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Staff:	J. Manna-SF
Staff Report:	1/17/13
Hearing Date:	2/07/13

## STAFF REPORT: REGULAR CALENDAR

**Consistency Determination No.:** CD-031-12

**Federal Agency:** Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, acting on behalf of the U.S. Department of Housing and Urban Development

**Location:** Manchester-Point Arena Rancheria in Mendocino County

**Project Description:** Senior housing project

**Staff Recommendation:** Conditional Concurrence

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### SUMMARY OF STAFF RECOMMENDATION

The Manchester Band of Pomo Indians of the Manchester-Point Arena (MPA) Rancheria (“Tribe”) proposes to construct a new senior housing development on a vacant parcel located within the MPA Rancheria north of Point Arena, in Mendocino County. The project is being funded by the federal Department of Housing and Urban Development (HUD), and under HUD regulations, funding recipients prepare and submit the necessary environmental compliance documents (**Exhibit 4**). The development would include twelve 800-square-foot individual one-bedroom/one-bathroom senior housing units, an 800-square-foot senior club room, parking,

common outdoor space, an access road, sidewalks, landscaping, a septic system and leach field, and other associated infrastructure. The property is currently held in trust by the United States government for the benefit of the Tribe. As trust lands, the MPA Rancheria is excluded from the coastal zone but is surrounded by coastal zone properties. The standard of review for this project is consistency to the maximum extent practicable with the Chapter 3 policies of the Coastal Act.

The subject parcel contains coastal prairie-scrub plant community, open grasslands, bare ground, and two linear wetland features with riparian vegetation. The wetlands and associated drainage trend to the north-northwest of the property where they connect to the Garcia River beyond the MPA Rancheria boundary. The project raises wetland buffer issues, because a portion of the senior residences, leach field, and access road would be less than 50 feet, and in some instances within 15 feet, of wetland areas. The Coastal Act water quality policies require that the biological productivity and quality of wetlands be maintained by, among other means, minimizing adverse effects of waste water discharges, controlling runoff, and maintaining natural vegetation buffer areas that protect riparian habitats. In addition, while not the legal standard (although it can be used as background in federal consistency reviews), the Mendocino County Local Coastal Plan (LCP) Habitats and Natural Resource Policies consider wetlands as environmentally sensitive habitat areas (ESHA) and generally call for a 100 foot buffer (or at least a rebuttable presumption for a 100 foot buffer) for development located adjacent to ESHA.

The Tribe has avoided locating any of its proposed development within wetland and riparian habitat on the project site. The Tribe has also incorporated additional mitigation measures and design features into its project to minimize any potential biological and hydrological impacts to the wetlands on the site and the water quality of the surrounding area. These mitigation measures and design features include planting native vegetation between development and wetlands to enhance protection in areas with a reduced buffer, restoring diminished riparian habitats along drainages within the MPA Rancheria that lead to the Garcia River, removing an on-site culvert to restore the hydrological function of the property's drainage, using low impact development and best management practices for storm water management to reduce pollutants and impurities entering off-site water bodies, and incorporating water conservation features into the project design to reduce overall water demand.

However, even with these mitigation measures, the staff believes the buffer is too small, as little as 15 feet in some areas, to adequately protect wetlands and riparian habitat, and the sensitive species using these habitats. The Tribe has stated that it would consider reorientation of the buildings to possibly increase the buffer during the final design process, but it remains unclear the extent to which this may increase the buffer width. Therefore, the staff is recommending a condition requiring the Tribe to submit final project plans that include a buffer of 50-100 feet between the edge of any wetland habitat on-site and the development. If the project is modified to include this increased buffer, the staff believes the Commission could find that such a modified project would avoid adverse impacts to sensitive wetland resources on the property, and would be consistent with the water quality and ESHA policies of the Coastal Act (Coastal Act Sections 30231 and 30240).

The staff therefore recommends that the Commission conditionally concur with the Tribe's consistency determination.

