

CALIFORNIA COASTAL COMMISSION

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LSM



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original staff report

F8a

MEMORANDUM

Date: February 11, 2015

To: Commissioners and Interested Persons

From: Alison Dettmer, Deputy Director
Bob Merrill, District Manager
Cristin Kenyon, Coastal Program Analyst

Subject: Addendum to Commission Meeting for Friday, February 13, 2015
North Coast District Item F8a
CDP Appeal A-1-MEN-14-0072 (Monique Chetelat and Steve Tyson)

The purpose of this staff report addendum is to present and respond to a public comment letter received from the appellant Patrick Burns in response to the January 30, 2015 staff report. The appellant's letter is attached to this addendum packet and shall be incorporated into the staff report as Exhibit 12. Staff continues to recommend that the Commission find that the appeal raises no substantial issue with respect to the grounds on which it was filed.

Response to Patrick Burns' Comment Letter

The single family residence and associated development approved by the County is located on a coastal terrace west of Highway One in a designated highly scenic area. Mendocino County Land Use Plan (LUP) Policy 3.5-4 requires that buildings and building groups that must be sited in highly scenic areas shall be sited: (1) near the toe of a slope; (2) below rather than on a ridge; or (3) in or near a wooded area; and that, except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. LUP Policy 3.5-4 further requires that the visual impacts of development on terraces be minimized by, among other requirements, minimizing the number of structures and clustering them near existing vegetation, natural landforms, or artificial berms.

1. **Comment:** In his comment letter, the appellant reiterates his contention that the approved development is inconsistent with the siting requirements of LUP Policy 3.5-4 as the appellant opines that the subject residence will be located in the middle of an open space when an alternative site exists on the southern portion of the property where the home would be near the edge of a wooded area and clustered with existing residences.

Response: Staff's position, which is expressed in the staff report on pages 12-13, is that the approved development is not located in the middle of a large open area but is instead clustered with other approved residences at the center of a 5-lot subdivision that is surrounded by existing vegetation, with a riparian feature to the west of the subdivision, a wooded area to the south, and an intermittent row of young trees and shrubs along Meghan Lane to the north.

2. **Comment:** In his comment letter, the appellant alleges that by allowing the subject development to encroach into the large open space to the north in violation of the siting requirements of LUP Policy 3.5-4, the approved CDP sets a precedent that will result in the future hap-hazard development of the 18-acre parcel to the north. The appellant asserts that by disregarding the aforementioned LCP visual resource policies in this case, the County would not be able to require future homes on the parcel to the north to be sited in a way that avoids open space and encroaching on public views.

Response: The 18-acre undeveloped parcel to the north provides a large open space area between the subdivision where the approved development is located and a wooded area to the north that is developed with homes. Based on the zoning, there is the potential for a maximum of nine residences on these 18 acres, but a subdivision of the parcel would first have to occur. Any future subdivision proposal must be consistent with the LCP policies and regulations for siting development in highly scenic areas, including the policy that development in the middle of large open areas shall be avoided if an alternative site exists. Thus, any approval of a proposed subdivision can limit the number and configuration of lots to ensure conformance with the highly scenic area visual policies, including ensuring that building sites are located near the existing development and wooded area to the north if appropriate.

3. **Comment:** In his comment letter, the appellant argues that the approved development on the northwestern parcel will be at a lower elevation than the subject development approved by the County and therefore will not have as much of an impact on the public view.

Response: The two parcels are relatively flat and are part of the same flat coastal terrace that slopes gently from Highway One westward to the ocean bluff with a one- to two-percent slope. Given the slope and the approximately 200-foot separation between the two residences, the applicant's approved residence is approximately four feet higher in elevation than the approved residence on the northwestern lot. The relatively flat topography across the two sites is visible in **Exhibit 7, pg. 4** of the staff report. Given the relatively flat topography and the relative locations of the two residences, the previously approved residence on the northwestern parcel will be more visually prominent from the Haul Road Coastal Access Trail to the west and the subject development approved by the County will be more visually prominent from public views along Highway One to the east. However, only fleeting views would be afforded of the subject residence for approximately 500 feet along the highway, and as the house site is over 1,000 feet away from this stretch of the road, the subject residence approved by the County would appear

small from the road, intermixed with other residences and less visually prominent than the taller and more extensive intervening trees on Meghan Lane. Thus while the previously approved house on the northwestern lot is likely to be less prominent from public views along the highway, the subject development approved by the County would still be seen from this vantage point intermixed with trees and other residences rather than at the center of an open area.

Modifications to Findings

Finding language has been added to the staff recommendation as follows to address the concerns in the appellant's comment letter (text to be added appears in **bold double-underline**):

❖ ***Modify Analysis of Appellant's Contention Finding IV-D in the third full paragraph on page 9 as follows:***

...

The subject parcel is located approximately 850 feet west of Highway One with two intervening parcels between the property and the highway, including a 5.75-acre lot with two two-story buildings. To the north of these three parcels are Meghan Lane and a large open field, and to the south are undeveloped, heavily wooded lots. The first visual submitted by the appellants (**Exhibit 10, pg. 5**) is an aerial photograph that allegedly shows site lines to the approved development footprint from Highway One and the Haul Road Coastal Trail. This aerial photograph does not show the row of trees along Highway One that block a significant portion of the view of the building site from the highway and thus overestimates the visibility of the house site. As one approaches the area from the south, driving north on Highway One, views of the residence **will would** extensively be blocked by the intervening vegetation and structures. As one approaches the area from the north, driving south on Highway One, the residence **will would** only be visible across the open field to the north of the subdivision for approximately 500 feet before the house is again blocked from views by trees along Meghan Lane and Highway One (See applicant's photographs in **Exhibit 11, pgs. 7-9**). As the house site is over 1,000 feet away from this stretch of the road, the residence **will would** appear small from the road, blocking very little blue water view and appearing less visually prominent than the taller and more extensive intervening trees on Meghan Lane (See **Exhibit 7, pg. 2**). In addition, the house on the southwestern lot of the subdivision and the future house on the northwestern lot of the subdivision will also be in view from portions of this stretch of Highway One, so that the subject residence **will would** appear intermixed with other houses and **will would** not disrupt a pristine public view of the ocean (See **Exhibit 11, pg. 7**).

