

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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Hearing Date:	2/12/14

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

Application No.:	A-1-MEN-14-0003
Applicant:	Harry W. Miller
Appellants:	Harry W. Miller
Local Government:	County of Mendocino
Local Decision:	Approval with Conditions
Location:	West of Highway One, approximately 0.5 mile south of Anchor Bay, at 35800 South Highway One, in Mendocino County (APN 144-070-18)
Project Description:	Temporary use and conversion of an existing guest cottage as a Family Care Unit.
Staff Recommendation:	No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

On November 22, 2013, the County of Mendocino Coastal Permit Administrator approved Coastal Development Permit (CDP) No. 10-2013 that authorized the temporary use and conversion of an existing guest cottage into a Family Care Unit. The project site is located west of Highway One on a blufftop parcel, approximately half a mile south of Anchor Bay.

One appeal was timely filed with the Commission's North Coast District Office on January 7, 2014, by the applicant, Harry W. Miller. The appeal raises two contentions: (1) a special

condition required by the County requiring recordation of a grant easement for a 25-foot-wide lateral public accessway measured from the daily bluff edge involves an exaction of property that is not related and proportional to the impact of the development on public access; and (2) the County's approval of the Family Care Unit should have been processed ministerially pursuant to Mendocino County Coastal Zoning Code (CZC) Section 20.460.040.

The public access contentions raised in the appeal present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the temporary use policies of the certified LCP, and with the public access policies of the certified LCP and the Coastal Act. However, the contentions do not raise a substantial issue of conformance of the project as approved with the policies of the certified LCP or the public access policies of the Coastal Act.

The County's conditional approval of the family care unit repeats the never satisfied requirement of the coastal development permit granted by the County in 2007 for the land division creating the subject property to record an offer to dedicate (OTD) a lateral public access easement approved by the Coastal Commission and the County across the bluff top of the property. The public access OTD requirement had been agreed to by the current applicant's predecessor and required prior to issuance of the underlying coastal development permit. However, the OTD was never properly recorded. In its conditional findings for approval, the County described that the requirement for the access easement was a condition of approval for the subdivision that created the subject parcel, and as such, "must be met before any additional development may proceed on these parcels in order to support Findings" regarding public access and recreation requirements. Further, the requirement to record a lateral public access easement is consistent with Land Use Plan (LUP) Policy 3.6-5 which requires developers obtaining coastal development permits to record an offer of dedication of an easement for public access purposes where it is delineated in the LUP as a condition of approval. The certified LUP map for the area identifies proposed shoreline access along the bluff of the subject property. LUP Policy 3.6-8 requires that bluff retreat shall be considered and provided for the life of the development when planning lateral accessways.

There is a high degree of factual support for the local government's decision to find that its approval conforms with the public access policies of the certified LCP and the Coastal Act. In addition, the County requirements maximize protection of coastal public access, a significant coastal resource.

The second contention that the County should have processed the applicant's application for the family care unit ministerially does not allege an inconsistency of the project as approved with the certified LCP and the public access policies of the Coastal Act. Rather, the appellant alleges that the application was not processed in the appropriate manner. Therefore, this concern does not raise valid grounds for appeal.

Therefore, Commission staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which it was filed.

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APPENDICES

- [Appendix A](#) – Commission’s Appeal Jurisdiction Over Project
- [Appendix B](#) – Substantive File Documents
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EXHIBITS

- Exhibit 1 – Regional location map
- Exhibit 2 – Vicinity Map/ Aerial Photo
- Exhibit 3 – Parcel Map
- Exhibit 4 – Site Plans
- Exhibit 5 – Site photo
- Exhibit 6 – Notice of Final Local Action and Findings for Approval for CDP 10-2013
- Exhibit 7 – Appeal
- Exhibit 8 – Notice of Final Local Action and Conditions for Approval of Underlying Subdivision (CDMS 24-2004)
- Exhibit 9 – Correspondence to Applicant Regarding Unsatisfied Pre-Conditions of Underlying Subdivision (CDMS 24-2004)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-14-0003 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting “Yes” as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-1-MEN-14-0003 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

Pursuant to Coastal Act Section 30603, the County’s approval is appealable to the Commission because the approved development is located: (1) between the sea and the first public road paralleling the sea; and (2) within 300 feet of the top of the seaward face of a coastal bluff. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program and as the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

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 filed¹. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Commission staff has analyzed the administrative record for the approved project, including the County’s Final Local Action

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: (a) the degree of factual and legal support for the local government’s decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

Notice for the development (**Exhibit No. 6**), the appellant's claims (**Exhibit No. 7**), and the relevant requirements of the Coastal Act and certified LCP (Appendices **C** and **D**) and is recommending that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The Mendocino County Coastal Permit Administrator approved the proposed project with special conditions at its hearing held on November 22, 2013. The North Coast District Office received the Notice of Final Local Action on December 23, 2013 (**Exhibit 6**). One appeal was timely filed with the Commission's North Coast District Office on January 7, 2014, within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeal was filed by the applicant, Harry W. Miller (**Exhibit No. 7**).

C. SITE DESCRIPTION

The County-approved project is located west of Highway One, on a relatively-flat, mostly-wooded blufftop parcel situated between the town of Gualala and the small resort village known as Anchor Bay. The parcel land use and zoning designation is Rural Residential, 5 acre minimum (RR-5). Existing development on the approximately 5-acre parcel includes a 2,175-square-foot single family residence, a 640-square-foot guest cottage, paved driveway, and ancillary development. General Plan and zoning classification on lands surrounding the subject property include Rural Residential 5- and 10-acre minimum parcel sizes, and visitor-serving facilities.

D. PROJECT DESCRIPTION

On November 22, 2013, the Mendocino Coastal Permit Administrator authorized conditional approval CDP 10-2013 to temporarily convert the existing guest cottage on Parcel 1 into a Family Care Unit (FCU). The County staff report (page 8 of **Exhibit 6**) describes that the FCU would rely on existing infrastructure, including the driveway and parking areas, water, and septic system. In its conditional findings for approval, the County described that the requirement for the access easement was a condition of approval for the subdivision that created the subject parcel, and as such, "must be met before any additional development may proceed on these parcels in order to support Finding #7²." The County staff report additionally states the following:

The subdivision which created the subject parcel included a condition of approval for public access which was not adequately complied with (See discussion above

² Finding #7 of CDP 10-2013 states the following: "The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan."

under the heading title Other Related Applications). The recorded public access easement is deficient as described above, and does not provide and ensure adequate access to the public.

*...In order to be consistent with the policies, procedures, and requirements of the Coastal Act, the County's LCP, the underlying permit that created the subject parcel, and Finding # 7, staff recommends **Special Condition Number 2** in order to rectify the deficient public access easement OTD and parcel map depiction....This action must be completed in order to consider the parcel legally created.*

E. ANALYSIS OF APPELLANTS' APPEAL CONTENTIONS

The appeal filed by Harry Miller is attached as **Exhibit 7**. The appeal raises two contentions: (1) there is no nexus and no proportionality to the imposition of the public access condition required by Special Condition No. 2; and (2) approval of a Family Care Unit should have been processed ministerially pursuant to Mendocino County Coastal Zoning Code Section 20.460.040.

As set forth in Section 30603 of the Coastal Act, after certification of its local coastal program, an appeal of a local government-issued coastal development permit is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. The contentions raised in the appeal regarding public access presents potentially valid grounds for appeal in that the contentions allege the approved development's inconsistency with the policies of the certified LCP and the public access policies of the Coastal Act. As discussed below, the Commission finds that the appeal raises no substantial issue of conformance of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act.

1. Public Access

The appellant objects to the imposition of County Special Condition No. 2, which requires the applicant to submit an easement deed for public access for review and approval by the County and the Coastal Commission, and to record the approved easement deed prior to permit issuance. The required lateral easement shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail of the western portion of the subject property. The appellant contends that "none of any of this has anything to do with my FCU conversion application. There is no nexus and no proportionality." The appellant also questions the meaning of "daily bluff edge" contained within the requirements of Special Condition No. 2.

As stated above, the County described that the requirement for the access easement was a condition of approval for the subdivision that created the subject parcel, and as such, "must be met before any additional development may proceed on these parcels in order to support Finding #7³." The County staff report additionally states the following:

*...In order to be consistent with the policies, procedures, and requirements of the Coastal Act, the County's LCP, the underlying permit that created the subject parcel, and Finding # 7, staff recommends **Special Condition Number 2** in order to rectify the deficient public access easement OTD and parcel map*

³ Finding #7 of CDP 10-2013 states the following: "The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan."

depiction....This action must be completed in order to consider the parcel legally created.

Further, the County's condition requiring the grant easement for public access is consistent with LUP Policy 3.6-5. This policy states in part:

If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

The County's findings for approval of the subject Family Care Unit development authorized by CDP 10-2013 reference LUP Policy 3.6-5 and the requirement for developers to record an offer to dedicate a public access easement where it is delineated in the land use plan. The County staff report documents that:

The County Land Use Map #31 identifies proposed shoreline access from Highway 1 and along the bluff on the subject property. Policy 3.6-9 of the Coastal Element states in part:

Offers to dedicate an easement shall be required for all areas designated on the land use plan maps.

Therefore, the requirement imposed by Special Condition No. 2 of CDP 10-2013 to measure the lateral access easement from the daily bluff edge is consistent with the public access policies of the certified LCP and the Coastal Act, including but not limited to LUP Policy 3.6-8 and CZC Section 20.528.015(E) which require in part that bluff retreat (erosion) shall be considered and provided for the life of the development when planning lateral accessways. Measurement of the lateral access easement from the "daily bluff edge" functions, in essence, as a "floating" easement in that as the bluff edge retreats landward over time, the 25-foot-wide easement moves landward accordingly.

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

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

As discussed above, the grounds for an appeal identified in Section 30603 concern whether the challenged development conforms to the standards in the LCP and the public access policies of the Coastal Act. As described in [Finding A](#) above, 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: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal

raises only local issues, or those of regional or statewide significance. In the absence of more detailed standards in the Coastal Act or the accompanying regulations for determining whether an appeal raises a substantial issue, there is good reason to determine the Coastal Act affords the Commission considerable discretion to determine when to exercise its appellate jurisdiction over local coastal permit decisions.

First, the Commission's broad discretion to accept appeals is inherent in the structure of an LCP process that depends for its success on a cooperative sharing of authority between the Commission and local governments. After the adoption of their local coastal programs, local governments become the chief permitting authority. The Commission's appellate authority is restricted to certain types of developments and certain geographical areas. Even in these situations, Section 30603 of the Coastal Act makes the Commission's exercise of appellate authority discretionary and not mandatory. As discussed above, if the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Moreover, it also is significant that the Coastal Act sets out "minimum" standards and policies with which local governments must comply (Yost v. Thomas (1984) 36 Cal. 3d 561, 572). Local governments also have the discretion to adopt LCP provisions of local interest that are more restrictive than, but not in conflict with, the Act (Ibid.). Where these local interest provisions are the only ones implicated by an appeal there is no compelling reason for the Commission to exercise its appellate authority. In this case, the Commission exercises its discretion and determines that the development as approved by the County presents no substantial issue.

The new owner is subject to both the benefits and liabilities of the underlying subdivision that bind the land. Coastal public access is a coastal resource of great significance and ensuring maximum feasible public access is an issue of statewide significance. The requirements of the County to satisfy the permit requirements for the underlying development prior to authorizing new development on the subject site are not unreasonable. The Commission further finds that the County's findings provide a high degree of factual evidence to demonstrate the necessity of its conditional approval of the family care unit to ensure conformity with the public access policies of the certified LCP and the Coastal Act and the underlying CDP that authorized the subdivision and established the subject parcel. Therefore, the Commission finds that the appeal raises no substantial issue of conformance with the public access policies and standards of the certified LCP and the Coastal Act.

2. Family Care Unit

The appellant contends that the project should have been processed ministerially by the County pursuant to the temporary use policies of the Mendocino County certified LCP, including but not limited to Mendocino County Coastal Zoning Code (CZC) Section 20.460.040. The appellant asserts that "I qualify in all respects (age, medical, family, etc.) for this to be properly and legally processed ministerially as required by law." The appellant does not expand on what he means by the phrase "processed ministerially as required by law." It is not clear whether the applicant/appellant is suggesting (a) that the conversion of the guest cottage to a family care unit does not require a coastal development permit, (b) the coastal development permit application should not have been subject automatically to a public hearing process and instead processed as an administrative permit, or (c) something else.

Regardless of what the /appellant intended in using the phrase “processed ministerially as required by law,” the contention that the County did not process the applicant’s application for the family care unit ministerially does not allege an inconsistency of the project as approved with the certified LCP. Rather, the appellants allege that the application was not processed in the appropriate manner. This concern is not valid grounds for appeal, as the concern does not relate to conformance of the approved project with the certified LCP and the public access policies of the Coastal Act. The Commission therefore finds that this contention is not a valid ground for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

Further, though this contention is not a valid ground for appeal, the County did, in fact, process the application according to the procedures set forth in the certified LCP.

Mendocino County CZC Section 20.532.010 requires that a coastal development permit be obtained prior to undertaking development in accordance with the provisions of the certified LCP. CZC Section 20.308.035(D) defines “Development” in part as any “change in the density or intensity of use of land...” The proposed temporary use of the existing guest cottage as a family care unit constitutes a change in the intensity of use of the guest cottage that requires a coastal development permit. With respect to conformance with CZC Section 20.460.040(A), the County findings indicate that the proposed FCU use “is being processed as a Standard CDP per Sec. 20.460.040 of the Mendocino County Coastal Zoning Code,” which it references as follows:

Section 20.460.040 of the Mendocino County Coastal Zoning Code (MCCZC) outlines temporary use regulations associated with a Family Care Unit as follows:

The temporary use of a building, structure or trailer coach, not to exceed one thousand (1,000) square feet in size, will be allowed, upon issuance of a Coastal Development Standard Permit, to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence subject to the following provisions:

*(A) Standard Permit. **The temporary unit shall be allowed only after securing a Coastal Development Standard Permit.**(emphasis added)*

(B) Statement. Prior to the granting of the permit and yearly renewal:

(1) A statement must be submitted by the owner of the property and signed under penalty of perjury that the use of the "family care unit" is to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence.

(C) Termination. Should the use or necessity of the temporary family care unit cease, it must be removed from the premises or converted to an accessory structure as provided in Chapter 20.456. Should the occupants of the family care unit or the main residence move to another off-site residence, the permit for the family care unit shall become null and void. (Ord. No. 3785 (part), adopted 1991)

As described in the County staff report, the County correctly processed the application for the proposed temporary change in intensity of use of the guest cottage as a coastal development standard permit consistent with CZC Section 20.532.010.

Regarding whether the proposed project could have been processed without a public hearing, the subject permit application for the family care unit does not qualify for processing as an administrative permit and requires a public hearing for at least two reasons. First, as noted above, Section 20.460.040(A) requires that permits for family care units be processed as a standard permit, not an administrative permit. Second, Section 20.532.015(A) specifically states that development projects which are appealable to the Coastal Commission shall not be processed as an administrative permit and Section 20.536.010(B) of the Coastal Zoning Code provides that the approving authority shall hold at least one public hearing on each coastal development application for a development that is appealable. As the applicant's development project is appealable to the Commission as described above, the coastal development permit application for the applicant's project cannot be processed as an administrative permit and must be subject to a public hearing.

