed the boundaries of the parcel on which it is placed."

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

THIS BOUNDARY LINE ADJUSTMENT IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE APPROVED LOT DESCRIPTIONS ARE RECORDED BY THE COUNTY RECORDER.

4-21-10

DATE

*Fred Tarr*FRED TARR
PLANNER II

FT/ckb

April 21, 2010

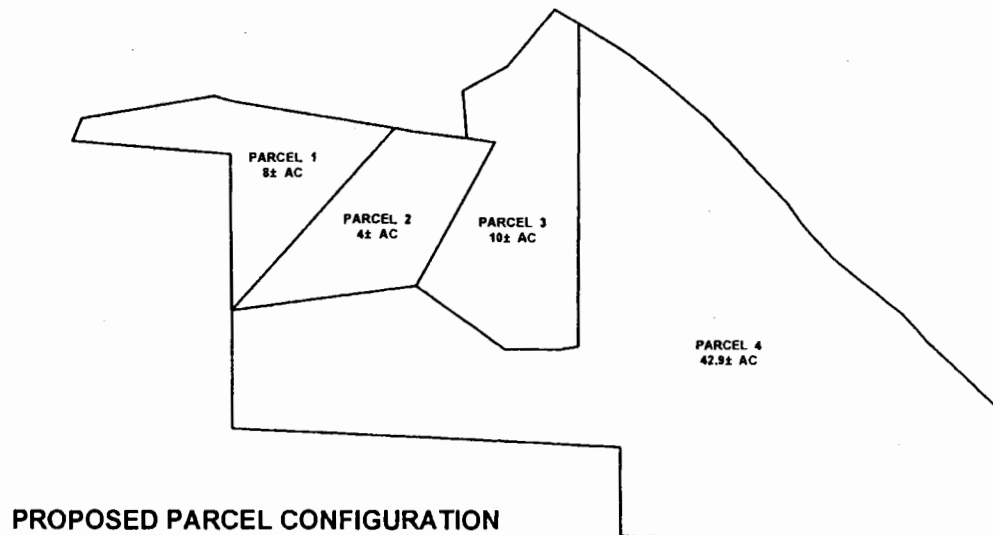
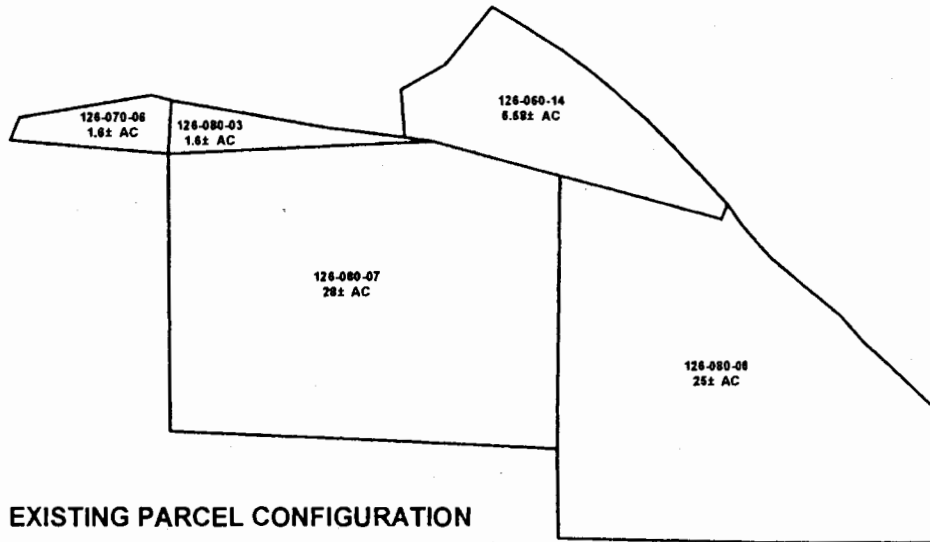
Negative Declaration

Appeal Fee - \$1855.00

Appeal Period - 10 days

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

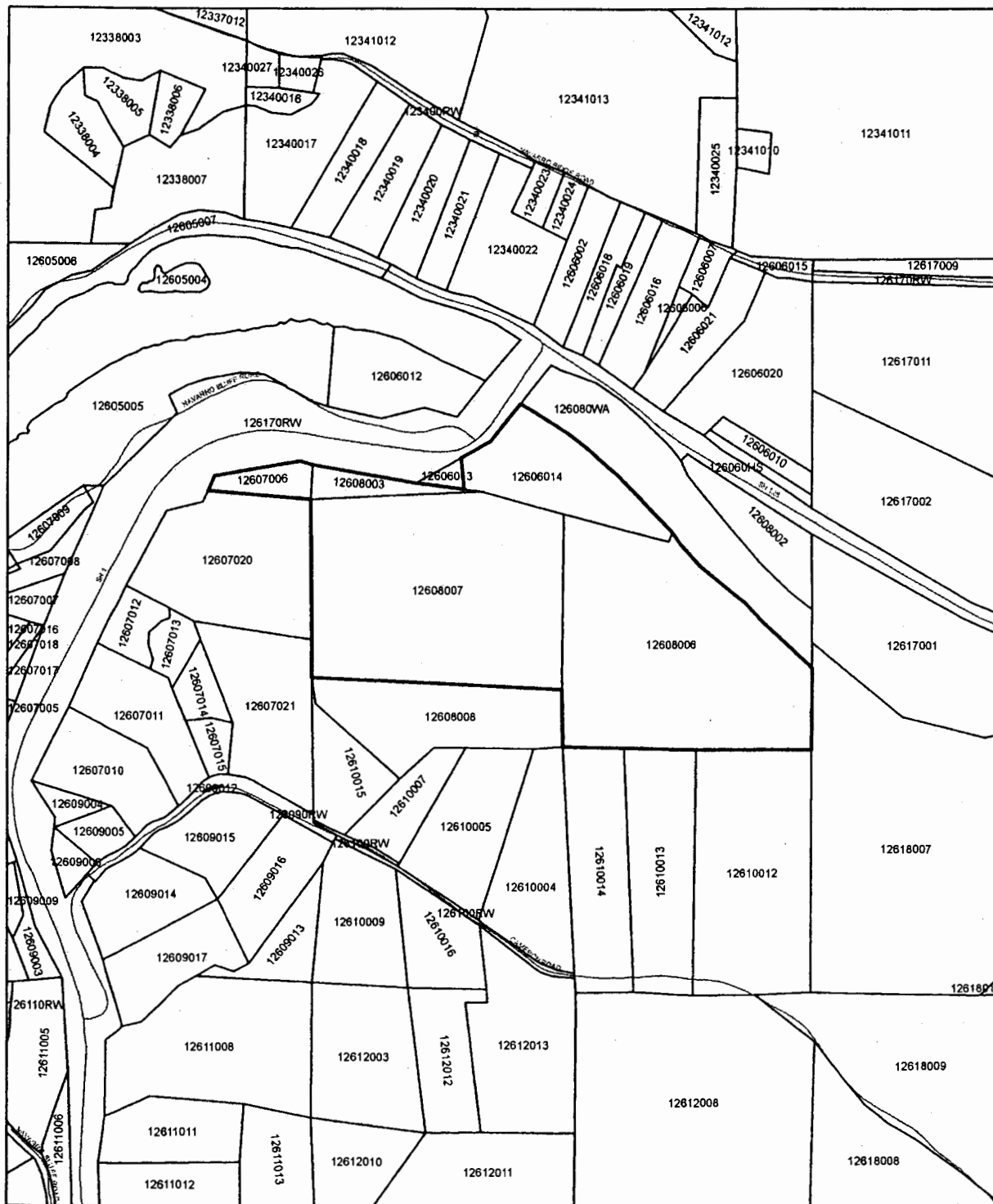
REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Planning - Ft Bragg			X
DOT			X
Environmental Health			X
Building Inspection - Ft Bragg			X
Assessor	X		
Forestry Advisor	X		
AQMD	X		
Cal Fire			X
Dept of F & G	X		
Coastal Commission	X		
US Fish & Wildlife	X		
Elk CSD			X
Arch Commission			X