In his February 5, 2015 comment letter, the appellant argues that the approved development on the northwestern parcel will be at a lower elevation than the subject development and therefore would not have as much of an impact on the public view. The previously approved residence on the northwestern lot will be approximately 200 feet further west from Highway One than the applicant's approved development and approximately four feet lower in elevation. Although it is true that the previously approved residence on the northwestern lot will be less prominent from the highway than the subject development, the applicant's approved residence would still appear from this vantage point as being intermixed with other houses and trees and not located within a large open area.

...

- ❖ *Modify Analysis of Appellant's Contention Finding IV-D beginning with the first full paragraph on page 13 as follows:*

...

The appellants proffer an alternative feasible building site on the southern half of the subject parcel. Approving development in this location, however, ~~will~~ would not lessen the visual impact of the development when viewed within the wider context of the subdivision. The home site approved on the northwestern parcel will break up the open space on the northern half of the subdivision. As approved, the subject development ~~does~~ would not encroach any further northward into the adjacent 18-acre open space area of the adjoining undeveloped parcel than this previously approved development within the subdivision. In addition, when viewed as a whole, the residences within the subdivision are sited near existing vegetation, as the building footprints are clustered between a riparian feature to the west, a wooded area to the south, and an intermittent row of young trees and shrubs along Meghan Lane to the north. Even if the approved residence on the northwestern lot is never constructed, the configuration of the northwestern lot and development constraints such as the presence of wetlands on portions of the lot limit any future development to a location on the northern side of the lot along the northern side of the subdivision.

In his February 5, 2015 comment letter, the appellant further alleges that by allowing the subject development to encroach into the large open space to the north in violation of the siting requirements of LUP Policy 3.5-4, the approved CDP sets a precedent that will result in the future hap-hazard development of the 18-acre parcel to the north. The appellant asserts that by disregarding the aforementioned LCP visual resource policies in this case, the County would not be able to require future homes on the parcel to the north to be sited in a way that avoids open space and encroaching on public views. Currently there is one 18-acre undeveloped parcel to the north of the subject development. Based on the zoning, there is the potential for a maximum of nine residences on these 18 acres, but a subdivision of the parcel would first have to occur. Any future subdivision proposal must be consistent with the LCP policies and regulations for siting development in highly scenic areas, including the policy that development in the middle of large open areas shall be avoided if an alternative site exists. Thus, any approval of a proposed subdivision can limit the number and configuration of lots to ensure conformance with the highly scenic area visual policies, including ensuring that building sites are located near the existing development and wooded area to the north if appropriate.

...

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FEB -9 2015

**CALIFORNIA
COASTAL COMMISSION
NORTH COAST DISTRICT**

California Coastal Commission
North Coast District Office
1385 Eight Street, Suite 130
Arcata, California 95521
RE: Appeal Number A-1-MEN-14-0072
Local GOV'T Permit Number CDP-7-2014

Dear Commissioners,

I, Patrick Burns and my wife Karin are the appellant's of this proposed CDP. I would like to point out to the Commission the future substantial cumulative impacts if this CDP is approved as is. By allowing the proposed residence to be placed in a open area, (when a alternative site exists) not in or near the edge of a wooded area, (the southern portion of this parcel is wooded) and not clustered (the existing homes are clustered to the south next to the wooded area) violates the binding subdivision Conditions of Approval .

#CDMS 23-92 which includes Coastal Element Policies 3.5-1, 3.5-3, and 3.5-4.

The exception in this minor subdivision is the approved CDP on Parcel #2 adjoining the Old Haul Road. Even though this approved CDP is in the public view it is at a lower elevation and will not have near as much impact or silhouette as the proposed CDP. In addition, no alternative site exists due to the wetland setback requirement.

The large open space between this minor subdivision and the adjoining parcel to the north is the last open public view shed of coastline before MacKerricher State Park. The next public view shed from Highway 1 is 6 miles to the north at Ten Mile River. By allowing this proposed residence to encroach into this large open space sets the stage for future hap-hazard development when the parcel to the north is developed. If the commission would follow its own Coastal Element Policies in this Highly Scenic Zoned area, the 10 future homes on this 20 acre parcel would be placed next to the wooded area at the north end of the parcel and not be allowed in the open space encroaching on the public views. Therefore the approval of CDP-7-2014 will have a future cumulative effect if the Highly Scenic Zoning standards are not being enforced on the proposed CDP. By moving the proposed residence to the southern portion of the parcel we are creating an opportunity for future responsible development when the parcel to the north is developed.

I have been accused by the applicant of appealing this CDP to protect my private views. It is true that if the Highly Scenic Zoning Coastal Elements were enforced, I would have some benefit, as would the public. The location of the proposed residence only benefits the applicant views and no one else. Being the property owner of 500' frontage of Highly Scenic Zoned property on Highway 1, I am will willing to enhance the public view shed by maintaining the overgrown vegetation on the northern and eastern portion insured by deeded title for any future owner of my property. This will ensure that this last open coastal view shed before MacKerricher State Park will remain for future generations including the view of the historic Nye Ranch dairy barn circa 1870.

In conclusion, if this CDP is approved as- is, this short-term planning will degrade this Highly Scenic view shed which is the gateway to MacKerricher State Park for future generations. We are only requesting

that the Coastal Commission adhere to its own policies and move the proposed residence to the southern portion of the 2 acre parcel as per Coastal Element Policies in this Highly Scenic Zoned area.

I ask the Commission to consider a compromise by moving the residence only 50'-75' to the south since the proposed home is at the northern most setback limit. Even 50'-75' would help keep the open space "open" between it and the 20 acre undeveloped parcel to the north. Considering the 2 acre parcel of the applicant is over 450' deep, that is a small concession to request to protect and maintain current and future public views.

I urge the Commission to hold true to your mission statement to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

Thank you for your consideration in this matter.

Patrick and Karin Burns
The Nye Ranch
23300 North Highway 1
Fort Bragg, CA 95437

A handwritten signature in black ink, appearing to be 'P. Burns', written in a cursive style.

