

CALIFORNIA COASTAL COMMISSION

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Filed: November 13, 2000
49th Day: Waived
Staff: Jim Baskin
Staff Report: February 2, 2001
Hearing Date: February 16, 2001
Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: **A-1-MEN-00-051**

APPLICANT: **Bonham Investment Company**

AGENT: Bud Kamb

PROJECT LOCATION: Approximately 2½ miles north of the town of Gualala, situated on the west side of County Road No. 526 (former Highway 1), Mendocino County, APNs 144-170-01& 144-140-03.

PROJECT DESCRIPTION: Boundary line adjustment to re-configure three (3) parcels recognized by Certificate of Compliance #CC 29-98. The existing parcels are ±5.3 (Lot #1), ±21.2 (Lot #2), and ±8.7 (Lot #3) acres in size. As proposed, ±6.35 acres of Lot #2 and ±0.08 acres of Lot #3 would be combined with existing Lot #1, and ±8.43 acres of Lot #2 would be combined with existing Lot 3 resulting in an ±11.66-acre Lot #1, a ±6.4-acre Lot #2, and a ±17.13-acre Lot #3.

APPELLANT: **Peter Reimueller, Friends of Schooner Gulch,**

SUBSTANTIVE FILE: 1) Mendocino County CDB No. 19-2000; and
DOCUMENTS 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

The project as approved by the County of Mendocino consists of a boundary line adjustment to re-configure three lots on property along the western side of County Road No. 526, the former route of Highway One, approximately 2½ miles north of the town of Gualala. The subject property encompasses much of the coastal headland known as "Bourns Landing." Under Certificate of Compliance No. 29-98, issued by the County on February 9, 1999, a total of three parcels were legally recognized at the site. The boundary line adjustment would reconfigure the three legal parcels in a manner that alters the location and amount of potential future building sites and raises substantial issues of conformance of the project as approved with LCP policies addressing the protection of environmentally sensitive areas and locations appropriate for development of visitor-serving facilities. This local action could therefore adversely affect the ability of future development on the parcels to be found fully consistent with the LCP and the access and recreational policies of the Coastal Act.

Specific contentions raised in the appeal include:

- An investigation for the potential existence of public coastal access prescriptive rights, following the required methodology identified in the certified LCP, was not conducted, contrary to LCP requirements;
- No requirement for dedication of vertical or lateral accessways and parking support facilities was applied to the project, contrary to LCP requirements;
- Further examination of the Certificates of Compliance that recognize the three parcels proposed to be adjusted may show that they were not legally created;
- The project is not a lot line adjustment, but actually a merger and resubdivision;
- The County redesignated the boundaries of the Visitor Accommodations and Services combining zone district applied to the project site without holding properly noticed public hearings;

- Negative impacts to the Highly Scenic Area in which the project is situated would result from the County approving the project and not having conducted required analysis for consistency of potential future development with visual resource policies;
- The County did not require that certain biological studies be performed to ascertain the presence of wetlands or other environmentally sensitive habitat areas on all portions of the project site;
- The County did not require the recordation of a deed restriction prohibiting the construction of seawalls as a condition of project approval, contrary to LCP requirements;
- The project application was incomplete and did not meet LCP filing requirements in that only two Assessor Parcel Numbers (APNs) were disclosed although a total of three parcels are involved in the boundary line adjustment;
- The County did not refer the project application to the Gualala Municipal Advisory Council for their consideration and input; and
- The County limited full public participation by not providing full public notice of the project hearing, as required by the LCP.

Staff recommends that the Commission find that the development as approved by the County raises a substantial issue of conformance with the provisions of the certified LCP addressing the amendment of zoning designations and/or determinations regarding uncertain zone boundaries. The County's land use and zoning maps designate the site with a Visitor Accommodations and Services - Inns, Hotels, or Motels, 20 Units Maximum (:*2C) combining zone. These kinds of designations were applied to various properties on the County's Land Use Plan Maps to allow for the development of inns and other visitor accommodations on non-commercial properties where such facilities would be particularly desirable and appropriate. The designation for the subject property was originally applied at a time when it was thought that the entire property consisted of just one parcel. As a condition of the project approval, the County required that a note be placed on the deeds for the adjusted parcels stating that the combining zone designation is restricted to the area corresponding to the proposed northerly Parcel 1.

Although LCP policies require that the County conduct hearings and give prescribed public notice for zoning amendments and/or determinations regarding uncertain zoning boundaries, no such hearings were conducted either separately or concurrently with the hearing on the subject boundary line adjustment. Furthermore, as the re-designation of the location of the Visitor Accommodations and Services combining zone would greatly limit options for siting a visitor accommodation where it would not adversely affect public access, visual resources, and environmentally sensitive habitat areas, a substantial

issue is also raised with respect to conformance with the LCP policies and processes for the protection of coastal resources.

Staff recommends that the Commission find that the project as approved also raises a substantial issue of conformance with the certified LCP policies regarding requirements for environmentally sensitive resource investigations. Although a botanical survey was conducted for the project, its scope did not include the southern-most Parcel 3. Instead, the County required that a deed note be recorded stating that future development on the southern parcel would be required to prepare a botanical study and abide by County policies for the protection of environmentally sensitive habitat areas that may be found to occur on the property.

The County's action does not fully implement the requirements of the certified LCP that surveys of the extent of environmentally sensitive areas and the presence of adequate building sites located outside of any elated buffer areas be conducted prior to creation of lots by subdivision or boundary adjustment. Deferring studies to the time when development is proposed could result in the creation of a lot comprised entirely of environmentally sensitive area or that does not have an adequate building site. Such a outcome could place the County or the Commission in the situation of approving future site development that, while limitable to the least environmentally damaging extent and location could nonetheless have direct or indirect impacts to environmentally sensitive areas on the parcel. Therefore, the project as approved by the County raises a substantial issue of conformance with the LCP policies regarding the requirements for biologic investigations to determine the extent of ESHAs, establish buffers areas, and determine that adequate building sites exist to accommodate future development on all parcels resulting from land divisions and lot line adjustments.

Staff recommends that six of the other contentions raised in the appeals regarding: (1) the manner by which prescriptive public access rights were investigated and the lack of a requirement for dedication of access easements; (2) the legality of the parcels being adjusted or whether the project is actually a merger and resubdivision of land; (3) effects of future development on scenic resources; (4) the lack of a deed restriction on future shoreline protection structures; (5) the completeness of the application; and (6) not referring the application to an advisory board; and, do not raise a substantial issue of conformance of the project as approved with the LCP. Staff further recommends that the Commission find that one of the contentions raised in the appeal is not valid grounds for appeal, in that it raises concerns that do not allege inconsistencies with either the public access and recreation policies of the Coastal Act or the policies and standards of the certified LCP. This contention alleges that the County did not refer the project to the Gualala Municipal Advisory Council for review.

Staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the project can be found consistent with

environmentally sensitive habitat area policies of the certified LCP. A botanical survey is needed for the southern portion of the project site to establish that future development of all of the parcels as adjusted would have adequate building sites located outside of any applicable ESHA and their buffers, as required by LCP policies.

The motion to adopt the Staff Recommendation of Substantial Issue is found on page 8.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within specific geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

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 or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because: (1) it is located between the sea and the first public road paralleling the sea; (2) it is within 300 feet of the mean high tide line and top of the seaward face of a coastal bluff; (3) it is not a principally permitted use; and (4) it is located in a sensitive coastal resource area.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to 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. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo*

hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

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.

2. Filing of Appeal.

The appellant filed an appeal (Exhibit No. 7) to the Commission in a timely manner on November 13, 2000 within 10 working days of receipt by the Commission on November 13, 2000 of the County's Notice of Final Action.

3. Hearing Opened and Continued / 49-Day Waiver.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. In accordance with the California Code of Regulations, on November 21, 2000, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. However, the County permit file information had only just been requested and had not yet been received as of the day of the mailing of staff reports to the Commission and interested parties on November 28, 2000. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question for the Commission's December meeting agenda. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, the Commission opened and continued the hearing on December 15, 2000.

The Commission's usual practice is to continue the hearing to the first Commission meeting for which a staff recommendation could be prepared and mailed after receipt of the local record. In this case, the local record was received in time for Commission staff to schedule the continued hearing for the January meeting. However, the applicant indicated that they would prefer that the continued hearing be scheduled for the February Commission meeting and on December 19th submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49-days from the date of the appeal. The 49-Day Waiver was received within 49 days after the filing of the appeal.

STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-00-051 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-00-051 presents 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.

I. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to approve the development. The appeal was received from Peter Reimuller representing the organization Friends of Schooner Gulch. The project as approved by the County consists of a boundary line or lot line adjustment to re-configure three lots along the western side of County Road No. 526 (former alignment of Highway One) 2½ miles north of the unincorporated town of Gualala. The adjustment would reconfigure the existing parcels, ranging from approximately 5.3 acres to 21.2 acres in size, to create three parcels ranging from approximately 7.4 acres to 17.13 acres in size. The appellants' contentions are summarized below, and the full text of the contentions are included as Exhibit No. 6.

The appeal raises contentions involving inconsistency with the County's LCP policies regarding public access, rezoning procedures, visual resources, environmentally sensitive habitat areas, and geologic hazards. The appellants cite further inconsistencies with the County's LCP policies regarding the completeness of development project applications, referrals of applications to advisory boards, providing adequate public hearing processes and noticing for considering the merits of the boundary adjustment and rezoning the property. In addition, the appellant asserts that the lots being adjusted may not be legally recognized as three separate parcels. Further, the appellants assert that the proposed adjustment of the lot boundaries is too substantial a reconfiguration to be considered a boundary line adjustment and contends that the project actually constitutes a merger and resubdivision of land. The appeal can be structured in terms of nine basic contentions, as follows:

1. Public Access.

The applicant asserts that potential prescriptive rights for public access may exist on the subject property for access to its headlands, beaches and cliffs. Accordingly, the appellants contend that the project as approved did not include a review for the existence of prescriptive rights and require dedication of either a vertical or lateral accessway or development of associated parking support facilities as required by the LCP.

The appellant cites the following Coastal Act (PRC) and Land Use Plan (LUP) policies, and Coastal Zoning Code (CZC) sections as the basis for the approved project being inconsistent with the prescriptive rights of public access provisions of the certified LCP: PRC §30211, LCP Chapter 3.6, LUP Policies 3.6-27 and 4.12-16, and CZC §20.528.030.

2. Lot Boundary Adjustments vs. Land Divisions / Legality of Parcels Being Adjusted.

The appellant questions the legal status of the three parcels approved for boundary adjustments. The appellant asserts that further review of the Certificate of Compliance, the document that recognizes the three parcels proposed to be adjusted, may show that the parcels were not legally established. Furthermore, the appellants assert that the project is actually a merger and re-subdivision of land rather than a lot line adjustment. Accordingly, the appellant claims that the project is subject to the requirements of the Coastal Land Division Regulations of the Zoning Code.

The appellant cites the following CZC section as the basis for the approved project being inconsistent with the provisions of the certified LCP regarding lot legality, boundary line adjustments, and mergers and resubdivisions: CZC §§20.524.025 *et seq.*

3. Rezoning Procedures / Zoning Designation Determinations.

The appellant maintains that the County determined that a Visitor Accommodations and Services – Inns, Hotels, and Motels, 20 Units Maximum (:*2C) combining zoning

designation applies to a precise location, adjusted Parcel 1, as part of the administrative action on the permit for the boundary line adjustment without conducting a public hearing for such proceedings as required by the LCP.

4. Visual Resources.

The appellant also contends that the project as approved by the County will negatively impact the designated Highly Scenic Area in which it is located. The appellant asserts that the project as approved is inconsistent with LCP policies requiring that the consistency of future development with visual protection policies be considered for all divisions of land, including boundary line adjustments, located in such designated areas.

The appellant cites the following LUP policies and CZC sections as the basis for the approved project being inconsistent with the visual resources provisions of the certified LCP: LUP Policy 3.5-3, CZC §§20.504.015, 20.524.020(B)(7) & (13).

5. Environmentally Sensitive Habitat Areas.

The appellant contends that the project as approved is inconsistent with LCP policies requiring that supplemental investigations as to the presence and extent of environmentally sensitive habitat areas be conducted prior to approval of any proposed development within an area of known or probable environmental sensitivity. The appellant states that environmentally sensitive area or botanical studies study should have been conducted as part of the review of the development and suggests that wetlands may exist on portions of the project site.

The appellant cites the following CZC sections as the basis for the approved project being inconsistent with the environmentally sensitive habitat provisions of the certified LCP: CZC §§20.496 *et seq.*, 20.532.060 *et seq.*, & 20.532.100(C)(1)(b).

6. Geologic Hazards.

The appellant contends that the project as approved is inconsistent with LCP policies that require that a prohibition against the building of future seawalls be required. The three parcels being adjusted are bluff top lots located west of the former alignment of Highway One (County Road No. 526).

The appellant cites the following LUP policies and CZC sections as the basis for the approved project being inconsistent with the geologic hazards provisions of the certified LCP: LUP Policies 3.4-7, 3.4-9, 3.4-12, 3.5-1, 3.5-4, CZC §§20.500.010, and 20.504.015(C)(1) & (3).

7. Completeness of Application.

The applicant asserts that the project as approved conflicts with the standards of the LCP that development applications contain certain specified information such that required findings may be made to approve the project. The appellants cite the application only stating two Assessor Parcel Numbers (APNs) for the three parcels being adjusted and assert the application was thus incomplete.

The appellant cites the following CZC section as the basis for the approved project being inconsistent with the LCP provisions concerning the completeness of an application: CZC §20.532.095.

8. Adequacy of Public Hearing Notices.

The appellant contends that the project as approved is inconsistent with LCP policies that require the County's Coastal Permit Administrator to notify the public of a hearing on a pending development project application. The appellant claims that, as a party with known interests in development within the project area, the appellant should have received a mailed notice of the hearing regarding the boundary line adjustment.

The appellant cites the following CZC section as the basis for the approved project being inconsistent with the noticing provisions of the certified LCP: CZC 20.536.010.

9. Referral to Advisory Agencies.

The appellant contends that the project as approved is inconsistent with the LCP policies that direct how development applications are to be processed. Specifically, the appellant asserts that the proposed development should have been forwarded to the Gualala Municipal Advisory Council (GMAC), a citizen review board established by the County Board of Supervisors.

B. LOCAL GOVERNMENT ACTIONS

On October 27, 2000, the Coastal Permit Administrator for the County of Mendocino approved Coastal Development Boundary Line Adjustment #19-2000 (CDB #19-2000) for the subject development. 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 by Commission staff on November 13, 2000 [see Exhibit No. 6].

The County attached to its coastal permit a number of special conditions, including requirements that new deeds describing the parcels' perimeter boundaries as adjusted be recorded. In addition, the recorded deeds were required to contain notes stating that: (1) the Visitor Accommodations and Services – Inns, Hotels, Motels, 20 Units Maximum

(*2C) combining zone designation is restricted to adjusted Parcel 1; (2) delineation of the boundaries of sand dunes and riparian vegetation occurring on the property as identified within the botanical survey prepared for the project shall be a requirement of future development on adjusted Parcel 1; (3) future development on adjusted Parcel 3 shall require the completion of a botanical survey to identify any environmentally sensitive habitat areas (ESHAs) that may occur on the parcel; (4) future development on adjusted Parcels 1 and 3 will be subject to the restrictions for protecting ESHAs identified by the botanical surveys; (5) future development of any of the adjusted parcels shall be subject to the policies and development criteria for highly scenic areas as set forth in the LUP and Coastal Zoning Code; and (6) dedication of public access and parking as depicted on LUP maps may be required of future development of the adjusted parcels.