OWNER: YAGER, Matt
CASE: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

EXISTING AND PROPOSED BOUNDARY LINES
REVISED MARCH 2010

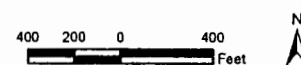
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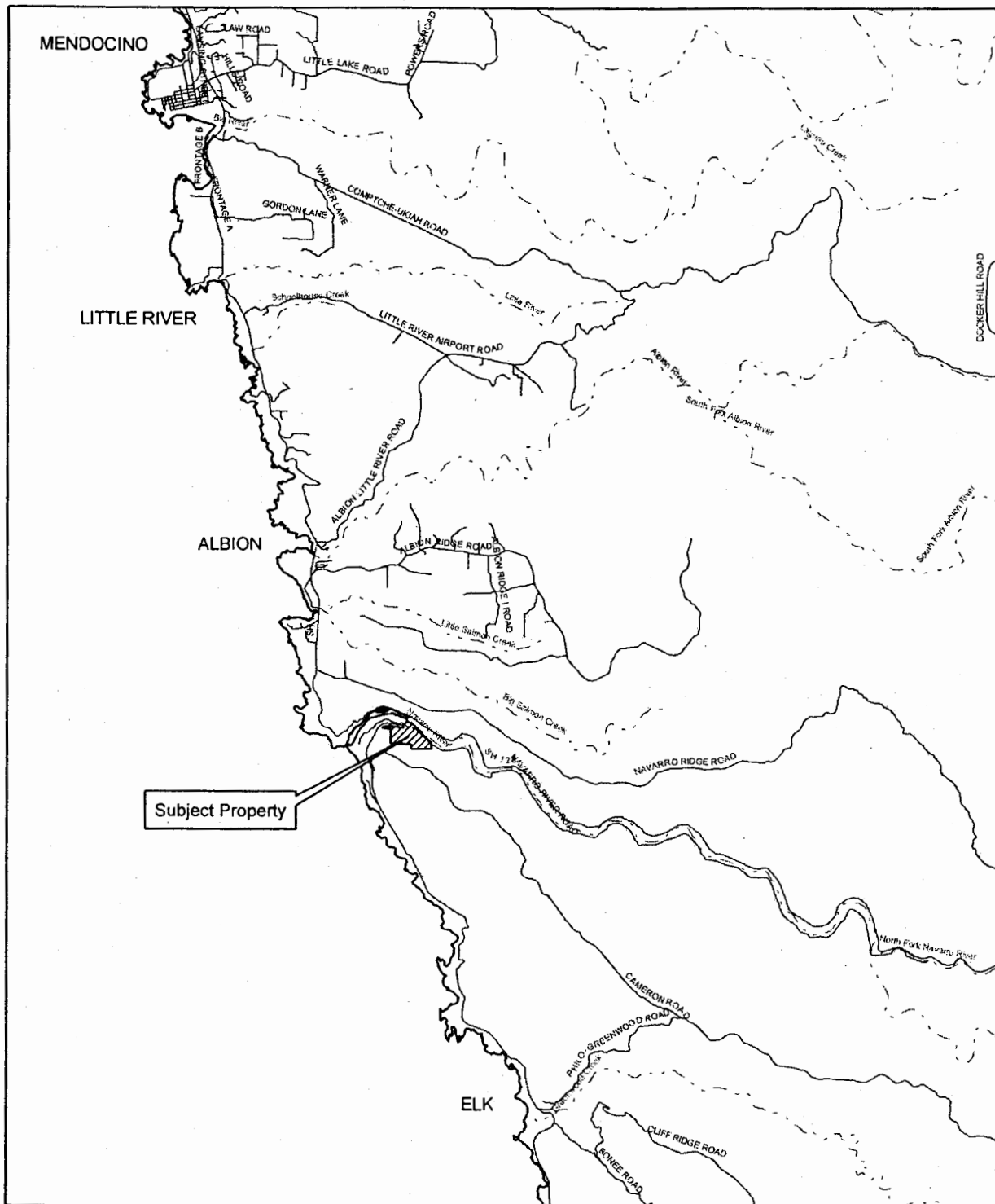


OWNER: YAGER, Matt
CASE: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

ASSESSOR'S PARCEL NUMBER

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)