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F8a

Filed:	12/16/14
49 th Day:	Waived
Staff:	C. Kenyon-A
Staff Report:	1/23/15
Hearing Date:	2/13/15

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

Application No.:	A-1-MEN-14-0072
Applicant:	Monique Chetelat and Steve Tyson
Appellants:	Patrick Burns and Karin Burns
Local Government:	County of Mendocino
Local Decision:	Approval with Special Conditions
Location:	33041 Meghan Lane, approximately 0.65 miles north of the City of Fort Bragg, Mendocino County (APN 069-171-46).
Project Description:	Construct a single-family house and garage covering a 4,156 square foot area and install a well, septic system, propane tank, water storage tank, and gravel driveway.
Staff Recommendation:	No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

The Mendocino County Board of Supervisors approved Coastal Development Permit (CDP) No. 7-2014 with special conditions on December 2, 2014 for a new single-family residence and associated development on a 2.02-acre parcel located west of Highway One and approximately 0.65 miles north of the City of Fort Bragg at 33041 Meghan Lane in Mendocino County. A

single appeal was timely filed with the Commission's North Coast District Office on December 16, 2014 by Patrick and Karin Burns.

The appellants contend that the approved development is inconsistent with the visual resource policies of the certified Local Coastal Program (LCP) because the development fails to provide for the protection of ocean and coastal views from public areas, and is located in a large open area when an alternative site exists near existing vegetation and other single-family residences.

Commission staff believes that the contention raised by the appellants presents valid grounds for appeal, but does not raise a substantial issue of conformance of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act. The public views of the development site from the Haul Road (the coastal trail in this area) and Highway One will be part of an existing landscape setting that includes a number of more visually-prominent houses and trees. From Highway One, the residence will be largely screened from view by trees except as viewed within a relatively narrow view corridor by southbound travelers, and where visible, will appear small and will affect very little blue water view. From the Haul Road, the subject development will be located behind a previously-approved single-story house, with two-story residences visible to the north, south, and east. The house will be a similar earth-toned color to the houses to the east and west, and will be screened from the Haul Road and Highway One by native vegetation. In addition, there is a high degree of factual and legal support for the local government's decision that the project as approved will not result in significant adverse impacts to visual resources. Finally, as the subject lot is the last lot within the previously approved 1994 five-lot subdivision to be approved for development of a single family residence, the precedential value of the County's decision to approve the development is relatively low.

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.

The motion to adopt the Staff Recommendation of No Substantial Issue is found on page 4.

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APPENDICES

Appendix A – Commission's Appeal Jurisdiction Over Project

Appendix B – Substantive File Documents

Appendix C – Mendocino County LCP Policies Regarding Visual Resources

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Maps and Aerial of Vicinity

Exhibit 3 – Parcel Map

Exhibit 4 – Mendocino County Coastal Plan Map

Exhibit 5 – Project Plans

Exhibit 6 – Subdivision Maps and Neighboring Parcels' Plans

Exhibit 7 – Commission Staff Photographs from the Haul Road and Highway One

Exhibit 8 – Story Pole Locations

Exhibit 9 – Notice of Final Local Action and Findings for Approval

Exhibit 10 – Appeal

Exhibit 11 – Applicant's Correspondence

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-14-0072 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-14-0072 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 a designated "highly scenic area," which is a type of sensitive coastal resource area. 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 (LCP) 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 issue¹ exists with respect to the grounds on which the appeal has been filed. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain

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.

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 Notice for the development (**Exhibit 8**), the appellant's claims (**Exhibit 9**), and the relevant requirements of the Coastal Act and certified LCP (**Appendix C**), 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. Generally, and at the discretion of the Chair, qualified persons 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 appellants 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 subject project with special conditions on August 28, 2014. Patrick and Karin Burns then filed an appeal of the decision at the local level, received by the County of Mendocino Board of Supervisors on September 5, 2014. On December 2, 2014, the Board of Supervisors heard the appeal and upheld the Coastal Permit Administrator's decision of approval of the project.

The County granted its approval of Coastal Development Permit (CDP) No. 7-2014 subject to 14 special conditions, including, but not limited to, conditions requiring that (1) all exterior lighting fixtures shall be downcast and shielded and any changes shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project; (2) any changes in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project; and (3) prior to issuance of the CDP, the applicant shall submit a revised landscape plan of native, drought tolerant evergreen trees and/or shrubs for the purpose of further buffering views of the residence from sections of the Old Haul Road Coastal Access Trail (Haul Road) and from Highway One.

The North Coast District Office received the Notice of Final Local Action (dated December 12, 2014) on December 15, 2014 (**Exhibit 8**). Patrick and Karin Burns filed an appeal (**Exhibit 9**) with the Commission's North Coast District Office in a timely manner on December 16, 2014, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

C. BACKGROUND & PROJECT DESCRIPTION

The project approved by the County involves the construction of a new single-family residence and associated development on a 2.02-acre parcel located west of Highway One and approximately 0.65 miles north of the City of Fort Bragg at 33041 Meghan Lane (See **Exhibits 1**

& 2). The one-story residence would have a maximum building height of 18 feet above grade, and would be comprised of a 2,762-square-foot house connected by a breezeway to a 1,245 square-foot garage (See **Exhibit 5** for project plans). Associated development approved by the County includes the establishment of a well, water storage tank, septic tank, leach field, propane tank, and a new gravel driveway. The driveway would connect the residence to Meghan Lane, a private road at the northern end of the property that is lined with an intermittent row of trees. All County-approved development would be sited on the northern half of the rectangular, north-south oriented parcel.

The subject property lies approximately 850 feet west of Highway One on a coastal terrace that slopes gently west towards the bluff edge and beach managed by the California Department of Parks and Recreation as part of MacKerricher State Park (See **Exhibit 2** for maps and an aerial photograph of the project vicinity). The coastal trail, known as the Haul Road because of its previous use as a logging truck access road, is situated approximately 430 feet west of the property near the edge of the bluff. This trail connects Glass Beach Headlands to the south with MacKerricher State Park to the north. A row of mature Monterey cypress trees runs perpendicular to Highway One and the shoreline along the southern boundary of the subject property. The remainder of the parcel is predominately covered with non-native grasses, the result of the area's historic use as pastureland. The County-approved single-family residence would displace some non-native grasses but would not involve the removal of any trees.