C. BACKGROUND, PROJECT AND SITE DESCRIPTION

1. Background.

The three lots involved in the proposed boundary adjustment were recognized as legal parcels by Certificate of Compliance No. 29-98, issued by the County in 1999 (see Exhibit No. 7). The County's issuance of the Certificate of Compliance occurred six years after the LCP was certified by the Commission in 1993. At the time of the Commission's actions on the LCP, the land use and zoning maps depicted the subject property as consisting of only one parcel for which only one land use and zoning designation, Rural Residential – One Unit Per 5 Acres, with Planned Unit Development and Visitor accommodations and Services – Inns, Motels, and Hotels, 20 Units Maximum Combining Zones (RR:L-5:PD:*2C) was assigned.

The certificate was issued pursuant to Section 66499.35(a) of the Government Code, indicating that the parcels were legally created under the Subdivision Map Act or a local ordinance. The subject parcels were initially created by patent deeds issued by the Department of Interior's General Land Office during the period of 1870 through 1892. Portions of the original patents were subsequently conveyed for state highway construction purposes and to other private parties. The resulting subject parcels correspond to those lands above the high tide line and lying west of County Road No. 526 comprised as follows (from north to south):

Parcel 1 (APN 144-170-03): The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 20;
Parcel 2 (western portion of APN 144-170-01): The NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20; and
Parcel 3 (eastern portion of APN 144-170-01): The NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20, all located in Township 11 North, Range 15 West, Mount Diablo Base and Meridian.

Certificate of Compliance No. 29-98 was subsequently recorded in Book of Records 1421 at Page 321, Mendocino County Recorders Office on February 9, 1999 [see Exhibit No. 8]. As the subject parcels were created prior to the effective date of Proposition 20,

the Coastal Initiative, no coastal development permit was required to create the existing parcels.

2. Site and Project Description.

The three parcels involved in the proposed boundary line adjustment are located on the west side of County Road No. 526 (former alignment of Highway 1), approximately 2½ miles north of the unincorporated town of Gualala. The subject property is approximately 35 acres and encompasses much of the landform known as Bourns Landing. The site consists of a gentle seaward sloping terrace terminating in several headland blufftops rimmed for more than a mile by steep cliffs that drop roughly 50 feet to the ocean. Adjacent to the site on the north lies Cook's Beach, a small sandy crescent-shaped inlet situated at the mouth of Big Gulch Creek (Glennen Gulch). To the south of the site, the coastline continues on as the rocky cliffs off of Wilson Field, a former airfield [see Exhibit No. 2].

The parcels are generally open in character with a plant covering of upland grasses and ruderal forbs including, lupines (Lupinus sp.), yarrow (Achillea borealis), buckwheat (Eriogonum latifolium), sow thistle (Sonchus oleracea), and wild rose (Rosa gymnocarpa). Several brushy patches of coyotebrush (Baccharis pilularis), bishop pine (Pinus muricata), wax-myrtle (Myrica californica), and coast silktassel (Garrya elliptica) lie across Parcels 2 and 3 in linear thickets, as does a windrow of Monterey cypress (Cupressus macrocarpa) in the northeast corner of Parcel 2. The northern portion of Parcel 1 tapers down to a relatively narrow band of land comprising the densely vegetated riparian corridor between the old highway and Cook's Beach. Typical plant cover in this area includes, red alder (Alnus rubra), Douglas-fir (Psuedotsuga menziesii), California blackberry (Rubus ursinus), salal (Gaultheria shallon), and wild cucumber (Marah oreganus).

Two of the three parcels are vacant, with structural remnants of the former Mar-Lyn Planing Mill remaining on existing Parcel 2 (adjusted Parcel 3). These mill relicts include the former mill manager's cabin, now extensively renovated into a modest single-family residence, and a former shop building that has been modified into a garage/outbuilding. In addition to these improvements, several areas on the site have been graded and cleared for log decks or contain the remains of concrete foundations for the mill's water tank and saw works.

The project site lies within the LCP's Iversen Road to Sonoma County Line Planning Area. All three parcels are planned and zoned Rural Residential – 1 Unit Per 5 Acres, with Planned Unit Development and Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zones (RR:L-5:PD:*2C) [see Exhibit Nos. 4 and 5]. As noted previously, the Land Use Plan and Zoning designations were applied prior to County action on the Certificates of Compliance, at a time when the County believed the subject property consisted of just one parcel.

The subject property is within a highly scenic area as designated on the Land Use Map. With the exception of the residence and accessory structure on Parcel 3, the parcels are largely undeveloped. The project site is a gently seaward-sloping uplifted marine terrace with scattered tree and brush cover. Topographic relief is limited to several minor rises and broad swales of less than ten feet in elevation difference. The western edge of the property consists of an ocean blufftop with steep cliffs that drop roughly 50 feet to the ocean. From County Road No. 526 (former alignment of Highway One), dramatic views are afforded across the northern and southern portions of the property to the ocean and the headlands from Fish Rock on the north to Robinson Point to the south.

Parcel 1, the first parcel involved in the boundary line adjustment (APN 144-170-03), is a roughly triangular shaped 5.3±-acre lot that comprises the northern third of the Bourns Landing terrace together with the narrow band of riparian forest between the county road and the east side of Cook's Beach. The roughly 3-acre bluff-top portion of the parcel is generally flat open grassland affording views of the ocean from the adjacent county road and along a short segment of Highway One.

Parcel 2, the second parcel involved in the boundary line adjustment (western portion APN 131-010-12), covers approximately 21.2 acres and borders the southern boundary of the first parcel. The second parcel extends another approximately 1,000 feet farther to the south and includes most of the Bourns Landing coastal terrace pasture. Given the depth of this parcel and the presence of mature vegetation, views from the adjacent county road are limited to distant horizon blue-water vistas. The western perimeter of Parcel 2 forms two prominent headlands, the northerly one comprises a broad open area, while its southern companion is more craggy, connected to the remainder of the terrace by only a narrow, actively eroding neck of blufftop. This headland was the site of the former mill's "teepee burner" incinerator.

Parcel 3, the southerly-most lot involved in the boundary line adjustment (eastern portion APN 131-010-12), is an 8.7-acre area lying along the eastern side of Parcel 2. This parcel comprises the southern flank of the Bourns Landing and is crossed by the main access road to the residence on Parcel 2. In addition to having topography and cover similar to that found on Parcel 2, the parcel is crossed by a drainage course running roughly parallel to the access drive. Views across this parcel from the adjacent county road are generally oriented to the south and southwest and include the offshore stacks of Bourns Rock and Robinson Reef.

The proposed boundary line adjustment would adjust the parcels in a way such that significant portions of Parcel 2 would be added to the adjoining lots roughly doubling the existing sizes of Parcels 1 and 3 to 11.66 acres and 17.13 acres, respectively. Parcel 2 would be reduced in size by over two-thirds, resulting in a very narrow wedge-shaped 6.40-acre lot [see Exhibit No. 3]. According to the applicant's agent, the purpose of the boundary adjustment is to configure the parcels such that adequate room is provided for future development of a visitor serving facility on the northern portion of the property

and to place the southern half of the site's 35.2 acres onto its own parcel for estate planning purposes.

No development other than the boundary line adjustment is currently proposed.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

As discussed below, one of the contentions raised in the appeal does not present potentially valid grounds in that it does not allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. All of the other contentions raised by the appellant are valid grounds for appeal under Section 30603 and are discussed further, below.

1. Appellant's Contentions That are Valid Grounds for Appeal.

Eight of the nine points of contention raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP and/or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (1) the protection of potential public coastal access prescriptive rights; (2) the legality of the parcels being adjusted and whether the project is actually a merger and resubdivision of land; (3) requirements for noticed public hearings for amending zoning district boundaries or determining uncertain zone boundaries; (4) the protection of visual resources; (5) the protection of environmentally sensitive habitat areas; (6) avoidance of geologic hazards; (7) the completeness of the permit application; and (8) the adequacy of the public hearing notices. The Commission finds that two of these seven contentions raise a substantial issue, for the reasons discussed below.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

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

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will

hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to certain allegations (1.a - 1.b below), a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP. As further discussed below, the Commission finds that with respect to the allegations regarding: (a) investigation of prescriptive rights and offers of dedication; (b) assessing the effects of future development on visual resources; (c) prohibiting construction of shoreline protective structures; (d) the completeness of the application; (e) whether the appropriate permitting process was employed; and (f) the legality of the parcels being adjusted, the development as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

a. Allegations Raising Substantial Issue

i. Rezoning Procedures / Uncertain Zoning Boundary Determinations

The appellant maintains that the County's actions on the boundary line adjustment request at its administrative hearing effectively included amendment of the project site's zoning. By applying a condition of approval requiring recordation of a deed note restricting the areal extent of the Visitor Accommodations and Services – Inns, Motels, Hotels, 20 Units Maximum Combining Zone (:*2C) designation to the bounds of the adjusted Parcel 1, the appellant argues that commercial zoning

was applied to a particular land area that had not previously been recognized for such future development. While the County states that their action served to only clarify the extent of an existing zoning combining zone designation, the appellant argues that this action effectively constituted a zoning amendment for which properly noticed public hearings before the Planning Commission and/or the Board of Supervisors as prescribed in the certified LCP were not conducted. The appellant cites LUP Policies 3.7-3, 3.7-4, and 3.7-4.1, and Coastal Zoning Code Sections 20.528.030 as the basis for this issue of appeal.

Summary of LCP Provisions:

LUP Policy 3.7-3 states:

Visitor serving facilities and proposed sites where the Coastal Commission has approved the issuance of permits are designated on the land use maps, and are reserved for those visitor accommodations as defined in Chapter 2. Provision has also been made for the following visitor services: boat launching or rental, visitor-oriented and handicraft shops. Precise intensity of visitor accommodations and development standards shall be specified by zoning regulations so the developments will be compatible with the natural setting and surrounding development. Visitor serving facilities which might occur in commercially designated areas have not been specifically designated, except for the Mendocino Town Plan. (See Appendix 10 for listing of privately operated visitor serving facilities.) [emphasis added]

LUP Policy 3.7-4 states:

*Proposed sites or areas for additional visitor serving facilities are designated and reserved by a number indicating a category of VSF described in this section subject to the granting of a conditional use permit (*C). Precise intensity of the proposed visitor accommodations and development standards shall be specified in the Zoning Regulations and regulated so that the use will be compatible with existing uses, public services and environmental resources. Any visitor serving facility not shown on the LUP Maps shall require an LUP amendment except in Rural Village (RV) and Commercial (C) Land Uses... [emphases added]*

LUP Policy 3.7-4.1 states, in applicable part:

Transference from one location to another of a visitor serving facility designation shown on the Land Use Plan maps shall require a Land Use Plan amendment...

Section 20.304.045 of the Coastal Zoning Code states, in applicable part:

Where uncertainty exists as to the boundaries of any district shown on the zoning maps, the Coastal Permit Administrator shall apply the following rules to resolve such uncertainty:

- ...
- (E) *Where further uncertainty exists, the Planning Commission, upon written request or on its own motion, shall determine the location of the boundary in question, giving due consideration to the location indicated on the zoning map and the purposes set forth in the base zone district regulations.*

Alternately, Chapter 20.548 of the Coastal Zoning Code states, in applicable part:

The purpose of this chapter is to provide procedures to change the boundaries of districts or change any other provisions of this Division. (Sec 20.548.005)

...

Administrative Review. The Planning and Building Services Department shall process the application for amendment through the project review process in accordance with Sections 65800 through 65993 of the Government Code, Sections 21000 through 21176 of the Public Resources Code, Sections 13500 through 13577 and Sections 15000 through 15387 of the California Administrative Code.

Planning Commission Hearing. After Administrative Review, the Planning Commission shall hold a duly noticed hearing on the application for amendment.

Action by the Planning Commission. After the hearing, the Planning Commission shall render its decision in the form of a report incorporating a written recommendation to the Board of Supervisors.

Action by the Board of Supervisors. After holding a noticed public hearing, the Board of Supervisors may approve, modify, or disapprove the recommendation of the Planning Commission...(Sec. 20.548.020(A) - (D))

...
Approval of the application for amendment shall not become effective until the amendment has been approved and certified by the California Coastal Commission. (Sec. 20-548.020(G))

Finally, with regard to boundary line adjustments and the assignment of zoning district designations, Coastal Zoning Code Section 20.524-025(E) states:

A land division or boundary line adjustment shall not result in parcel having more than one (1) zoning district designation, not including combining district designation(s), if such designation would adversely affect environmental resources or agricultural use of the property.

Discussion:

One of the LCP provisions cited by the appellant, Coastal Zoning Code Section 20.524.025(E), cited above, relates to the designation of zoning on parcels resulting from land divisions and boundary line adjustments. It should be noted that this provision was cited in the appeal in conjunction with the appellant's contention regarding the legality of the parcels recognized by the County under its Certificate of Compliance process. By citing this code provision, the appellant has assumed that less than three parcels legally exist at the project site. Thus, the appellant appears to be asserting that the County's action to condition project approval on restricting the extent of the Visitor Accommodations and Services combining zone to the bounds of proposed Parcel 1 would result in a parcel having more than one zone designation as the appellant proposed Parcel 1 is not a separate parcel, but only a portion of a larger lot.

As analyzed further in Staff Report Section I.D.1.b.vi, below, the Commission has determined that the three parcels recognized by the County's Certificate of Compliance process are legally separate. Accordingly, the appeal raises no substantial issue of conformance with Coastal Zoning Code Section 20.524.025(E) as no parcel involved in the boundary line adjustment would have more than one zoning designation.

However, the appellant's contention regarding whether the project as approved by the County was consistent with the LCP procedures regarding zoning boundary determinations is a separate matter. LCP policies provide that visitor accommodation and service facilities can be located outside of commercially designated areas where the County has designated selected sites with an asterisk (*) symbol on the land use maps. When the original land use maps were certified, the County applied such an asterisk to the entire Bourns Landing property, based on the understanding that the property comprised only one parcel. Only later, while investigating the property's chain of title for the requested Certificate of

Compliance, the County subsequently determined that three legal parcels comprised the Bourns Landing site.

In approving the requested boundary line adjustment, the County attached the following Condition Number 6:

A note shall be placed on the deeds and legal descriptions stating that the “*2C” designation is restricted to Parcel 1 as identified on the “Exhibit Map” on file with the Department of Planning and Building Services.

County staff have stated that prior to the title research conducted as part of the Certificate of Compliance process, the County believed that the Bonham property consisted of only one parcel comprising all of the Bourns Landing headland.[†] Later, when three parcels were found to exist, the County concluded that continued application of the designation to all three parcels would provide for the potential development of three separate visitor serving facilities with the potential for as many as 60 inn units being allowed in the area. Realizing that such intensity of development would be excessive for the size of the area its location, and available supporting facilities, the County states it attached Condition No. 6 to clarify the location of the pre-existing Visitor Accommodations and Services – Inns, Hotels, and Motels, 20 Units Maximum Combining Zone (:*2C) that had been previously interpreted to apply over the whole of the project site. In this way, a three-fold intensification of potential commercial use at the site would not result.