The County approval also contains findings that the approved coastal development permit is consistent with the other provisions of CZC Section 20.460.040. In its findings for approval of the guest cottage previously authorized by CDPM 69-2004(2006), Mendocino County imposed Special Condition No. 12 to ensure that the guest cottage would not have kitchen or cooking facilities, and that its use would be clearly subordinate and incidental to the primary dwelling on the same lot. As conditioned, the County found its approval of the guest cottage would be consistent with the certified LCP policies that limit permitted accessory uses, including but not limited to CZC Sections 20.456, 20.308.035(B), and 20.308.050(I).

Given the factual evidence set forth by the County as the basis by which the FCU could be granted pursuant to CZC Section 20.460.040, the Commission finds that the requisite findings consistent with CZC Section 20.460.040 were made.

F. CONCLUSION

For the reasons stated above, the Commission finds that there is factual and legal evidence in the record to support the County's approval of a CDP for this project when it found that the project is consistent with the relevant LCP policies and the Coastal Act public access policies. The Commission therefore finds that the appeal raises no substantial issue with respect to the grounds on which it was filed.

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On November 22, 2013, the County of Mendocino Coastal Permit Administrator approved Coastal Development Permit (CDP) No. 10-2013 that authorized the temporary use and conversion of an existing guest cottage into a Family Care Unit. The project site is located west of Highway One on a blufftop parcel.

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 it is located: (1) between the sea and the first public road paralleling the sea; and (2) within 300 feet of the top of the seaward face of a coastal bluff.

1. Between the First Public Road and the Sea

The subject property is located between Highway One and the Pacific Ocean. The Post LCP Certification Permit and Appeal Jurisdiction Map for the area adopted by the Commission in May of 1992, designates Highway One as the first public road paralleling the sea. Therefore, as the approved development is located between the first public road paralleling the sea and the sea, the subject development is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act.

2. Within 300 Feet of the Top of the Seaward Face of a Coastal Bluff

The project site is a bluff-top parcel, and the approved development is located more than 125 feet but less than 300 feet from the bluff edge. Therefore, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

The decision of the Coastal Permit Administrator 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 December 23, 2013 (**Exhibit No. 6**). 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 January 7, 2014 from the applicant, Harry W. Miller (**Exhibit No. 7**). 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.

APPENDIX B: SUBSTANTIVE FILE DOCUMENTS

October 27, 2011. Letter submitted to Mr. Harry and Susan Miller from Mendocino County Planning and Building Department.

October 27, 2011. Letter submitted to Marilyn Haines from Mendocino County Planning and Building Department.

June 17, 2013. Letter submitted to Mr. Harry and Susan Miller from Coastal Commission Enforcement Program.

November 5, 2012. Letter submitted to Mendocino County from Coastal Commission Enforcement Program.

Mendocino County Coastal Development Minor Subdivision No. CDMS 24-2004

Mendocino County Coastal Development Permit CDP 69-04

Mendocino County Coastal Development Permit Modification No. CDPM 69-2004(2006)

Mendocino County Local Coastal Program

Offer to Dedicate Easement, Record No. 2009-05004, Recorded April 10, 2009, Mendocino County Recorder's Office.

Appendix C
Mendocino County LCP Policies Regarding
Planning and Locating New Development
(Emphasis added)

Mendocino County Land Use Plan (LUP) Policy 3.9-1 states:

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. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

CZC Section Sec. 20.376.025 “Maximum Dwelling Density for RR Districts” states in part:

(A) RR: One (1) unit per forty thousand (40,000) square feet except as provided pursuant to Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit).

CZC Section 20.456.010 “Sec. 20.456.010 “Accessory Uses Encompassed by Principal Permitted Use” states:

(A) In addition to the principal permitted uses expressly included in the zoning districts such use types shall be deemed to include such accessory uses which are specifically identified by these Accessory Use Regulations; and such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal permitted uses. When provided by these regulations, it shall be the responsibility of the Director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to the principal permitted use, based on the Director's evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal permitted uses and the relationship between the proposed accessory use and the principal use. Accessory uses shall not include manufacturing, processing or transportation of flammable, explosive, toxic or other hazardous materials.

Such determinations which are made by the Director may be appealed pursuant to the administrative appeal procedure commencing at Chapter 20.544.

(B) An accessory structure may be constructed prior to the construction of a dwelling on the premises. An accessory structure shall not be used for temporary or permanent occupancy as a residence, without compliance with Section 20.460.025 (Construction Support). Accessory uses and structures shall be subject to the provisions of Chapter 20.532 (Permit Regulations) and where applicable Chapter 20.504 (Visual Resource and Special Treatment Areas).

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.456.015 “Residential and Agricultural Use Types” states in part the following:

Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit, where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single-family residence:

(A) Private garages.

(B) Children's playhouse, patios, porches, gazebos, etc.

...

(G) Accessory Living Unit Not more than one accessory living unit for each legal parcel.

(H) Room and Board. The renting of not more than one (1) room for occupancy by transient guests for compensation or profit.

...

(N) Public Access. The offer to dedicate and acceptance of a dedication for an accessway except that the construction of a public access trail and/or construction of a staircase accessway on a bluff face (as determined by the Department of Planning and Building Services) will require a Coastal Development Use Permit.

(O) Other Necessary and Customary Uses. Accessory non-residential uses and non-residential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use, as determined by the Director of Planning and Building Services.

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.308.020 defines “Accessory Living Unit” as follows:

...a detached bedroom as defined in Section 20.308.035(B) or a guest cottage as defined in Section 20.308.050(I).

CZC Section 20.308.050(I) defines “Guest Cottage” as follows:

...a detached building (not exceeding six hundred forty (640) square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for use without compensation by guests of the occupants of the primary dwelling.

CZC Section 20.460.040 outlines temporary use regulations associated with a Family Care Unit as follows:

The temporary use of a building, structure or trailer coach, not to exceed one thousand (1,000) square feet in size, will be allowed, upon issuance of a Coastal Development Standard Permit, to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence subject to the following provisions:

(A) Standard Permit. The temporary unit shall be allowed only after securing a Coastal Development Standard Permit.

(B) Statement. Prior to the granting of the permit and yearly renewal:

(1) A statement must be submitted by the owner of the property and signed under penalty of perjury that the use of the "family care unit" is to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence.

(C) Termination. Should the use or necessity of the temporary family care unit cease, it must be removed from the premises or converted to an accessory structure as provided in Chapter 20.456. Should the occupants of the family care unit or the main residence move to another off-site residence, the permit for the family care unit shall become null and void. (Ord. No. 3785 (part), adopted 1991)

Coastal Zoning Code (CZC) Section 20.532.010 describes the applicability of coastal development permit regulations as follows:

Any person, partnership, corporation, state or local agency or special district proposing to undertake any development as defined in Section 20.308.035(D) shall obtain a coastal development permit in accordance with the provisions of this Chapter, in addition to any other permit or discretionary approval required by any local agency or special district or any State or Federal agency as authorized by law or ordinance. If a coastal development permit is required pursuant to this section, no building permit, water well permit, septic permit, business license, grading permit, transient occupancy registration certificate, encroachment permit, occupancy permit or other entitlement for use shall be issued prior to the issuance of a coastal development permit.

CZC Section Sec. 20.532.015 “Permit Requirements” states:

Permits required by this Chapter must be secured prior to any development in the Mendocino County Coastal Zone.

(A) Coastal Development Administrative Permit. *The purpose of Coastal Development Administrative Permits is to provide for the administrative issuance of coastal development permits. The coastal permit administrator may process as an administrative permit any coastal development permit application for the types of projects specified below, and emergency projects specified in Section 20.536.055. Development projects which are appealable to the Coastal Commission, including any division of land, shall not be processed as an administrative permit.*

(1) Any single-family residence that is a principal permitted use within the zoning district in which the development site is located;

(2) Any other development specifically authorized as a principal permitted use within the zoning district in which the development site is located;

(3) Improvements to an existing structure;

(4) Any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land;

(5) Any other development that is not appealable to the Coastal Commission if the Coastal Permit Administrator determines that it involves no potential for any adverse effects, either individually or cumulatively, on coastal resources, and that it will be consistent with the Certified Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act. The determination shall be made in writing and based upon factual evidence.

(B) Coastal Development Use Permit. *A use permit must be secured, pursuant to the requirements of these regulations prior to the initiation, modification or expansion of a use or development that is permitted only as a conditional use in a particular district.*

(C) Coastal Development Variance. *Variances are discretionary adjustments in the regulations contained in this Division. Variances may only be granted to allow deviations from standards governing such development conditions as setbacks, lot coverage and lot width.*

(D) Coastal Development Standard Permit. *A coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use.*

(Ord. No. 3785 (part), adopted 1991)

CZC Section 20.532.095 “Required Findings for All Coastal Development Permits” states:

(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; and*
 - (3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*
 - (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*
 - (5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.*
 - (6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.*
- (B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:*
- (1) 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.*
- (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.536.005 “Coastal Development Administrative Permits” states in part:

(A) Purpose. The purpose of this section is to provide for the administrative issuance of coastal development permits for those types of development projects specified in Section 20.532.015 and emergency permits as provided for in Section 20.536.055.

(B) Approval. The Coastal Permit Administrator may administratively approve or conditionally approve a Coastal Development Administrative Permit without the requirement of a public hearing. Any permit approved administratively by the Coastal Permit Administrator shall contain a statement that the permit will not be effective until it has been reported to and reviewed by the Board of Supervisors.

(C) Reporting. A Coastal Development Administrative Permit approved by the Coastal Permit Administrator shall be available on the agenda of the Board of Supervisors at its next available meeting after the permit has been approved. The Coastal Permit Administrator shall report in writing to the Board at each meeting the permits approved under this section, with sufficient description of the work authorized to allow the Board to understand the development proposed to be undertaken. If, at the meeting, at least one (1) member of the Board so requests, the permit issued shall not go into effect and the application shall be processed in accordance with Section 20.536.010.

Appendix D

Coastal Act and Mendocino County LCP Policies Regarding Public Access

Coastal Act Section 30001.5 states in part the following:

The legislature further finds and declares that the basic goals of the state for the coastal zone are to: . . .

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

Coastal Act Section 30210 states:

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

Coastal Act Section 30211 states:

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

Coastal Act Section 30212 states in applicable part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LUP Policy 3.6-28 states the following:

New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be

to grant and convey to the people of the State of California an easement for access over and across the offeror's property.

Coastal Act Section 30214 states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to [Section 4 of Article X of the California Constitution](#). Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under [Section 4 of Article X of the California Constitution](#).

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

(Amended by: Ch. 919, Stats. 1979; Ch. 285, Stats. 1991.)

LUP Policy 3.6-25 states:

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- topographic and geologic site characteristics;*
- capacity of the site to sustain use and at what level of intensity;*
- fragility of natural resource areas and proximity to residential uses;*
- need to provide for management of the access;*
- balance between the rights of individual property owners and the public's constitutional rights of access.*

LUP Policy 3.6-8 states:

Easements for lateral shoreline accessways shall extend landward 25 feet from mean high tide or to the toe of the bluff or the first line of terrestrial vegetation if the width of the beach is greater than 25 feet. Lateral blufftop accessway easements shall be at least 25 feet in width. However, the passageway within the easement area may be reduced to the minimum necessary to avoid: (1) adverse impacts on habitat values identified in the plan; or (2) encroachment closer than 20 feet from an existing residence; or (3) hazardous topographic conditions. Bluff retreat (erosion) shall be considered and provided for the life of the development when planning lateral accessways.

CZC Section 20.528.015 “Minimum Access Standards” states in part the following:

*(A) **Width.** Easements for lateral shoreline accessways shall extend landward twenty-five (25) feet from mean high tide or to the toe of the bluff or the first line of terrestrial vegetation if the width of the beach is greater than twenty-five (25) feet. All access easements required to be offered for public use shall be a minimum of twenty-five (25) feet wide with the following exceptions:*

- (1)Where the passageway would adversely impact identified habitat values;*
- (2)Where it would encroach within twenty (20) feet or less from an existing residence;*
- (3)Where there are identified hazardous topographic conditions; or*
- (4)Along Highway 1 where accessway(s) will be fifteen (15) feet wide pursuant to Section 20.528.010.*

...

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

LUP Policy 3.6-5 states the following:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

Vertical accessways from the sites of all existing ocean front visitor accommodations and services and from all sites in which visitor accommodations and services are designated as the principal permitted use shall be considered to be designated as such in the Land Use Plan, and appropriate provisions implementing this policy shall be required in conjunction with all new or expanded developments on such sites. (For the purpose of this section, the blufftop area is that area between Highway 1 and the beach or ocean.)

CZC Section 20.528.035 “Methods for Securing Access” states:

Where acquisition of access delineated in the land use plan has not occurred through preferred methods such as bequests, gifts or purchase, recordation of an offer to dedicate an easement for public access purposes shall be required as a condition of any coastal development permit. Such offer shall be acceptable to the California Coastal Commission in form and content. Visitor accommodations and services on parcels adjoining the shoreline as identified on the public access maps shall provide public access to the blufftop and/or the shoreline. The access, to be required as a condition of permit approval or other methods as described in this Chapter, shall be available to the public at large as well as to guests. In the event that the use is changed to a use other than visitor accommodations or services, an irrevocable offer to dedicate an easement for public access shall be made available to a public entity for acceptance and management. If the accessway is reopened, it shall remain available to the public free of entrance charge.

LUP Policy 3.6-9 states:

Offers to dedicate an easement shall be required for all areas designated on the land use plan maps. Where sufficient sites in public ownership exist, additional private lands or easements over private lands beyond those shown on the land use plan maps shall not be required without a plan amendment or as otherwise required by the County. When considering such an amendment sites for shoreline access in public ownership shall be favored over those in private ownership.

The narrative contained in **LUP Section 4.12** describes public access near Getchell Gulch as:

Getchell Gulch Access

Location: 0.5 mile south of Anchor Bay.

Ownership: Private

Characteristics: Wooded headlands and small beach.

Potential Development: Blufftop trail and beach access trail.

LUP Policy 4.12-12 states:

Offers of dedication for vertical beach access and blufftop lateral access shall be obtained consistent with Policy 3.6-5.

Appendix E

Project Background

The County staff report prepared for CDP 10-2013 describes related applications and other associated project background, which is summarized below.

CDP 69-04: Single Family Residence

On May 26, 2005, Mendocino County granted conditional approval to the former property owners, Leonard and Marilyn Haines, authorizing the construction of a 2,175-square-foot single family residence plus 576-square-foot garage, primary and secondary septic, and driveway on the subject parcel (formerly known as APN 144-070-15). The County staff report described that:

An application for a Coastal Development Minor Subdivision (#CDMS 24-2004) to create three 5-acre parcels was being processed concurrently with the subject CDP. The project discussed herein is based on the parcel configuration for Parcel 1 as proposed on the tentative map (the southernmost 5-acre parcel). Staff originally processed the two cases together, however it became apparent that processing of the minor subdivision would delay the hearing for the CDP. The applicant wishes to begin construction as soon as possible in order to complete the project before the rains begin. Therefore, staff is processing the two applications separately.