The subject parcel is part of a five-lot subdivision approved by the County Planning Commission in 1994 (Coastal Development Minor Subdivision #23-92). The subdivision created four approximately 2-acre new parcels and a 5.75-acre remainder parcel which abuts Highway One and is the site of the historic Nye Ranch (See **Exhibit 6, pgs. 1-2** for maps of the subdivision). The subject parcel (Parcel 3 on the subdivision parcel map) is located at the center of the subdivision and is the last lot to receive an approval for a house. The parcel directly to the east of the subject parcel (Parcel 4) has an 18-foot-tall, 2000-square-foot single family dwelling on its southern half, approved by the County in the late 1990s under CDP No. 70-1997. Two parcels in the subdivision are located directly to the west of the subject parcel between the parcel and both the Haul Road and the ocean, including one that abuts the southern half of the property (Parcel 1) and one that abuts its northern half (Parcel 2). The southwestern lot contains an 18-foot-tall, 3,110-square-foot single-family dwelling, approved under CDP No. 34-2009 in May 2010. An 18-foot-tall, 3,200-square-foot single-family dwelling was also approved in May 2010 for the northwestern property (CDP No. 31-2009), but the house has not yet been constructed (See **Exhibit 6, pgs. 3-4** for approved site plans for the neighboring parcels to the west). The house on the northwestern property was approved in the only buildable location on the parcel as wetlands and other factors constrain where development can occur. Undeveloped lots are located to the north and south of the subject property and the subdivision.

The subject parcel and all the surrounding parcels are classified on the Coastal Plan Map as "RR-5 [RR-2]," Rural Residential Five Acres Minimum with an alternate density of Two Acre Minimum (See **Exhibit 4**). The parcel is similarly zoned Rural Residential, (RR:L-5 [RR:L-2]), indicating a two acre minimum parcel size. The County-approved single family residence and associated development are principally permitted uses within the Rural Residential Zoning District, and are consistent with the Rural Residential land use classification.

D. ANALYSIS OF APPELLANT'S CONTENTIONS

The appeal filed by Patrick and Karin Burns is attached as **Exhibit 10**. The appeal raises two main contentions: (1) the approved siting of the development on the northern half of the subject property is inconsistent with the visual resource policies of the LCP; and (2) the County improperly granted the project a Class 3 categorical exemption in violation of the California Environmental Quality Act (CEQA). As set forth in Section 30603 of the Coastal Act, after certification of its LCP, an appeal of a local government-issued CDP is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. As discussed below, the Commission finds that the first contention raised by the appellants presents valid grounds for appeal, but does not raise a substantial issue of conformance of the approved development with the policies of the certified LCP or the public access policies of the Coastal Act. In addition, the Commission finds that the second contention raised by the appellants does not present valid grounds for appeal because it does not allege the inconsistency of the approved project with the policies of the certified LCP or the public access policies of the Coastal Act. The two contentions are discussed separately below.

Inconsistent with Visual Resources Policies of the Certified LCP

The County-approved development is located on a coastal terrace west of Highway One within a designated "highly scenic" area. The Mendocino County LCP requires that any new development in highly scenic areas be subordinate to the character of its setting [Mendocino County's Land Use Plan (LUP) Policies 3.5-1, 3.5-3; Mendocino County's Coastal Zoning Code (CZC) §§ 20.504.015, 20.504.020] and provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes (LUP Policy 3.5-3; CZC § 20.504.015). In addition, the LCP requires that buildings and building groups that must be sited in highly scenic areas be sited near the toe of a slope, below rather than on a ridge, or in or near a wooded area [LUP Policy 3.5-4; CZC § 20.504.015(C)(5)]. Furthermore, the LCP dictates that except for farm buildings, development in the middle of large open areas in highly scenic areas must be avoided if an alternative site exists (LUP Policy 3.5-4). The LCP also requires that the visual impacts of development on terraces in highly scenic areas be minimized by (1) avoiding development in large open areas if alternative sites exist; (2) minimizing the number of structures and clustering them near existing vegetation, natural landforms, or artificial berms (3) providing bluff setbacks for development adjacent to or near public areas along the shoreline; and (4) designing development to be in scale with the rural character of the area [LUP Policy 3.5-4; CZC § 20.504.015(C)(7)]. See **Appendix C** for a full list of relevant LCP policies.

The 2,762-square-foot single-family house, 1,245-square-foot garage, and associated development approved by the County will be located on the northern half of the subject parcel. The appellants contend that the approved location of the development is inconsistent with the aforementioned visual resource policies because the approved development (1) fails to provide for the protection of ocean and coastal views from public areas; (2) is located in a large open area when an alternative site exists near existing vegetation and other single-family residences; and (3) should be sited on the southern half of the parcel based on a prior subdivision approval. These contentions are analyzed separately below.

Fails to protect coastal views from public areas

LUP Policies 3.5-1 and 3.5-3, and CZC Sections 20.504.015 and 20.504.020 all require that new development in highly scenic areas be subordinate to the character of its setting. In addition, LUP Policy 3.5-1 and CZC Sections 20.504.010 and 20.504.020 require that all permitted development in Mendocino County be sited and designed to protect views to and along the ocean and scenic coastal areas. LUP Policy 3.5-3 and CZC Section 20.504.015 also require that any development permitted in highly scenic areas provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. The County-approved development is located on a 2.02-acre rectangular parcel that is visible from Highway One, the Haul Road Coastal Trail, and a beach managed as part of MacKerricher State Park.

The appellants contend that from its location on the northern side of the subject parcel, the approved residence will be highly visible from Highway One, the Haul Road, and MacKerricher State Park and will fail to protect ocean and coastal views from public vantage points.

At the County's request, the applicant installed two eighteen-foot-tall story poles on the parcel to indicate the highest points of the future development's roofline and a number of stakes to mark the perimeter of the building footprint. Both the appellants and applicant have submitted photographs showing views of these story poles from Highway One and the Haul Road (See **Exhibit 10, pgs. 5-12 & Exhibit 11, pgs. 4-10**). The story poles appear much more visually obtrusive from these public vantage points and appear to block more significant views of the ocean in the appellants' photographs, as many of the appellant's photographs are zoomed in. The appellants have also drawn a red box on each photograph to represent the subject house. These boxes are drawn to the same height as the story poles but are six times the length between the two story poles. While these boxes do show the full extent of the building footprint, they overestimate the bulk of the future house, as the house will only be as tall as the story poles at its highest point with roofs that slope downward. The appellants have added these boxes because they assert that the story poles used to assess the visual impact of the development are inadequate.