Although the rationale behind the County’s action is understandable, and arguably appropriate given conditions at the site, a substantial issue is raised as to whether the action followed established procedure within the certified LCP to accomplish the desired outcome. Coastal Zoning Code Section 20.304.045 is specifically intended to determine the extent of an uncertain zoning district boundary once new information had come to light. Under the provisions of Section 20.304.045, the County’s Planning Commission, on its own volition or by written petition, is to review and decide the exact extent of the zoning designation in question.

[†] Although the Zoning Map [see Exhibit No. 6] includes a line between existing Parcels 1 and 2, County staff have indicated that they have interpreted this mapping feature to represent the “quarter section line” delineating the dividing line between the Northeast Quarter and the Southeast Quarter of Section 20, rather than a property boundary (or the taxation boundary between APNs 144-170-01 and 144-170-03). As the Commission has no knowledge that the County intended to delineate Parcel 1 as a separate legal parcel apart from the combined area of Parcels 2 and 3 on the Zoning Map, the Commission defers to the County’s interpretation that only one lot was previously recognized over which the :*2C designation fully extended.

In making the determination, the Planning Commission is to duly consider the location of the zoning designation's boundary as indicated on the zoning map and the purposes set forth in the base zone district regulations.

Alternately, the certified LCP establishes a formal zoning amendment process within Chapter 20.548 of the Coastal Zoning Code to legislatively "...change the boundaries of [zoning] districts or change any other provisions of this Division." As detailed above, this process is primarily for much more extensive changes in zoning and is correspondingly more complex, involving environmental review, state planning and zoning law procedures, and Coastal Commission certification criteria.

By either method, the Planning Commission's and/or Board of Supervisors actions would be conducted during a noticed public hearing where the public would have the opportunity to give testimony as to the merits of a particular zoning boundary determination or amendment. No such hearing before the Planning Commission pursuant to Sections 20.304.045 or 20.548.005 of the Coastal Zoning Code occurred. By restricting the areal extent of the :*2C combining zone to adjusted Parcel 1 during an administrative hearing whose notice described only action being contemplated on the adjustment of property boundary lines, the Coastal Permit Administrator effectively approved the official location of a zoning designation without a zone boundary determination or LCP amendment.

Though ensuring that a three-fold increase in commercial development entitlements does not occur over what the County interpreted the certified Land Use Plan maps provided for is a laudable land use planning goal, a substantial issue is raised as to whether the process the County followed is consistent with Sections 20.304.045 and 20.548.005 of the Coastal Zoning Code. Moreover, the Commission notes that the physical construction of up to 20 visitor serving inn, hotel or motel units could have significant adverse impacts to a host of sensitive coastal resources, including public accessways, recreational opportunities, marine and water resources, highly scenic areas, and habitat areas, if the development is sited in an improper location on any of the three parcels. By setting the location for the extent of the :*2C combining zone through a permit condition of the permit approving the boundary line adjustment, a substantial issue is raised of consistency of the project as approved with LUP Policy 3.7-4 which states that the *"...precise intensity of the proposed visitor accommodations and development standards shall be ... regulated so that the use will be compatible with existing uses, public services and environmental resources."*

Thus, the Commission finds that given (a) the limited degree of factual and legal support for the local government's decision and (b) the significance of the coastal resources affected by the decision, the project as approved by the County raises a

substantial issue with respect to conformance with the LCP policies regarding determining uncertain zoning boundaries or amending zoning district boundaries, including Sections 20.304.045 and 20.548.005 of the Coastal Zoning Code.

ii. Environmentally Sensitive Habitat Areas

The appellant contends that the presence of environmentally sensitive habitat areas (ESHAs), including wetlands, was not considered or surveyed during the County's review of the project. Accordingly, the full extent of ESHAs, any associated buffer areas, and assurance that adequate building sites exist on all parcels resulting from the boundary line adjustment was not determined as required by the certified LCP. The appellant cites Coastal Zoning Code Sections 20.496.015, 20.532.060, and 20.532.100 as the basis for this appeal issue.

Summary of LCP Provisions:

LUP Policy 3.1-1 states:

The various resources designations appearing on the land use maps represent the best information available at this time and therefore create a presumption of accuracy which may be overcome only with additional information that can be shown to be a more accurate representation of the existing situation than the information that has been used to determine these boundaries. Such showing shall be done in the context of a minor amendment to the land use plan. [emphasis added]

LUP Policy 3.1-32 states:

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

LUP Policy 3.1-7 states:

(A) A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation

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

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

Section 20.496.015 of the Coastal Zoning Code states, in applicable part:

(A) Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:

- (1) The development is proposed to be located on a parcel or proximate to a parcel identified on the land use plan map with a rare and/or endangered species symbol;*
- (2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information;*

- (3) The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.

Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or which have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060, "Environmentally Sensitive Habitat Area – Supplemental Application Procedures..."
[emphases added]

Section 20.532.060 of the Coastal Zoning Code establishes states, in applicable part:

Environmentally Sensitive Habitat Area - Supplemental Application Procedures. Additional project information shall be required for development within an Environmentally Sensitive Habitat Area (ESHA) and may be required for any development within five hundred (500) feet of an ESHA if the development is determined to have the potential to impact an ESHA... Additional requirements may include one or more of the following:

- (A) *Topographic Base Map...*
- (B) *Inundation Map...*
- (C) *Vegetation Map...*
- (D) *Soils Map...*
- (E) *Report of Compliance...*

Section 20.532.100 of the Coastal Zoning Code states, in applicable part:

Supplemental Findings. In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

- (A) *Resource Protection Impact Findings.*

- (1) *Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:*
- (a) *The resource as identified will not be significantly degraded by the proposed development.*
 - (b) *There is no feasible less environmentally damaging alternative.*
 - (c) *All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted...*

Discussion:

The above LCP policies provide for the regulation of new development to protect Environmentally Sensitive Habitat Areas (ESHA). The Mendocino County Coastal Zoning Code Section 20.496.010 defines ESHA's as including wetlands and riparian areas and establishes buffers to protect them. Zoning Code Section 20.496.015(A) states that developments that have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The survey must be approved by the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey must be prepared as described in Section 20.532.060 and include a topographic base map, an inundation map, a vegetation map, and a soils map. LUP Policy 3.1-7 and Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. Section 20.496.020 states that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

Contrary to the appellant's allegation, a botanical survey (Gordon M. McBride, Ph.D., dated June 21, 2000) was conducted for at least portions of the site of the boundary line adjustment project [see Exhibit No. 9]. This study concluded that while no rare or endangered plants or Pygmy Forest Community were discovered on the Bonham property, the site did contain ESHA in the forms of riparian plant community and sand dune habitat areas bracketing Big Gulch Creek (Glennen Gulch) and on Cook's Beach, respectively, on the northern portion of Parcel 1. These areas, however, were not mapped by the botanical investigator. This

decision was based on the rationale that future development would not be allowed on these portions of Parcel 1. As a mitigation measure, the botanist recommended that if future development is proposed on Parcel 1 in the vicinity of the riparian plant community, that the boundary of the riparian ESHA and a suitable buffer area be determined for the area. No provision for the delineation of the extent of sand dune environmentally sensitive areas was recommended in the report as the preparer assumed that no development would be allowed on the beach areas.

The report further explained that proposed Parcel 3 was not included in the botanical survey as the site was already developed with a single family dwelling and no further development was proposed as part of the boundary line adjustment. Similar to the recommendation for the development in or near the riparian plant community on Parcel 1, the report recommended that a botanical survey be required as part of the planning process should any development be proposed on adjusted Parcel 3. The County in turn approved the boundary line adjustment and included Condition No. 7 which reads as follows:

Notes shall be placed on the deeds and legal descriptions stating the following:

- A) "Future development on Parcel 1 as proposed by this Coastal Development Boundary Line Adjustment shall require the delineation of the boundaries of sand dunes and riparian vegetation occurring on the property as identified in the botanical survey dated June 21, 2000, prepared by Gordon E. McBride, Ph.D., on file at Planning and Building Services."
- B) "Future development on Parcel 3 as proposed by this Coastal Development Boundary Line Adjustment shall require the preparation of a botanical survey to identify any environmentally sensitive habitat areas that may occur on the parcel."
- C) "Future development on Parcels 1 and 3 may be subject to the restrictions for the protection of environmentally sensitive habitat areas as identified in botanical surveys prepared for these parcels."

It is possible that future development on Parcel 3 will indeed occur given the small size of the existing residence and its location within only a few feet of the blufftop edge. Present or future owners may someday wish to build a newer, more substantial residence in a more stable location farther away from the bluff edge. Accordingly, there is a practical need to determine whether a suitable

building site will exist on the parcel, as proposed to be adjusted, even though a residence already exists.

County staff and the applicant's agent contend that, at more than 17 acres, adjusted Parcel 3 would undoubtedly contain an adequate building site located outside of ESHAs and any associated buffer areas. In addition, the applicant's agent noted that, since a given site is subject to biophysical changes over time, the usefulness of a particular botanical survey is limited. A change in site conditions at the time that subsequent development is proposed would likely necessitate that the biological setting be reassessed under an updated survey. Accordingly, the agent argues, requiring a botanical survey and wetlands delineation for a boundary line adjustment project for which no physical site development is being proposed would be premature. In conditionally approving the boundary line adjustment in the manner in which it did, the County apparently concurred and concluded that requiring the deed notes cited above was the best means of assuring the protection of ESHA resources.

Arguably, at 17.13 acres, the size of adjusted Parcel 3 is substantial. However, when all known and potential site limitations (i.e., the RR-5 zoning district's 30-foot minimum parcel setbacks, coastal erosion blufftop setbacks, possible hazardous materials contaminated areas associated with the former timber products processing use) are considered, the availability of potential building sites may be substantially constrained. Furthermore, without the full extent of ESHA areas having been determined, it is not possible to conclusively determine that all of the adjusted parcels are not comprised entirely of ESHA and that all parcels being created have an adequate building site. This situation is especially problematic since, during a site visit by Commission staff, the presence of hydrophytic vegetation (i.e., Juncus sp.) indicating the potential presence of wetlands was encountered within 100 feet of the proposed boundary line between Parcels 2 and 3.

Section 20.496.015 of the Coastal Zoning Code states that any development within 100 feet of an ESHA has the potential to impact an ESHA. The section also states that a development proposal that has the potential to impact an ESHA shall be subject to a biological survey. Therefore, as no biological survey for Parcel 3 was required, the Commission finds that there is insufficient factual and legal support for the County's decision that the development is consistent with ESHA protection policies of the certified LCP. Therefore, a substantial issue is raised of the conformance of the project as approved with Coastal Zoning Code Section 20.496.015. Without such a survey to determine the extent of any environmentally sensitive habitat and whether building sites exist outside of such habitat areas and their prescribed buffers, a substantial issue is raised with the requirements of LUP Policy 3.1-32, which states that a lot line adjustment shall not be permitted if any parcel being created does not have an adequate building

site that would allow for development outside of a buffer area conforming to the requirements of LUP Policy 3.1-7.

b. Appellants' Contentions That Do Not Raise a Substantial Issue

i. Public Access

The appellant contends that historical and physical evidence exists to indicate that potential prescriptive rights may be present on the property for access to its headlands, beaches and cliffs. The appellant asserts that given the existence of such evidence, the County neglected to conduct a prescriptive rights investigation as prescribed within the certified LCP. The appellant also maintains that the County action to approve the development without including a condition to require recordation of an irrevocable offer to dedicate a public access easement is contrary to the provisions of the LCP that such easements be required of coastal developments permits for sites designated in the land use plan for coastal access purposes. The appellant cites Coastal Act Section 30211, LUP Policies 3.6-27 and 4.12-16, and Coastal Zoning Code Sections 20.528.030 as the basis for this issue of appeal.

Summary of Coastal Act[‡] and LCP Public Access Provisions:

Coastal Act Section 30210 states that:

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.

‡ The public access policies of the Coastal Act are part of the standard of review in this case because portions of the site are located between the first public road and the sea.

Coastal Act Section 30211 states that:

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 further states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new

development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

LUP Policy 3.6-5 states:

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. [emphasis added]

LUP Policy 3.6-27 states:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's 'Manual on Implied Dedication and Prescriptive Rights.' Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner that minimizes risks to life and property, or (3) such siting is necessary for consistent with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site. [emphasis added]

Note: This policy is implemented verbatim in Section 20.528.030 of the Coastal Zoning Code

Section 4.12-16 of the LUP's Coastal Access Inventory states:

Bourns Landing

Location: 1.5 miles south of Anchor Bay.

Ownership: Private.

Potential Development: Trail along open bluff with long views of coast and shoreline access at small beach; connects to Cooks Beach.

Policy 4.12-16: Offers to dedicate easements for a blufftop trail and shoreline access shall be acquired for that area delineated on the land use plan map consistent with policy 3.6-5.

Discussion:

The project site occupies the large uplifted marine terrace known as Bourns Landing. The property is crossed by several well-worn trails running along the blufftop margins and descending to Cook's Beach through the riparian corridor on Parcel 1. While these features indicate that some access use has occurred along the blufftop and down to the beach, the period in which the access use has occurred, the casual or continuous pattern of access use, and the degree to which such use has been substantial is not known.

The above LCP policies provide for the regulation of new development to protect potential prescriptive rights of public access. Mendocino County Land Use Plan Policy 3.6-27 states that where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." This policy also states that where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of approval.

Section 30211 states, in part, that "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization." Applicants for coastal development permits must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act the permitting agency, either the Commission or the local government where there is a certified LCP, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. If the agency finds that there may be such an interference or effect, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because

the authority to make a final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of an implied dedication are present. The agencies also must consider whether the applicant has demonstrated that the law prevents the area from being impliedly dedicated, even if the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication." The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from along-delayed assertion of rights. The rule establishes a statute of limitation, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a. The public has used the land for a period of five years or more as if it were public land;
- b. Without asking for or receiving permission from the owners;
- c. With the actual or presumed knowledge of the owner;
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- e. The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission or the applicable local government cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission or the applicable local government is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights

may exist, the Commission or the applicable local government must ensure that proposed development would not interfere with any such rights.

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g., permission) are not considered to be a "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to accrue. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore, the required five year period of use need not have occurred prior to March of 1972 in order to establish public rights.

It is important to note that Section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the Statute (March 4, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of Section 1009 or utilization of application procedures set forth in the section is sufficient to establish public rights in the property.

Another section of the Civil Code, Section 813, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent

use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive.

On August 30, 1981, a "Notice of Use by Permission Pursuant to Civil Code Section 813" was recorded at pages 605 – 609 of Book 1324 of Official Records, Mendocino County Recorders Office. This instrument effectively extinguished further recognition of access use through the parcel for purposes of obtaining a prescriptive rights decree through judicial review. Accordingly, if prescriptive rights of public access exist on the property, they would have had to have been established based upon activities occurring during a minimum 5-year period preceding August 30, 1981.