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### EXHIBITS

Exhibit 1- Project Area Map

Exhibit 2- Project Site Plan for the Proposed Senior Housing

Exhibit 3- Environmental Constraints of the Subject Parcel

Exhibit 4- HUD Letter to CCC, April 5, 2012

## I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

## II. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **conditionally concur** with consistency determination CD-031-12 that the project would be fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the Tribe agrees to modify the project consistent with the condition specified below, as provided for in 15 CFR §930.4.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the determination of consistency, provided the project is modified in accordance with the recommended condition, and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

### Resolution:

*The Commission hereby **conditionally concurs** with consistency determination CD-031-12 by the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria on the grounds that the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the Tribe agrees to modify the project consistent with the condition specified below, as provided for in 15 CFR §930.4.*

## III. CONDITION

1. **Final Plans/Increased Buffer.** Prior to commencement of construction, the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria shall submit final plans to the Executive Director, for his review, which provide that the buffer will be increased such that the distance between the edge of any wetland habitat on-site (as defined by the one-parameter Coastal Act definition) and all development shall be a minimum of 50 feet, and where feasible, 100 feet. The project shall be implemented in accordance with the revised plans.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

The Northern Circle Indian Housing Authority (NCIHA) has submitted a consistency determination on behalf of the Manchester Band of Pomo Indians of the Manchester-Point Arena (MPA) Rancheria (“Tribe”) for the construction of a new senior housing development on a vacant parcel located in the western portion of the 364-acre MPA Rancheria, approximately two miles north of the City of Point Arena, in Mendocino County (**Exhibit 1**). The subject parcel is located on the northeast corner of the intersection of Windy Hollow Road and Mamie Laiwa Road. The development would include twelve 800-square-foot individual one-bedroom/one-bathroom senior housing units, parking, an 800-square-foot senior club room unit, common outdoor space, an access road, sidewalks, landscaping, a septic system and leach field, and other associated infrastructure (**Exhibit 2**). All buildings would be approximately 12 feet high. The buildings would include lap or sheet siding, painted in colors compatible with the natural landscape, energy efficient windows, and composition roofing shingles. The total project area would encompass about 1.25 acres of the 45 acre parcel.

The MPA Rancheria was established by the Secretary of Interior on June 23, 1909, and on September 20, 1927. The property is currently held in trust by the United States government for the benefit of the Tribe. As trust lands, the MPA Rancheria is excluded from the coastal zone, but it is surrounded by coastal zone properties. The coastal zone boundary is 997 feet north of the northern edge of the Project. The parcel is currently vacant, has not been previously developed, and is heavily vegetated with coastal prairie-scrub plant community with areas of open grasslands and bare ground. The land uses surrounding the parcel include existing MPA Rancheria houses to the east, a tribal casino to the west, and agricultural operations to the north, west, and south.

The parcel also contains two linear wetland features as defined by the one-parameter Coastal Act wetland definition, as well as by the three-parameter US Army Corps of Engineers (ACOE) wetland definition. (See **Exhibit 3** for a map of the wetland features on the subject parcel - wetlands as defined by the Coastal Act are referred to as “riparian,” and wetlands as defined by the ACOE are referred to as “palustrine emergent wetland.”) The wetlands trend to the north-northwest and are associated with the primary drainage on the project site. The drainage and associated wetland features originate south of Mamie Laiwa Drive, flow under the road in an existing culvert, and continue northwest where they connect to the Garcia River as a tributary 0.25 miles to the north.

Water services for the development would be provided by an extension of the existing MPA Rancheria water supply. The proposed septic system, designed by a certified soil scientist, would serve the proposed senior housing until the Tribe is able to develop a wastewater treatment plant to serve the MPA Rancheria. The senior housing would be designed to tie into the wastewater facility once it is completed.

The project site is within the U.S. Fish and Wildlife Service identified range of the Point Arena mountain beaver (PAMB) and contains suitable habitat for this endangered species. PAMB site habitat assessment surveys conducted in 2011 revealed no PAMB burrow or individuals onsite.

The Tribe would resurvey the project area no more than eight weeks prior to ground disturbing activity. No archaeological resources are known to occur in the project area. However, mitigation measures would be incorporated to address buried archeological or historical resources encountered during project construction pursuant to the guidelines of the California Indian Heritage Commission.

Currently, the Tribe has approximately 60 single-family residences housing about 212 tribal members, but does not have any designated senior residential accommodations. This project would provide housing needed for seniors currently residing within the MPA Rancheria, as well as a dedicated senior meeting space in close proximity to the senior housing and the residential portion of the MPA Rancheria.