The applicant installed the story poles at their present locations at the request of County staff, who sent a site plan to the applicant showing where the story poles should be placed relative to the building footprint (**Exhibit 8**). According to the appellants, because only two story poles are installed twenty feet apart and the overall development footprint will be over 4,000 square feet, the story poles result in an underestimation of the development's future visual impact. To create a better representation of the structure's bulk, the appellants argue that story poles should be placed at each building corner and each ridgeline. While additional story poles at the corners of the building footprint would further aid in the assessment of the structure's visual impact, the two story poles, along with the stakes marking the corners of the development's footprint, are sufficient to indicate the general location and height of the subject development. Knowing where the story poles are located relative to the building footprint, one can use the poles along with the site plans and elevations to envision the full extent of the development and its visual impacts. Even if story poles were placed around the entire building footprint, the views of the story poles from public areas would not be completely representative of the development's visual impact as an approved residence on the northwestern lot of the subdivision adjacent to the west of the

subject development has not yet been built and will have a significant impact on the visibility of the subject development.

The applicant has submitted aerials of the subdivision in which a house has been added to the northwestern lot in the general location of the approved building footprint (**Exhibit 11, pgs. 7-11**). The applicant has also submitted photographs of neighboring residences that are more highly visible from the Haul Road than the subject residence will be (**Exhibit 11, pgs. 12-15**), and photographs from Highway One showing that from the short section of the road from which the residence will be visible, the residence will be at least 1,200 feet away, hardly noticeable clustered among trees and neighboring rooftops (**Exhibit 11, pgs. 7-9**).

In order to independently assess the visual impact of the development from public areas, on January 2, 2015, Commission staff walked north and south along Highway One and the Haul Road tracking the two story poles and consulting the site plans, building elevations, and landscaping plans for the subject and neighboring parcels. Commission staff took photographs (both full-extent and zoomed in) from various public vantage points, attached as **Exhibit 7**.

The subject parcel is located approximately 850 feet west of Highway One with two intervening parcels between the property and the highway, including a 5.75-acre lot with two two-story buildings. To the north of these three parcels are Meghan Lane and a large open field, and to the south are undeveloped, heavily wooded lots. The first visual submitted by the appellants (**Exhibit 10, pg. 5**) is an aerial photograph that allegedly shows site lines to the approved development footprint from Highway One and the Haul Road Coastal Trail. This aerial photograph does not show the row of trees along Highway One that block a significant portion of the view of the building site from the highway and thus overestimates the visibility of the house site. As one approaches the area from the south, driving north on Highway One, views of the residence will extensively be blocked by the intervening vegetation and structures. As one approaches the area from the north, driving south on Highway One, the residence will only be visible across the open field to the north of the subdivision for approximately 500 feet before the house is again blocked from views by trees along Meghan Lane and Highway One (See applicant's photographs in **Exhibit 11, pgs. 7-9**). As the house site is over 1,000 feet away from this stretch of the road, the residence will appear small from the road, blocking very little blue water view and appearing less visually prominent than the taller and more extensive intervening trees on Meghan Lane (See **Exhibit 7, pg. 2**). In addition, the house on the southwestern lot of the subdivision and the future house on the northwestern lot of the subdivision will also be in view from portions of this stretch of Highway One, so that the subject residence will appear intermixed with other houses and will not disrupt a pristine public view of the ocean (See **Exhibit 11, pg. 7**).

The Haul Road is another important public vantage point as the Haul Road is the coastal trail along this portion of the coast. The subject parcel is located 430 feet east of the Haul Road. Although users of the trail will primarily be focused on the view towards the ocean away from the approved development, the approved development will be visible to trail users when they look inland from the coast. The appellant's photographs and visual simulations suggest that from vantage points along the Haul Road directly west of the approved development there will be a continuous unobstructed view of the approved development. The appellant's aerial

photograph (**Exhibit 10, pg. 5**) shows an unbroken line of site from the Haul Road directly east toward the approved development. This depiction is not entirely accurate as there is a riparian feature to the west of the building site that provides some screening as viewed from the Haul Road (See **Exhibit 7, pg. 5, Photographs 4a, 4b**). In addition, the County has already approved an 18-foot-tall, single-family dwelling on the northwestern lot of the subdivision directly west of the subject residence that has not yet been built. Although the story poles for the subject residence are currently highly visible from the Haul Road across this undeveloped lot (See **Exhibit 7, pg. 4**), once the previously approved residence on the northwestern lot is built, it will largely block these views from the Haul Road directly to the west of the approved development.

From vantage points along the Haul Road further to the southwest of the building site, the approved development will be visible for a few hundred feet before it will be blocked again by existing landscaping and the existing residence on the southwestern lot of the subdivision (See **Exhibit 7, pgs. 5-6**). From this vantage point, none of the other residences in the subdivision are visible, but the subject development will be seen against a backdrop of trees. Moreover, the County's conditions of approval require that landscaping be planted to buffer views of the residence to the west of the garage, ensuring that the house will be screened from this angle, as the house on the southwestern lot is similarly screened by its landscaping.

From vantage points along the Haul Road to the northwest of the building site, the approved development, like the other houses in the subdivision, will be visible across a large open field against a backdrop of trees (See **Exhibit 7, pg. 3**). From this angle, the development will appear clustered with neighboring residences. As it will be similar in scale, height, and color to the surrounding residences and will be screened by landscaping, the approved development will not degrade the view shed from the Haul Road to the north.

The County-approved development consists of a single-story, 2,762-square-foot, single-family house rising to a maximum height of 18 feet above natural grade and a 1,254-square-foot garage connected to the house by a breezeway. The adjacent parcel to the east and the two adjacent parcels to the west have all already received building entitlements for eighteen-foot tall, single-family residences of 2,000 square feet, 3,100 square feet, and 3,200 square feet, respectively. The Nye Ranch, located two parcels east of the subject parcel adjacent to Highway One, includes two structures with second stories with a total building area of well-over 4,000 square feet. In addition, many of the nearby structures outside of the 14-acre subdivision are taller than 18 feet and many are highly visible from the Haul Road with little vegetative screening. Two parcels northwest of the subject parcel there is a two-story, single-family residence and to the southwest there are also several residences with heights of approximately 21 feet, all visually prominent from the Haul Road. Many other undeveloped residential lots exist in the area that will also likely be developed with residences in the future. The eighteen-foot-tall, subject development will be located a parcel back from the Haul Road and will be partially screened by intervening houses and vegetation, and therefore its location will make it less prominent from the Haul Road than other residences in its vicinity.

