

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
PHONE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

RECORD PACKET COPY

**W 13a**

Filed: June 19, 2002
49th Day: August 7, 2002
Staff: Randall Stemler
Staff Report: July 25, 2002
Hearing Date: August 7, 2002
Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-02-029

APPLICANT: Dan & Rosanna Shia

AGENT: Leventhal / Schlosser Architects

PROJECT LOCATION: 5260 South Highway One, ¼ mile north of Elk, Mendocino County (APN 127-130-04 and 127-130-05).

PROJECT DESCRIPTION: Construct a 3,710-square-foot, single-story, single-family residence with a maximum height of 18 feet above average natural grade. The proposed residence includes 3,025 square feet of living space and a 685-square-foot attached garage. Replace an existing mobile home with a new 768-square-foot single-story residence with a maximum height of 16 feet 6 inches above average natural grade. Demolish an existing residence. Install a new septic disposal system, add parking areas and turnouts to the existing driveway, extend underground utilities to the new building site, connect the new residence to the existing community water system and install a new underground propane tank. Build new wood fences and install a new wood gate.

APPELLANT: Dr. Hillary Adams

SUBSTANTIVE FILE: 1) Mendocino County CDU No. 15-2001; and
DOCUMENTS 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Commission staff recommends that the Commission find that the project as approved, raises a **SUBSTANTIAL ISSUE** of conformance with the certified LCP.

The development, as approved by the County, would involve construction of a 3,710-square-foot, single-story, single-family residence, with a maximum height of 18 feet above average natural grade. The project as proposed would also demolish an existing residence; and replace an existing mobile home, which is a legal non-conforming second residential unit, with a new 16 ½-foot-high, 768-square-foot, single-story residence. Other appurtenant improvements are proposed.

The appeal raises contentions involving inconsistency of the approved project with Mendocino County's certified LCP policies and standards relating to special communities, color, reflectivity, style of architecture, geologic hazard, and non-conforming uses. The appellant asserts that the extremely modern architecture of the project as proposed does not blend with the nearby historic, rural village of Elk, which has special neighborhood status. The appellant asserts that the approved colors would be too light resulting in a project that would not blend in hue and brightness, and that and that the project would include substantial glass and other elements that would be too reflective. The appellant further asserts that the style of architecture, prominence, and visibility would not be subordinate to the character of its setting. In addition, the appellant contends that the project as approved may not have an adequate setback to protect the development from geologic hazards, considering the presence of sea caves, geologic fault lines, and landslides. Landscaping intended for visual screening would be planted within the geologic setback, and would therefore not be secure for the full 75-year economic lifespan of the project. Finally, the appellant alleges that replacement of the mobile home would allow a non-conforming use to continue inconsistent with the certified LCP regulating such use.

Staff recommends that the Commission find that the project as approved, raises a substantial issue of conformance with the certified LCP and the public access policies of the Coastal Act with respect to contentions raised concerning color, reflectivity, style of architecture, geologic hazard, and non-conforming use.

Staff recommends that the Commission determine that no substantial issue is raised with respect to special protections provided to the historic, rural village of Elk. 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 approved development can be found consistent with provisions of the certified LCP regarding runoff and bluff retreat hazards.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 4.

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 certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed house is located (1) between the sea and the first public road paralleling the sea; (2) within 300 feet of the mean high tide line; (3) within 300 feet of the top of the seaward face of a coastal bluff; and (4) within a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "*those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,*" including, among other categories, "*highly scenic areas.*" The approved development is located within an area designated in the LCP on the certified land use map as a "*highly scenic area,*" and, as such, is appealable to the Commission.

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

An appeal was filed by Dr. Hillary Adams (Exhibit 5). The appeal was filed with the Commission in a timely manner on June 19, 2002 within 10 working days of receipt of the County's Notice of Final Action (Exhibit 4) by the Commission on June 6, 2002

I. 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-02-029 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 by a majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-02-029 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. APPELLANT'S CONTENTIONS.

The Commission received one appeal of the County of Mendocino's decision to approve the development from Dr. Hillary Adams.

The project as approved by the County consists of construction of a 3,710-square-foot, single-story, single-family residence, with a maximum height of 18 feet above average natural grade. The house would include 3,025 square feet of living space, and a 685-square-foot attached garage. The project as proposed would also demolish an existing residence; and replace an existing mobile home, which is a legal non-conforming second residential unit, with a new 16 ½-foot-high, 768-square-foot, single-story residence. Additionally, the proposed development would install a new septic disposal system; add parking areas and turnouts to the existing driveway; extend underground utilities to the new building site; connect the new residence to the existing community water system; install a new underground propane tank; build new wooden fences; and install a new wooden gate. The project site is located along the Mendocino County coastline, approximately ½ mile south of Cuffey's Cove Cemetery, and approximately ¼ mile north of the town of Elk, on the west side of Highway One, at 5260 S. Highway One.

The appeal raises contentions involving inconsistencies with the County's LCP visual policies regarding community neighborhood, color, reflectivity, and style of architecture; and inconsistencies with LCP policies related to geologic hazards, and non-conforming use.

The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 5.

1. Community Neighborhood

The appellant asserts that the project as approved, is inconsistent with the provisions of Mendocino County Land Use Plan Policy 3.5-2 that provide special protection for certain rural villages, communities, and service centers located along the Mendocino coastline, including the town of Elk, ¼ mile south of the proposed development.