CDMS 24-2004: Minor Subdivision

As described above, owners Leonard and Marilyn Haines had applied to subdivide their 15.6-acre parcel into three⁴ parcels concurrent with their CDP application for construction of a residence. The County staff report for CDMS 24-2004 indicated that “Chapter 4 of the Coastal Element identifies potential development of a bluff top trail and beach access trail to access the wooded headlands and small beach at this (Getchell Gulch) access.” The County additionally documented public comment received from the Gualala Municipal Advisory Council which stated the following:

According to policy 4.12-12 of the Coastal Element, the Getchell Gulch Access (located on this parcel) requires the obtaining of an offer to dedicate for vertical beach access and bluff top lateral access consistent with policy 3.6-5. Obtaining these offers to dedicate is key to the future establishment of the California Coastal Trail. Mr. Haines, who was present at our meeting, agreed to dedicate the access ways and have them recognized on the new Parcel Maps.”

Consistent with the applicant’s proposal to dedicate vertical and lateral public access easements along defined portions of the to-be divided parcels, Mendocino County Board of Supervisors conditionally approved the subdivision of the 15.6-acre parcel into three parcels on June 19,

⁴ The General Plan and zoning classification of the undivided parcel was Rural Residential, 5-acre minimum with a *1C designation. The land division proposed assigning the *1C designation to Parcel 3 (remainder parcel).

2007⁵. The final findings and conditions of approval included Special Condition No. 2 which states (Emphasis added):

Prior to issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, an easement for (1) a 25-foot lateral and (2) 10-foot vertical public access easement for passive recreational use. The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line. This condition is based on the pattern of use evidenced by the County's prescriptive rights investigation. See Exhibit E for the approximate location of these OTDs.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this coastal development permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer.

CDPM 69-2004(2006): Guest Cottage

On June 28, 2007 (one week following the approval of minor subdivision CDMS 24-2004), the Mendocino County Coastal Permit Administrator conditionally approved the construction of a 640-square-foot guest cottage on Parcel 1 as a modification to the originally-approved CDP for the single-family residence. To ensure consistency with Mendocino County certified LCP policies that limit allowable uses of guest cottages, the approval included Special Condition No. 12 limiting the use of the guest cottage to be subordinate and incidental to the primary dwelling and without kitchen or cooking facilities.

⁵ The original hearing was scheduled for October 19, 2006, and the staff recommended Special Condition No. 2 that reflected the applicant's proposal to dedicate a 10-foot-wide vertical access easement and a 25-foot-wide lateral access easement. The hearing was continued to February 15, 2007, in order to address issues raised during the hearing, including the matter of trail width and location. The project was approved with a modified trail width requirement (increasing the vertical access width to 25 feet), and adding a second vertical access easement requirement on the southerly parcel (Parcel 1). The applicant appealed the approval to the Board of Supervisors, requesting to revert to the original Special Condition No. 2, which the Board approved at their June 19, 2007, meeting.

Deviations from Requirements of CDMS 24-2004

On March 27, 2008, the permittee executed an Offer-to-Dedicate public access (OTD) in an attempt to satisfy Special Condition No. 2 of CDMS 24-2004. However, the recorded document had not been approved by either Mendocino County or the Executive Director of the Coastal Commission. Section 13574 of the Commission's Administrative Regulations and Mendocino County certified LCP policies including but not limited to LUP Policy 3.6-5 and Coastal Zoning Code (CZC) Section 20.528.040 require the local government to submit copies of the OTD documents to the Executive Director of the Coastal Commission for review and approval prior to permit issuance.

Mendocino County later submitted a new draft OTD for Commission review, Commission staff responded to Mendocino County's submittal stating that the document was inadequate both in form and content. Commission staff provided the County with revisions required prior to recordation of the OTD. On November 17, 2008, Commission staff received a revised OTD from the County; however, Commission staff informed the County that the OTD did not contain the Final Findings and Conditions of Approval from the June 19, 2007 Board of Supervisors hearing, and indicated that the OTD must be updated accordingly prior to its recordation.

Although the Final Findings and Conditions of Approval from the June 19, 2007 Board of Supervisors hearing were ultimately included with the new OTD that was recorded, the applicant recorded the version of the OTD that had previously been rejected by the Coastal Commission. The County staff report for the subject approved family care unit (page 7 of **Exhibit 6**) describes the deviations and the measures to rectify the situation as follows:

Unfortunately, the parcel map and OTD were recorded (April 10, 2009, # 2009-05004) with language and depiction of the public access easements that do not meet the requirements of Special Condition #2, nor were these documents approved and accepted by the Coastal Commission. Rather, the OTD that was recorded was a version of the document that was reviewed and rejected by the Coastal Commission on October 23, 2008. The depiction and description of the easements are defective in the following ways:

- 1. The vertical access easement on the northern parcel boundary is 85 feet from Highway 1, and therefore does not connect with the highway.*
- 2. The vertical access easement ends 58 ft from the mean high tide, and*
- 3. The lateral access is not described as 25 ft wide as measured from the daily bluff edge.*

The incorrect OTD was accepted by the Redwood Coast Land Conservancy (RCLC) and in a letter dated August 4, 2011 from the CA Coastal Conservancy; the County was made aware of the error in the recorded documents. In addition, the properties created by the subdivision were subsequently sold.

On October 27, 2011 a letter from PBS was sent to Mr. Harry and Susan Miller alerting the new property owners of the issue with the public access easement description and depiction.

On November 5, 2012, the Coastal Commission sent a letter to the County and all the property owners describing the permit history, the issue with the recorded documents, and concludes that the subdivision was not authorized. The intent of the letter is to obtain compliance with the conditions of approval of the subdivision permit, and have the property owners record a corrected parcel map and Irrevocable Offers to Dedicate easements. If property owners are unwilling to correct the deficient documents, then formal code enforcement action would be pursued.

On June 17, 2013, the Coastal Commission sent a letter to Mr. Harry and Susan Miller explaining the violation that the improperly recorded documents created and proposed a resolution of recording an easement deed that meets the conditions of approval for the subdivision.

Staff is continuing to work with Coastal Commission staff in resolving this matter.

CDP 10-2013: Family Care Unit

On November 22, 2013, the Coastal Permit Administrator authorized conditional approval to temporarily convert the existing guest cottage on Parcel 1 into a Family Care Unit (FCU). The County staff report (page 8 of **Exhibit 6**) describes that the FCU would rely on existing infrastructure, including the driveway and parking areas, water, and septic system. In its conditional findings for approval, the County described that the requirement for the access easement was a condition of approval for the subdivision that created the subject parcel, and as such, “must be met before any additional development may proceed on these parcels in order to support Finding #7⁶.” The County staff report additionally states the following:

The subdivision which created the subject parcel included a condition of approval for public access which was not adequately complied with (See discussion above under the heading title Other Related Applications). The recorded public access easement is deficient as described above, and does not provide and ensure adequate access to the public.

*During the processing of the subject permit, staff received a letter from Redwood Coast Land Conservancy, the holder of the public access easements, requesting the county not advance the permit until a resolution or ruling on the easement matter has been attained. In order to be consistent with the policies, procedures, and requirements of the Coastal Act, the County’s LCP, the underlying permit that created the subject parcel, and Finding # 7, staff recommends **Special Condition Number 2** in order to rectify the deficient public access easement OTD and parcel map depiction.*

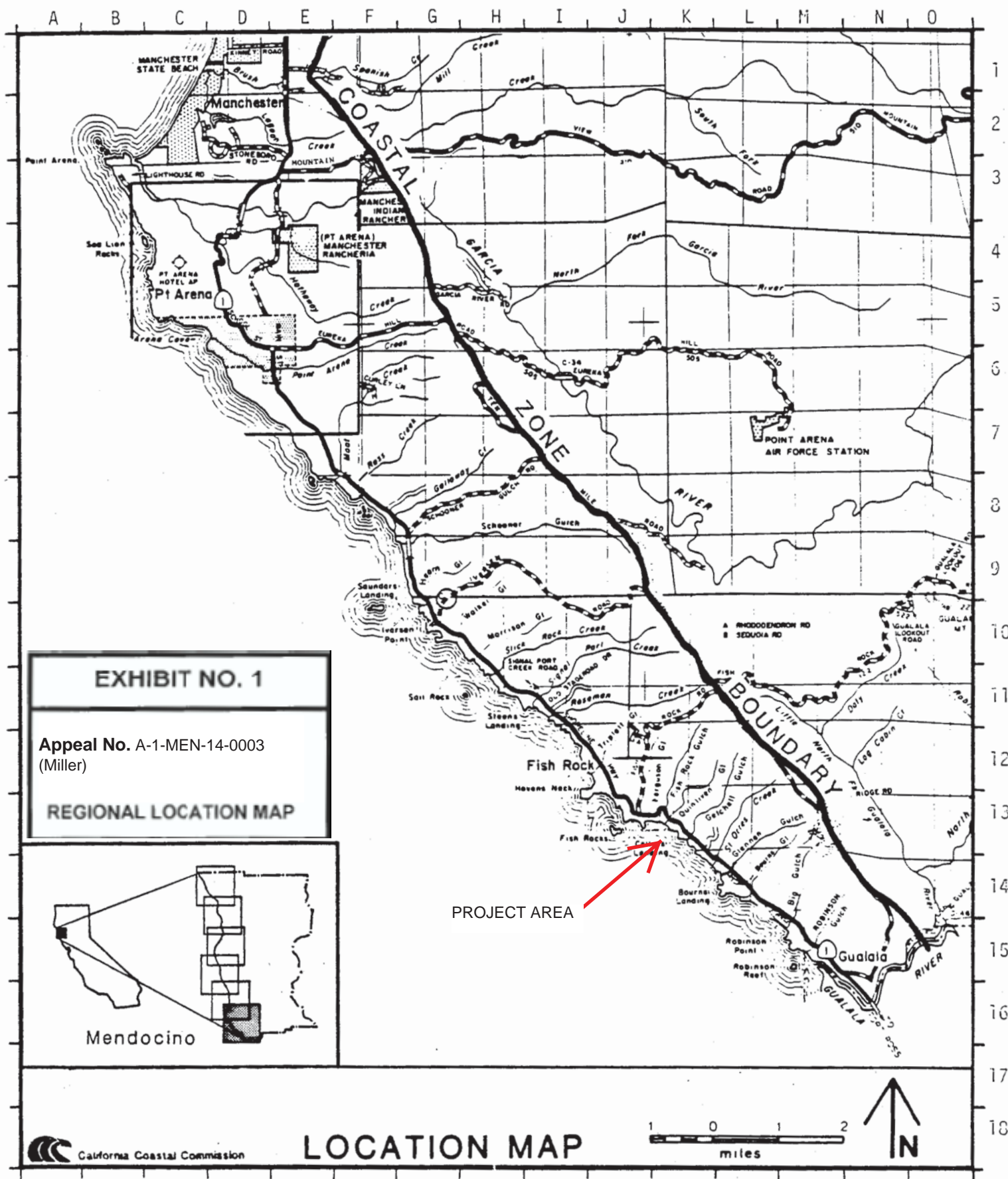
Accordingly, the County attached Special Condition No. 2 to CDP 10-2013 which requires the following:

Prior to issuance of the Coastal Development Permit, the owner shall submit for review and approval by the County and the California Coastal Commission and then record an easement deed for public access to Redwood Coast Land Conservancy which satisfies the Special Condition #2 of the underlying permit that created the subject parcel. This action must be completed in order to consider the parcel legally created.

⁶ Finding #7 of CDP 10-2013 states the following: “The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.”

The execution of an irrevocable easement deed for public access shall consist of one 25 ft later [sic] public access easement for passive recreational use. The lateral easement shall be 25 ft wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail of the western portion of the subject property.

This easement would overlie the existing public access easement already dedicated to the Redwood Coast Land Conservancy.



County of Mendocino

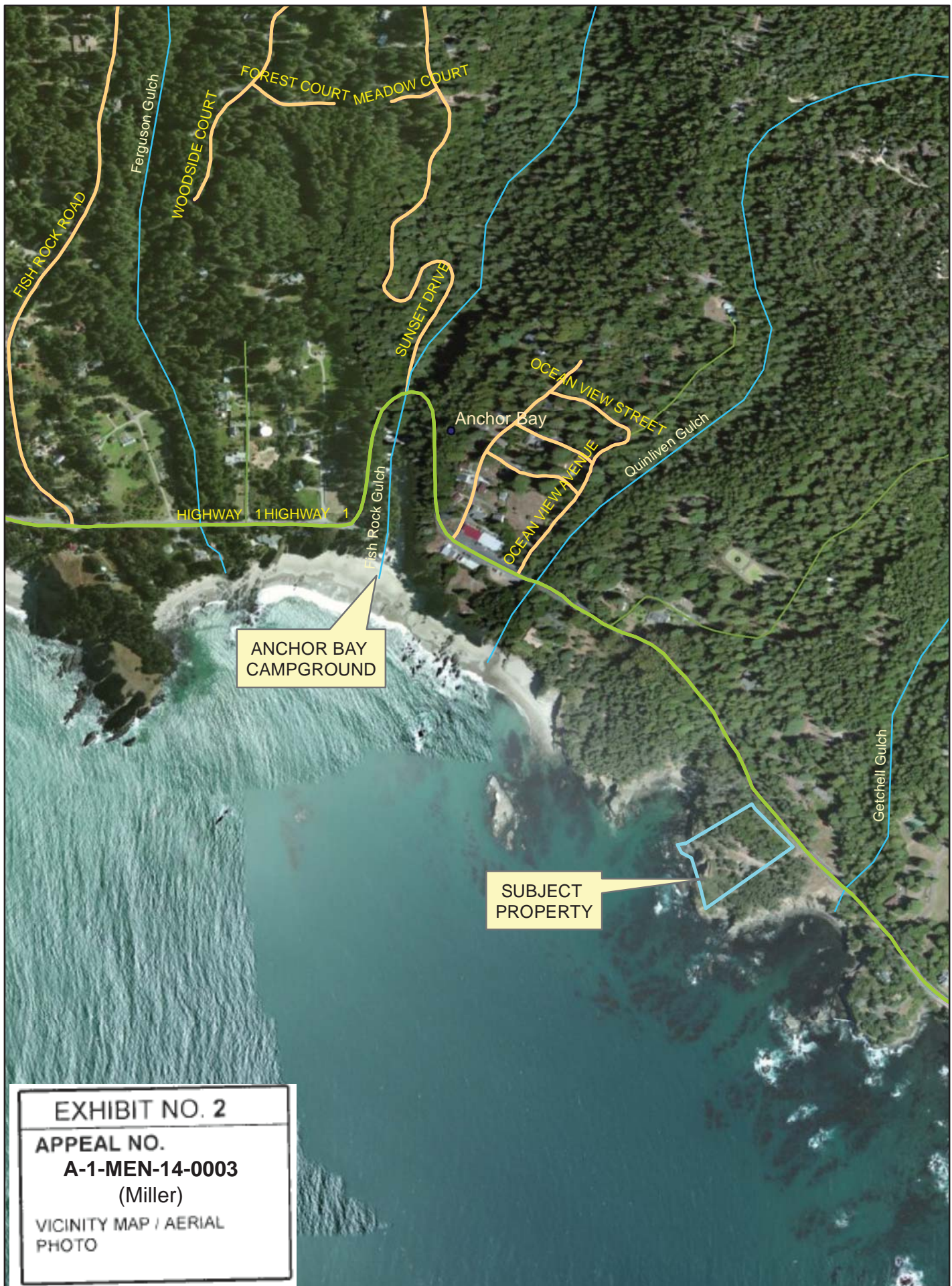


EXHIBIT NO. 2
APPEAL NO.
A-1-MEN-14-0003
(Miller)
VICINITY MAP / AERIAL
PHOTO

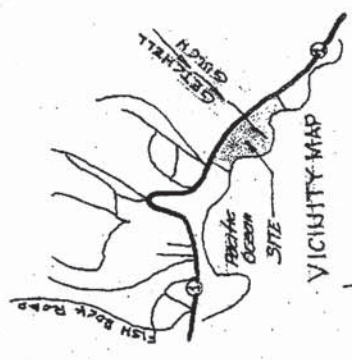
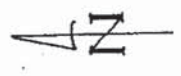