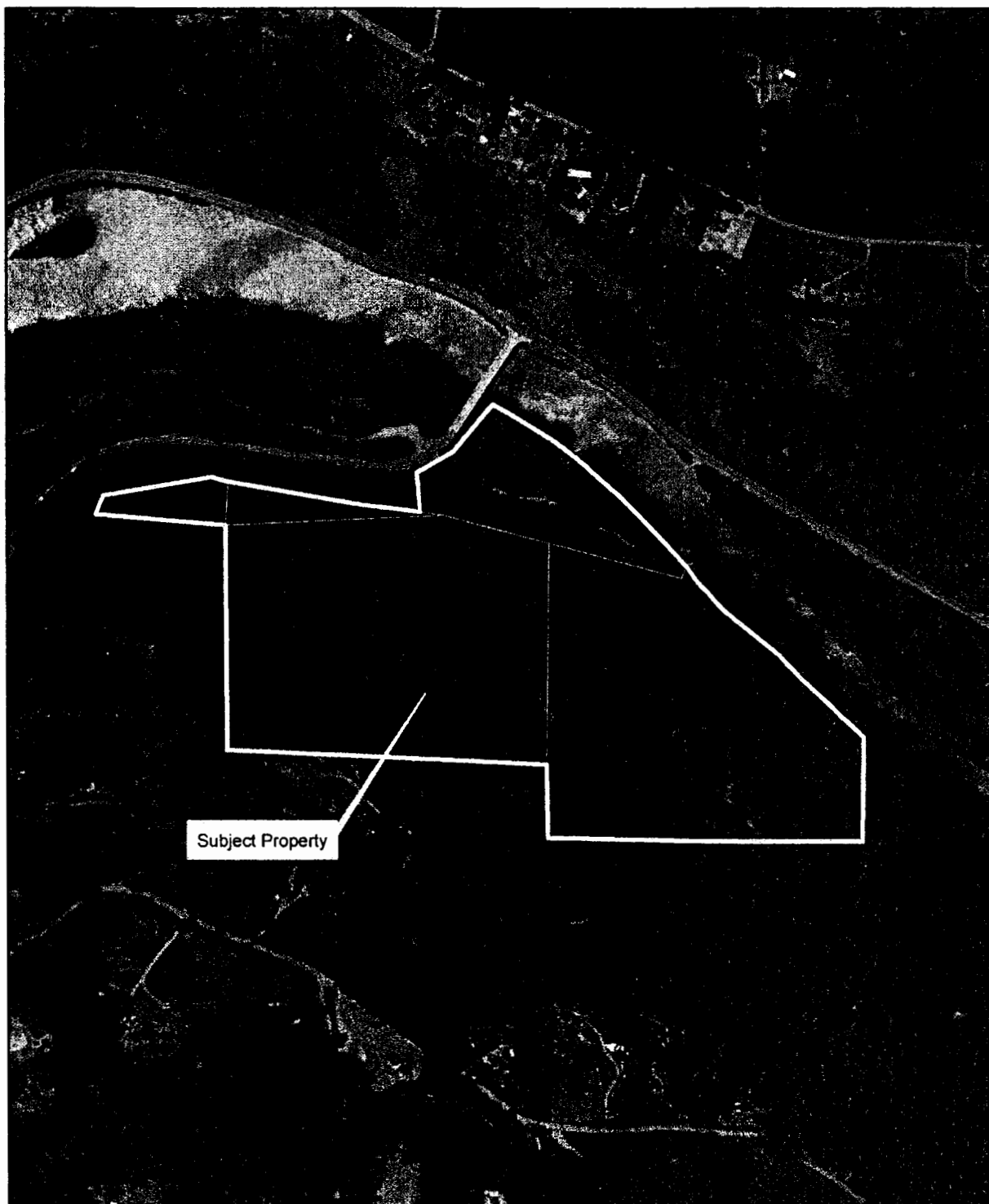
OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