The County findings and conditions of approval for the subject residence include significant evidence that the development will be designed to be subordinate to the character of its setting. The applicant provided the County with a list of proposed exterior finishes and materials as well

as color chips for the proposed siding, trim, and window-frames to show that the house's exterior colors and materials will be earth-toned to blend in hue and brightness with their surroundings, and Special Condition 13 of the CDP specifies that any changes to approved colors or materials are subject to review and approval by the Coastal Permit Administrator for the life of the project. Based on the provided color chips, the applicant chose a beige base and tan trim for the house that are similar to the colors of the two adjacent houses to the east and west. Similarly, the applicant provided the County with a description of the location and specifications of the proposed exterior lighting to show that all exterior lighting will be shielded and directionally downcast, and Special Condition 12 of the CDP specifies that any changes to exterior light fixtures are subject to review and approval by the Coastal Permit Administrator for the life of the project.

In addition to providing information on exterior colors, materials, and lighting, the applicant has submitted a landscaping plan that provides for vegetative screening to partially screen the approved development from public views (**Exhibit 5, pg. 4**). In initially approving the project, the County's Coastal Permit Administrator added Special Condition 14 to require the applicant to submit a revised landscape plan, stating in part that:

The purpose of the landscaping is to further buffer views of the residence from sections of the Old Haul Road (to the west and northwest of the residence) and from Highway 1.

On hearing the case on appeal, the County Board of Supervisors further modified this statement to read:

The purpose of the landscaping is to further buffer views of the residence from sections of the Old Haul Road (to the west and northwest of the residence and garage) and from Highway 1 (to the east). [emphasis added]

The language has been modified to more clearly state that the landscaping must buffer views of the residence from all public vantage points along the Haul Road and Highway One. Special Condition 14 further requires that the final landscaping plan consist of native, drought tolerant evergreen trees and/or shrubs, and that the plan include maintenance and watering details and a replacement plan for all dead and dying plants. The requirements that the plants be native and evergreen and that they be maintained and replaced if necessary assures consistent vegetative screening for the life of the development that blends with the surrounding natural setting. Thus the exterior colors, materials, lighting, and landscaping will all help the new structure blend into the existing view shed.

In summary, the scale and design of the subject development will be similar to the single-story residential structures built on the adjoining lots and will fit with the rural residential character of the subdivision and wider area. The public views of the development site from the Haul Road and Highway One will be part of an existing landscape setting that includes a number of more visually-prominent houses and trees. From Highway One, the residence will be largely screened from view by trees except as viewed within a relatively narrow view corridor by southbound travelers, and where visible, will appear small and will affect very little blue water view. From

the Haul Road, the subject development will be located behind a previously-approved single-story house that is just as far north as the subject development, with two-story residences visible to the north, south, and east. There is a high degree of factual and legal support for the local government's decision that the project as approved will not result in significant adverse impacts to visual resources. In addition, as the subject lot is the last lot within the previously approved 1994 five-lot subdivision to be approved for development of a single family residence, the precedential value of the County's decision to approve the development is relatively low. Therefore, the Commission finds that contention of the appeal that the residence will not provide for the protection of coastal views from the Haul Road and Highway One in its approved location does not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP or the public access policies of the Coastal Act.

Sited in an open area when an alternate site exists

LUP Policy 3.5-4 and CZC Section 20.504.015(C)(5) require that buildings and building groups that must be sited in highly scenic areas shall be sited: (1) near the toe of a slope; (2) below rather than on a ridge; or (3) in or near a wooded area; and that, except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. LUP Policy 3.5-4 and CZC Section 20.504.015(C)(7) further require that the visual impacts of development on terraces be minimized by, among other requirements, minimizing the number of structures and clustering them near existing vegetation, natural landforms, or artificial berms. The County-approved development is sited on the northern half of a 2.02-acre parcel. The parcel is predominately covered with grasses with a row of mature trees along its southern boundary and a row of younger trees and shrubs along Meghan Lane leading up to the property to the northeast. The parcel and surrounding lands are zoned for rural residential development, although the parcels directly north and south of the subject lot are currently vacant. The land to the north of the parcel is open grassland, while there is a large wooded area to the south.

The appellants contend that the approved development is inconsistent with the siting requirements of LUP Policy 3.5-4 because the residence would not be clustered with existing residences and would be located in the middle of an open space when an alternative site exists on the southern side of the property that is near existing vegetation and the edge of a wooded area. In a letter from the appellants' representative Douglas B. Aikins to the County dated August 14, 2014, the representative states:

The approval of this CDP would create a hop-scotch (or checkerboard) effect by not clustering with the existing residences as required and placing the proposed residence in a large open space not shielded by existing vegetation. This hop-scotch (or checkerboard) effect is very evident on the aerial image and the proposed site plan of the staff report pages 11 and 22.

The subject parcel is located at the center of a 14-acre, 5-lot subdivision and is the last lot to receive an entitlement for a house (See **Exhibit 6, pg. 1**). There are two parcels in the subdivision directly to the west of the subject parcel between the parcel and the Haul Road, one that abuts the southern half of the property and one that abuts its northern half. As stated previously, the County already approved a residence on the northwestern parcel under CDP No. 31-2009 in May 2010 that extends just as far north as the subject development (See **Exhibit 6,**

pg. 4 for a site plan of the approved residence). The house has not yet been constructed, but the County has granted two one-year renewals for the CDP, the most recent of which expires in May of 2015. Even if no further CDP renewals are granted, the configuration of the northwestern lot and development constraints such as the presence of wetlands on portions of the lot limit any future development to the northern side of the lot along the northern side of the subdivision. **Exhibit 6, pg. 5**, which was originally included as an exhibit in the County staff report, shows the approved building envelopes for the subject and neighboring parcels on one map. As this map illustrates, the subject development will be sited at the center of the residential subdivision and will not extend any further north or south than the other existing and approved house sites. Thus in the context of the subdivision, the subject development will not appear at the center of an open area, but rather at the center of a larger development, clustered with other approved residences. Because the house on the northwestern parcel has not yet been built, aerial images of the area make the new development appear more hop-scotch than it will be.