In this case, it is possible that the trails may have resulted solely from public use since 1981 after recordation of the notice. Thus, the mere existence of the trails does not mean that prescriptive rights of public access have accrued over the property. LUP Policy 3.6-27 requires an investigation of potential prescriptive rights whenever "evidence" of historic public use indicates the potential for the existence of prescriptive rights. Furthermore, the parcels as adjusted would be large enough that, even if there were evidence of potential prescriptive rights of public access along the trails on the bluff edge and down to Cook's Beach, future development could be sited where it would not adversely affect such access. The Commission notes that the parcel adjacent to Cook's Beach would actually be expanded in size by the proposed boundary line adjustment, further ensuring that future development could be sited where it would not adversely affect potential prescriptive rights of public access. Therefore, with no compelling evidence indicating that prescriptive rights may have accrued prior to August 30, 1981, when the notice was recorded, the Commission finds that no substantial issue is raised with regard to the conformance of the project as approved with the provisions of LUP Policy 3.6-27 requiring an investigation of potential prescriptive rights when evidence of historic public use exists.

The appellant also raises a contention that the County did not require a dedication for public access as required by LUP Policy 3.6-5. This policy states that an offer of dedication of an easement for public access purposes shall be required prior to the issuance of a coastal development permit where such an easement is delineated in the Land Use Plan. These policies were adopted prior to key case law rulings that imposed limits on the ability of government entities to exact private property for public purposes. In applying the LUP policies and Coastal Zoning Code regulations, the County and Commission are limited by the need to show that the denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring provision of public access facilities, is necessary to avoid or offset a project's impact on existing or potential public access.

In a memo from the County's Coastal Access Coordinator to the Coastal Permit Administrator [see Exhibit No. 11], the issues of prescriptive rights and possible requirements for dedication and improvement of accessway easements and parking lot support facilities were discussed. Though the correspondence indicates some confusion as to precisely what the project entailed [the memo indicates the project to be a "subdivision"], the memo clearly shows that the protection of public access between the first public road and the sea was considered in the review of the project. Further review of the local record indicates that upon subsequent review by the County's Counsel, it was noted that the dedications and access facility improvements discussed in the Coastal Access Coordinator's memo would constitute development exaction for which no *nexus* or connection exists between the effects of the project (i.e., an intensification in the density or intensity of the use of land) and the need for the access facilities such that their dedication or improvement could be legally required. Accordingly, based upon the input from the County's Counsel, none of the access dedications or improvements identified in the Coastal Access Coordinator's memo were required as conditions of approval for the boundary line adjustment project.

As discussed above, no evidence exists that potential prescriptive rights of public access would be adversely affected by the proposed development. In addition, as the boundary line adjustment would not increase the number of parcels, would not otherwise increase density, and does not include any physical development of the property, no evidence exists that the development would adversely affect public access in other ways. Thus, although the size of the property is relatively large, the extent and scope of the development, in terms of the changes that would result from the development and its effects on public access, is small. Therefore, although the protection of prescriptive public access rights and requiring offers to dedicate public access easements to offset the increased demand for access facilities associated with new development are important considerations, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance with the public access policies of the certified Local Coastal Program and the public access policies of the Coastal Act.

ii. Visual Resources

The appellants contend that the approved project raises a substantial issue of conformance with Mendocino County LUP policies regarding the protection of visual resources. Specifically, the appellants contend that the boundary line adjustment is inconsistent with LCP policies requiring that new development protect views to and along the ocean. The appellant cites LUP Policy 3.5-3 and Coastal Zoning Code Sections 20.504.015, 20.524.020(B)(7), and 20.524.020(B)(13) as the basis for this appeal issue.

Summary of LCP Provisions:

Policy 3.5-1 states in applicable part:

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

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'...Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1...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. [emphasis added]

Policy 3.5-4 states:

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 area 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.

Coastal Zoning Ordinance Section 20.504.015 states, in applicable part:

(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...*
- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces...*
- (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. [emphasis added]*
- (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...*
- (6) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development 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...*

Discussion:

The development is located in a rural residential area north of the unincorporated town of Gualala within a designated highly scenic area along the western side of Highway One. The subject site is situated on a large undulating grassy coastal terrace with scattered tree and shrub cover. The site affords distant blue water views to motorists traveling on County Road 526. Travelers also are provided oblique views of the scenic offshore rocks and headlands of Fish Rock to the north and Robinson's Reef to the south. Highway One is separated from the site to the east by intervening parcels and a road cut through a low ridge. Consequently, there are virtually no views through the site from Highway One as it passes to the east of the subject site.

The appellant contends that the project as approved would be inconsistent with the provisions of LUP Policy 3.5-3 and Coastal Zoning Code Section 20.504.015 that require boundary line adjustments within "highly scenic areas" to be analyzed for the consistency of potential future development with visual resource policies, and that new development be sited and designed to protect views to and along the ocean.

Note: The appellant also cites Coastal Zoning Code Sections 20.524.020(B)(7) and (13), however these provisions address conditions for the approval of urban subdivisions rather than boundary line adjustments.

The appellant states that approval of the boundary line adjustment would negatively impact the highly scenic area in which it is located, but offers no examples of what aspects of the project (i.e., lot dimensions, building site constraints, high visibility from nearby public areas, etc.) would cause such impacts. Based upon the LCP provisions cited by the appellant, the main point raised by the appellant seems to be that the County did not analyze future development on the adjusted parcels for consistency with the LCP's visual resources policies.

Although the analysis is brief as written up in the County staff report, County staff did study the effects of future development at the project site, concluding:

Although the boundary line adjustment itself will not affect the visual character of the area, staff is of the opinion that future development of proposed Parcels 1 and 2 could adversely affect the visual quality of the project site and the surrounding area. Therefore, to ensure that potential development of Parcels 1 and 2 are aware of the development limitations imposed by the "highly scenic area" criteria of the Coastal Element, Condition Number 8 is recommended. [emphasis added]

Condition No. 8, subsequently attached to the permit approval, states:

A note shall be placed on the deeds and legal descriptions stating that "Future development of any of the newly configured parcels subject to this Coastal Development Boundary Line Adjustment shall be subject to the development criteria for 'highly scenic areas' as set forth in Section 20.504.015(C) of the Coastal Zoning Code and the goals and policies of the Coastal Element of the General Plan."

The LCP policies referenced in the condition provide that development in highly scenic areas must be subordinate to the character of its setting. To help achieve

this result, the policies state that buildings 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; (c) in or near a wooded area, and that (c) the visual impacts of development on terraces must be minimized by avoiding development in large open areas if alternative site exists and minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms.

As noted previously, the project site is located west of the highway on a gently sloping, terrace pasture with scattered tree and shrub cover. Topographic relief consists of several small rises and swales of less than ten feet in elevation difference. All three parcels, as adjusted, contain wooded areas or natural landforms that would provide opportunities for screening or clustering future development to reduce impacts to visual resources consistent with the criteria of Coastal Zoning Code Section 20.504.015(C). Furthermore, the use of natural berms or additional landscaping could be employed in future site development that would further reduce the visual intensity of structural improvements without impacting views to and along the coast.

Although the size of the property is relatively large, the extent and scope of the development, in terms of the changes that would result from the development and its effects on visual resources, is relatively small. Thus, the Commission finds that the project as approved by the County does not raise a substantial issue of conformance of the approved project with LUP Policies 3.5-1 and 3.5-4 and Coastal Zoning Code Section 20.504.015(C), as future development of the parcels as adjusted could be sited and designed to protect views to and along the ocean and scenic coastal areas, minimize the alteration of natural landforms, and be subordinate to the character of its setting.

iii. Geologic Hazards

The appellants contend that the project as approved is inconsistent with LCP policies regarding geologic hazards management in that the County did not require a prohibition for the construction of future seawalls on the parcel. The appellants cite a variety of geologic stability and visual resources policies to support this contention, including LUP Policies 3.4-7, 3.4-9, 3.4-12, 3.5-1, and 3.5-4, and Coastal Zoning Code Sections 20.500.010 and 20.504.015(C).

Summary of LCP Provisions:

LUP Policy 3.4-7 states, in applicable part:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans

(75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works...

Note: This language is reiterated in Zoning Code Section 20.500.020(B).

LUP Policy 3.4-9 states:

Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

LUP Policy 3.4-12 states:

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts. Upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means.

Note: Please refer to Staff Report Section I.D.1.b.ii, above, for the text of LUP Policies 3.5-1, and 3.5-4, and Coastal Zoning Code Section 20.504.015(C).

Zoning Code Section 20.500.010 states that development shall:

- (1) *Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) *Assure structural integrity and stability; and*

- (3) *Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Discussion:

The project site comprises three parcels totaling approximately 35 acres in size that make up the uplifted marine terrace headland known as Bourns Landing. The western margin of the property consist of over a mile of shoreline cliff that drops roughly 50 feet to the ocean. No geologic information about the stability of the bluffs or the bluff retreat rate is included in the permit application or elsewhere in the local record for the project. The County staff report does not include specific discussion of geologic hazards associated with the site. Parcel 3 is currently developed with a small single family residence and a detached garage/outbuilding. No structural improvements are proposed in association with the requested boundary line adjustment.

The appellant notes that no prohibition on the construction of seawalls was required in approving the project, and cites a variety of hazard avoidance and scenic resource protection policies and standards of the certified LCP. Section 20.500.010(A)(3) requires that development within the coastal zone, "(n)either create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."

However, the Commission notes that since: (a) the proposed development before the Commission does not propose any physical development; (b) the proposed adjustment of the configuration of the parcels would not reduce the potential maximum blufftop setback that could be applied to future development on any of the three parcels involved in the adjustment; and (c) the depths of the proposed parcels, at roughly 600 to over 1,000, feet would be relatively large, the proposed project does not give rise to the need to construct protective devices or create new risks of exposure of persons and property to geologic hazards. Further, although the size of the property is relatively large, the extent and scope of the development, in terms of the changes that would result from the development and its effects on geologic stability, is relatively small. Therefore, the Commission finds that, as discussed above, no substantial issue is raised of conformance of the project as approved with LUP Policies 3.4-7, 3.4-9, and 3.4-12, and Coastal Zoning Code Sections 20.500.010 and 20.504.015(C).

iv. Completeness of the Application

The appellant contends that by disclosing only two Assessor Parcel Numbers to describe the three lot project site, the application was incomplete and should not have been scheduled for a hearing decision until the missing information was provided. The appellant cites Section 20.532.025 of the Coastal Zoning Code as the basis for this appeal issue.

Summary of LCP Provisions:

Section 20.532.025 of the Coastal Zoning Code states, in applicable part:

Each application for a coastal development permit (administrative, use permit, variance or standard permit) shall be submitted to the Department of Planning and Building Services on forms provided by the department and completed by the applicant, accompanied by a fee set by resolution of the Board of Supervisors. When more than one development is proposed on a parcel, the applications shall be processed concurrently, where possible as one (1) application. The application shall include the following information:

- (A) *A description of the proposed development, including maps, plans, and other relevant data of the project site and vicinity in sufficient detail to determine whether the project complies with the requirements of these regulations. Sufficient information concerning the existing use of land and water on or in the vicinity of the site of the proposed project, insofar as the applicant can reasonably ascertain for the vicinity surrounding the project site, should also be provided... [emphasis added]*

Discussion:

As discussed previously, the project entails a boundary or lot line adjustment between three parcels recognized under Certificates of Compliance issued by the County in 1999. A review of mapping and title information within the local record indicates that existing Parcels 2 and 3 share the same Assessor's Parcel Number, APN 144-170-01, even though they have been determined to be legally separate parcels. This situation is not an uncommon occurrence. Assessor parcel numbers are an identification system used by County Assessors to designate the boundaries of real property subject to a particular *ad valorem* tax rate. APNs can delineate a corresponding co-terminus legal parcel, a portion of a legal parcel, or multiple legal parcels. Often, owners of adjacent legal parcels within the same tax rate area will receive, or may request, a combined tax bill covering both

parcels under identical tax rates designated with only one APN. It is also a common practice of County assessors to assign multiple APNs to relatively large properties that encompass multiple tax rate areas (e.g., parcels partially within or spanning multiple school, community service, or special assessment districts). Accordingly, a discrepancy between the number of legal parcels and APNs listed in a development permit application does not necessarily mean that information has been omitted.

Given the mapping and title information within the local record that demonstrates that the parcels involved in the proposed lot line adjustment share only two Assessors Parcel Numbers, there is a high degree of factual support for the County's determination that the application has included all of the Assessors Parcel Number information for the subject property necessary to complete the application for filing. Therefore, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the approved project with the requirements of Coastal Zoning Code Section 20.532.025 that a permit application contain sufficient detail and relevant data of the project site to determine whether the project complies with the requirements of the certified LCP.

v. Adequacy of Public Hearing Notices

Section 20.536.010 of the Mendocino Zoning Code states, in applicable part, that:

(A) The purpose of this section is to provide for the issuance of coastal development permits for those types of development projects which are not administrative or emergency permits...

(C) At least ten (10) calendar days prior to the first public hearing on the development proposal, the Coastal Permit Administrator shall provide notice by first class mail of a pending application for a development subject to this section. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions, to all property owners within three hundred (300) feet of the perimeter of the parcel on which the development is proposed, to all occupants of property within one hundred (100) feet of the perimeter of the parcel on which the development is proposed, and to the Coastal Commission... [emphasis added]

Section 20.536.010(C) of the certified Coastal Zoning Code requires that the County notify all landowners within 300 feet and occupants within 100 feet of the project. The local record contains evidence that the County did provide such notice. However, it is not clear from the local record whether the County sent

notice to all persons who have requested to be on the mailing list for coastal decisions, as is also required by Section 20.536.010(C). Regardless of whether notice was sent to every individual who may have requested notice of coastal decisions in general, the contention raises a procedural inconsistency and not a substantial or substantive inconsistency of the approved project with the certified LCP. The contention thus raises a local issue relevant to this project and not an issue of regional significance since the County has LCP notification policies in place and the County's decision to approve the permit would not influence the existing LCP standards that include notification provisions. Furthermore, the Commission notes that it's own hearing on this appeal has provided additional opportunities for interested parties to provide comments on the project.

vi. Lot Boundary Adjustments vs. Land Divisions / Legality of Parcels Being Adjusted

The appellant raises a final contention that the project actually entails a merger and resubdivision of land rather than an adjustment of the boundary lines of contiguous parcels. The appellant maintains that further study of the Certificates of Compliance recognizing the three parcels proposed to be adjusted may show that the parcels were not legally created and therefore, a subdivision of the property would be necessary to legally create the three lots. The appellant maintains the County did not review the development pursuant to the subdivision requirements of the LCP.

Summary of LCP Provisions:

Coastal Zoning Code Section 20.308.035(D), in applicable part, defines "development" as:

...(O)n land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits... [emphasis added]

Section 20.524.025 of the Coastal Zoning Code states, in applicable part:

Every division of land within the coastal zone shall be preceded by the filing of a tentative map pursuant to this Division.

- (A) *Submission of a Tentative Map for Subdivisions...*
- (B) *Examination of Tentative Map...*
- (C) *Contents of Tentative Map Application...*
- (D) *Findings...*

Coastal Zoning Code Section 20.532.010 states, in applicable part:

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...

Discussion:

The certified LCP contains no policies or standards addressing the distinctions between boundary line adjustments, subdivisions, and merger and resubdivisions. These processes are described within the County's Subdivision Ordinance, which locally implements the State Subdivision Map Act (Calif. Gov't Code, Section 66410 *et seq.*) The County's Subdivision Ordinance has not been certified as part of its LCP. Similarly, the County's Certificate of Compliance process, wherein legal determinations are made by local governments as to the status of particular parcels of land under real property law, is also not part of the certified LCP.