LOCATION MAP

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5,000 2,500 0 5,000
Feet

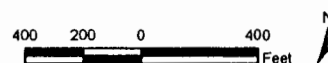


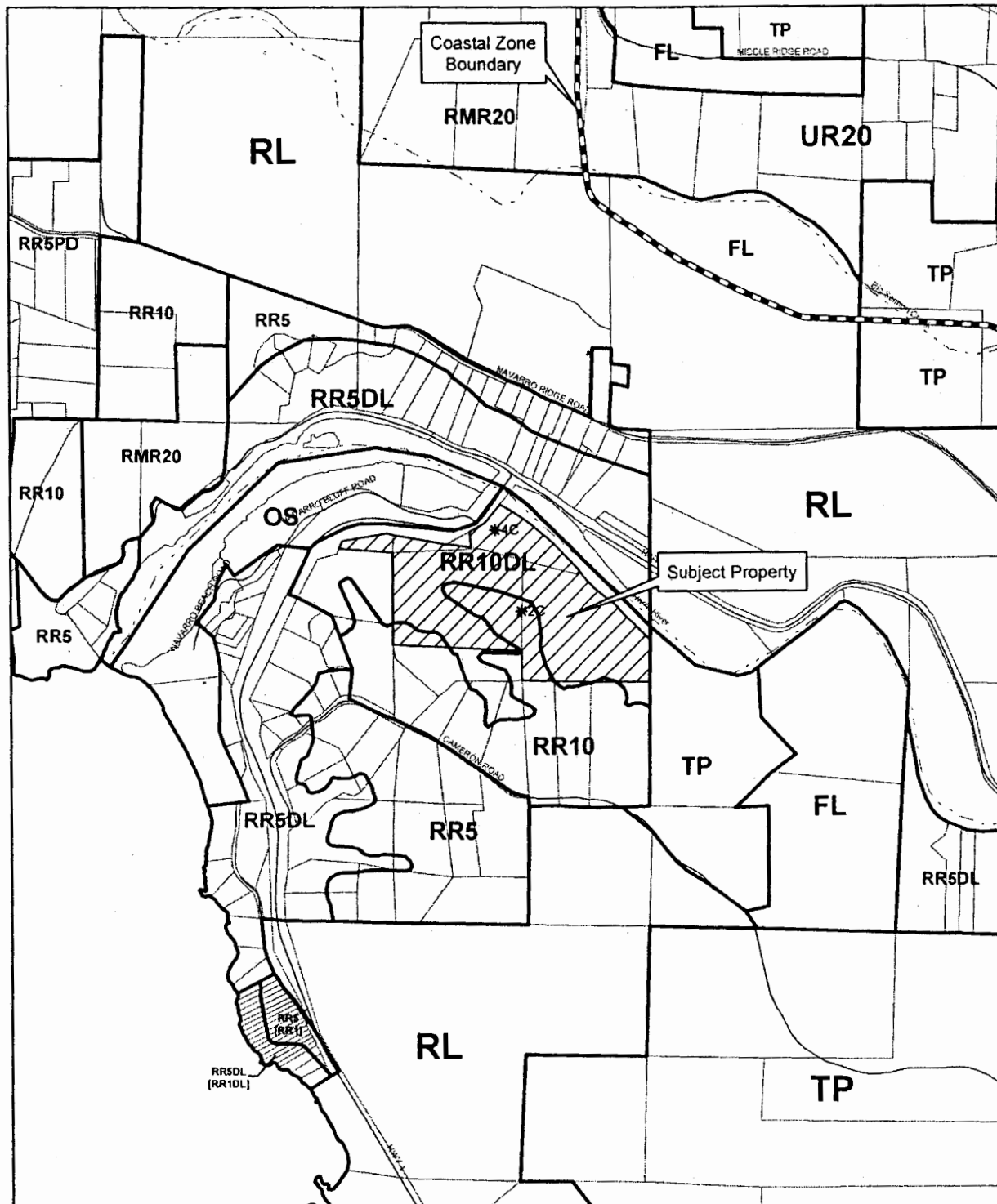


OWNER: YAGER, Matt
CASE #: CDB 22-2009
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ORTHOPHOTO - June 2009

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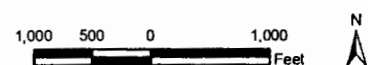


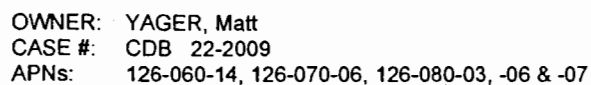


OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

ZONING DISPLAY MAP

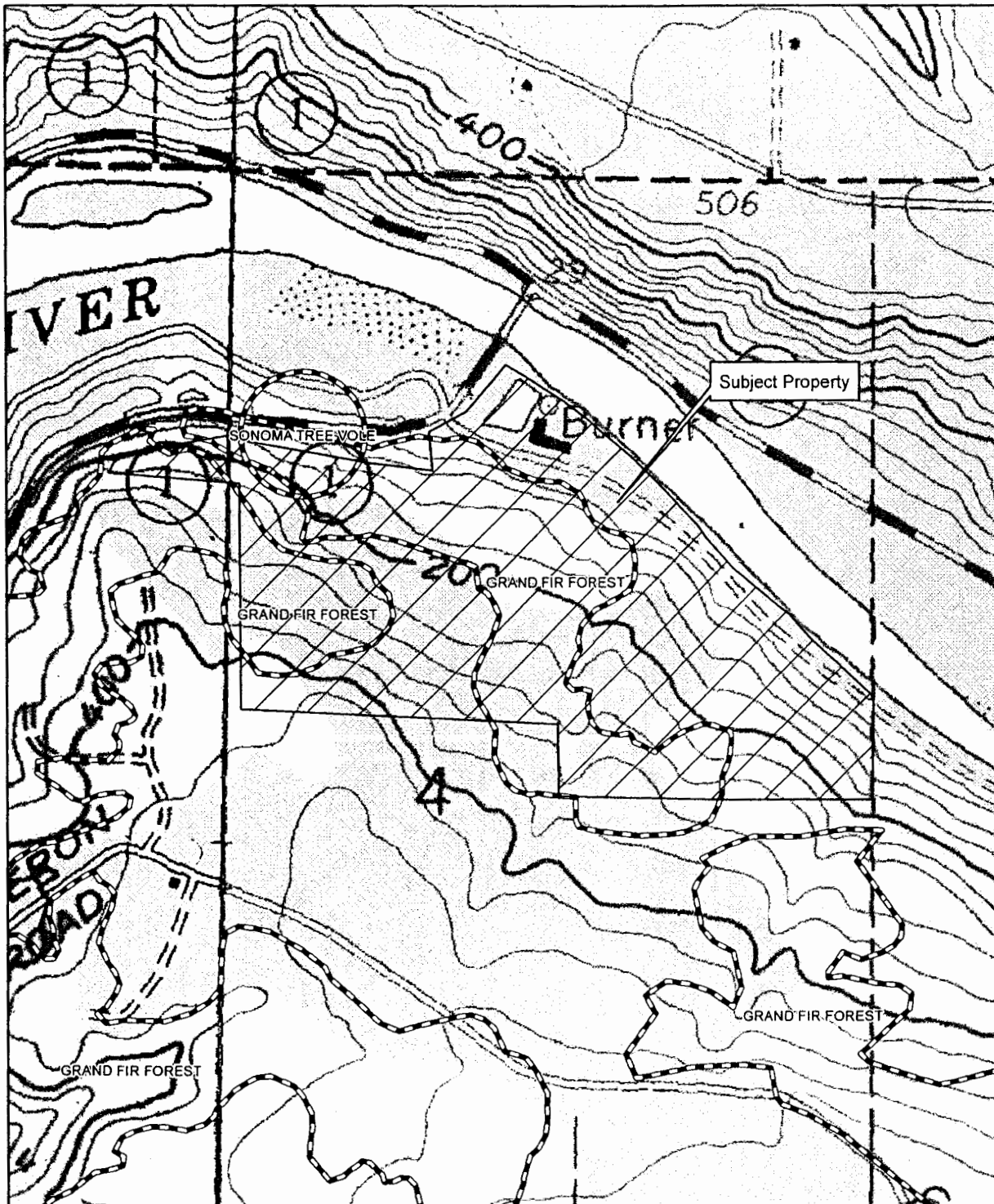
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Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off.