1:8,028



Date: 1/29/2014

MINOR SUBDIVISION
 TENTATIVE MAP
 LOT 6 SECTION 18
 TOWNSHIP 11 NORTH
 RANGE 15 SOUTH
 APN 144-070-15
 SEPT 2004



Prepared by and for
 Leonard Haines Inc.
 78 Bondy Lane
 Walnut Creek, CA 94597
 925-932-8567

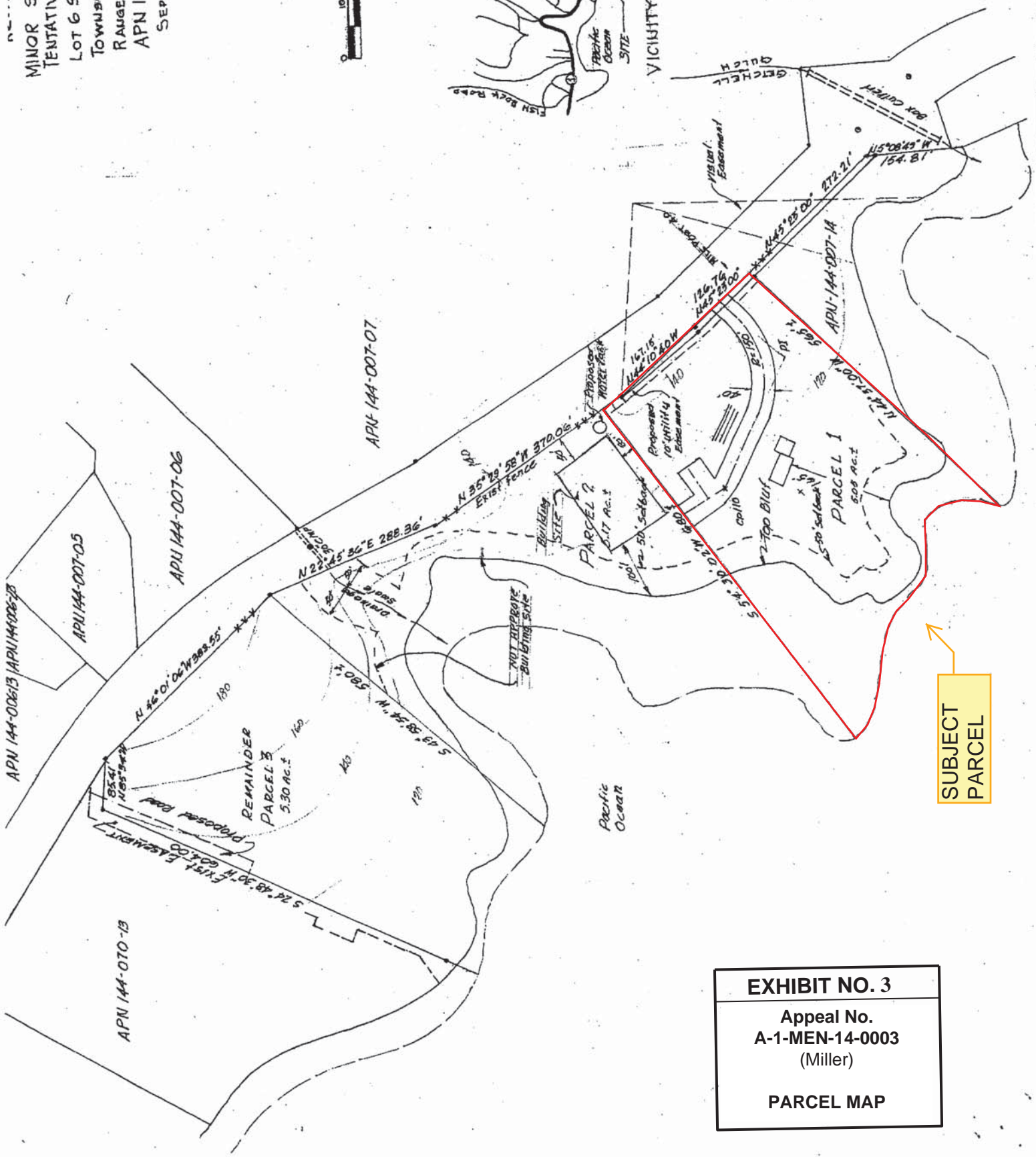
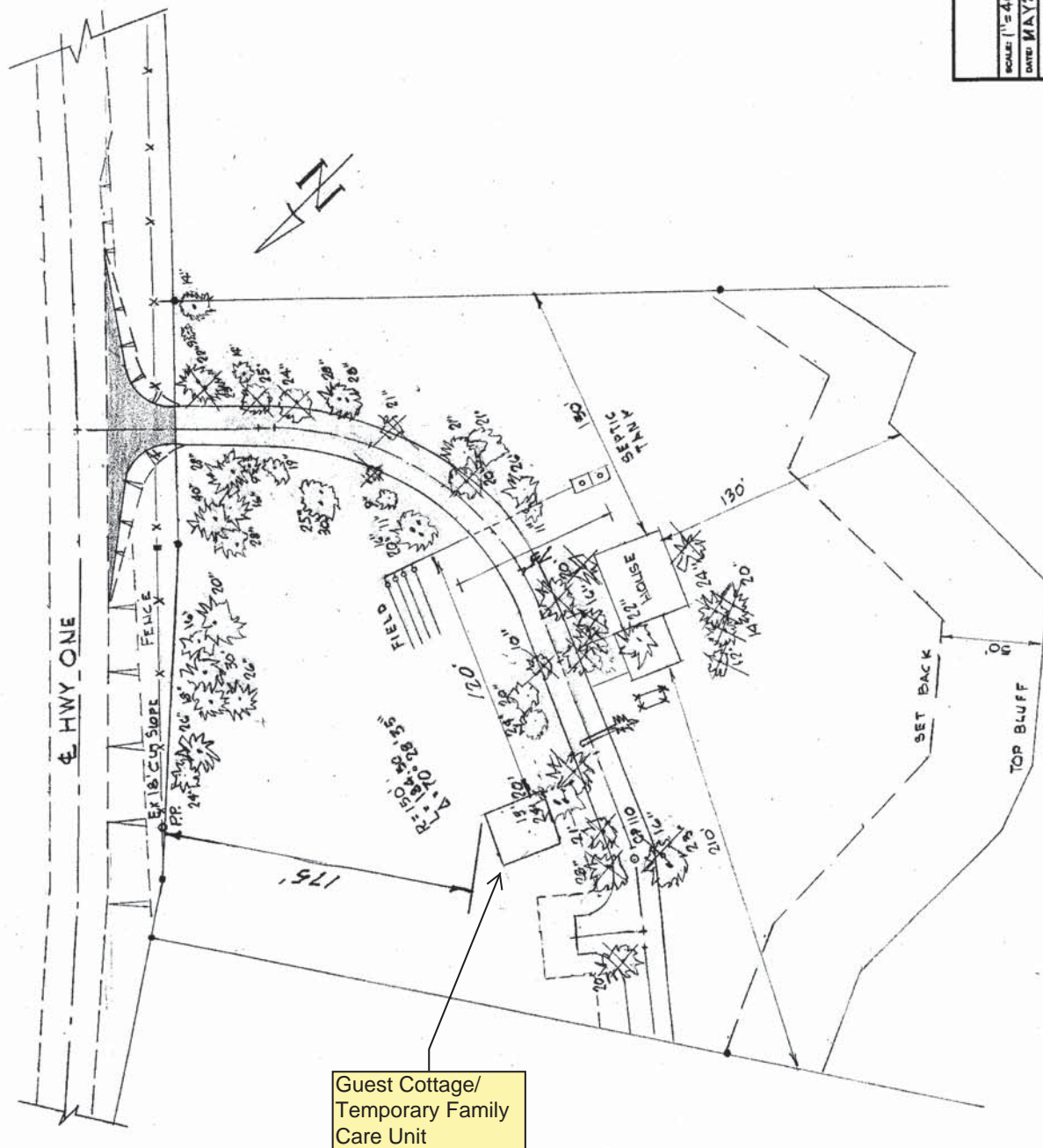


EXHIBIT NO. 3
Appeal No. A-1-MEN-14-0003 (Miller)
PARCEL MAP



Guest Cottage/
Temporary Family
Care Unit

SITE PLAN	
SCALE: 1" = 40'	DATE: MAY 2005
APPROVED BY: LKH	REVIEWED:
35800 HWY ONE	

EXHIBIT NO. 4

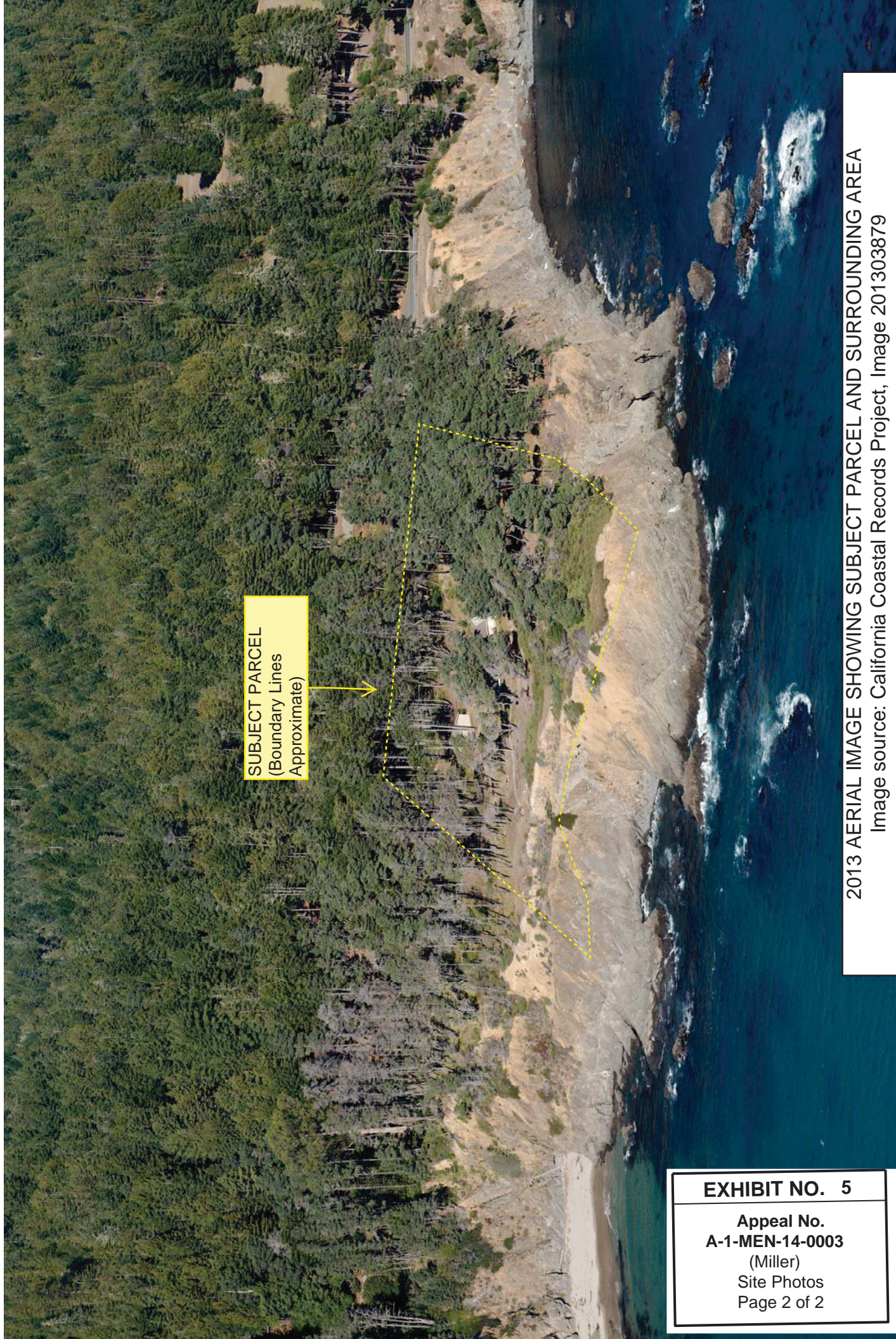
Appeal No.
A-1-MEN-14-0003
(Miller)
Site Plan

EXHIBIT NO. 5

Appeal No.
A-1-MEN-14-0003
(Miller)
Site Photos
Page 1 of 2

GUEST COTTAGE/
TEMPORARY FAMILY
CARE UNIT





SUBJECT PARCEL
(Boundary Lines
Approximate)

EXHIBIT NO. 5

Appeal No.
A-1-MEN-14-0003
(Miller)
Site Photos
Page 2 of 2

2013 AERIAL IMAGE SHOWING SUBJECT PARCEL AND SURROUNDING AREA

Image source: California Coastal Records Project, Image 201303879

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RECEIVED

DEC 23 2013

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

December 19, 2013

NOTICE OF FINAL ACTION

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

CASE#: CDP #10-2013
OWNER: Harry Miller
REQUEST: Temporary use and conversion of an existing guest cottage as a Family Care unit.
LOCATION: In the coastal zone, ~ ½ mile south of Anchor Bay, on the west side of Hwy 1, at 35800 South Hwy 1, (APN: 144-070-18).
PROJECT COORDINATOR: Abbey Stockwell

HEARING DATE: November 22, 2013

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-14-0003 – MILLER

NOTICE OF FINAL LOCAL
ACTION & FINDINGS FOR
APPROVAL (1 of 19)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #10-2013 HEARING DATE: 11-22-13

OWNER: Miller

ENVIRONMENTAL CONSIDERATIONS:

- ☒ Categorically Exempt
☐ Negative Declaration
☐ EIR

FINDINGS:

- ☒ Per staff report
☐ Modifications and/or additions
- _____

ACTION:

- ☒ Approved
☐ Denied
☐ Continued _____

CONDITIONS:

- ☒ Per staff report
☐ Modifications and/or additions
- _____


Signature on File

Signed: Coastal Permit Administrator

2019

INTEROFFICE MEMORANDUM

TO: CALIFORNIA COASTAL COMMISSION
FROM: *ANN* ANN, PLANNING & BUILDING SERVICES, FORT BRAGG
SUBJECT: NOTICE OF FINAL ACTION, NOVEMBER 22, 2013 CPA AGENDA
DATE: 12/19/2013

RECEIVED

DEC 23 2013

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

Enclosed please find the Notice of Final Action, Action Sheet and Action Agenda for the following item heard at the November 22, 2013 Coastal Permit Administrator Hearing:

CDP #10-2013 (Miller)

The second agenda item, CDP #6-2013 (Guardino) was continued to a date uncertain.