There are, however, several provisions within the certified LCP that do address determinations regarding the number and legal status of land parcels:

- As defined in Coastal Zoning Code Section 20.308.035(D), "changes in the density or intensity of use of land" are recognized as a form of "development;"
- Under Coastal Zoning Code Section 20.532.010, a coastal development permit is required to be obtained by parties undertaking "development" as defined by Coastal Zoning Code Section 20.308.035(D); and
- If the subject change in the density or intensity of the use of land involves a land division, approval of a tentative map by the County is required pursuant to Coastal Zoning Code Section 20.524.025.

Where a Certificate of Compliance review determines that the subject lots were created after adoption of the California Coastal Act in 1972, the lot creation would constitute a form of development for which a coastal development permit would be required. As discussed previously in Staff Report Section I.C.1, above, the County factually determined that three lots were created on the property in 1961, eleven years before adoption of the Coastal Act. Consequently, recognition

of the creation of three parcels through the Certificate of Compliance process in this case did not entail a development for which either additional coastal development permitting or subdivision approval would be required. Therefore, the parcels are legal parcels and the minor changes to the boundaries between the parcels do not entail a merger and resubdivision of land. The adopted Certificates of Compliance are part of the local record. Given that these Certificates of Compliance demonstrate that the parcels were established prior to 1972 and was not subject to coastal development permit requirements, there is a high degree of factual support for the County's determination that the proposed changes to the boundaries between the three parcels should be processed as a lot boundary adjustment, rather than a subdivision. Therefore, the Commission finds that a substantial issue is not raised with regard to the approved project's conformance with Sections 20.308.035(D), 20.524.025, and 20.532.010 of the Coastal Zoning Code.

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

The appellant raises one contention that is not valid grounds for appeal. As discussed below, the contention raised is in regard to the lack of referral to the Gualala Municipal Advisory Council. This contention does not present potentially valid grounds for appeal in that it does not relate the project's consistency with the LCP or the public access policies of the Coastal Act.

Discussion:

In 1990, the Mendocino County Board of Supervisors established by resolution the Gualala Municipal Advisory Council (GMAC). Among other tasks, the GMAC was given the mandate to initiate long-range planning efforts to update the Coastal Element of the Mendocino County General Plan as it pertains to the Gualala area. In addition, the GMAC was charged with providing input on major development proposals within the delineated Gualala Planning Area, especially those involving commercial visitor serving facilities and construction within designated highly scenic areas. However, several classes of development, chiefly single-family residences and boundary adjustments, are not routinely referred to the GMAC for comments. Coastal Act Section 30603(b)(1) specifically limits the grounds for appeal to the question of whether the proposed development as approved conforms to the public access policies of the Coastal Act and to the standards of the certified LCP.

Although the GMAC was established by the Mendocino Board of Supervisors to function as a conduit for public input from Gualala area residents to the Board and its Planning Commission regarding community planning and development issues, the resolution establishing the Council is not part of the County's certified LCP. Furthermore, the LCP contains no specific policies either acknowledging the existence of the GMAC or requiring that applications for specified coastal development permits or other

authorizations be referred to the Council for public hearing comments prior to action by other County hearing boards. Therefore, this contention is not a valid grounds for appeal as the contention does not allege an inconsistency for the project as approved with a policy or standard of the certified LCP or the public access policies of the Coastal Act.

3. Conclusion.

The Commission finds that, for the reasons discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP concerning the procedures for zoning amendments or zone district boundary determinations, and the requirements of the certified LCP that biological studies be conducted to ensure that protection of environmentally sensitive habitat areas is afforded in the approval of new development.

E. INFORMATION NEEDED FOR DE NOVO REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP and the public access and public recreation policies set forth in the Coastal Act.

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

Environmental Sensitive Area Reconnaissance.

As discussed previously, the project raises a substantial issue of conformance with the environmentally sensitive area resource policies of the LCP. There is a question as to how Parcel 3 should be configured to ensure that future development of a residence has an adequate building site outside of ESHA and buffer areas in a manner consistent with LCP policies.

Prior to the writing of this report, Commission staff conducted a site visit of the subject property. During this investigation, staff noted the presence of rushes (Juncus sp.) within and in proximity to a drainage course running along the northern side of proposed Parcel 3. As most rush species occurring in western Mendocino County are considered "obligate" or "facultative wetland" hydrophytic plant species closely associated with the presence of wetlands, the area along the drainage course may have a seasonal wetland that would preclude normal site development in that area. If the area is a wetland, LCP wetland protection policies would preclude development in that area and some other location would have to be considered for future development of the home, including areas west of the highway. Therefore, in light of other building site constraints that may apply to the site (i.e., areas of geological instability, high visibility from public roads, potential prescriptive rights, or possible contamination from past industrial activities), knowing the extent of wetlands on proposed Parcel 3 could have a major affect on the Commission's *de novo* review of the application.

The botanical survey conducted by the applicant's botanist (Gordon McBride, Ph.D., 2000) does not constitute a definitive wetlands survey. Although plant species were identified, the density and areal extent of hydrophytic vegetation was not analyzed. In addition, no soil samples were taken or site hydrology evaluated, nor was a precise map of potential wetland areas prepared. It is not clear whether any or all of the area in proximity to the drainage course on Parcel 3 is actually wetland. To properly determine the extent of any wetlands in the area, a wetland evaluation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be prepared.

Without the above information, the Commission cannot reach a final determination concerning the appropriateness of the configuration of the proposed boundary line adjustment to accommodate future development consistent with the policies in the LCP to protect environmentally sensitive habitat areas.

II. **EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Proposed Boundary Line Adjustment
4. Portion, Land Use Plan Map No. 31 – *Gualala*
5. Portion, Zoning Map 70H – *Gualala Quadrangle*
6. *Notice of Final Action*
7. *Appeal from Coastal Permit Decision of Local Government*, filed November 13, 2000 (Reimuller)
8. *Botanical Survey*, Gordon E. McBride, Ph.D., June 21, 2000
9. General Correspondence



A B C D E F G H I J K L M N O

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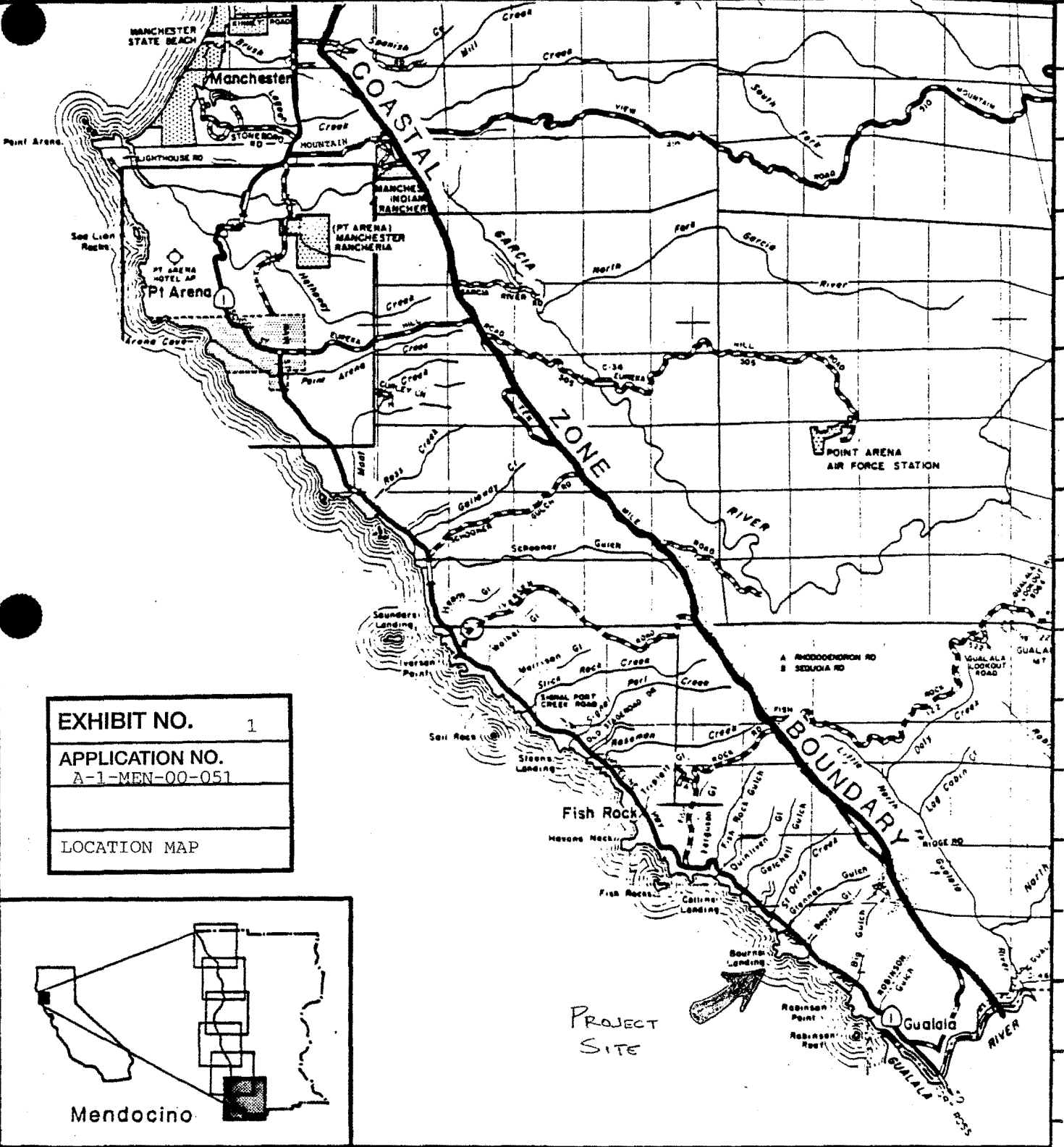
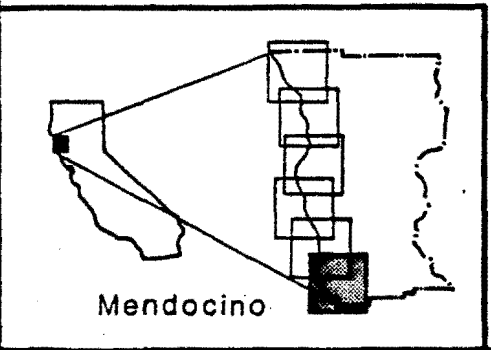
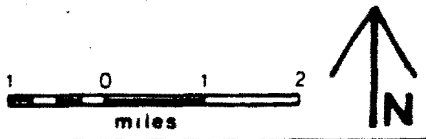
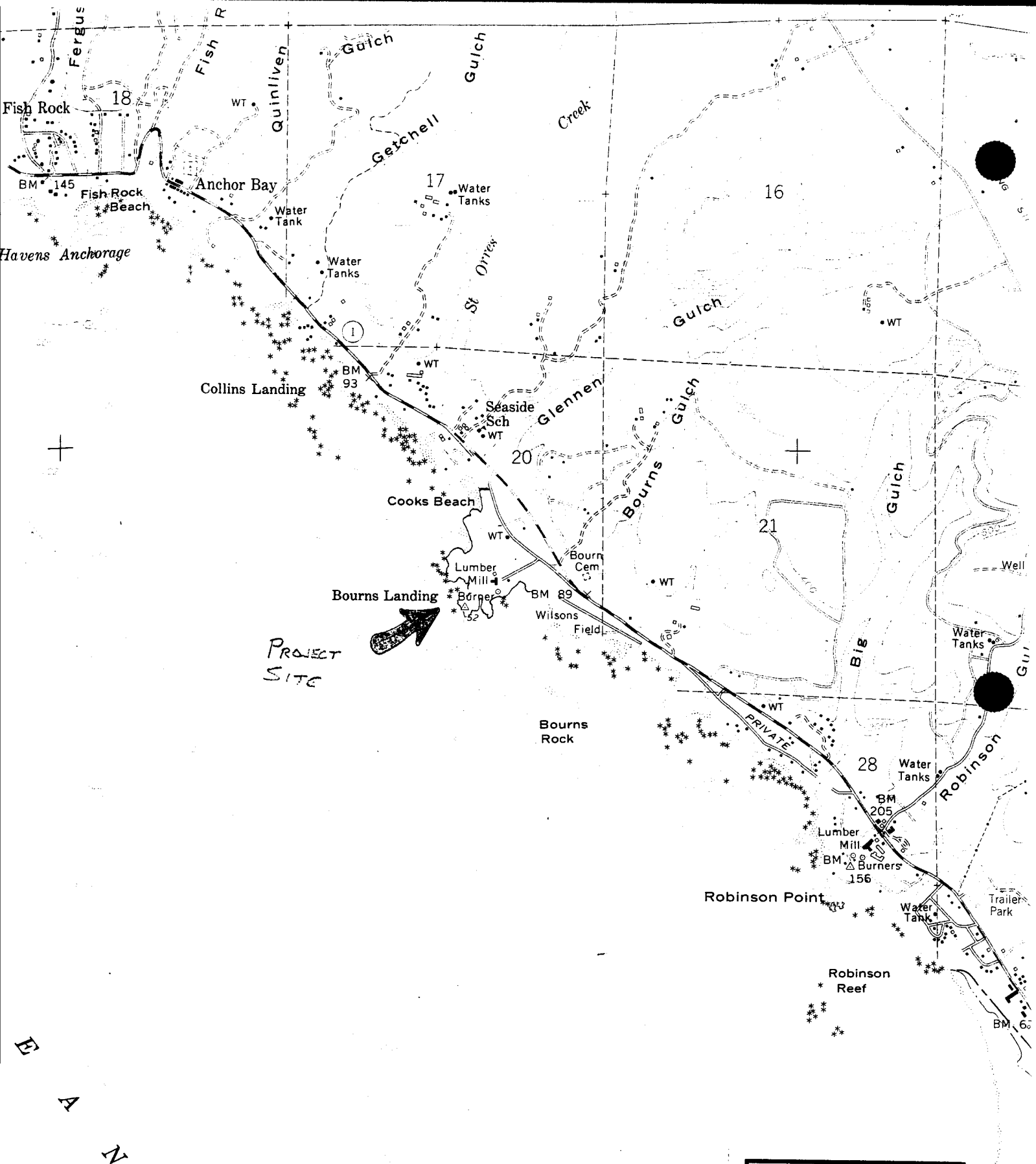