## **B. WETLANDS, WATER QUALITY, AND ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30240(b) of the Coastal Act states:

*..... (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Mendocino County LCP, which can be used as background in Commission federal consistency reviews, considers wetlands and areas with riparian vegetation as environmentally sensitive habitat areas (ESHA):

*LCP 3.1-2 Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource....*

As stated in the Mendocino LCP regarding development adjacent to ESHA:

*LCP 3.1-7 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.*

As mentioned in the project description, the parcel contains two linear wetland features. In **Exhibit 2** and **3** these wetlands are referred to as “riparian” or “riparian areas” if they meet the one-parameter definition of a wetland as defined by the Coastal Act but not the three-parameter definition used by the ACOE, and “wetland area” or “palustrine emergent wetland” if they also meet the ACOE three-parameter definition. The wetlands to the east and west of the project site, referred to as “riparian” in **Exhibit 3**, are freshwater forested/shrub wetlands with broadleaved deciduous riparian vegetation, periodically flooded with water and dominated with species such as Scouler’s willow (*Salix scouleriana*), California blackberry (*Rubus ursinus*), thimbleberry (*Rubus parviflorus*), slough sedge (*Carex obnupta*), and black twinberry (*Lonicera involucrate*). The two wetlands at the north end of the project site, referred to as “palustrine emergent wetlands,” are freshwater emergent wetlands dominated by slough sedge (*Carex obnupta*), common rush, (*Juncus effusus*) spreading rush (*Juncus patens*), creeping buttercup (*Ranunculus repens*), hedge nettle (*Stachys sp.*), self-heal (*Prunella vulgaris*), and fireweed (*Epilobium angustifolium*). Both of these areas are considered wetlands under the Coastal Act definition.

All direct project disturbances would be restricted to upland areas outside of wetlands as defined by the Coastal Act and ACOE definition (**Exhibit 2**). However, a portion of the development would be within 50 feet of wetlands as defined by the Coastal Act. The Coastal Act requires that the biological productivity and quality of streams and wetlands be maintained through minimizing effects of waste water discharges, controlling runoff, and maintaining natural vegetation buffer areas that protect riparian habitats. Looking to the Local Coastal Program (LCP) policies as background, the Mendocino LCP Habitats and Natural Resource Policies consider wetlands and riparian zones on streams as ESHA (section 3.1-2) and require that 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 Wildlife,<sup>1</sup> that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development (section 3.1-7). The policies state in that event, the buffer shall not be less than 50 feet in width. The development proposed within the ESHA buffer for the proposed project includes a portion of the senior housing, leach field, and access road, which would be as near as 15 feet from wetlands.

As trust lands, the MPA Rancheria is not technically within the coastal zone, and the Commission's review is similar to that of activities on federal land and focuses primarily on the potential spillover impacts on coastal zone resources. In this case, impacts to the water quality of wetlands on the site may affect resources within the coastal zone as the wetlands associated with the primary drainage on the project site eventually connect downstream to the Garcia River in the coastal zone. In addition, impacts to wetland habitats, even if on federal land, may have a spillover effect due to statewide loss of overall riparian and wetland habitat (i.e., the scarcity of the habitat, and further losses lead to additional pressures on what little habitat remains), as well as to habitat continuity and migration corridors. The California Natural Diversity Database and staff from the Department of Fish and Wildlife have confirmed that there is identified habitat for sensitive species within 0.6 miles of the project site, including the California red legged frog and the Point Arena mountain beaver. The wetland and riparian habitat on the project site could provide potential migration or breeding habitat for these species. Due to this reasoning, the Commission would generally request a 100-foot buffer for development adjacent to these habitats, with further analysis needed in the event a smaller buffer were proposed.

In this case, it is clear that the Tribe has considered the presence of wetlands and riparian habitats on the project site, as all direct project work has been sited in upland areas outside of these sensitive habitats. In addition, all project work is setback at least 15 feet from wetlands as defined by the Coastal Act and 25 feet from wetlands as defined by the ACOE. The Tribe has also incorporated additional design features and mitigation measures to ensure that the reduced buffer would not result in biological or hydrological impacts to the site or surrounding area.

In areas of the site where buildings are proposed to be located in close proximity to riparian and wetland habitats (with a reduced buffer) the back of the building has been designed to "face" the resource. Since there are no doors on the back of the residences and no backyards proposed, there would be only minor disturbances resulting from the operation of the senior residences near these resources. Also, in areas where project activities would occur within 15-50 feet of riparian or wetland habitats, the Tribe would plant a buffer consisting of thimble berry (*Rubus parviflorus*) and sword fern (*Polystichum minutum*) to enhance protection. In addition, the Tribe proposes to conduct activities on the project site and in the surrounding area to enhance the biological and hydrological function of the wetland and riparian resources. These activities include planting native landscaping north of Mamie Laiwa Road, south of the project access road, and in between residences on the north side of the senior housing road, removal of an existing 15-foot culvert to restore the hydrological function of the drainage area, and planting additional riparian habitat in areas within the MPA Rancheria along the drainages that lead out to the Garcia River where the habitat has diminished.