The appellants proffer an alternative feasible building site on the southern half of the subject parcel. Approving development in this location, however, will not lessen the visual impact of the development when viewed within the wider context of the subdivision. The home site approved on the northwestern parcel will break up the open space on the northern half of the subdivision. As approved, the subject development does not encroach any further northward into the adjacent 18-acre open space area of the adjoining undeveloped parcel than this previously approved development within the subdivision. In addition, when viewed as a whole, the residences within the subdivision are sited near existing vegetation, as the building footprints are clustered between a riparian feature to the west, a wooded area to the south, and an intermittent row of young trees and shrubs along Meghan Lane to the north.

In summary, there is a high degree of factual and legal support for the local government's decision that the project as approved is consistent with the siting requirements of LCP Policy 3.5-4. In addition, as the subject lot is the last lot within the previously approved 1994 five-lot subdivision to be approved for development of a single family residence and as a single family residence on the adjoining parcel to the northwest has already been approved in a similar location relative to the large open lot to the north and the wooded area to the south of the subdivision, the precedential value of the County's decision to approve the development is relatively low. Therefore, the Commission finds that the contention that the approved house is inappropriately sited to protect visual resources does not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP or the public access policies of the Coastal Act.

Location Inconsistent with Underlying Subdivision Permit

The appellants next assert that the approved location of a single-family residence on the northern half of the subject parcel is inconsistent with an underlying subdivision permit, suggesting that, during the subdivision approval process, a precise building envelope for a future residence was designated on the southern half of the subject parcel. As previously discussed, the subject parcel is one of four new parcels that were created under a five-lot subdivision approved by the County Planning Commission in 1994 (MS #23-92). According to the appellant, the plan to locate the future residence on the southern section of the subject parcel was a crucial feature in the approval of the subdivision in order to ensure the compliance of future development with those sections

and policies of the LCP requiring the minimization of visual impacts and protection of public views in designated highly scenic areas.

There is no evidence in the staff report, conditions of approval, Planning Commission hearing minutes, tentative map, or final parcel map for the subdivision that a future building footprint was designated for the subject parcel at the time of subdivision. The County staff report for the subdivision (dated March 3, 1994) includes a brief section on aesthetics that notes that the project is within a designated highly scenic area, quotes in relevant part LCP Policies 3.5-1, 3.5-3, and 3.5-4, and concludes, "Compliance with Condition Number 12D will address concerns of the 'highly scenic' resource impacts" (See **Exhibit 10, pg. 28**). Condition 12 states:

The subdivider shall prepare an "Additional Information Sheet" and Exhibit map to be recorded with the parcel map which shall contain:

- A. A map depicting a minimum 50 foot buffer from the edge of the riparian vegetation along the unnamed stream(s) as recommended in the Botanical Survey prepared by Gordon McBride, Ph.D., on file with Planning and Building Services. A notation shall state that "No development shall be allowed within the buffer area identified on this map."
- B. A map depicting the 50 foot corridor setback with a notation stating "Minimum corridor preservation setbacks of 50 feet from the centerline of Highway One."
- C. A map depicting the identified archaeological site with the notation "An archaeological site (CA-MEN 835) was discovered in the western portion of parcels 1 and 2. Prior to any disturbance, the site must be tested by a qualified archaeologist to better define site boundaries. All future development shall comply with Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries."
- D. A notation that "Future development shall be in conformance with criteria for development in 'highly scenic areas' contained within the Coastal Zoning Code." [emphasis added]

The 1994 staff report does not include any mention of future building footprints on the four new parcels or any analysis of how the siting of houses on the parcels would affect compliance with the cited visual resource policies of the LCP. Instead, in finding that the subdivision consistent with the visual resource policies of the LCP, the staff report cites condition of approval 12D, which requires that a notation be included with the recorded parcel map for the subdivision stating, "Future development shall be in conformance with criteria for development in 'highly scenic areas' contained in the Coastal Zoning Code." Condition 12D only requires the notation related to visual resources without any accompanying mapped information such as view corridors or building footprints. The special condition does not explain how the parcels should be developed to be consistent with the LCP's visual resource policies for highly scenic areas; it only reinforces the necessity that future development be found consistent with these policies.

The draft minutes of the Mendocino County Planning Commission's hearing on the subdivision on March 3, 1994 also indicate that the County's decision on the subdivision was not in any way based on designated building footprints for future residences (See **Exhibit 10, pg. 37**).

According to the draft minutes, the subdivider's representative was the only person who mentioned visual impacts at the hearing. The draft minutes, in relevant part, state:

Mr. Jack Tubbs, representing the application, spoke in support of the project. He discussed visual aspects of the project and found that it is not necessary to require building envelopes. He requested that siting of the structures be determined at the permit stage for the residences.

A tentative subdivision map was included as an exhibit to the 1994 County staff report and was later updated on April 1, 1994 (See **Exhibit 6, pg. 2**). Neither version of this tentative map includes future building footprints. This tentative subdivision map does show a number of restrictions on the siting of future development, including an easement around an existing drain pipe; an archaeological sensitive site; 50-foot buffer zones around two unnamed watercourses; the proposed Meghan Lane road easement; and proposed leach fields and replacement leach fields for each of the four new lots. The map clearly shows some areas where future development cannot be sited, but does not identify building envelopes. While there is more room on the southern half of the property for a house, the applicant has found a viable building envelope on the northern half of the property that avoids the different easements, infrastructure, and other development constraints and meets the requirements of the LCP.

A final parcel map dated May 1995 was recorded with the County in fulfillment of Special Condition 12 above (See **Exhibit 6, pg. 1**). While this recorded parcel map includes verbatim the notation required by Condition 12D, like the tentative subdivision map, it does not include mapped building footprints.

In summary, the staff report, conditions of approval, hearing minutes, and maps for the subdivision all indicate that the County did not require that future residences be sited in any particular location on each lot.

The appellants also state that the applicant for the subdivision, Jean Jay Gray, intended the future house to be located on the southern section of the subject parcel to reduce its public visibility. The appellants have submitted as evidence an email dated December 14, 2014 from Jean Jay Gray in which she asserts that no home was ever intended or allowed to be placed on the northern side of the subject parcel (See **Exhibit 10, pg. 25**). While it may have been Ms. Gray's intent at the time of the subdivision that the future home on Parcel 3 be placed on the south side of the parcel, no building footprint was established in the findings, conditions of approval, or approved parcel map for the subdivision. Therefore while the placement of a single-family residence on the northern half of the parcel may conflict with the intentions of the subdivider, it does not conflict with any requirements of the subdivision permit.