Note: I apologize for this NOFA being so late...Mr. Miller said he was going to appeal the approval of CDP #10-2013 to the Mendocino County Board of Supervisors; I have been waiting to hear from them. Then, with both Matt Kelley and Abbey Stockwell leaving, and it being pretty chaotic around here, I forgot about this item. When I realized this morning that I hadn't heard from the BOS about an appeal, I contacted them; the Clerk of the Board couldn't find any appeal from Mr. Miller.....SO, at long last I am sending the NOFA.

34919

**MENDOCINO COUNTY COASTAL PERMIT ADMINISTRATOR
COASTAL DEVELOPMENT PERMITS
AGENDA**

DATE: November 22, 2013
TIME: 10:00 a.m.
PLACE: Veterans Memorial Hall, 360 North Harrison Street, Fort Bragg, California

RECEIVED
NOV 12 2013
**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

A. Determination of Noticing.

B. Public Hearing Items.

1. **CASE#:** CDP #10-2013
DATE FILED: 5/23/2013
OWNER: Harry Miller
REQUEST: Temporary use and conversion of an existing guest cottage as a Family Care unit.
LOCATION: In the coastal zone, ~ 1/2 mile south of Anchor Bay, on the west side of Hwy 1, at 35800 South Hwy 1, (APN: 144-070-18)

PROJECT COORDINATOR: Abbey Stockwell

2. **CASE#:** CDP #6-2013
DATE FILED: 5/1/2013
OWNER: Gary Guardino
APPLICANT: Superior Pump & Drilling
REQUEST: Water supply line between two common ownership parcels.
LOCATION: In the Coastal Zone, approximately 2 miles north of the community of Inglenook, on the west side of Highway One, approximately 0.2 miles west of its intersection with Ocean Meadows Circle (CR #449), at 32853 & 32854 Ocean Meadows Circle (APN: 015-350-23, 015-350-39).

PROJECT COORDINATOR: Matt Kelley

- C. Matters from the Public.** The Coastal Permit Administrator welcomes participation in meetings. This item is limited to matters under the jurisdiction of the Coastal Permit Administrator which are not on the posted agenda and items which have not already been considered by the Coastal Permit Administrator. No action will be taken.

D. Adjournment.

Appeal Process. Applicants or other persons who are dissatisfied with a decision of the Coastal Permit Administrator 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 within 10 calendar days of the Administrator's decision. The appeal of the decision will be placed on the next available Board of Supervisors agenda for consideration and the appellant will be notified of the time, date and place. 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 Coastal Permit Administrator.



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

STEVE DUNNICLIFF, DIRECTOR
Telephone 707-463-4281
notice miller cap 10 2013
FAX 707-463-5709
FB PHONE: 707-964-5379
FB FAX: 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

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NOV 12 2013

CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT

November 8, 2013

**PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT**

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Friday, November 22, 2013 in the Veteran's Memorial Building, 360 North Harrison Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #: CDP #10-2013
DATE FILED: 5/23/2013
OWNER: Harry Miller
REQUEST: Temporary use and conversion of an existing guest cottage as a Family Care unit.
LOCATION: In the coastal zone, ~ ½ mile south of Anchor Bay, on the west side of Hwy 1, at 35800 South Hwy 1, (APN: 144-070-18).
PROJECT COORDINATOR: Abbey Stockwell

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Andy Gustavson, Coastal Permit Administrator

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STAFF REPORT FOR COASTAL DEVELOPMENT STANDARD PERMIT

CDP# 10-2013 (Miller)

November 22, 2013

CPA -1

OWNER/APPLICANT: Harry Miller
Po. Box 184
Gualala, CA 95445

REQUEST: Temporary use and conversion of an existing guest cottage as a Family Care unit.

LOCATION: In the coastal zone, ~ ½ mile south of Anchor Bay, on the west side of Hwy 1, at 35800 South Hwy 1, (APN: 144-070-18)

APPEALABLE AREA: Yes- blufftop lot

PERMIT TYPE: Standard, FCU

TOTAL ACREAGE: 5 ± acres

ZONING: RR:L-5 [FP]

GENERAL PLAN: RR-5 [FP]

EXISTING USES: Single family residence

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorical Exemption, Class 3

RECOMMENDATION: Approve with conditions

OTHER RELATED APPLICATIONS:

Coastal Development Minor Subdivision (CDMS) 24-2004 to subdivide a ~15.6 acre parcel into three parcels was approved on February 15, 2007 by the Planning Commission. The Planning Commission's approval authorized the creation of the subject parcel and included Special Condition #2 that required public access easement dedications on all of the created parcels. The easement would run from Highway 1 to the mean high tide line and along the bluff edge (25 ft wide, as measured from the daily bluff edge) on the northern most parcel and along the bluff edge for the two parcels to the south with an easement on the southern boundary of the southern-most parcel that extended east to Highway 1.

The applicant appealed the language of Special Condition #2 requiring the public access easement and on June 19, 2007 the Board of Supervisors approved CDMS 24-2004 and overturned the action of the Planning Commission relative to Special Condition #2 and required public access easements from Highway 1 to the mean high tide on the northern-most parcel, and lateral access along the bluff edges for the three created parcels (but without the southern boundary easement back to the Highway, creating an out-and-back trail, rather than a through-trail).

Subsequent to the approval, the applicant executed an Offer-to-Dedicate (OTD) in an attempt to satisfy Special Condition #2. The Coastal Commission must review and approve the language included in OTD, and on October 23, 2008 responded to the submittal stating that the document was inadequate both in

6 of 19

form and content. The applicant was provided a model OTD document to modify and submit, which the applicant submitted for review. This version was also lacking and the Coastal Commission sent an additional letter requesting that the OTD include the Board of Supervisors' condition of approval.

Unfortunately, the parcel map and OTD were recorded (April 10, 2009, # 2009-05004) with language and depiction of the public access easements that do not meet the requirements of Special Condition #2, nor were these documents approved and accepted by the Coastal Commission. Rather, the OTD that was recorded was a version of the document that was reviewed and rejected by the Coastal Commission on October 23, 2008. The depiction and description of the easements are defective in the following ways:

1. The vertical access easement on the northern parcel boundary is 85 feet from Highway 1, and therefore does not connect with the highway.
2. The vertical access easement ends 58 ft from the mean high tide, and
3. The lateral access is not described as 25 ft wide as measured from the daily bluff edge.

The incorrect OTD was accepted by the Redwood Coast Land Conservancy (RCLC) and in a letter dated August 4, 2011 from the CA Coastal Conservancy; the County was made aware of the error in the recorded documents. In addition, the properties created by the subdivision were subsequently sold.

On October 27, 2011 a letter from PBS was sent to Mr. Harry and Susan Miller alerting the new property owners of the issue with the public access easement description and depiction.

On November 5, 2012, the Coastal Commission sent a letter to the County and all the property owners describing the permit history, the issue with the recorded documents, and concludes that the subdivision was not authorized. The intent of the letter is to obtain compliance with the conditions of approval of the subdivision permit, and have the property owners record a corrected parcel map and Irrevocable Offers to Dedicate easements. If property owners are unwilling to correct the deficient documents, then formal code enforcement action would be pursued.

On June 17, 2013, the Coastal Commission sent a letter to Mr. Harry and Susan Miller explaining the violation that the improperly recorded documents created and proposed a resolution of recording an easement deed that meets the conditions of approval for the subdivision.

Staff is continuing to work with Coastal Commission staff in resolving this matter.

CDP 69-2004 approved the construction of a 2,175 ft² single family residence with an attached garage, septic system and driveway.

CDPM 69-2004(2006) approved the construction of a 640 ft² guest cottage that is the subject structure of the current request.

CDP 20-2012 (Pallestrini) is currently being processed for development of the center parcel with residential development. Staff is aware that the Mr. Pallestrini is willing to record the public access easement to meet the special condition of the subdivision which created his parcel.

PROJECT DESCRIPTION: Authorize a Family Care Unit (FCU) in a converted guest cottage. All proposed work would be interior to the existing guest cottage. The project site is developed with a single

family residence, driveway and landscaping. The proposed FCU would rely on existing infrastructure, including the driveway and parking areas, water, and septic system.

The Applicant has expressed in the past an unwillingness to record a public access easement as measured from the daily bluff edge. However, with the requirement for the access easement as a condition of approval for the subdivision that created the subject parcel, this condition must be met before any additional development may proceed on these parcels in order to support Finding #7.

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

Gualala Municipal Advisory Committee

The Gualala Municipal Advisory Council (GMAC) reviewed the subject project at its regular meeting on July 11, 2013. Council members and the Applicant discussed the history of the subdivision. The Council moved and approved the following motion:

The Gualala Municipal Advisory Council cannot take any action on subject CDP 10-2013. It therefore has no recommendation or advice to make. However, GMAC requests that a Coastal Development Administrative Permit be issued for [certain temporary uses – namely a Family Care Unit/FCU].

The Family Care Unit permit is not an administrative type permit and is being processed as a Standard CDP per Sec. 20.460.040 of the Mendocino County Coastal Zoning Code (MCCZC).

Land Use

The proposed Family Care Unit is a permitted temporary use within the Rural Residential Zoning District, and is consistent with the Rural Residential land use classification.

Section 20.460.040 of the Mendocino County Coastal Zoning Code (MCCZC) outlines temporary use regulations associated with a Family Care Unit as follows:

The temporary use of a building, structure or trailer coach, not to exceed one thousand (1,000) square feet in size, will be allowed, upon issuance of a Coastal Development Standard Permit, to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence subject to the following provisions:

(A) Standard Permit. The temporary unit shall be allowed only after securing a Coastal Development Standard Permit.

(B) Statement. Prior to the granting of the permit and yearly renewal:

(1) A statement must be submitted by the owner of the property and signed under penalty of perjury that the use of the "family care unit" is to provide housing for (a) not more than two (2) adult persons who are sixty (60) years of age or older, or (b) an immediate family member

or members who requires daily supervision and care, or (c) a person or persons providing necessary daily supervision and care for the person or persons residing in the main residence.

(C) Termination. Should the use or necessity of the temporary family care unit cease, it must be removed from the premises or converted to an accessory structure as provided in Chapter 20.456. Should the occupants of the family care unit or the main residence move to another off-site residence, the permit for the family care unit shall become null and void. (Ord. No. 3785 (part), adopted 1991)

The applicant indicates that the Family Care Unit would be occupied by family members. **Special Condition Number 1** is recommended to ensure that a Family Care Unit statement is submitted and signed annually in conjunction with yearly renewal, until such time that the use of the family care unit ceases.

The applicant is reminded that it is their sole responsibility to renew the family care unit permit, as the County of Mendocino will not send a notice prior to the expiration of the permit.

The previously approved and existing guest cottage is proposed to be converted to the FCU. The guest cottage shall be converted back once the temporary use is no longer needed.

Public Access

The project site is located west of Highway One. The County Land Use Map # 31 identifies proposed shoreline access from Highway 1 and along the bluff on the subject property. Policy 3.6-9 of the Coastal Element states in part:

Offers to dedicate an easement shall be required for all areas designated on the land use plan maps.

Policy 3.6-5 of the Coastal Element states in part (emphasis added):

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

Chapter 4 of the Coastal Element identifies potential development of a bluff top trail and beach access trail to in this area. A required finding that must be supported in order find the project consistent with the County Local Coastal Program is Finding #7, which states:

The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

The subdivision which created the subject parcel included a condition of approval for public access which was not adequately complied with (See discussion above under the heading title Other Related Applications). The recorded public access easement is deficient as described above, and does not provide and ensure adequate access to the public.

During the processing of the subject permit, staff received a letter from Redwood Coast Land Conservancy, the holder of the public access easements, requesting the county not advance the permit until a resolution or ruling on the easement matter has been attained. In order to be consistent with the policies, procedures, and requirements of the Coastal Act, the County's LCP, the underlying permit that created the subject parcel, and Finding # 7, staff recommends **Special Condition Number 2** in order to rectify the deficient public access easement OTD and parcel map depiction.

Hazards

The property is in an area that has a "moderate" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention (Cal Fire). The proposed project is exempt from Cal Fire regulations.

The existing structure is located in a flat area, and the development does not present any hazard issues relative to slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources

The subject parcel is not located within a designated Highly Scenic Area. The proposed FCU would not degrade public views to an along the coast.

Natural Resources

Conversion of the existing guest cottage and temporary use of the Family Care Unit would not have any discernable impacts on natural resources. No ground disturbance is anticipated. No impacts to natural resources are expected.

Archaeological/Cultural Resources

An archaeological survey of the project site was conducted by Max Neri on July 11, 2002 for CDP 69-2004. No archaeological sites were found. The County Archaeological Commission accepted the survey on November 10, 2004. Standard Condition Number 8 advises the applicant of the requirements of the County's Archaeological Ordinance, which establishes procedures to be followed in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources

The site is located within an area mapped as Critical Water Resources. The North Gualala Water Company commented on the guest cottage CDP that they provide water to the residence. No comments were submitted for the subject request. Frank Kemper of the Division of Environmental Health commented that this project can be approved by Environmental Health provided that the structure is

10219

converted back to a guest cottage when the FCU is no longer needed. Standard Condition Number 4 requires that all applicable permits from other agencies be obtained. No adverse impacts to groundwater resources are anticipated.

Transportation/Circulation

The project would not result in any additional encroachments, and is not expected to result in a significant increase to traffic volumes on local and regional roadways.

Zoning Requirements

The project complies with the zoning requirements for the Rural Residential (RR) District set forth in Chapter 20.376 and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

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

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within

12 of 19

the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. Prior to issuance of the Coastal Development Permit, the applicant shall submit a signed statement certifying the need for the Family Care Unit. Use of the Family Care Unit within the guest cottage is permitted but must be administratively reviewed and extended annually. The following statement shall be submitted to the Department of Planning and Building on an annual basis prior to the anniversary date of the issuance of the permit:

"Under penalty of perjury, I declare that the family care unit is to provide housing for one or two persons, over the age of 60."

Failure to comply with this condition shall render the permit for the family care unit null and void. Should the use or necessity of the temporary family care unit cease, the owner shall notify Planning and Building Services and the unit (guest cottage) shall be converted back to the guest cottage as approved by CDPM 69-2004(2006) subject to permit requirements. Should the occupant of the family care unit or the main residence no longer reside on the premises, the permit for the family care unit shall become null and void.

2. Prior to issuance of the Coastal Development Permit, the owner shall submit for review and approval by the County and the California Coastal Commission and then record an easement deed for public access to Redwood Coast Land Conservancy which satisfies the Special Condition #2 of the underlying permit that created the subject parcel. This action must be completed in order to consider the parcel legally created.

The execution of an irrevocable easement deed for public access shall consist of one 25 ft later public access easement for passive recreational use. The lateral easement shall be 25 ft wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail of the western portion of the subject property.

This easement would overlie the existing public access easement already dedicated to the Redwood Coast Land Conservancy.