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<sup>1</sup> The California Department of Fish and Wildlife was, until recently, known as the California Department of Fish and Game, which is why LCP section 3.1-7 refers to it as such.

To ensure the water quality of the surrounding wetlands are not affected by project construction and operation the Tribe also plans to incorporate low impact development (LID) techniques and best management practices (BMPs) within the project's storm water drainage system. The LID and BMPs may include bioswales, permeable pavements, bioretention basins, a rain garden, and water quality inlet filters. These features would filter out sediments and other contaminants and thus would result in minimal impacts to the offsite receiving waters.

The septic system and leach field would be setback a minimum of 50 feet from any wetlands as defined by the ACOE. This setback is consistent with the Regional Water Quality Control Board Basin Plan (North Coast Region 1) regulations which require septic tanks to be setback 25 feet, and leach fields to be setback 50, from ephemeral drainages. An initial on-site wastewater disposal system plan was prepared for the site by the Tribe's Consultant (Winzler & Kelly), which included a field investigation and assessment by a certified soil scientist conducted in August 2010. A draft report of this evaluation was provided to Indian Health Service, US Department of Health and Human Services for review. Indian Health Service reviewed the report and determined the design to be adequate, offering a few recommendations which were incorporated into the final on-site waste water disposal system report produced in August 2011. The final report notes that sufficient space and soils exist on the site for the proposed septic system and associated leach field to function adequately. As such, the operation of the septic tank and leachfield would not adversely affect the wetland and riparian resources on the site. The Tribe is also working to eventually develop a wastewater treatment plant to serve the MPA Rancheria. The senior housing would be designed to tie into the wastewater facility once it is completed, and therefore operation of the on-site septic system would be temporary.

Even with the mitigation measures as discussed above, the Commission is still concerned that habitat and wildlife impacts may occur due to the reduced buffer of less than 50 feet. Under the proposed planting configuration, adequate space would not be afforded between the wetland edge and development to provide for vegetative growth sufficiently dense or wide to provide an effective screen for the adjoining ESHA. The development would still subject wildlife species that may occur (and travel to and from the coastal zone) within the ESHA, including California red legged frog, Point Arena mountain beaver, bird species, and other wildlife, to light and glare, noise, and visible human disturbance and thus result in adverse impacts on the adjoining coastal zone ESHA resources. Therefore, the Commission finds that a buffer width of less than 50 feet would not provide adequate protection to the environmentally sensitive resource areas adjacent to the development, contrary to the requirements of the Coastal Act, as further elucidated by the certified LCP.

The Tribe has determined that there is no other feasible site for the project located within the MPA Rancheria, and the inclusion of a 100 foot buffer may preclude the essential purpose of the project. However, to accommodate the Commission's remaining concerns, the Tribe has agreed to consider reorienting or reconfiguring the design of the buildings in a manner that would provide a greater buffer between the riparian/wetland habitat and the project in the final design and planning process. Since the final project plans are not currently available, the Commission is unable to find the project as proposed consistent with the Coastal Act's water quality policy concerning buffers, and the Commission has therefore included a condition of concurrence, **condition 1**, under which the Tribe would submit final plans illustrating that the buffer distance

has been increased between the edge of any wetland habitat on the site (as defined by the one-parameter Coastal Act definition) and the development to 50-100 feet. While the LCP recommends a 100 foot buffer, a minimum buffer of 50 feet would be appropriate and consistent with the Coastal Act ESHA policy (as well as the LCP buffer policies) based on consultations with the Department of Fish and Wildlife on what is needed to protect the biological resources of this area, and the additional mitigation measures provided by the Tribe.

In conclusion, the Commission finds that if the project is modified in accordance with the special condition of concurrence increasing the buffer distance to 50-100 feet, the biological productivity and water quality of nearby wetlands and riparian habitat on the site would be adequately maintained. The Commission therefore concludes that such a modified project, as conditioned, would be consistent with the water quality and ESHA policies of the Coastal Act (Sections 30231 and 30240b), as well as the related LCP policies.