Incorrect Environmental Review

Mendocino County Planning and Building Services granted the subject project a Class 3 categorical exemption pursuant to Section 15303 of the California Environmental Quality Act (CEQA) Guidelines which exempts new construction of small structures, including one single-family residence and accessory structures. The project will establish a single family dwelling on

a site located within the Rural Residential zoning district, where a single family dwelling is a principally permitted use.

The appellants allege that the subject project does not qualify for a CEQA Class 3 exemption because it entails a number of circumstances listed under CEQA Guideline 15300.2 under which Class 3 exemptions are inapplicable (See Appendix D for applicable CEQA guidelines). Among other circumstances, CEQA Guideline 15300.2 prohibits the use of a categorical exemption when (a) the project may impact an environmental resource of critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; (b) the cumulative impact of successive projects of the same type in the same place, over time is significant; (c) there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; and (d) the project may result in damage to scenic resources within a highway officially designated as a state scenic highway. First, the appellants argue that because the subject project is in a highly scenic area that is designated and mapped in the certified Mendocino County LCP, the project may impact a designated, mapped, and officially adopted environmental resource of critical concern and therefore cannot be categorically exempt pursuant to CEQA Guideline 15300.2(a). Second, the appellants argue that the project cannot be categorically exempt pursuant to CEQA Guideline 15300.2(b) because its adverse visual impacts may have a cumulatively significant impact when analyzed in conjunction with the other three approved houses on parcels 1, 2, and 4 of the subdivision. Third, the appellants argue that (1) the decision to site the subject development on the northern half of Parcel 3 when it was originally sited within the southern section of the parcel in the subdivision tentative map and (2) the dedication of a public access trail within close proximity to the project since the approval of the subdivision have both increased the project's visual prominence since the subdivision was approved in 1994 and therefore warrant unusual circumstances pursuant to CEQA Guideline 15300.2(c) for which a categorical exemption cannot be used. Finally, the appellants argue that the project's visibility from a scenic highway disqualifies it for a categorical exemption under CEQA Guideline 15300.2(d). The appellants therefore contend that the County must perform an initial study under CEQA to determine whether the subject development would have significant adverse impacts.

Coastal Act Section 30603(b)(1) limits the grounds for an appeal to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. The contention that the project did not qualify for a categorical exemption and therefore did not have the correct environmental review does not allege an inconsistency of the project as approved with the certified LCP or the public access policies of the Coastal Act. Rather, the appellants allege that the CDP 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.

E. 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. 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 December 2, 2014, the Mendocino County Board of Supervisors approved Coastal Development Permit (CDP) No. 7-2014 authorizing the construction of a single-family residence at 33041 Meghan Lane.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a CDP 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 LCP and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located: (1) between the sea and the first public road paralleling the sea; and (2) within a designated "highly scenic area," which is a type of sensitive coastal resource area.

Between the First Public Road and the Sea

The approved single-family residence is located on the west side of Highway One in Mendocino County in a location where 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 Pacific Ocean, it is appealable to the Commission pursuant to Section 30603(a)(1) of the Coastal Act.

Within a Sensitive Coastal Resource Area

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

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

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*

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

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP). Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

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

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission. The ability of local governments to designate SCRAs in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAs (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan)). The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRAs did not have the effect of preventing local governments from designating SCRAs through the LCP process. If the Commission's decision not to designate SCRAs rendered the Coastal Act provisions that relate to SCRAs moot, the

Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRAs.

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

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

The appeal of Mendocino County Coastal Development Permit No. CDP No. 7-2014 was accepted by the Commission in part, on the basis that the project is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Land Use Map 13, "Fort Bragg Area," designate the area where the property is located that is the subject of Mendocino County Permit No. 7-2014 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

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

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County's approval of local Permit No. CDP No. 7-2014 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

APPENDIX B
Substantive File Documents

Mendocino County Local Coastal Program

Appeal File No. A-1-MEN-14-0072, including local record for Mendocino County Coastal Development Permit No. 7-2014

Post-Cert File No. 1-MEN-03-254 (for Mendocino County CDP # 75-2003)

Post-Cert File No. 1-MEN-09-188 (for Mendocino County CDP # 31-2009)

Post-Cert File No. 1-MEN-10-005 (for Mendocino County CDP # 34-2010)

Post-Cert File No. 1-MEN-10-016 (for Mendocino County CDP # 2-2010)

Report for Coastal Development Minor Subdivision 23-92 (March 3, 1994) and Mendocino County Planning Commission Minutes (Draft) from March 3, 1994.

APPENDIX C
Mendocino County LCP Policies Regarding Visual Resources
(Emphasis added)

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

... ..

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

LUP Policy 3.5-3 states in applicable part:

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

-
- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

... ..

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-4 states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near

the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

... ..

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area.

... ..

LUP Policy 3.5-5 states in applicable part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

... ..

LUP Policy 3.5-15 states in applicable part:

... ..

Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible.

Coastal Zoning Code (CZC) Section 20.504.010, "Purpose," states in applicable part:

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. (Ord. No. 3785 (part), adopted 1991)

CZC Section 20.504.015, "Highly Scenic Areas," states in applicable part:

(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:

... ..

(2) Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusion of certain areas east of Highway 1.

... ..

(C) Development Criteria.

- (1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.
- (2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.
- (3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.
- (4) All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.
- (5) Buildings and building groups that must be sited in highly scenic areas shall be sited:
 - (a) Near the toe of a slope;
 - (b) Below rather than on a ridge; and
 - (c) In or near a wooded area.
- (7) Minimize visual impacts of development on terraces by the following criteria:
 - (a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;
 - (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;
 - (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;
 - (d) Design development to be in scale with rural character of the area.
- (10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.
- (13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991).

CZC Section 20.504.020, "Special Communities and Neighborhoods," states in applicable part:

... ..

(D) *The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.504.035, "Exterior Lighting Restrictions" states in applicable part:

- (A) *Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.*
- (1) *No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.*
 - (2) *Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.*
 - (3) *Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.*
 - (4) *Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.*
 - (5) *No lights shall be installed so that they distract motorists.*