STAFF REPORT FOR COASTAL DEVELOPMENT STANDARD PERMIT

CDP# 10-2013 (Miller)

November 22, 2013

CPA -9

Staff Report Prepared By:

11/7/13
Date

Signature on File

Abbey Stockwell
Planner III

Attachments: Exhibit A Location Map
Exhibit B Aerial
Exhibit C Site Plan
Exhibit D Floor Plan
Exhibit E Zoning Map
Exhibit F General Plan Map
Exhibit G Flood Hazard Map
Exhibit H Fault Zone Map

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

Appeal Fee: \$945.00 (Appeals to the County Board of Supervisors)

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No response
Department of Transportation	No comment.
Environmental Health – Fort Bragg	Approved, FCU must be converted to G.C. after temp. use ceases.
Building Inspection – Fort Bragg	No comment.
Assessor	No comment.
Coastal Commission	Must record new public access easement correcting language.
N. Gualala Water Co	No comment.
South Coast Fire District	No comment.
Point Arena City Hall	No response.
GMAC	Approval recommended
CalTrans	No response.

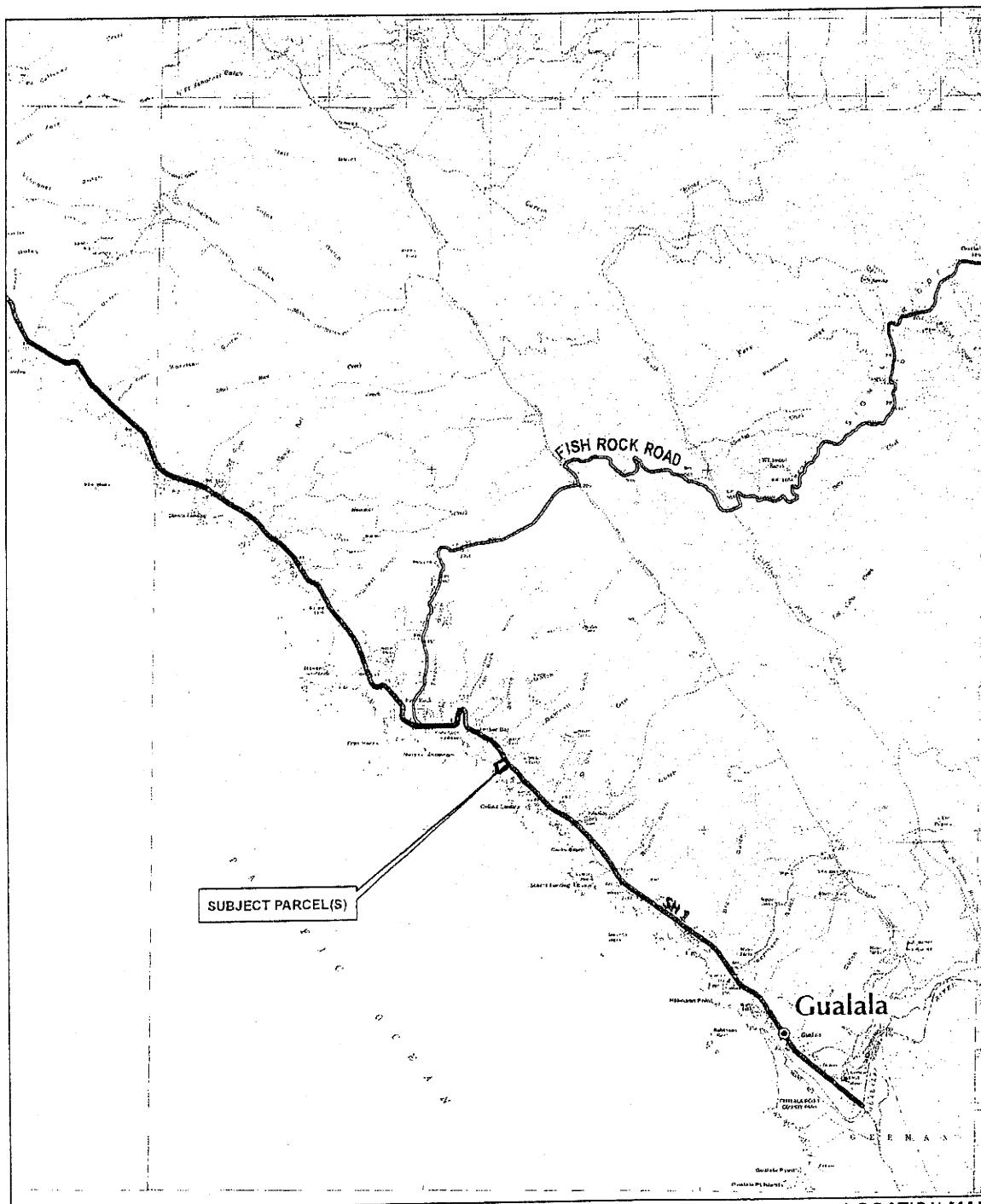
14 of 19

STAFF REPORT FOR COASTAL DEVELOPMENT STANDARD PERMIT

CDP# 10-2013 (Miller)

November 22, 2013

CPA -10



CASE: CDP 10-2013
OWNER: MILLER, Harry & Susan
APN: 144-070-18
AGENT:
ADDRESS: 35800 S. Hwy. 1, Anchor Bay

LOCATION MAP

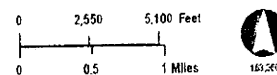


Exhibit A

Location Map

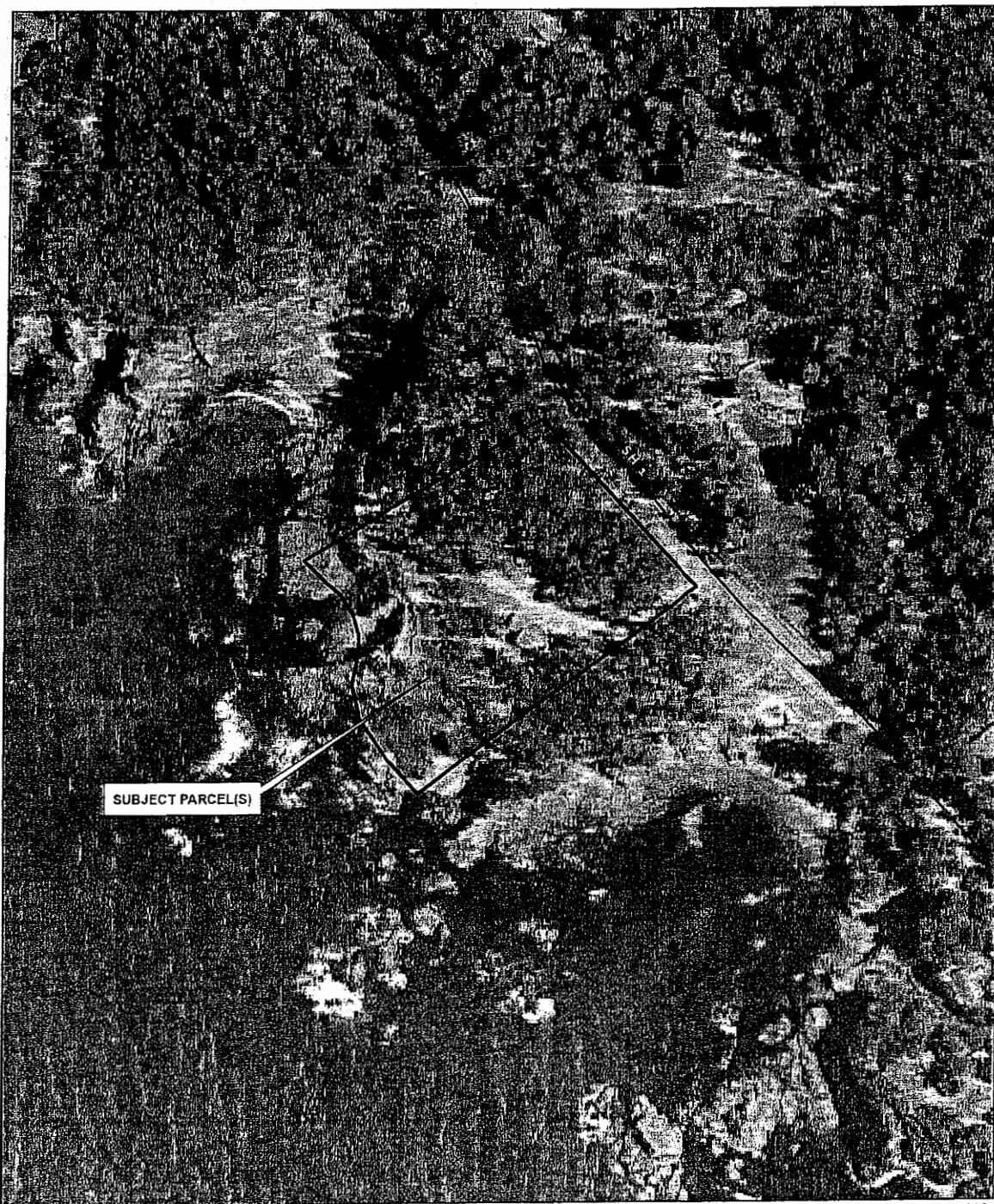
15 of 19

STAFF REPORT FOR COASTAL DEVELOPMENT STANDARD PERMIT

CDP# 10-2013 (Miller)

November 22, 2013

CPA -11



CASE: CDP 10-2013
OWNER: MILLER, Harry & Susan
APN: 144-070-18
AGENT:
ADDRESS: 35800 S. Hwy. 1, Anchor Bay

2010 NAIP AERIAL ORTHOPHOTO

0 100 200 Feet
0 0.0175 0.035 Miles



Exhibit B

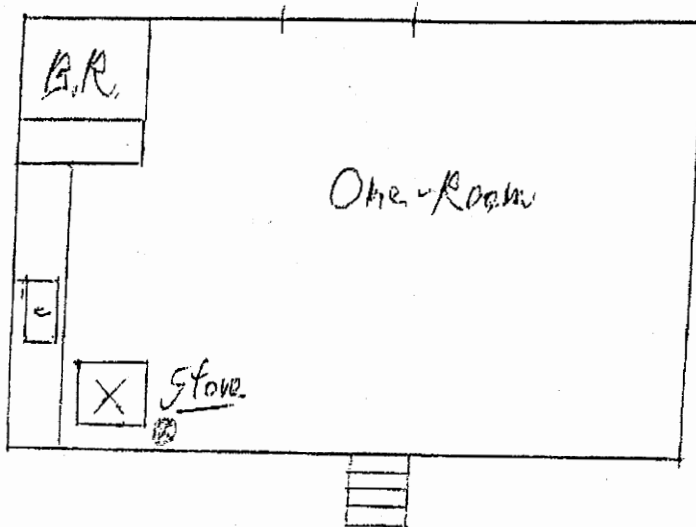
Aerial

16419

CPA -12



Guest House

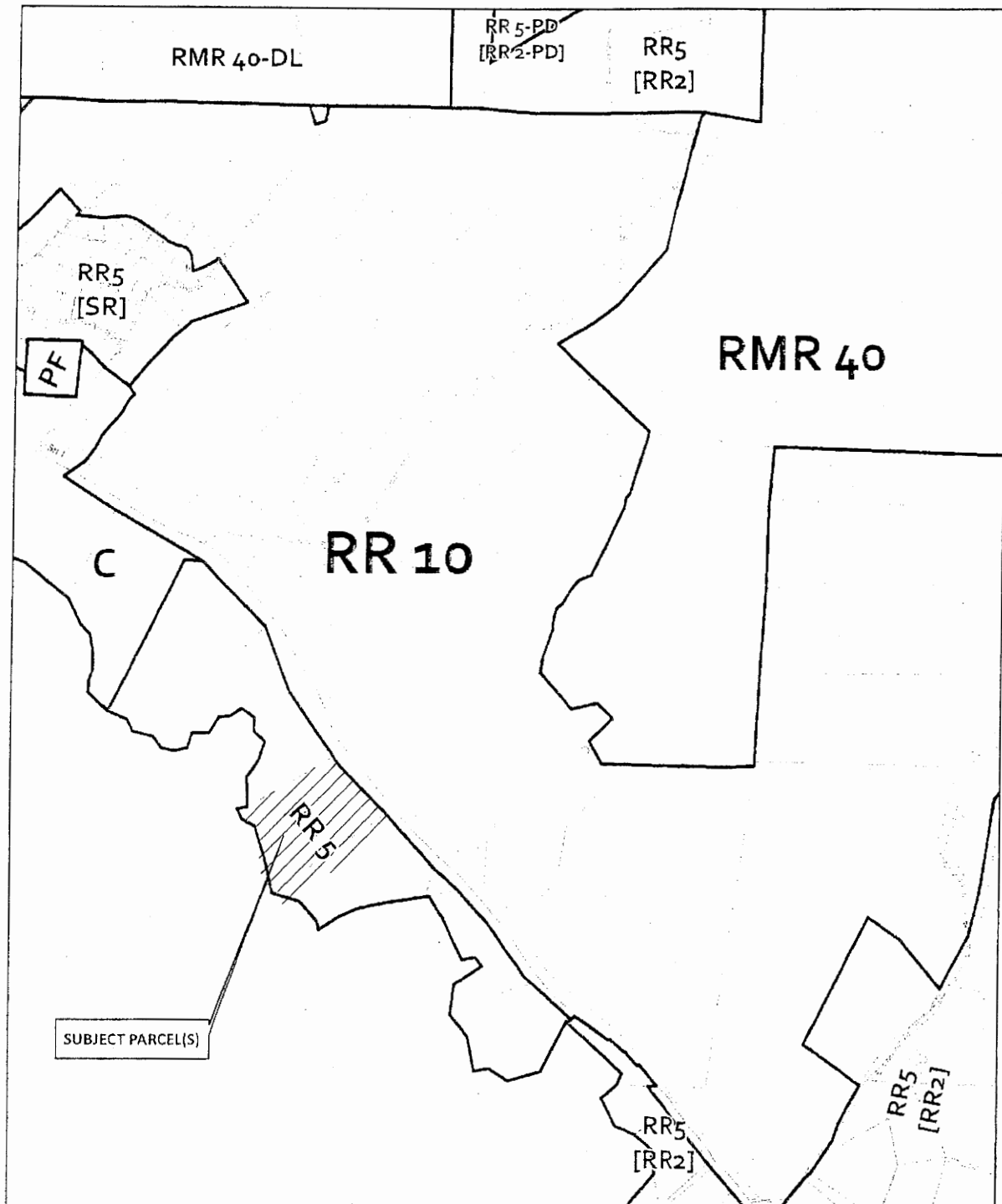


20'


↓ - 1 ft. = 1/8"

← 32' →

Existing gas conn.



CASE: CDP 10-2013
OWNER: MILLER, Harry & Susan
APN: 144-070-18
GP/ZONE: RR5 / RR
ADDRESS: 35800 S. Hwy. 1, Anchor Bay

 Coastal Zone Boundary

0 250 500 Feet
0 0.0475 0.095 Miles
1:5,000

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 8TH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FACSIMILE (707) 826-8960



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name:

Mailing Address:

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

FCU / Guest house conversion

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

35800 S. Hwy 1, Guadalupe 95445

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

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

EXHIBIT NO. 7**APPLICATION NO.****A-1-MEN-14-0003****MILLER****APPEAL (1 of 6)****RECEIVED****JAN 07 2014****CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

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-14-0003

DATE FILED:

1/7/14

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:

12/5/13 (notification)

7. Local government's file number (if any):

CAP 10-2013

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:

Harry Miller
P.O. Box 184
Gualala, CA 95445



Mr. Harry W. Miller
PO Box 184
Gualala, CA 95445

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

(1)

None / C.O.C.?