EXHIBIT NO.	1
APPLICATION NO.	A-1-MEN-00-051
LOCATION MAP	



LOCATION MAP





PROJECT SITE

EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-00-051
VICINITY MAP	

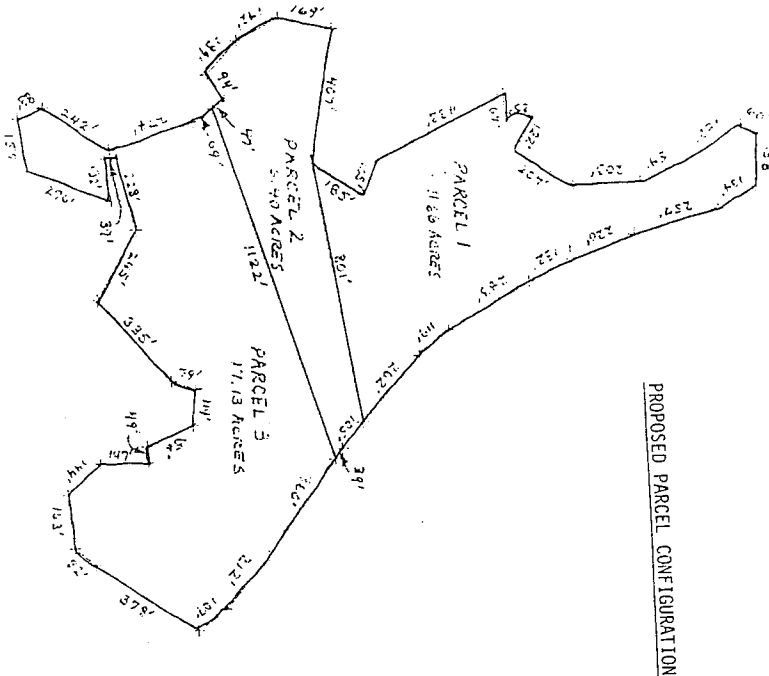
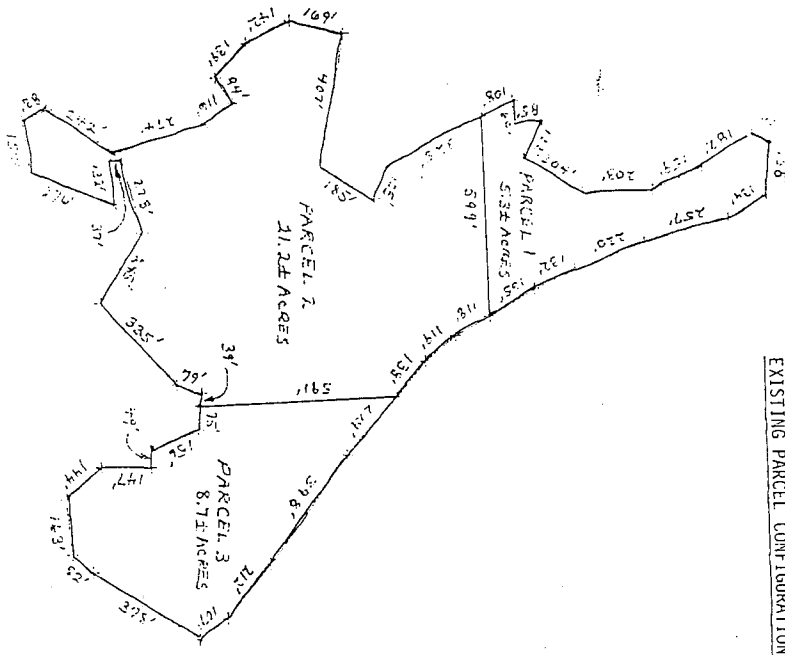
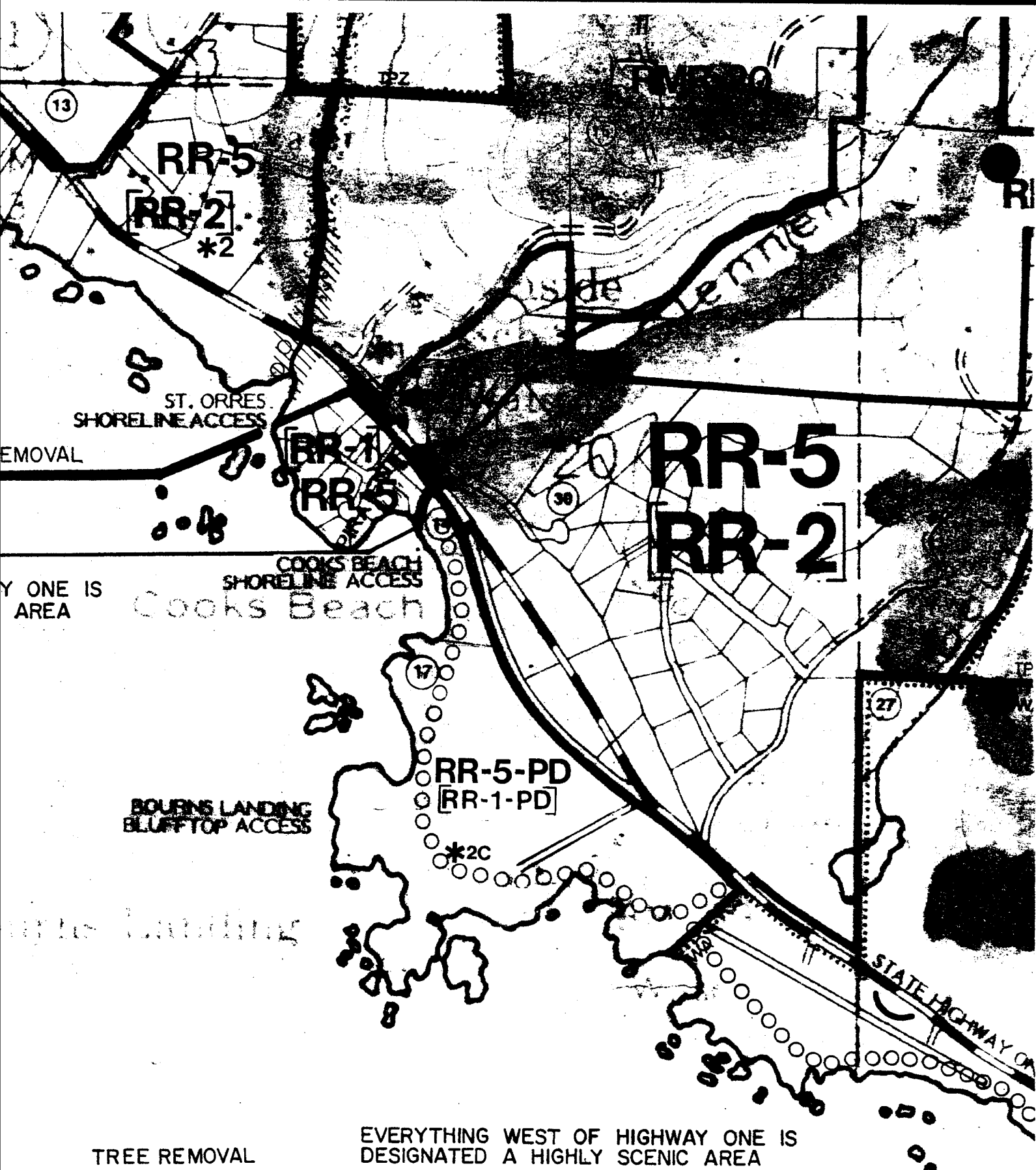


EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-00-051
PROPOSED BOUNDARY LINE ADJUSTMENT	



TREE REMOVAL

EVERYTHING WEST OF HIGHWAY ONE IS DESIGNATED A HIGHLY SCENIC AREA

EXCLUDED FROM THE HIGHLY SCENIC AREA

EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-00-051
EXCERPT, LAND USE	
PLAN MAP NO. 31 -	"GUALALA"

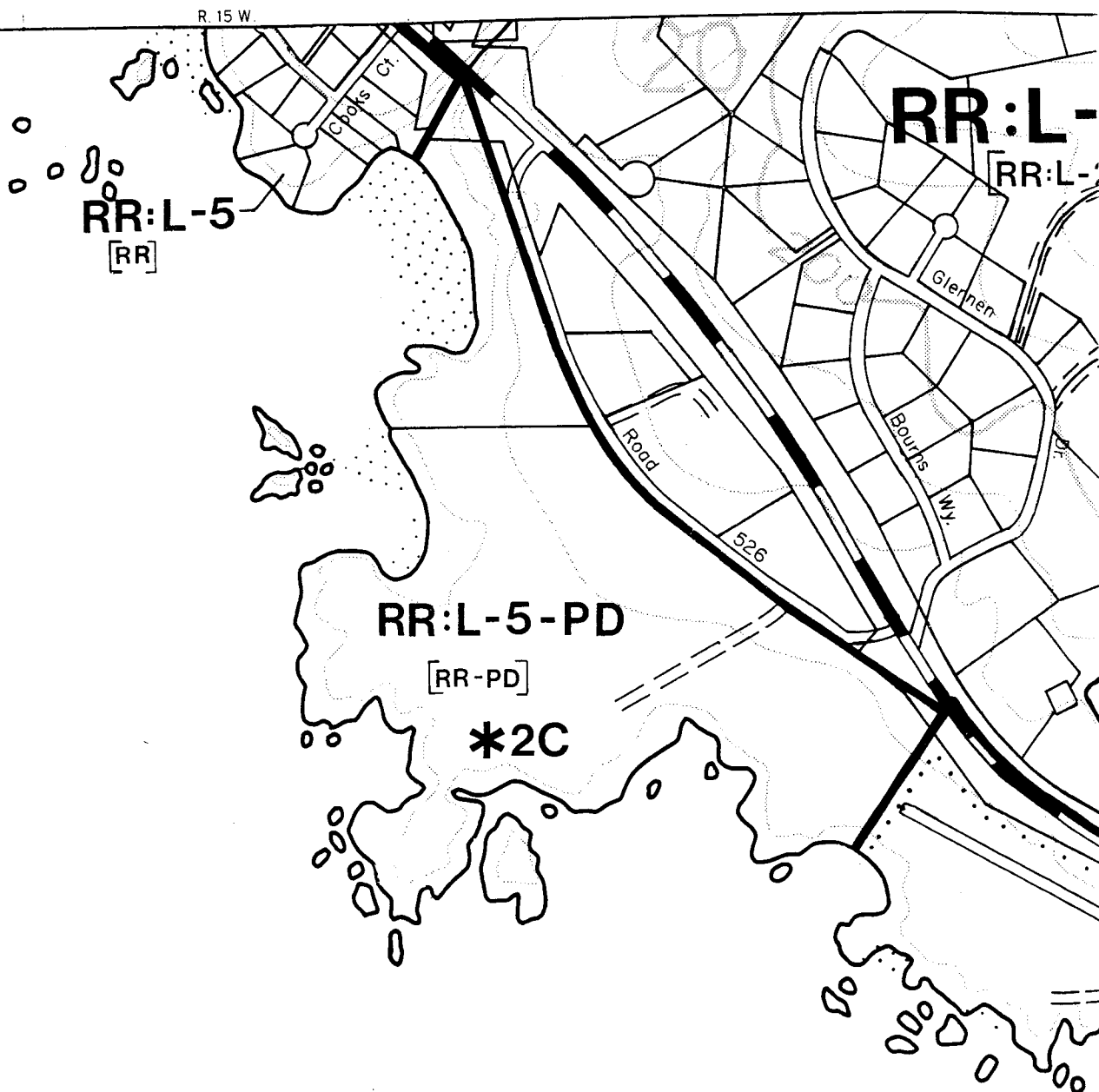


EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-00-051
EXCERPT, ZONING	
MAP 70H - "GUALALA QUADRANGLE"	



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
NOV 13 2000

November 9, 2000

CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

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

CASE#: CDB 19-2000

DATE FILED: March 1, 2000

OWNER: BONHAM INVESTMENT COMPANY

AGENT: BUD KAMB

REQUEST: Coastal Development Boundary Line Adjustment to reconfigure three (3) parcels recognized by Certificate of Compliance #CC 29-98.

LOCATION: Within the Coastal Zone, 2.5+ miles north of Gualala, lying on the west side of Highway 1 at its intersection with Glennen Drive (CR# 534); AP# 144-170-01 and 144-140-03.

PROJECT COORDINATOR: Dennis Chaty

ACTION TAKEN:

The Coastal Permit Administrator, on October 27, 2000, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

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

Attachments

cc: Bonham Investment Co
Bud Kamb
Coastal Commission
Assessor

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-00-051
NOTICE OF FINAL ACTION (3 pages)	

FINAL CONDITIONS OF APPROVAL
CDB 19-2000 – BONHAM INVESTMENT CO
OCTOBER 27, 2000

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel, provide one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

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

and,

"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment #CDB 19-2000 and is intended to create no new parcel."

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

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

4. Per Mendocino County Code Section 17-17.5(I)(2):

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

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

5. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon receipt of this information, you will receive a Completion Certificate.
6. A note shall be placed on the deeds and legal descriptions stating that the "*2C" designation is restricted to Parcel 1 as identified on the "Exhibit Map" on file with the Department of Planning and Building Services.

7. Notes shall be placed on the deeds and legal descriptions stating the following:
 - A) "Future development on Parcel 1 as proposed by this Coastal Development Boundary Line Adjustment shall require the delineation of the boundaries of sand dunes and riparian vegetation occurring on the property as identified in the botanical survey dated June 21, 2000, prepared by Gordon E. McBride, Ph.D, on file at Planning and Building Services."
 - B) "Future development on Parcel 3 as proposed by this Coastal Development Boundary Line Adjustment shall require the completion of a botanical survey to identify any environmentally sensitive habitat areas that may occur on this parcel."
 - C) "Future development on Parcel 1 and 3 may be subject to restrictions for the protection of environmentally sensitive habitat areas as identified in botanical surveys prepared for these parcels."
8. A note shall be placed on the deeds and legal descriptions stating that "Future development on any of the newly configured parcels subject to this Coastal Development Boundary Line Adjustment shall be subject to the development criteria for "highly scenic areas" as set forth in Section 20.504.015© of the Coastal Zoning Code and the goals and policies of the Coastal Element of the General Plan".
9. A note shall be placed on the deeds and legal descriptions stated that "Future development on the parcels subject to this Coastal Development Boundary Line Adjustment may be required to dedication of public access and parking as depicted on the Coastal Element Land Use Plan Maps."

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



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 and telephone number of appellant(s):

Friends of Schooner Gulch
P.O. BOX 4
POINT ARENA CA 95468 (707) 822-2001
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MENDOCINO COUNTY

2. Brief description of development being appealed: BOUNDARY LINE ADJUSTMENT

3. Development's location (street address, assessor's parcel no., cross street, etc.): W. SIDE HWY 1 @ GLENNAN DR (C.R. # 534) AP 144-170-01 and 144-140-03 (per staff report)

4. Description of decision being appealed:
- a. Approval; no special conditions: _____
 - b. Approval with special conditions: _____
 - c. Denial: _____

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-00-051

DATE FILED: 11/13/00

DISTRICT: North Coast

H5: 4/88

RECEIVED
NOV 13 2000

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-00-051
APPEAL (6 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- c. Planning Commission
- b. City Council/Board of Supervisors
- d. Other _____

6. Date of local government's decision: OCT. 27, 2000

7. Local government's file number (if any): CDB 19-2000

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:
BONHAM INVESTMENT CO,
C/O BUD KAMB, Agent
LITTLE RIVER CA 94546

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) Friends of Schwaner Gulch, Box 4 Pt Arena 95468
- (2) RIXANNE WEITZER, Mendocino Lake Group, Sierra Club,
Box 340 Albion CA 95410
- (3) Julie Verran, Box 382, Gualala Ca 95445
- (4) Roanne Withers, Box 198, Ft Bragg Ca 95437
- (5) Coast Action Group, Box 215, Pt Arena Ca 95468
- (6) Supervisor David Colfax, Courthouse, Ukiah 95482
- ~~(7)~~ _____
- _____
- _____
- ~~(8)~~ _____
- _____
- _____

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

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

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.)

See letter attached

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

SECTION V. Certification

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

Additional Appellants:
1) Rexanne Wehren
Mendo Lake Group
Seena Clark
Box 340
Albion Ca 95410

Peter Rasmussen
Signature of Appellant(s) or
Authorized Agent
Date 11/9/00

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.