26 of 39

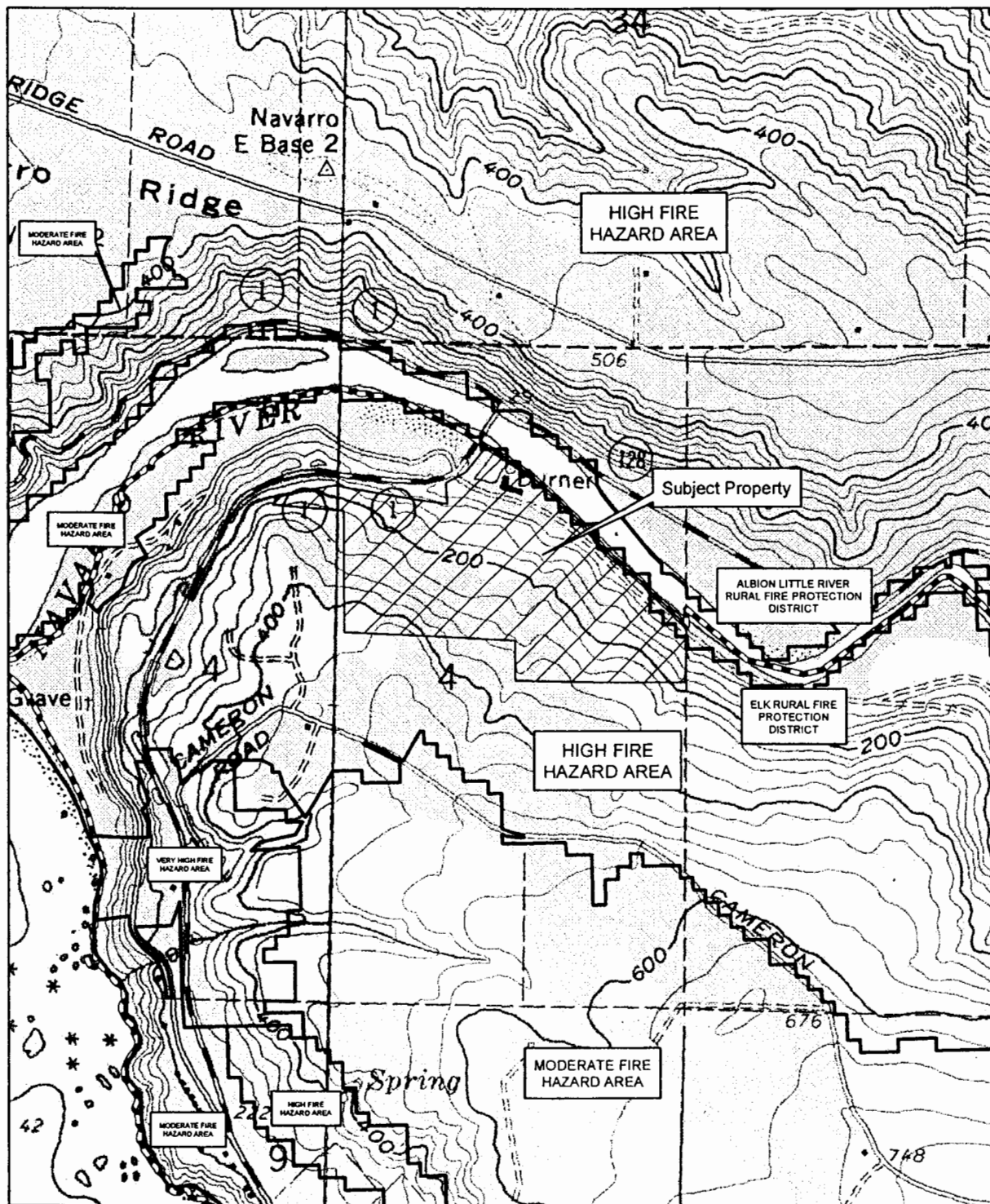


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CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

CALIFORNIA NATURAL DIVERSITY
DATABASE RAREFIND (July 2009)

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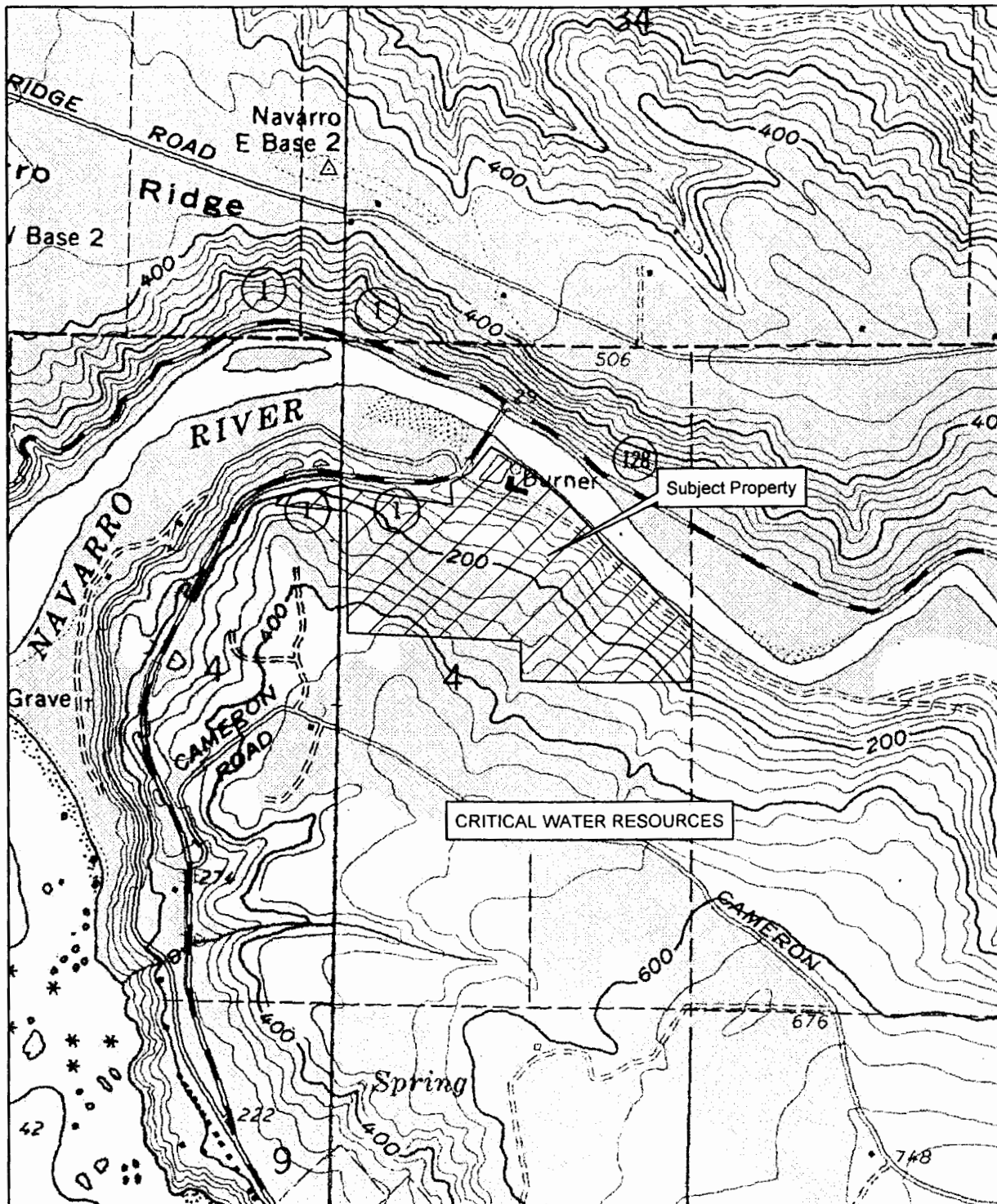