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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

Signature

Date:

Signature on File

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

Section VI. Agent Authorization

I/We hereby
authorize

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

Signature of Appellant(s)

Date:

3 of 6

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

(See attached)

492

(attachment C.C.C. appeal form)

12/31/13

Dear C.C.C. :

This re Mendocino County CDP 10 – 2013, Application 1 –MEN – 13 -0339,
application for conversion of existing guest house to a family care unit per Div.
II Title 20 of Coastal Zoning Code Sec. 20.460.040 . I qualify in all respects
(age, medical, family, etc.) for this to be properly and legally processed minister-
-ially as required by law.

You are familiar with the history of the trail easement imbroglio including all the
allegations, implications, and accusations included in your 5 Nov. 2012 letter to
Mendocino County.

You are also familiar with my regarding your so-called “definition” of the “daily
bluff edge” including terms like “ more or less continuously”, “ general” , “ may
be subject to various interpretations” , “ may be inconsistent with the legal definition”,
and “ possible” use of first and second derivatives calculus as being turgid, opaque,
virtually incomprehensible and indeed risible.

At the Gualala Municipal Advisory Council hearing Linda Bell of the R.C.L.C.
was asked by a board member if this would not allow the trail easement to be located
almost anywhere on the property. She responded that yes that could be the case.

That is my problem with the DBE as it currently stands. It needs desperately to be
clarified and cleaned up.

My application was referred to eleven agencies and only one, the C.C.C., had a problem.
The special condition you insist on is the same as has been previously discussed and that

5 of 6

I made clear that I had no intention of acquiescing to. It not my job or place to fix mistakes made by you and Mendocino County years ago.

I bought my house based on the extant Parcel Map as then recorded . You and the county can do all sorts of things to meet your needs but I won't be any part of it. I wasn't there, didn't do anything, didn't violate anything, and indeed committed no sins of omission or commission.

None of any of this has anything to do with my FCU conversion application. There is no nexus and no proportionality. What you are trying to do is wrong and illegal.

You are taking a lot from me by insisting that I rectify your prior mistakes.

Mendocino County has told me that per you no permits of any sort for anything will ever be granted for my property. That too will be wrong and illegal whenever it occurs.

All the above leads to this "appeal" to you, the author(s) of the effective denial of my FCU application , as required by process,

I qualify for the appeal just as I qualify for the FCU conversion ,

You and Mendocino need to work out your difficulties over mistakes made years ago and not try to hold me up to fix your problem by illegally refusing to me the rights due any (including coastal) private property owner. Please do so.

Harry W. Miller

6 9 16

Signature on File



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

RAYMOND HALL, DIRECTOR

Telephone 707-463-4281

FAX 707-463-5709

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

RECEIVED
JUN 22 2007
CALIFORNIA
COASTAL COMMISSION

June 20, 2007

NOTICE OF FINAL ACTION

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

CASE#: CDMS 24-2004

DATE FILED: 9/9/2004

OWNER: LEONARD & MARILYN HAINES

REQUEST: Coastal Development Minor Subdivision to create two 5+- acre parcels and a 5+- acre remainder parcel on a 15.67 acre blufftop parcel, including development of encroachments and access roads, on-site sewage disposal systems, connection to North Gualala Water District, and a visitor serving facility designated on the proposed Remainder Parcel.

LOCATION: Within the Coastal Zone, on a blufftop parcel, approximately 3.25 miles north of Gualala, on the west side of Highway One, at Mile Marker 4.00, located at 35700 Highway One; AP# 144-070-15.

PROJECT COORDINATOR: DENNIS CHATY

ACTION TAKEN:

The Planning Commission, on February 15, 2007, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level. The appeal was heard by the Board of Supervisors on June 19, 2007 and approved with the addition of Special Condition Number 2.

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. 8

APPLICATION NO.

A-1-MEN-14-0003 - MILLER

NOFA FOR UNDERLYING
SUBDIVISION (CDMS 24-2004)
(1 of 5)

1-MEN-14-0003-336



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE # CDMS 24-2004 – LEONARD & MARILYN HAINES
FEBRUARY 15, 2007

The Planning Commission approves #CDMS 24-2004 subject to the following conditions of approval as recommended within the staff report, further finding:

1. Pursuant to California Government Code Section 66445(e), the Planning Commission finds that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement.
2. 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.
3. The Environmentally Sensitive Habitat Area as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

STANDARD CONDITIONS OF APPROVAL: For a Minor Subdivision that has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

ALL CONDITIONS OF APPROVAL MUST BE MET PRIOR TO EXPIRATION OF TWENTY-FOUR (24) MONTHS FROM DATE OF APPROVAL, UNLESS RENEWED PURSUANT TO THE MENDOCINO COUNTY CODE.

- **1. Prior to filing a Parcel Map, the subdivider shall submit an Exhibit Map which shall identify building envelopes as determined by the Geologic Study, prepared by BACE Geotechnical, dated July 22, 2004.
 - A. Areas outside these building envelopes shall be labeled "Not an approved Building Site".
 - B. A note shall appear on the Parcel Map that future development shall be limited to those building envelopes depicted on the Exhibit Map on file with the Department of Planning and Building Services.
- **2. All concentrated flows, such as from roof downspouts, area drains, etc., shall be collected in a closed pipe and discharged into a functioning storm drain system or into a natural drainage area well away from the bluff top and building areas.
- **3. Where land divisions lie either partially or wholly within 500 feet of a public water and/or sewer systems, the subdivider shall submit to the Division of Environmental Health, a letter from the district(s) or agency's stating that: (1) services (and main extensions, where required) have been installed to the satisfaction of the district or agency, to serve each lot in said subdivision and connected to the system providing the service (Mendocino County Code 17.55 and 17.56); or (2) performance bonds or other adequate surety have been secured, to the satisfaction of the district or agency, to cover the cost of installation of services (and main extensions, where required) for each lot and the connection to the system providing the service.

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- **4. The applicant shall submit to the Department of Planning and Building Services an Exhibit Map defining building envelopes that will avoid rare plant communities in accordance with the Botanical Survey prepared by Trillium Botanical Consulting, dated June 21, 2002 and the Addendum to the Botanical Survey, dated April 25, 2005. A note shall be placed on the parcel map stating that development will be confined to the building envelopes as described on the Exhibit Map on file with the Department of Planning and Building Services.
- **5. The applicant shall submit to the Department of Planning and Building Services an Exhibit Map demonstrating a 50-foot buffer around the identified Class II watercourse as recommended in the Botanical Survey prepared by Trillium Botanical Consulting, dated June 21, 2002. A note shall be placed on the parcel map that no development shall be allowed within this buffer area as delineated on the Exhibit Map on file with the Department of Planning and Building Services.
- **6. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required for permitted development.
- A notation shall be placed on the Parcel Map advising that future development of any parcel will be subject to the Development Criteria set forth in the Mendocino County Coastal Element and Chapter 20.504 of the Mendocino County Zoning Code, and that future development may require additional studies and/or may be subject to restrictions.
- **7. 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 \$1,850.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to February 25, 2007. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
- **8. There shall be provided an access easement of 40 feet in width (as per tentative map) from a publicly maintained road, to Parcels 1 and 2. Documentation of access easement(s) shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
9. If a Parcel Map is filed, all easements of record shall be shown on the Parcel Map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
10. If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when such improvements have been completed.
- **11. Eighteen (18) foot wide road within the access easement including four (4) inch minimum rock base, one hundred twenty-five (125) foot minimum radius of horizontal curve, grade not to exceed fifteen (15) percent, drainage culverts where necessary. New or replaced culverts shall be a minimum of twelve (12) inches in diameter.
- **12. A 40-foot radius turnaround shall be constructed within a 50-foot radius easement at terminus of access easement to the satisfaction of the Mendocino County Department of Transportation. If approved in writing by the applicable fire protection service provider(s), in lieu of the turnaround described above, subdivider shall construct a modified "Hammerhead-T" turnaround (with the leg of the "T" extending 40 feet from the edge of the road, within a

forty (40) foot wide by sixty (6) foot long easement, as measured from the centerline of the access easement), at the terminus of the access easement. Turnaround shall be constructed with four (4) inch minimum rock base, twenty (20) feet wide, with twenty (20) foot radius surfacing returns.

**13. A standard private road approach shall be constructed at the State Highway at the proposed 40 foot wide access easement in accordance with encroachment permit procedures administered by the California Department of Transportation.

**14. A standard private driveway approach shall be constructed at the State Highway to serve the Remainder Parcel in accordance with encroachment permit procedures administered by the California Department of Transportation.

**15. A Conditional Certificate of Compliance shall be recorded for the remainder parcel concurrently with the recording of the Parcel Map. The Conditional Certificate of Compliance shall require that the following condition must be met prior to future development of the remainder parcel:

A standard driveway approach shall be constructed at the State Highway to serve the Remainder Parcel in accordance with encroachment permit procedures administered by the California Department of Transportation.

A Coastal Development Permit may be required for grading associated with driveway improvements (sight distance).

**16. The subdivider shall comply with those recommendations in the California Department of Forestry and Fire Protection (CDF) letter of 10/15/04 (Letter #535-04) and the South Coast Fire Protection District letter of 10/13/04 or other alternatives as acceptable to CDF and the South Coast Fire Protection District. Written verification shall be submitted from CDF and the South Coast Fire Protection District to the Department of Planning and Building Services that this condition has been met to the satisfaction of CDF and the South Coast Fire Protection District.

**17. Submit to the Division of Environmental Health an acceptable site evaluation report (DEH Form Number 42.04) for Parcel(s) 2 and Remainder Parcel to be completed by a qualified individual demonstrating compliance with the North Coast Regional Water quality control Board's "Basin Plan Policy for On-site Waste Treatment and Disposal" and Mendocino County Division of Environmental Health's "Land Division Requirements" (DEH Form Number 26.09). The report shall also include identifying replacement areas for existing on-site sewage disposal systems which may exist on the project site.

**18. Submit to the Division of Environmental Health an acceptable site development plan by a qualified individual showing the location and dimensions of the initial sewage disposal systems, 100 percent replacement areas, acceptable setback distances and other pertinent information which may impact project site development.

19. A note shall be placed on the Parcel Map stating that: "In the event that archaeological resources are encountered during construction on the property, 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."

SPECIAL CONDITIONS OF APPROVAL:

1. A note shall appear on the Parcel Map indicating that *1C designation shall be assigned to the Remainder Parcel.

4 of 5

- **2. Prior to issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, an easement for (1) a 25-foot lateral and (2) 10-foot vertical public access easement for passive recreational use. The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line. This condition is based on the pattern of use evidenced by the County's prescriptive rights investigation. See Exhibit E for the approximate location of these OTDs.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this coastal development permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer.



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

IGNACIO GONZALEZ, DIRECTOR
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October 27, 2011

Harry William & Susan Mary Miller
PO Box 184
Gualala, CA 95445

EXHIBIT NO. 9
APPLICATION NO.
A-1-MEN-14-0003 – MILLER
CORRESPONDENCE TO APPLICANT
RE: UNMET PRE-CONDITIONS OF
CDMS 24-2004 (1 of 11)

RECEIVED
OCT 31 2011
CALIFORNIA
COASTAL COMMISSION

Subject: Coastal Development Minor Subdivision No.: CDMS 24-2004
Site Address: 35800 South Highway One
Assessor's Parcel No.: 144-070-18

Dear Mr. and Ms. Miller:

The following information is specific to property you own at 35800 South Highway One, which was created by minor subdivision CDMS 24-2004. On August 5, 2011, our Department received a letter from the California Coastal Conservancy, alerting us to the fact that the Offer to Dedicate for public access that was recorded in conjunction with approval of Coastal Development Minor Subdivision (CDMS) 24-2004 was not the draft approved by the County and Coastal Commission. Additionally, on October 24, 2011, the Redwood Coast Land Conservancy (RCLC) brought to our attention that the vertical easement as shown on the recorded document, does not span from the Highway to mean high tide along the northern property line as required in the condition of approval. I am therefore seeking your assistance in correcting these errors.

The staff report outlined conditions of approval for the subdivision, including the following Special Condition Number 2:

Prior to issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, an easement for (1) a 25-foot lateral and (2) 10 foot vertical public access easement for passive recreational use. The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the train on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line. This condition is based on the pattern of use evidenced by the County's prescriptive rights investigation. See Exhibit E for the approximate location of these OTDs.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this coastal development permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer.

The minor subdivision was approved on February 15, 2007 by the Planning Commission, and conditions of approval included Special Condition Number Two, with changes as recommended in a memorandum from Dennis Chaty, dated February 9, 2007, which read as follows:

Special Condition Number 2 (paragraph #1) Page PC 12: should read: Prior to recordation of the Parcel map and pursuant to LCP Policy 3.6-7 and 3.6-8 the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, (1) a 25 foot wide vertical public access easement from Highway One along the northerly boundary of the Remainder Parcel to the blufftop, and a 25 foot vertical easement from the blufftop to the mean high tide, (2) a 25 foot lateral easement measured from the daily bluff edge along the blufftop from the northwest corner of the Remainder Parcel to the southwest corner of Parcel 1, and (3) a 25 foot wide vertical access easement from the blufftop along the southerly boundary of Parcel 1 to Highway One.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this coastal development permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer.

On February 22, 2007, the Clerk of the Board received an appeal of this condition from Mr. Leonard Haines, who was the current property owner and applicant for the subdivision. Mr. Haines expressed opposition to conditions above and beyond that required on the tentative map, and requested the condition be reverted to that as provided on the original Tentative Map.

On June 19, 2007, the Board of Supervisors heard the appeal, voting in favor of Mr. Leonard Haines and overturning the action of the Planning Commission. The minutes reflect that the following condition of approval was adopted, as originally outlined in the staff report:

Prior to issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, an easement for (1) a 25-foot lateral and (2) 10 foot vertical public access easement for passive recreational use. The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the train on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication

shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line. This condition is based on the pattern of use evidenced by the County's prescriptive rights investigation. See Exhibit E for the approximate location of these OTDs.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this coastal development permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer.

Please note that both versions of this condition include:

...The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line...

The drafted version of the Offer to Dedicate that was submitted by Mr. Haines and approved by the County and the Coastal Commission included the following language starting on Page 3, line 3:

1. Description. The easements offered hereby affect the following portions of the Property:
 - a. Lateral access easement shall be 25 feet wide as measured from the daily bluff edge and traverse the Property from north to south along the trail on the western portion of the Property, as designated on Mendocino County Land Use Plan (LUP) Map 18; and
 - b. Vertical access easement shall be 10 feet wide and extend from Highway One to the mean high tide line along the northern property line.

The above easements are described and depicted on EXHIBIT C, attached hereto and incorporated herein by reference (hereinafter collectively referred to as the "Easement Areas)."

Unfortunately, the document recorded on April 10, 2009 as 2009-05004 does not specify that the lateral access easement would be measured from the daily bluff edge. It is necessary that this is specified. Otherwise, as the bluff erodes, the easement location will not be useable.

I would appreciate your timely response to this issue as it is my hope it would benefit everyone involved to rectify these mistakes as soon as possible. I am available to assist you by providing templates which include updated versions of the original draft approved by the California Coastal Commission and County, and will also help in any other way I can.

30911

Please be aware that the County and Coastal Commission will need to review and approve the drafts prior to recordation, and will also be checking the recorded documents for accuracy, so that we can avoid repeating this mistake in the future.