### **C. PUBLIC SERVICES**

Coastal Act Section 30250 states in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

As stated in the project description, water for the project would be supplied by the Tribe's existing water system, which provides service exclusively to the Tribe's residential area and casino operation. Groundwater wells and pumps produce the water supply which is stored in an existing 102,800 gallon storage tank. The Tribe has estimated up to 1,900 gallons per day of water use for the senior housing. As the existing water supply pumps about 65 gallons per minute, the water demand for the senior housing project would have a minimal impact on the overall water supply and would not require additional ground water pumping. The Tribe would also incorporate water conservation fixtures and native, drought tolerant landscaping to further reduce demand on the existing water supply. As mentioned, the septic system design has been reviewed by Indian Health Services and was found to be adequate. The Commission therefore finds that adequate public services are available to accommodate the proposed development, and that the project is consistent with the public services policy of Section 30250. The Commission further finds that, if modified as discussed in the previous section of this report, the project would avoid individual and cumulative impacts on coastal resources and would be consistent with the remaining tests of Section 30250 of the Coastal Act.

**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

- 1) Manchester Band of Pomo Indians Senior Housing Project Consistency Determination (Clement, Fitzpatrick, & Kenworthy, July 2012)
- 2) Environmental Assessment for HUD-funded Proposals, Manchester-Point Arena Senior Housing Project (Winzler & Kelly Consulting Engineers, September 2011)
- 3) Manchester Band of Pomo Indians/Northern Circle Indian Housing Senior Housing Project Consistency Determination Supplement (Clement, Fitzpatrick, & Kenworthy, December 2012)