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FIRE HAZARD SEVERITY ZONES
-- ELK & ALBION LITTLE RIVER RURAL
FIRE PROTECTION DISTRICTS

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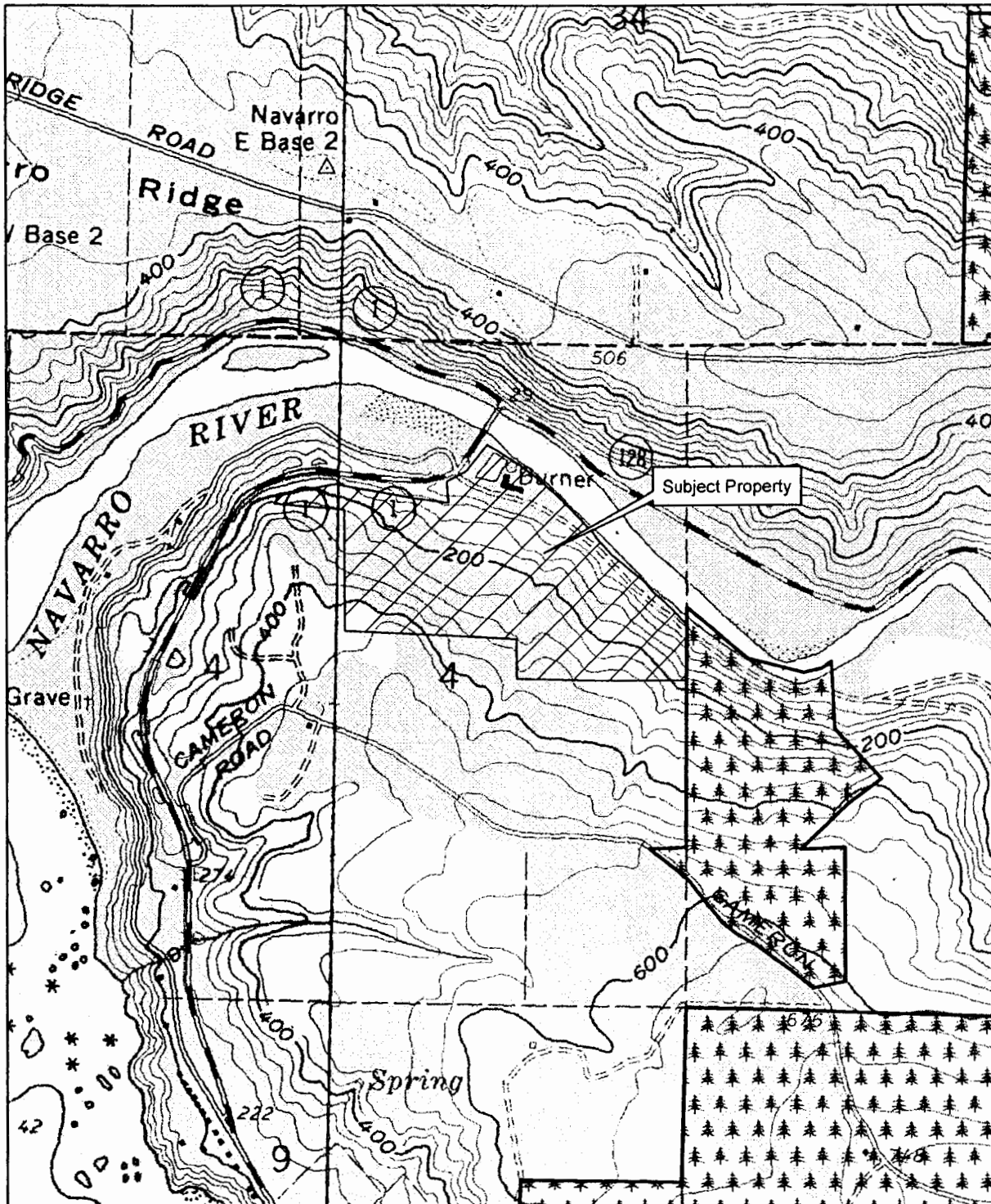
OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