Sincerely,

Signature on File

Teresa R. Spade, AICP
Planner II

c/c: Roger Mobley, Chief Planner
Terry Gross, County Counsel
Peter Jarausch, State Coastal Conservancy
Bob Merrill, Pat Sexton & Tamara Gedik, California Coastal Commission
Nancy Trissel, Redwood Coast Land Conservancy

Enclosures: Recorded copy of the Offer to Dedicate
Record of Approval, as provided by the California Coastal Commission

4 of 11

CALIFORNIA COASTAL COMMISSION

45 FREMONT ST, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885



November 5, 2012

Steve Dunncliff, Deputy Chief Executive Officer
Mendocino County Planning and Building Services
860 North Bush Street
Ukiah, CA 95482

Subject: Coastal Development Minor Subdivision Permit No. 24-2004, APNs: 144-070-18, 144-070-19, and 144-070-20, at 35700 South Highway One, Gualala, Mendocino County.

Dear Mr. Dunncliff:

The California Coastal Commission (Coastal Commission) enforcement staff was notified of and has confirmed that errors caused by the applicant for the above-referenced permit have affected the creation of a subdivision as approved by Mendocino County (County) located at 35700 South Highway One, in unincorporated Mendocino County. The applicant should not have been allowed to record the Parcel Map purportedly effectuating the subdivision because the applicant failed to satisfy the pre-conditions of the County's Coastal Development Permit (Coastal Permit) that conditionally authorized the subdivision. Specifically, the applicant recorded an incorrect Parcel Map and Offer to Dedicate (OTD) an easement for public access – one that the Coastal Commission had specifically rejected. To correct this error, the current owners must satisfy the pre-conditions of the County's Coastal Permit by recording a new Parcel Map and OTD "in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission" (Coastal Permit Special Condition No. 2). If the current owners fail to do so, we believe the County and the Commission should commence appropriate enforcement action to enforce the requirements of the County's Coastal Permit.

Permit History and Conditions

The policies of the Mendocino County certified Local Coastal Program (LCP), section 20.532.010, require property owners to obtain a County Coastal Permit before undertaking any development within the Coastal Zone. Section 20.308.035 (D) of the LCP defines development, in part, as "any change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act, and any other division of land, including lot splits ..." According to County records, the subject property is in the Coastal Zone, and therefore, a Coastal Permit is required before any development, including subdivision, may be undertaken.

On May 9, 2004, the applicant, Mr. Leonard Haines, applied to the Mendocino County Planning and Building Department for a Coastal Permit authorizing a minor subdivision on a 15.67 acre bluff-top parcel located at 35700 Highway One [former APN 144-070-15] as well as physical development including the construction of access roads, on-site sewage disposal systems, connection to North Gualala Water District, and a visitor serving facility on the proposed remainder parcel. On February 15, 2007, the County Planning Commission approved CDMS 24-2004, subject to conditions including Special Condition No. 2 requiring the recordation of four easements for public access: two that, together, run from Highway One to the mean high tide line along the northern boundary of the subject property, one along an existing bluff-top trail that runs parallel to the coastline across the parcels to be subdivided, and a fourth along the southerly boundary of the subject property from the blufftop trail to Highway One. (See Mendocino County Planning Commission Minutes for Meeting Held on February 15, 2007, pp. 3, 7; Mendocino County Planning and Building Services Planner III Dennis Chaty, Memorandum to Mendocino County Planning Commission, February 9, 2007.) The applicant appealed the Planning Commission decision to the County Board of Supervisors to contest Special Condition No. 2. On June 19, 2007, the County Board of Supervisors "overturn[ed] the action of the Planning Commission relative to Special Condition No. 2" and supplanted it with a revised approval of CDMS 24-2004 subject to new pre-conditions, including the following:

Prior to issuance of the Coastal Development Permit, the landowner shall execute and record a document, in a form and content acceptable to Mendocino County Planning Division and the California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by Mendocino County and the Coastal Commission, an easement for (1) a 25-foot lateral and (2) 10-foot vertical public access easement for passive recreational use. The lateral offer of dedication shall be 25 feet wide as measured from the daily bluff edge, and traverse the parcel from north to south along the trail on the western portion of the subject property (as designated on LUP Map 18). The vertical offer of dedication shall be 10 feet wide and extend from Highway One to mean high tide along the northern property line. This condition is based on the pattern of use evidenced by the County's prescriptive rights investigation. See exhibit E for the approximate location of the OTDs.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere[] with any rights of public access acquired through use which may exist on the property. The recorded document shall include all legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which Mendocino County and/or the Coastal Commission determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require an amendment to this Coastal Development Permit, pursuant to the provisions of 14 CCR Section 13166. This requirement shall be reflected in the provisions of the recorded offer. (Emphasis added.)

In accordance with the County's permit action, the applicant was required to complete the Standard Conditions of Approval prior to the applicant filing a Parcel Map. (See County Planning Commission Final Findings and Conditions of Approval Case # CDMS 24-2004,

introductory language of Standard Conditions of Approval, February 15, 2007; see also Mendocino County Board of Supervisors, minutes for meeting held on June 19, 2007.) The County further required the applicant to execute and record a document offering to dedicate lateral and vertical easements for public access, as detailed above, before a Coastal Permit would issue to authorize the subdivision. (See Mendocino County Board of Supervisors, Minutes for Meeting Held on June 19, 2007, Special Condition No. 2.)

Recorded Documents – Offers, Acceptances, and Maps

On March 27, 2008 the applicant executed an OTD, in an apparent attempt to satisfy Special Condition No. 2 of the County's Coastal Permit, and submitted it for review. The Coastal Commission reviewed the OTD and, on October 23, 2008, issued a letter stating its determination that the OTD document was inadequate both in form and content. Thus, the Coastal Commission did not approve this document for recording, which is an express criterion in Special Condition No. 2. In fact, the Coastal Commission's letter asked that the applicant execute a new OTD with additional information and provided a model OTD that the Coastal Commission would require the applicant to use. The applicant subsequently submitted to the County a revised OTD containing the requested information and based on the required model OTD. The County forwarded the revised OTD to the Coastal Commission for review. Upon review of this revised OTD, the Coastal Commission forwarded a letter dated January 6, 2009 to the County, asking that the OTD again be revised, prior to recording, to include the County Board of Supervisors' Final Determinations as Exhibit B. This document establishes the express conditions upon which the County's Coastal Permit would be issued, including the size, scope, and location of the required easement for public access.

On March 17, 2009, the Clerk of the Board of Supervisors signed a note on the cover page of the Parcel Map purporting to approve the map and to accept, on behalf of the public, the easements for public access shown on the Parcel Map and in a version of the OTD recorded as Instrument No. 2009-05004. The Coastal Commission did not acknowledge or approve this acceptance of the easement. These easements should not have been accepted by the Clerk (at least not as satisfying Special Condition No. 2) because the applicant had not yet executed and recorded an OTD for said easements that was acceptable in form and content to the Coastal Commission, and because the easement shown on the Parcel Map failed to satisfy Special Condition No. 2, as approved by the County Board of Supervisors. The Parcel Map's depiction of the easement was defective in three respects:

1. the vertical access easement depicted on the map began 85 feet from Highway One in contravention of Board of Supervisors' express condition that it commence at Highway One,
2. the vertical access easement depicted on the map ended 58 feet from mean high tide, in contravention of the Board of Supervisors' express condition that it reach to the mean high tide, and
3. the Parcel Map fails to state that the lateral access easement is to be measured from the daily bluff edge, as required by the Board of Supervisors in Special Condition No. 2.

Further, the recordation of the Parcel Map purporting to accept the offer to dedicate an easement for public access stated that the Board of Supervisors by resolution on March 17, 2009, approved the Parcel Map of CDMS 24-2004, and accepted on behalf of the public, the easements for public access purposes offered in Item "A" in the Owner's Statement on said map and as designated on the map. Page 2 of the Parcel Map identifies Item "A" as the document recorded as Instrument No. 2009-05004, Mendocino County Records. This document is an altered version of the OTD executed by Mr. Haines on March 27, 2008 and which the Coastal Commission rejected in both form and content on October 23, 2008.

While this item was listed on the consent calendar for the County Board of Supervisors' March 17, 2009 special meeting agenda, the minutes for that meeting contain no mention of the consent agenda being addressed and state that no action was taken on any of the items listed in the minutes as being heard that day.

On April 10, 2009, the faulty Parcel Map, including the improper acceptance of the easement, and the altered version of the OTD dated March 27, 2008, were recorded in the County Recorder's Office. This OTD fails to satisfy the pre-conditions of the County's Coastal Permit for several reasons. First, the legal description of the easements contained in the OTD suffered from the same defects as those listed above as defects in the Parcel Map.

Second, the recorded OTD was not in a form and content approved by the Coastal Commission. It was not created using the required model OTD provided by the Coastal Commission, it did not contain the additional information the Coastal Commission required to be included, and there is evidence that it was tampered with by a third party after it was signed by Mr. Haines and his signature acknowledged by a notary public on March 27, 2008.

As the recorded OTD is not consistent with the express pre-conditions to issuance of the Coastal Permit, the Coastal Permit should not have issued; and in fact, the Coastal Commission has found no evidence that it did issue. Thus, the subdivision purportedly effectuated by the recordation of the Parcel Map was not authorized.

The Offer to Dedicate an Easement for Public Access Must Be Revised and a new Offer to Dedicate an Easement for Public Access recorded to resolve this County permit violation.

As the pre-conditions to issuance of the permit were not satisfied, Coastal Commission enforcement staff respectfully request that the County rescind any Coastal Permit it may have issued purporting to authorize the subdivision of the subject property. As the subdivision was never legally authorized, we also request that the County notify the current property owners of actions that must be taken pursuant to the County's LCP policies and the Coastal Act to legally subdivide the parcel.

If all property owners are unwilling to record a corrected Parcel Map and Irrevocable Offers to Dedicate easements for vertical and lateral public access in a form and content approved by the Coastal Commission, the Commission recommends that the County join the Commission in taking formal enforcement action to resolve this matter. If you wish to request that the Coastal Commission take the primary role in enforcing the County's action on this Coastal Permit, you

Letter to Steve Dunncliff
November 5, 2012
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may request the Coastal Commission pursue enforcement action, pursuant to section 30810(a)(1) of the Coastal Act.

Please contact me to discuss this situation. If you have questions regarding this letter, please contact me at (415) 904-5290 or Stephanie Tavares-Buhler of my staff at (415) 597-5886 or in writing at the letterhead address. Thank you for your cooperation.

Sincerely,

Signature on File

Nancy L. Cave
Supervisor, Statewide Enforcement Program
California Coastal Commission

CC:
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Robert Merrill, CCC, North Coast District Manager
Tamara Gedik, CCC, North Coast District Planner
Stephanie Tavares-Buhler, CCC, Statewide Enforcement

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CALIFORNIA COASTAL COMMISSION

45 FREMONT ST, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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TDD (415) 597-5885

**Sent by Regular and Certified Mail**

June 17, 2013

Harry William Miller & Susan Mary Miller
PO Box 184
Gualala, CA 95445-0184

Certified Mail No. 7006 2760 0005 5883 4425

Coastal Development Minor
Subdivision Permit No.: 24-2004 (Mendocino County)

Property Location: APN: 144-070-18, at 35800 South Highway One, Gualala,
Mendocino County.

Dear Mr. and Ms. Miller:

I am writing to follow up on your telephone conversation with Stephanie Tavares-Buhler from the California Coastal Commission's (the Commission) Enforcement Unit, which took place on March 6, 2013. In that conversation, you discussed the failure of your predecessor in title, the late Mr. Leonard Haines, to satisfy the pre-conditions of Coastal Development Minor Subdivision Permit No. 24-2004 (the Permit) authorizing the creation of your lot, APN 144-070-18, at 35800 South Highway One in Gualala, California (the subject property). As these complex errors were discussed at length in a letter to Mendocino County dated November 5, 2012, of which you received a copy, I will not discuss those details at length here.

As was discussed over the phone with Ms. Tavares-Buhler, your property is subject to an easement for public access, to be eventually held by the Redwood Coast Land Conservancy, which was meant to satisfy the preconditions of the Permit obtained by Mr. Haines. The easement Mr. Haines executed does not satisfy the preconditions of the Permit, which means the Permit never actually issued and the lot upon which your home was built was never legally created. This means that no further development can be approved on your property until the lot is legalized.

Mr. Haines' subdivision of the land without a valid Coastal Development Permit also constitutes a violation of the certified Mendocino County Local Coastal Program (LCP) as well as the Coastal Act. Section 20.532.010 of the County's LCP requires property owners to obtain a County Coastal Permit before undertaking any development within the coastal zone. Section 20.308.035(D) of the LCP defines development, in part, as "any change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act, and any other division of land, including lot splits..." Section 30600 of the Coastal Act also provides that no development may be undertaken in the Coastal Zone without a Coastal Development Permit. The Coastal Act definition of development, found in Section 30106, also expressly includes subdivision. As the owner of one of the resulting lots, you are ultimately responsible for resolving this violation of the County's coastal permit requirements under their LCP and of the Coastal Act and correcting the errors as they pertain to your property.

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Mendocino County has requested that the Commission take primary enforcement action to resolve the violation. Commission staff sincerely hope to resolve this violation administratively, however if no administrative resolution can be reached, or if you fail to comply with any terms you agree to as part of an administrative resolution, the Commission may take formal enforcement action. It is my obligation to inform you that the Coastal Act authorizes the Coastal Commission to pursue, against any violator, a number of enforcement remedies, including, but not limited to cease and desist orders and civil liability in an amount not less than \$500 and not more than \$30,000 for each instance of development, pursuant to Coastal Act sections 30809, 30810, 30811, and 30820(a). Finally, pursuant to Section 30812, the Executive Director, after giving notice and allowing for a public hearing if requested, may record with the county clerk a Notice of Violation on property where an unresolved violation exists.

Proposed Resolution

In the interest of fairness and expediency, the Commission staff propose that each property owner involved in the subdivision approved by the Permit prepare for review and then record an easement deed for public access to Redwood Coast Land Conservancy which satisfies the preconditions of the underlying Permit. As to your property, CDMSP No. 24-2004 required, as a precondition, the execution of an irrevocable easement deed for public access consisting of:

1. One 25-foot lateral public access easement for passive recreational use.
2. The lateral easement shall be 25 feet wide *as measured from the daily bluff edge*, and traverse the parcel from north to south along the trail on the western portion of the subject property.

This easement would overlie the existing public access easement already dedicated to the Redwood Coast Land Conservancy, which would remain in effect. The only difference between the new easement we propose and the easement already in place on your property is that it would be measured from the daily bluff edge, as required under Special Condition Two of the Permit. The Coastal Commission would be happy to draft a model easement to this effect, for your convenience, at your request.

Please contact me as soon as possible and no later than July 8, 2013 to discuss resolution of this violation. If you have questions regarding this letter, please contact me at (415) 597-5886 or in writing at the letterhead address. Thank you for your cooperation.

Sincerely,

Signature on File

Derek Schaible
California Coastal Commission
Statewide Enforcement Program

CC: Abbey Stockwell, Mendocino County
Bob Merrill, CCC North Coast
Pat Sexton, CCC Legal
Nancy Cave, CCC Statewide Enforcement