2) Julie Verran
Box 382
Gualala Ca
95445

Peter Rasmussen
Signature of Appellant(s)
Date 11/9/00

Friends of Schooner Gulch

A Watershed Organization
P. O. Box 4, Point Arena, California 95468
(707) 882-2001, Fax (707) 882-2011

Executive Committee:

Sarah Flowers
Charles Peterson
Peter Reimuller

November 9, 2000

Reasons for Appeal

The Mendocino County Permit Administrator did not require dedication of either the vertical or lateral coastal trails and the required parking for them.

Mendocino County Planning staff decided and applied future zoning designations to the parcels without appropriate zoning notifications or hearings.

The approval will impact the Highly Scenic Area negatively.

The Gualala Municipal Advisory Council was not notified of this matter for their consideration, even though the application contains a Highly Scenic Area and a potential commercial development.

Pending further study, it may turn out that the Certificates of Compliance which created the parcels may not be legally established.

Three alleged legal parcels are included within the boundary of the application, but only two parcel numbers are listed on the application.

The application lacks a sensitive habitat survey and a botanical survey. The potential for wetlands designations on portions of the property was not considered or surveyed.

A prohibition on sea walls on the property was not required. (LUP Policies 3.5-1, 3.5-4, 3.4-7, 3.4-9, and Zoning Code Sections 20.500.010, 20.504.015(c)(1) and (3))

Sincerely,



Peter Reimuller
Corresponding Secretary
Friends of Schooner Gulch

From the Coastal Ridge to the Pacific Ocean, since 1986.

Friends of Schooner Gulch

A Watershed Organization
P. O. Box 4, Point Arena, California 95468
(707) 882-2001, Fax (707) 882-2011

Executive Committee:

Sarah Flowers
Charles Peterson
Peter Reimuller

November 24, 2000

Revised Reasons for Bonham Appeal

Please accept this letter which supersedes all previous letters explaining our reasons for the appeal. Code sections cited are not exhaustive.

Potential Prescriptive Rights may exist on the property for access to the headlands, the beaches and the cliffs. This possibility was not investigated in the required way by the County. 20.528.030; 3.6-27.

The Mendocino County Permit Administrator did not require dedication of either the vertical or lateral coastal trails and the required parking for them. 30211; 4.12-16; 3.6 et seq.;

Mendocino County Planning staff decided and applied future zoning designations to the parcels without appropriate zoning notifications or hearings. The application, while masquerading as a boundary line adjustment, actually is a resubdivision, and must meet the requirements of a resubdivision. 20.504.015 C 4; 20.536.010; 20.524.025 et seq. (and especially 20.524.025,E); 20.524.015 C 4; 3.7-3 et seq.; 3.7-4.1.

The approval will impact the Highly Scenic Area negatively. 3.5-3 (last sentence); 20.524.020,B,7 and 13; 20.504.015.

The Gualala Municipal Advisory Council was not notified of this matter for their consideration, even though the application contains a Highly Scenic Area and a potential commercial development. GMAC must be considered as an interested party on all applications involving Highly Scenic Areas and commercial areas. As such, they must be included in the referral letters which are sent to interested parties. Because they were not notified, the public has not had proper notice of the application, nor a chance to make local input. Indeed, the only way that Friends of Schooner

From the Coastal Ridge to the Pacific Ocean, since 1986.

Gulch found out about the case a few days before the hearing was by accessing the Subdivision Committee agenda on the web.

Pending further study, it may turn out that the Certificates of Compliance which created the parcels are not legally established, and therefore the resubdivision is not possible.

Three alleged legal parcels are included within the boundary of the application, but only two parcel numbers are listed on the application. The application was incomplete. 20.532.095.

The application lacks a sensitive habitat survey and a botanical survey. The potential for wetlands designations on portions of the property was not considered or surveyed. 20.496 et seq.; 20.532.060 et seq.; 20.532.100 C b.

A prohibition on sea walls on the property was not required. 3.5-1; 3.5-4; 3.4-12; 3.4-7; 3.4-9; 20.500.010; 20.504.015, c, 1 and 3.

Sincerely,



Peter Reimuller
Secretary
Friends of Schooner Gulch

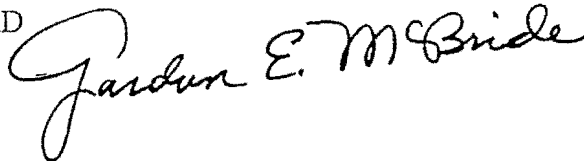
Botanical Surveys
GORDON E. McBRIDE, Ph.D.

DATE: June 21, 2000

To: County of Mendocino
Department of Planning and Building Services
501 Low Gap Road, Room 1440
Ukiah, CA 95482

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-00-051
BOTANICAL SURVEY (9 pages)	

From: Gordon E. McBride, PhD
30301 Sherwood Road
Fort Bragg, CA 95437
707 964 2922



Re: BOTANICAL SURVEY AS REQUIRED FOR PROPOSED BOUNDARY LINE ADJUSTMENT AT 37200 SOUTH HIGHWAY 1, GUALALA (AP #144-170-01. 144-140-03, BONHAM). DETERMINE THE PRESENCE OR ABSENCE OF SUITABLE BUILDING ENVELOPES ON PROPOSED PARCEL #1 AND #2.

1. Project Description:

The proposed Boundary Line Adjustment would create one +-11.66 acre parcel (proposed Parcel #1), one +-6.40 acre parcel (proposed Parcel #2) and one +- 17.13 acre parcel (proposed Parcel #3) on a 35.19 acre parcel (see attached map).

2. Area Description:

At the time of the survey there is one single family dwelling, access road, well and septic system on proposed Parcel #3. There is no other development on the site, however on proposed Parcel #1 there is an area where the surface soil has been disturbed – perhaps as a barrow pit. On proposed Parcel #1 and #2 there is an area that has been historically paved, but the original use is now obscure.

There are five plant communities on the whole parcel: Sand Dune, Riparian, Coastal Bluff Scrub, possible Wetland and Coastal Terrace Prairie. No development is proposed or possible in the Sand Dune and Riparian plant communities. The possible Wetland areas are on proposed Parcel #3, where no additional development is planned at the present time. This survey is concentrated on the Coastal Bluff Scrub and Coastal Terrace Prairie communities on proposed Parcels #1 and #2 where potential development may occur. These plant communities grade into each other – there are no clear boundaries between the two.

On proposed Parcels #1 & #2 the Coastal Bluff Scrub plant community is represented by

the following vegetation: Lupine (*Lupinus bicolor*, *L. varicolor*, *L. littoralis*, *L. arboreus*), Plantain (*Plantago maritima*, *P. ovata*), California Poppy (*Eschscholzia californica*), Thrift (*Armeria maritima*), Timothy (*Phleum pratense*), Cat's Ear (*Hyphochaeris radicata*), Barley (*Hordeum marinum* var. *gussoneanum*), Wild Rye (*Elymus glaucus*), Morning Glory (*Calystegia soldanella*), Yarrow (*Achillea borealis*), Seaside Daisy (*Erigeron glaucus*), Thistle (*Cirsium quercetorum*), Sweet Vernal Grass (*Anthoxanthum odoratum*), Velvet Grass (*Holcus lanatus*), Eriophyllum (*Eriophyllum staechadifolium*), Tufted Hairgrass (*Deschampsia caespitosa* ssp. *holciformis*), Himalaya Berry (*Rubus discolor*), Brome (*Bromus hordeaceus*), Coyote Brush (*Baccharis pilularis*), Gum Plant (*Gridellia stricta* var. *platyphylla*), Strawberry (*Fragaria chiloensis*), Angelica (*Angelica hendersonii*), Quaking Grass (*Briza major*, *B. minor*), Indian Paintbrush (*Castilleja wightii*, *C. ambigua*), Sow Thistle (*Sonchus oleracea*), Blue Eyed Grass (*Sisyrinchium bellum*), Perennial Rye (*Lolium perenne*), Phacelia (*Phacelia californica*), Sea Fig (*Carpobrotus chilensis*), Eryngium (*Eryngium armatum*), Ripgut Grass (*Bromus diandrus*), Mustard (*Brassica rapa*), Wild Rose (*Rosa gymnocarpa*), Wild Radish (*Raphanus sativa*), Point Reyes Ceanothus (*Ceanothus gloriosus* var. *gloriosus*), Silktassel (*Garrya elliptica*), Dogtail Grass (*Cynosurus echinatus*), Buckwheat (*Erigonium latifolium*), Salal (*Gaultheria shallon*), Huckleberry (*Vaccinium ovatum*), Ocean Bluff Bluegrass (*Poa unilateralis*), Plantain (*Plantago maritima*), Fireweed (*Erichites arguta*), Senecio (*Senecio lyonii*), Coast Larkspur (*Delphinium decorum*), Woolly Sunflower (*Eriophyllum lanatum* var. *arachnoideum*), Stonecrop (*Dudleya farinosa*), Wild Cucumber (*Marah organus*), Dock (*Rumex crispus*), Sheep Sorrel (*Rumex acetosella*), Cow Parsnip (*Heracleum lanatum*) and associated plant species.

Plant species represented in the Coastal Terrace Prairie include Sweet Vernal Grass and Velvet Grass, Bent Grass (*Agrostis stolonifera*), Annual Bluegrass (*Poa annua*), Hairgrass (*Aira caryophylla*, *A. praecox*), Quaking Grass, Rabbitsfoot Grass (*Polypogon monspeliensis*), Dogtail Grass, Plantain (*Plantago lanceolata*, *P. ovata*), Flax (*Linum bienne*), Cat's Ear, Douglas Iris (*Iris douglasiana*), Morning Glory, Ripgut Grass (*Bromus diandrus*), Vulpia (*Vulpia bromoides*), Lupine (four species, as above), Sheep Sorrel, Dock, Blackberry (*Rubus ursinatus*), Blue Eyed Grass, Perennial Ryegrass, Yarrow, Nightshade (*Solanum nigrum*), Brome (*Bromus holciformis*), Lotus (*Lotus corniculatus*, *L. formississimus*), Thrift, Hedge Nettle (*Stachys rigida*), Coyote Brush, Johnny Nip (*Castilleja ambigua* ssp. *ambigua*), Eryngium, Orchard Grass (*Dactylis glomerata*), Rush (*Juncus ensifolius*, *J. falcatus*, *J. phaeocephalus* ssp. *phaeocephalus*), Toad Rush (*Juncus bufonius*), Coffeeberry (*Rhamnus californica*), Strawberry, Mule's Ears (*Wyethia angustifolia*), Brodiaea (*Brodiaea corofnata*), Ithuriel's Spear (*Tritelia laxa*), White Brodiaea (*Tritelia hyacinthina*), Huckleberry, Clover (*Trifolium wormskioldi*, *T. subterraneum*, *T. barbigeum*), Cudweed (*Gnaphalium palustre*), Ox Eye Daisy (*Leucanthemum vulgare*), Pineapple Weed (*Chamomilla suaveolens*), Wild Radish, Storksbill (*Erodium cicutarium*), Self Heal (*Prunella vulgaris*), California

Poppy, Pimpernell (*Anagallis arvensis*), Goose Grass (*Gallium aparine*), Bee Plant (*Scrophularia californica*), Soaproot (*Chlorogalium pomeridianum*), California Oatgrass (*Danthonia californica*), Tufted Hairgrass, Blue Wild Rye (*Elmyus glaucus*), Fescue (*Festuca rubra*) and associated plant species.

There are scattered Monterey Cypress (*Cupressus macrocarpa*), Bishop Pine (*Pinus muricata*), Wax Myrtle (*Myrica californica*) and Douglas Fir (*Pseudotsuga menziesii*) on the site.

3. Survey Methodology and Dates:

The site was surveyed on June 14, 2000. The survey was conducted by systematically walking the site and making field notes of the plant communities and species represented. Any material needing further identification was taken to the laboratory and keyed in one or more the references listed below.

According to the California Native Plant Society's (CNPS) there are seven rare or endangered plant species known from the Gualala quadrangle in Closed Cone Coniferous Forest, Coastal Prairie and Coastal Bluff Scrub habitats: Swamp Harebell, Mendocino Paintbrush, Pygmy Cypress, Supple Daisy, Point Reyes Horkelia, Coast Lily and the Maple Leaved Checkerbloom. See Appendix A for a CNPS Fulldata printout for these species.

At the time of the field survey the Swamp Harebell, Mendocino Paintbrush, Supple Daisy, Point Reyes Horkelia, Coast Lily and the Maple Leaved Checkerbloom were known to be in bloom from reference populations. The Pygmy Cypress is a tree and can be identified any time of year.

4. Results and Discussion:

The Swamp Harebell, Mendocino Paintbrush, Supple Daisy, Point Reyes Horkelia, Coast Lily, Maple Leaved Checkerbloom and the Pygmy Cypress were not discovered on the site of the proposed Bonham Minor Subdivision as a result of this botanical survey. No other rare or endangered plants were discovered on the proposed Bonham Boundary Line Adjustment as a result of this botanical survey.

There is a riparian plant community associated with Big Gulch Creek near the very northern part of proposed Parcel #1. This area was not surveyed because there are abundant areas in proposed Parcel #1 where a building envelope might be located without encroaching on the riparian plant community. Should any development be proposed in the northern portion of proposed Parcel #1 in the vicinity of the riparian plant community, the boundary of that plant community should be established by a qualified botanist or ecologist and a suitable buffer area recommended.

There is also a sand dune community near the north end of proposed Parcel #1, however this botanical survey did not address it because no development would be allowed on a beach.

There is no Pygmy Forest plant community on the site of the proposed Boundary Line Adjustment

Proposed Parcel #3 was not included in this botanical survey because there is a single family dwelling on the site and no further development is proposed as a result of this boundary line adjustment. Should any development be proposed on this parcel, a botanical survey should be required as part of the planning process.

5. Impact Assessment and Mitigation Measures:

No mitigation measures are necessary for the protection of the Swamp Harebell, Mendocino Paintbrush, Supple Daisy, Point Reyes Horkelia, Coast Lily, Maple Leaved Checkerbloom and the Pygmy Cypress on the site of the proposed Bonham Boundary Line Adjustment.

Should any development be anticipated on proposed Parcel #3 a botanical survey should be required to address the potential for rare or endangered plants and/or sensitive habitat.

Should any development be proposed on the northern end of proposed Parcel #1, in the vicinity of the riparian plant community, the boundary of the riparian plant community should be determined by a qualified botanist or ecologist and a suitable buffer be recommended.