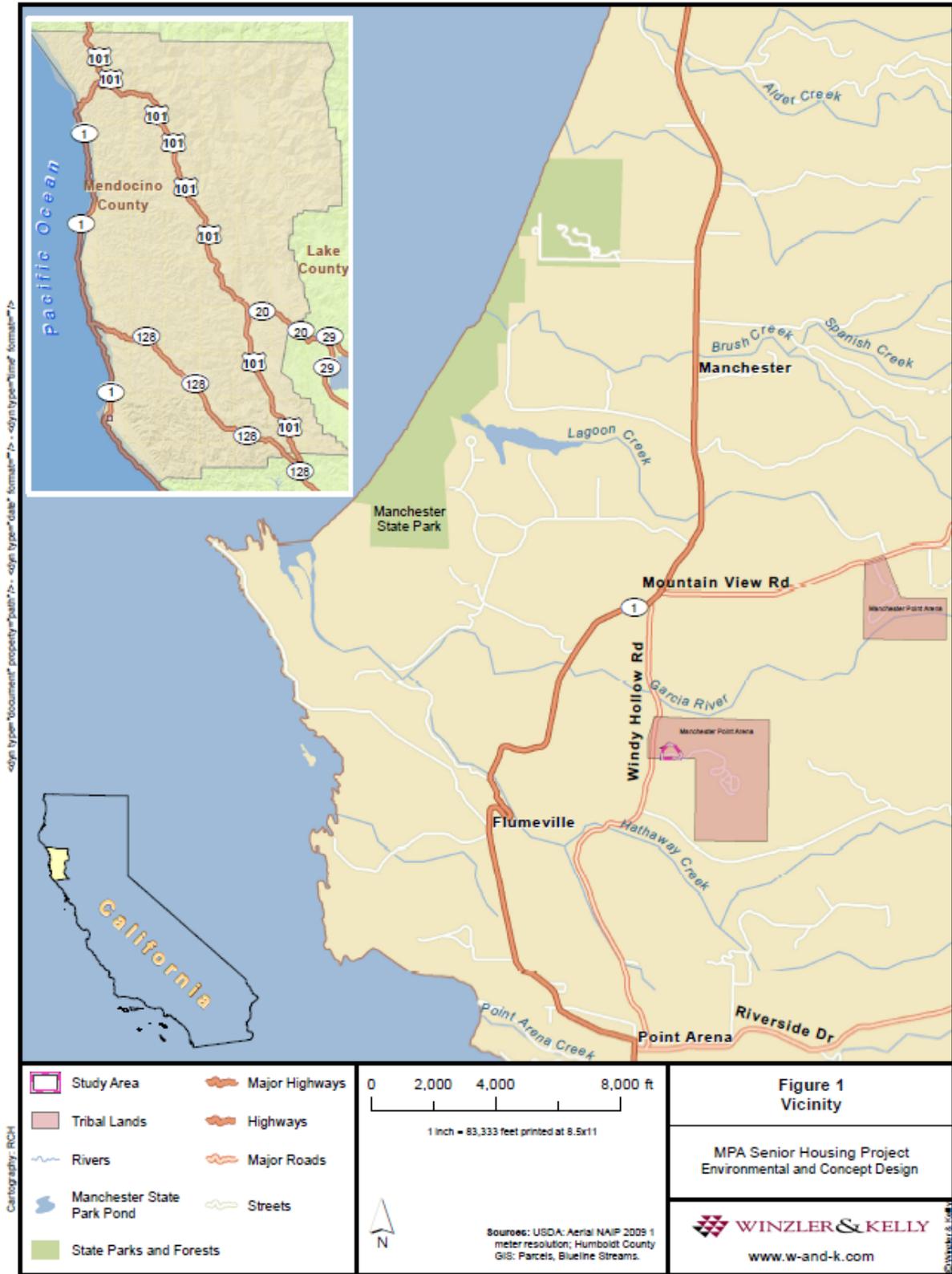


Exhibit 1 (CD-031-12)



Exhibit 2 (CD-031-12)



Exhibit 3 (CD-031-12)



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CALIFORNIA  
COASTAL COMMISSION

Mark Delaplaine, Manager  
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Dear Mr. Delaplaine:

Thank you for your letter of February 3, 2012, regarding the subject senior housing development on the Manchester Point Arena Rancheria. As you noted, potential funding sources for the activity include programs administered by HUD, including the Native American Housing Assistance and Self-Determination Act and the Indian Community Development Block Grant Program. Under these programs, the Manchester Band of Pomo Indians acts as Responsible Entity, assuming HUD's agency responsibility for the project's compliance with the National Environmental Policy Act and related environmental laws and authorities including the Coastal Zone Management Act.

HUD has had unique authority to delegate environmental responsibilities to governmental recipients of HUD funds. The original authorization was provided by Congress at Title I, Section 104(g) of the Housing and Community Development Act of 1974 as amended, which states:

"In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented . . . and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to recipients of assistance under this title who assume all of the responsibilities for environmental review, decision making and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this sub-section only after consultation with the Council on Environmental Quality."

Similarly, Section 105(a) of the Native American Housing Assistance and Self Determination Act of 1996, provides that

"...the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decision making and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects."

Exhibit 4 (CD-031-12)

The HUD Secretary's regulations appear at 24 CFR Part 58 and are entitled, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Final Rule." A copy of the regulation is enclosed. According to §58.10, "the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in §58.5." Section 58.5(c) addresses compliance with the Coastal Zone Management Act of 1972 as amended, particularly sections 307(c) and (d).

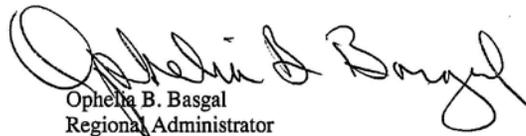
Therefore, under this framework, the Manchester Band of Pomo Indians as Responsible Entity acts in HUD's place as the federal agency for purposes of completing an Environmental Assessment for the activity and in making a determination of consistency under Section 307(c)(1) of the Coastal Zone Management Act.

Nevertheless, under 24 CFR Part 58, HUD retains an oversight responsibility to ensure that all required environmental compliance steps are completed before federal funds are expended for an activity. This process, called the "Request for Release of Funds" (24 CFR Part 58 Subpart H), includes a period during which HUD may receive objections to the release of funds for a particular project. The appropriate time frame and HUD office for submission of objections are indicated in a public notice published by the Responsible Entity called the Notice of Intent to Request Release of Funds, which usually accompanies the Finding of No Significant Impact.

With regard to the subject activity, HUD will consider your letter of February 3, 2012, a timely objection when, and if, HUD receives a Request for Release of Funds for this activity. HUD will require that the Responsible Entity demonstrate that it has addressed your comments and provided the requested consistency determination under Section 307(c)(1) of the CZMA, before authorization to expend funds can be provided.

Please call Regional Environmental Officer Ernest Molins at (415) 436-6731, if you have any questions on this matter.

Sincerely,

  
Ophelia B. Basgal  
Regional Administrator

Enclosure

cc:  
Christine Dukatz  
Manchester Point Arena Rancheria

Beverly Hill  
HUD Southwest Office of Native  
American Programs

**Exhibit 4 (CD-031-12)**