COASTAL GROUND WATER RESOURCES

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500 250 0 500
Feet



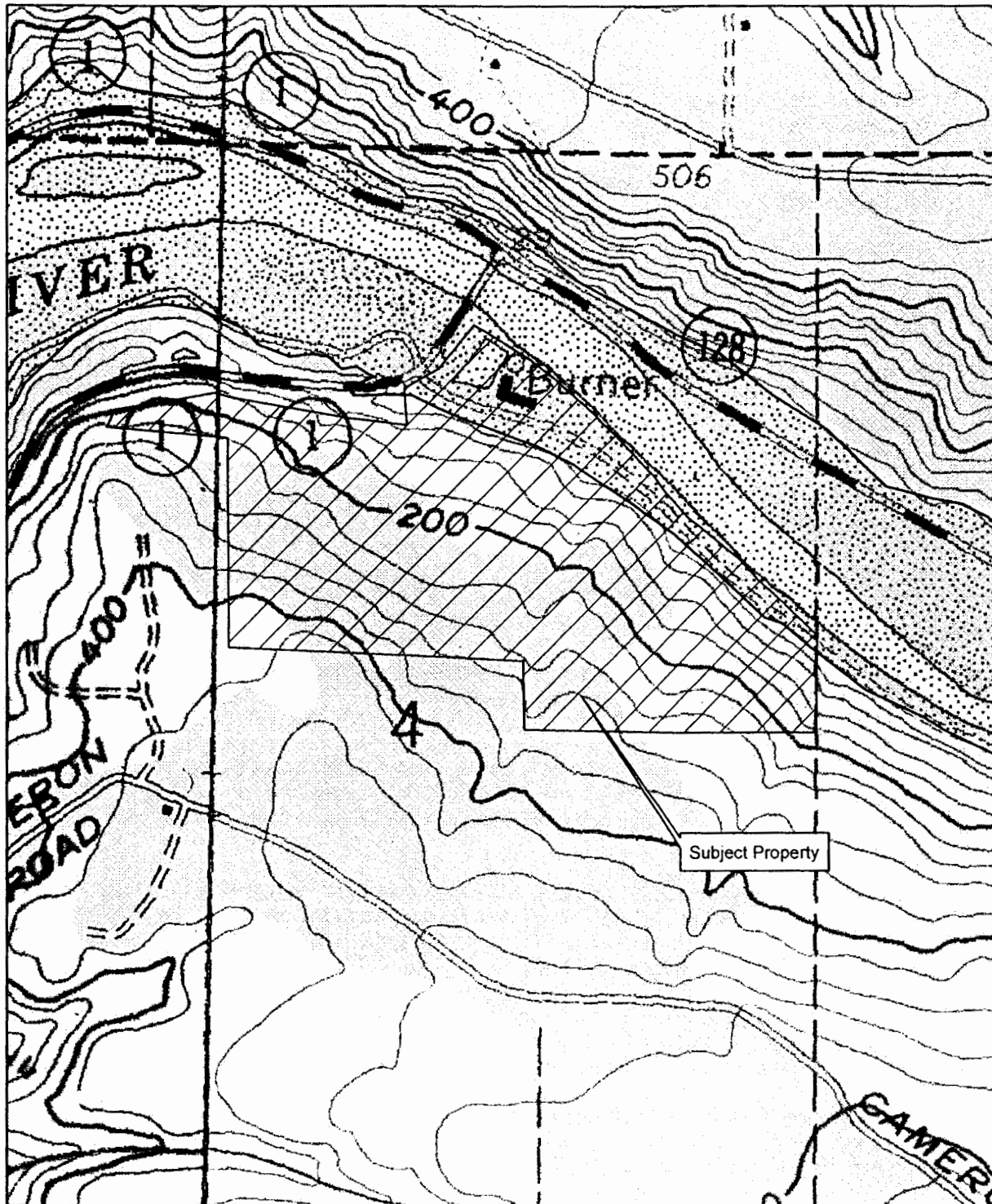


OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

 LANDS WITHIN TIMBER PRODUCTION ZONE

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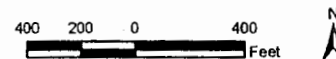
500 250 0 500
Feet
N



OWNER: YAGER, Matt
CASE #: CDB 22-2009
APNs: 126-060-14, 126-070-06, 126-080-03, -06 & -07

 100 YEAR FLOOD ZONE

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Frank Lynch
Mendocino Co. Planning Dept.
501 Lowgap Rd,
Ukiah, CA 95482

Dec. 20, 2009

RECEIVED
DEC 21 2009
BY
PLANNING & BUILDING SERVICES
Ukiah, CA 95482

Re: CDB 22-2009

Dear Mr. Lynch,

This letter is in reference to Matt Yager's BLA, which adjoins our home and at least 6 neighboring properties along Cameron Road in Elk.

We were referred by Rick Miller to a County rule affecting the subdivision at Albion headlands, which required the applicant to prove the "buildability" of existing (or grandfathered in through certificate of compliance) non-conforming parcels, which the developers were attempting to re-locate through the BLA.

The practice of moving existing non-conforming parcels to more advantageous locations doesn't change residential/infrastructure density if the parcels are buildable by current standards. However if the smaller than zoned parcels are inherently unbuildable, their relocation and reclassification as buildable parcels circumvents the intents and purposes of the minimum zoning parcel size, and can precipitate a cascade of negative impacts on infrastructure, quality of life and land values in a neighborhood.

The Staff Report for the Albion subdivision (see attached,) states that the County has adopted the "buildability of small parcels" rule, as a "gating criteria", presumably for all coastal BLAs.

We believe this rule should be applied as a "gating criteria" to the Yager BLAs, since the Cake parcels (AP 126-070-06 and AP 126-080-03, 3.5 Ac.) and the tee-pee burner parcel (AP 126-060-14, 5.6 Ac.) would almost undoubtedly be found to be "unbuildable" by current standards.

The Cakes tried unsuccessfully for years to develop their land, but failed for reasons that exist today, including wetlands, setbacks, access, back-up septic, etc. (see Co. records) The old tee-pee burner parcel is all wetlands and steep hill-side, and adjoins the critical Navarro Estuary ESHA.

The non-conforming parcels in their current configurations and locations provide valuable buffer zones between the state highway and Yager lands, and between the soon-to-be-developed hillside and Navarro River wetlands/wildlife habitat.

An assumption that the non-conforming parcels are buildable could almost double residential density if the Yagers created 7 parcels rather than the 4 or 5 that would be possible without using the unbuildable parcel #s.

An additional 7 or 8 building sites adjoining our homesites would drain the water tables, diminish the quality of life in our neighborhood and lower land values.

From our perspective, the County is obligated by the intention of the zoning limits, and the precedent of the Albion headlands permit, to require the Yagers to prove buildability of the non-conforming parcels at the onset of their BLA application process, through the timely application of the "gating criteria", "buildability of small parcels" rule.

Each non-conforming parcel, as well as the additional conforming parcels should be examined and certified to meet current standards re: access, on-site septic disposal, utility easements, etc. as in the Albion headlands precedent: "The applicant provided sample house plans and exhibit maps which demonstrated conformity with the LCP and building codes but was told that approved water, septic, recorded utility agreements and surveyed easements would need to be submitted for the benefit of the existing parcels." (see attached)

To not apply this criteria at the onset of the Yager BLA denies the concerned neighbors along Cameron Road the fair application of due process re: parcel size standards.

Please see that all Planning Codes pertaining to parcel size are applied in an evenhanded manner by requiring that the Yager's non-conforming parcels be proven buildable at the beginning of the process.

Thank you

Signature on File

Roger and Georgia Collin
1361 Cameron Rd.
Elk, CA

**COUNTY OF MENDOCINO
ENVIRONMENTAL REVIEW GUIDELINES
DRAFT NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT.

DATE: April 19, 2010

CASE#: CDB 22-2009

DATE FILED: 4/14/2009

OWNER: MATT, JOSH & RHONDA YAGER

APPLICANT: MATT YAGER

REQUEST: Coastal Development Boundary Line adjustment to reconfigure four (4) existing lots into 4+/-, 6+/-, 10.1+/- & 46+/- acres.