6. References;

Anon. 1985. Mendocino County General Plan – Coastal Element. Ukiah

Anon. 1991. Zoning Mendocino County Code – Coastal Zone. Ukiah

Hitchcock, A. S. 1950. Manual of the Grasses of the United States. U.S. Govt. Printing Office, Washington DC

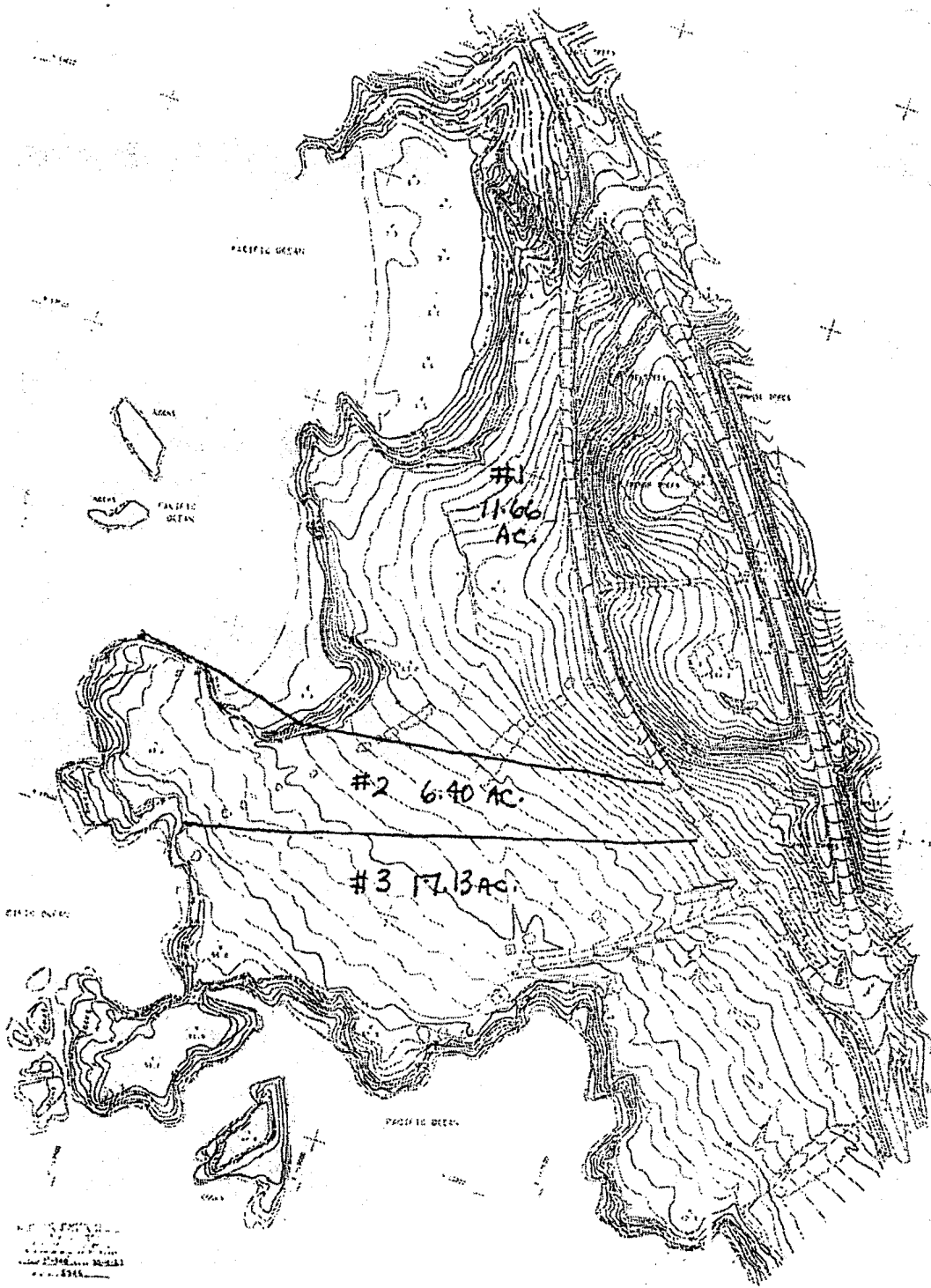
Hickman, J. C. (ed). 1993. The Jepson Manual the Higher Plants of California University of California Press, Berkeley

Bonham Botanical Survey, Pg. 5

Holland, R. F. 1986. Preliminary Descriptions of the Terrestrial Plant Communities of California. California Department of Fish and Game, Sacramento

Mason, H. G. 1959. A Flora of the Marshes of California. University of California Press, Berkeley.

Skinner, M and B. Pavlik 1994. Inventory of Rare and Endangered Vascular Plants Of California. California Native Plant Society Special Publication #1 (5th ed), Sacramento, CA.



THIS MAP SHOWS THE AREA OF THE BONHAM BOTANICAL SURVEY.
PROPOSED LOT #1 & #2 WERE THE AREAS SURVEYED. ANNOTATION
BY GORDON E. MCBRIDE, PH.D. Gordon E. McBride, JUNE 22, 2000

California Native Plant Society's
Inventory of Rare and Endangered Vascular Plants of California

Full Data Report for the Selected Plants
Appendix A - Rare or Endangered Plants known from the Gualala
Quad in Closed Cone Forest, Coastal Prairie and Bluff Scrub

LILIUM MARITIMUM (cont.)

Notes: Did this plant occur in SFO Co.? Populations along Highway 1 routinely disturbed by road maintenance; also threatened by urbanization, horticultural collecting, and habitat fragmentation. Hybridizes with *L. pardalinum* ssp. *pardalinum*. See Proceedings of the American Academy of Arts and Sciences 6:140 (1875) for original description.

SIDALCEA MALACHROIDES

"maple-leaved checkerbloom"

Family: Malvaceae

Life Form: Perennial herb

Blooms: May-August

CNPS List: [1B] R/T/E in CA and elsewhere

R-E-D: 2-2-2

State: [None] No state status

Federal: [None] No federal status

Counties: Del Norte, Humboldt, Mendocino, Monterey, Santa Clara, Santa Cruz, Sonoma, Oregon

Quads: Mt. Carmel (344A), Soberanes Point (344B), Big Sur (344D), Monterey (366C), Santa Cruz (387E), Calaveras Reservoir (427A), Stewarts Point (520B), Point Arena (537B), Gualala (537D), Mallo Pass Creek (552C), Albion (553A), Noyo Hill (568B), Comptche (568D), Westport (585A), Inglenook (585D), Bear Harbor (601B), Shelter Cove (618D), Redcrest (635B), Weott (635C), Scotia (636A), Petrolia (637D), Hydesville (654D), Blue Lake (671B), Korbel (671C), Arcata North (672A), Eureka (672C), Arcata South (672D), Childs Hill (723A)

Habitat: Broadleafed upland forest, Coastal prairie, Coastal scrub, North Coast coniferous forest / often in disturbed areas

Elevation: 2-700 m.

Notes: How common is plant in HUM and MEN counties? Endangered in OR. See University of Washington Publications in Biology 18:1-96 (1957) for taxonomic treatment.

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

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ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

OF COUNSEL
MOSS, LEVITT & MANDELL, LLP

December 19, 2000

RECEIVED
DEC 27 2000
CALIFORNIA
COASTAL COMMISSION

Mr. Robert S. Merrill
North Coast Manager
California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501

Re: CDP Appeal No. A-1-MEN-00-51 (Bonham)
Boundary line adjustment at 37200 Highway One , Mendocino County, CA

Dear Bob:

Pursuant to our telephone conversation of this date it is my understanding that staff may be recommending that the Commission find "substantial issue" regarding the above captioned appeal.

In light of the fact that one of the issues raised by the appellants in the pending appeal is an allegation of public acquired "prescriptive rights" on the property I would like to submit for your review a copy of a recorded Notice of Use By Permission Pursuant to Civil Code Section 813.

This document, recorded with the Office of the County Recorder on October 2, 1981, against the subject property expressly provides that members of the public using the property are doing so with the permission of the property owner. Prescriptive rights cannot be gained against subject property subsequent to the recordation of a Civil Code Section 813 notice of permissive use.

As discussed this morning, it is my understanding that staff only yesterday received the County of Mendocino file regarding the applicants lot line adjustment. As stated, please have the file photocopied and forward to this office for our review and comment. Naturally, I will forward reimbursement for the photocopying.

EXHIBIT NO.	9
APPLICATION NO.	A-1-MEN-00-051
GENERAL	
CORRESPONDENCE	(7 pages)

Mr. Robert S. Merrill

Re: CDP Appeal No. A-1-MEN-00-51 (Bonham)

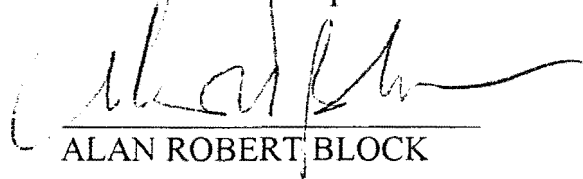
December 19, 2000

Page 2

Thank you for your courtesy and cooperation.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation



ALAN ROBERT BLOCK

ARB:aw

cc: Dr. John Bonham
Bud Kamb

(3)

*Chickering & Gregory
Twenty Third Floor
Three Embarcadero Center
San Francisco, Ca 94111*

RECORDING REQUESTED BY
And When Recorded Mail To:
Thomas S. Barrett, Esq.
Chickering & Gregory
Three Embarcadero Center, Suite 2300
San Francisco, Calif. 94111

Chickering & Gregory
1324 605
Oct 2 2 28 PM '01
OFFICIAL RECORDS
\$1.00

NOTICE OF USE BY PERMISSION PURSUANT TO
CIVIL CODE SECTION 813

NOTICE IS HEREBY GIVEN, pursuant to California Civil Code
Section 813, as follows:

(1) The undersigned is the holder of record title to the
land described in Exhibit "A" attached hereto and hereby
incorporated herein by reference.

(2) "The right of the public or any person to make any use
whatsoever of the above described land or any portion thereof
(other than any use expressly allowed by a written or recorded
map, agreement, deed or dedication) is by permission. and subject
to control, of owner: Section 813, Civil Code."

(3) This notice, and the permission granted herein, may be
revoked at any time by the holder of record title by recording
a notice of revocation.

(4) Any person who enters upon the above described land
shall do so at his sole risk, and by so doing waives all claims
against the undersigned, his successors, and his employees and
agents, for any injuries sustained upon said land.

(5) No person who enters upon the above described land
shall interfere with any use thereof by the undersigned or his
successors.

(6) The permission granted herein shall be conditioned
upon the following restrictions:

(4)

(a) Time of use: Use of the property is permitted during the hours between sunrise and sunset only.

(b) Place of use: Use is limited to that which is necessary for access over designated paths to the beach and fishing area and to recreation within the immediate beach and fishing area itself.

(c) Manner of use: Use is permitted only for recreational activities that are incidental to enjoyment of the beach and fishing area. The right of the owners to quiet enjoyment of their property is to be respected at all times. To this end, the following specific restrictions as to the manner of use of the above described land are imposed:

(i) Access is granted only to persons travelling on foot.

(ii) Use of motor vehicles or motorized equipment of any kind is prohibited.

(iii) The maximum size of any group using the property shall be limited to six (6) persons.

(iv) The total number of persons permitted to use the property at any one time shall be limited to ten (10).

(v) Pets are to be closely controlled by their owners and are to be confined at all times to the designated paths and the immediate beach and fishing area only.

(vi) The collection, removal, displacement, or disfigurement of any natural or man-made feature on the property is prohibited.

(vii) No fires of any kind are permitted at any time.

(5)

(viii) Each person is responsible for taking his own refuse and litter away with him when he leaves.

(xi) Persons using the area are to act at all times with consideration for others. Modesty in dress and behavior is required.

Dated: Aug 30, 1981 ^{dlb}

Delores D. Bonham
Delores D. Bonham

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) SS

On August 30, 1981 before me, the undersigned, a Notary Public in and for said State, personally appeared
John L. Bonham
Delores D. Bonham

_____, known to me to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same, WITNESS my hand and official seal

Signature Rosemary Fogarty
Rosemary Fogarty
Name (Typed or Printed)



(B)

EXHIBIT A

That certain real property situated in the County of Mendocino, State of California, described as: That portion of Section 20, Township 11 North, Range 15 West, Mount Diablo Meridian, more particularly described and lying with the following described boundaries:

BEGINNING at a point in the Southwesterly right of way line of State Highway No. 1, as said right of way line is described in that certain Deed from Mar-Lyn Planing Mill to the State of California, recorded in Book 406 Official Records, Page 145, et seq, Mendocino County Records, from which the 1/4 Section corner common to Sections 21 and 28, Township 11 North, Range 15 West, Mount Diablo Meridian, bears South 58° 29' 30" East, 4017.62 feet distant; thence from said point of beginning and along the Southwesterly right of way line of said State Highway No. 1, North 35° 32' 03" West, 107.31 feet; thence North 49° 31' 47" West, 211.56 feet; thence leaving said highway right of way line and along the Southwesterly side line of a County Road (formerly State Highway No. 1) as now fenced, the following courses and distances: North 53° 05' 20" West, 398.46 feet; thence North 49° 05' West, 367.00 feet; then thence North 38° 03' West, 119.00 feet; thence North 28° 42' West, 283.00 feet; thence North 23° 50' West, 132.00 feet; thence North 20° 42' West, 220.00 feet; thence North 15° 13' West, 257.00 feet; thence North 29° 47' West, 133.57 feet to the Southerly right of way line of State Highway No. 1 as described in the hereinabove mentioned Deed recorded in Book 406 Official Records, Page 145 et seq, Mendocino County Records; thence leaving the Southwesterly side line of said County Road as now fenced, and along the Southerly right of way line of said State Highway No. 1, North 84° 50' 45" West, 158.00 feet to the center of a stream in the bottom of gulch commonly known as Glennan Gulch; thence leaving the Southerly right of way line of said State Highway No. 1, and along the center of said stream in Glennan Gulch, South 29° 20' West, 60.00 feet more or less to the line of Mean High Water of the Pacific Ocean; thence leaving the center of said stream and along said line of Mean High Water of the Pacific Ocean, the following general courses and distances: South 32° 11' East, 182.00 feet; thence South 24° 19' East, 159.00 feet; thence South 0° 24' East, 203.00 feet; thence South 31° 47' West, 204.00 feet; thence North 59° 27' West, 122.00 feet; thence

(7)

South 1° 28' East, 85.00 feet; thence South 85° 50' West, 69.00 feet thence South 25° 52' East, 433.00 feet; thence South 67° 27' East, 105.00 feet; thence South 33° 56' West, 185.00 feet; thence North 78° 20' West, 407.00 feet; thence South 14° 00' West, 169.00 feet; thence South 26° 32' East, 142.00 feet; thence South 45° 42' East, 139.00 feet; thence North 57° 26' East, 94.00 feet; thence South 32° 42' East, 116.00 feet; thence South 15° 26' East, 274.00 feet; thence South 34° 25' West, 242.00 feet; thence South 22° 06' East, 83.00 feet; thence North 83° 03' East, 157.00 feet; thence North 22° 30' East, 276.00 feet; thence South 83° 10' West, 132.00 feet; thence North 1° 15' West, 37.00 feet; thence North 76° 38' East, 228.00 feet; thence South 57° 15' East, 245.00 feet; thence North 49° 14' East, 335.00 feet; thence North 19° 02' East, 79.00 feet; thence South 82° 54' East, 114 feet; thence South 22° 30' East, 156.00 feet thence South 89° 45' East, 49.00 feet; thence South 1° 18' West, 147.00 feet; thence South 40° 15' East, 144.00 feet; thence North 85° 04' East, 163.00 feet; thence North 43° 08' 30" East, 81.54 feet to a point from which the point of beginning bears North 33° 57' 20" East; thence leaving the line of Mean High Water of the Pacific Ocean, and along the South-westerly extension of an old picket fence line, and along said old picket fence line, North 33° 57' 20" East, 378.41 feet, more or less, to the point of beginning.

CONTAINING an area of 35.17 acres more or less.
Together will (sic) all mineral rights.