LOCATION: In the Coastal Zone southwest of State Highway 1 on the south side of the Navarro River, 6+/-miles north of Elk, located at 1361 Cameron Road: AP#'s 126-060-14, 126-070-06, 126-080-03, 126-080-06 & 126-080-07.

PROJECT COORDINATOR: FRED TARR

II. DETERMINATION.

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a **NEGATIVE DECLARATION** be adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

MENDOCINO COUNTY ENVIRONMENTAL REVIEW GUIDELINES INITIAL STUDY

Section I	Description Of Project
	<p>DATE: April 19, 2010</p> <p>CASE#: CDB 22-2009</p> <p>DATE FILED: 4/14/2009</p> <p>OWNER: MATT, JOSH & RHONDA YAGER</p> <p>APPLICANT: MATT YAGER</p> <p>REQUEST: Coastal Development Boundary Line adjustment to reconfigure four (4) existing lots into 4+/-, 6+/-, 10.1+/- & 46+/- acres.</p> <p>LOCATION: In the Coastal Zone southwest of State Highway 1 on the south side of the Navarro River, 6+/-miles north of Elk, located at 1361 Cameron Road: AP#'s 126-060-14, 126-070-06, 126-080-03, 126-080-06 & 126-080-07.</p> <p>PROJECT COORDINATOR: FRED TARR</p>
Section II	Environmental Checklist
	<p>"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change, may be considered in determining whether the physical change is significant (CEQA Guidelines, Section 15382).</p> <p>Accompanying this form is a list of discussion statements for all questions, or categories of questions, on the Environmental Checklist (See Section III). This includes explanations of "no" responses.</p>

Will the project result in the following environmental effects?	No	Yes			
		No Significant	Significant Unless It Is Mitigated	Significant - No Apparent Mitigation	Cumulative
1. EARTH:					
A. Unstable earth conditions or changes in geologic substructures?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Disruptions, displacements, compaction, or overcovering of the soil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Change in topography or ground surface relief features?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Destruction, covering, or modification of any unique geologic or physical features?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Any increase in wind or water erosion of soils, either on or off the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify a river channel, stream, inlet, or bay?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects?	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
2. AIR:					
A. Substantial air emissions or deterioration of ambient air quality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Creation of objectionable odors?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. WATER:					
A. Changes in currents, or the course of water movements, in either fresh or marine waters?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alterations to the course of flow of flood waters?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Change in the amount of surface water in any water body?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Discharge into surface waters, or any alteration of surface water quality, such as temperature, dissolved oxygen or turbidity?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Alteration of the direction or rate of flow of ground water?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Substantial reduction in the amount of water otherwise available for public water supplies?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Exposure of people or property to water related hazards such as flooding or tsunamis?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. PLANT LIFE:					
A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction of the numbers of any unique, rare, or endangered species of plants?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of a new plant species into an area, or creation of a barrier to the normal replenishment of existing species.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Reduction in acreage of any agricultural crop?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. ANIMAL LIFE:					
A. Change in the diversity of species, or number of any species of animals including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Reduction in the number of any unique, rare, or endangered species of animals?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Will the project result in the following environmental effects?	No	Not Significant	Significant Unless It is Mitigated	Significant No Apparent Mitigation	Cumulative
C. Introduction of new species of animals into an area, or in a barrier to the migration or movement of animals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Deterioration of fish or wildlife habitat?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. NOISE:					
A. Increases in existing noise levels?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to severe noise levels?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. LIGHT AND GLARE:					
A. Production of new light or glare?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. LAND USE:					
A. Substantial alteration of the present or planned land use of the area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. NATURAL RESOURCES:					
A. Increased rate of use of any natural resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. POPULATION:					
A. Alterations to the location, distribution, density, or growth rate of human populations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. HOUSING:					
A. Will the proposal affect existing housing or create a demand for new housing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. TRANSPORTATION/ CIRCULATION:					
A. Generation of substantial additional vehicular movement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Effects on existing parking facilities, or demand for new parking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Substantial impact upon existing transportation systems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Alterations to present patterns of circulation or movement of people and/or goods?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Alterations to waterborne, rail, or air traffic?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. PUBLIC SERVICES:					
A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Schools?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and other recreational facilities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Will the project result in the following environmental effects?	No	Yes			
		Not Significant	Significant Unless It Is Mitigated	Significant No Apparent Mitigation	Cumulative
Maintenance of public facilities, and roads?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other governmental services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. ENERGY:					
A. Use of substantial amounts of fuel or energy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Substantial increase in demand upon existing sources of energy, or require development of new energy sources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. UTILITIES:					
A. Will the project result in a need for new systems or substantial alterations to the following:					
Potable water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewerage?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Energy or information transmission lines?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. HUMAN HEALTH:					
A. Creation of any health hazard or potential health hazard?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to any existing health hazards?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Risk of explosion or release of hazardous substances (i.e. pesticides, chemicals, oil, radiation) in the event of an accident or unusual conditions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Possible interference with emergency response plan or evacuation plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. AESTHETICS:					
A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. RECREATION:					
A. Impact upon the quality or quantity of existing recreational opportunities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. CULTURAL RESOURCES:					
A. Alteration or destruction of a prehistoric or historic archaeological site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Cause a physical change that would affect the unique ethnic cultural values?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. Restrict existing religious or sacred uses within the potential impact area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Section III Responses to Environmental Checklist

For a discussion of each of the environmental effects listed in the Environmental Checklist along with related goals and policies of the General Plan, see the Environmental Review section of the attached staff report.

Section IV Mandatory Findings of Significance

- A. As discussed in the preceding sections, the project does ~~does not~~ have the potential to significantly degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.
- B. As discussed in the preceding sections, both short-term and long-term environmental effects associated with the project will be less than significant ~~significant~~.
- C. When impacts associated with the project are considered alone or in combination with other impacts, the project-related impacts are insignificant ~~significant~~.
- D. The above discussions do not identify any substantial adverse impacts to people as a result of the project.


Section V Determination

On the basis of this initial evaluation, it has been determined that:

- ☐ The proposed project will not have a significant effect on the environment, and it is recommended that a NEGATIVE DECLARATION be adopted.
- ☒ Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.
- ☐ The proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

4-21-10

DATE


FRED TARR
PLANNER II