2. Color

The appellant asserts that the colors approved for the siding and roof would be too light, and therefore would not blend in hue or brightness as required by Mendocino County Coastal Zoning Code Section 20.504.015.

3. Reflectivity

The appellant asserts that the structural materials approved for the project would be too reflective, and would be inconsistent with the provisions of LUP Policy 3.5-3, which state that new development should be subordinate to the natural setting and minimize reflective surfaces. Specifically cited as project elements that conflict with this policy are the skylight, the curved window-wall, and the lighted reflecting pool.

4. Style of Architecture

The appellant asserts that the style of architecture, the prominence of the proposed structural development in relation to the site, and the visibility from public viewing areas would not be visually compatible with the character of surrounding areas, and would therefore be inconsistent with the provisions of LUP Policy 3.5-1 that require new development in highly scenic areas to be subordinate to the character of its setting. In addition, the appellant contends that the project as approved would be inconsistent with the provisions of LUP Policy 3.5-3 that protect coastal views from public areas, including waters used for recreational purposes.

5. Geologic Hazards

The appellant contends that the project is inconsistent with the Mendocino County LCP because the geologic setback for the approved development "may not be adequate." The appellant specifically refers to the "geologic hazard of six sea caves, two fault lines, and two landslides." The appellant contends that the approval of this development is inconsistent with LCP policies and standards contained in Policy 3.4 et seq., especially LUP Policy 3.4-7 dealing with determination of adequate setbacks, and the provisions of Coastal Zoning Code Sections 20.500.020, and 20.532.070 dealing with geologic hazards.

4. Non-conforming Uses

The appellant raises the subject of non-conforming uses and structures, and by reference contends an inconsistency of the County approval with Chapter 20.480 of the Coastal Zoning Code. The appellant questions the allowance of two residential units on a single lot in the coastal zone when both original non-conforming units are being removed, and the project proposes construction of an entirely new development. The appellant points out that only one dwelling unit is allowed per 5 acres for RR:L5 zoned property, and maintains that the project approval is inconsistent with Coastal Zoning Code Section 20.376-025(C).

B. LOCAL GOVERNMENT ACTION.

On May 16, 2002, the Mendocino County Planning Commission approved a Coastal Development Use Permit for the subject development. The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County

then issued a Notice of Final Action, which was received by Commission staff on June 6, 2002, (Exhibit 4).

The County attached to its coastal development use permit 17 Conditions of Approval, contained in their entirety in Exhibit 4, and as applicable to this appeal, are included by appropriate number below.

3. All recommendations of the geotechnical report prepared by BACE Geotechnical dated October 11, 1999 shall be incorporated into the design and construction of the development. BACE shall review the project plans; verify the setbacks in the field when the house corners have been staked; and observe the foundation excavations during construction.
4. Prior to issuance of the Coastal Development Use Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Director of the Department of Planning and Building Services that shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
 - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

- f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
7. The exterior stucco color shall be the stone grey color as submitted at the public hearing on May 16, 2002. All other exterior building materials and finishes shall match those specified in the coastal development permit approval. Windows and the skylight shall be made of non-reflective glass and shall not be frosted. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
8. The building plans shall be consistent with the revised elevation drawings labeled Exhibit A and dated May 16, 2002 depicting the south and west elevations with reduced glass treatment for the master bedroom.
9. The evergreen trees surrounding the proposed residence and shown on the site plan provide a significant visual buffer from public view areas and shall be retained. A revised landscape plan shall be submitted to the Coastal Permit Administrator. The new plan shall provide for three or more groupings of two or three native pines north and east of the currently proposed additional landscaping shown on the site plan. No tree removal or liming of the existing trees shall occur without prior review and approval by the Department of Planning and Building Services. In cases of emergencies such as diseased, damaged or dying trees, verbal approval from the Coastal Permit Administrator shall be obtained and replacements shall be provided where feasible. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.

Prior to the final building inspection, all required landscaping indicated on the site plan shall be installed, irrigated and staked. All required landscaping shall be maintained, and replaced, as necessary, to ensure that a vegetative screen is established and maintained in perpetuity for the life of the project.

11. The riparian habitat associated with the watercourse and described by Mary Rhyne and Gordon McBride shall be protected with a 100-foot buffer from the edge of the riparian habitat. No development, disturbance, or tree removal shall occur within the buffer except as explicitly described in this permit. Prior to removal and replacement of the mobile home, a temporary protective fence or hay bale barrier shall be extended at least ten feet beyond the footprint of the existing mobile home. Construction debris, disturbance or material storage shall not be allowed between the barrier and the riparian plant community. Construction vehicles shall not be permitted to park or drive between the barrier and the riparian plant community. The fence or barrier shall remain in place until the final building inspection of the proposed residence.

13. An amendment to this coastal use permit shall be obtained prior to construction of any additions, additional structures, or placement of exterior lighting on any portion of the site within view of public access areas or Highway 1.

C. PROJECT AND SITE DESCRIPTION.

The project site is a blufftop parcel west of Highway One, and is located on a point of land situated at the northern end of Greenwood Cove, approximately ½ mile south of Cuffey's Cove, and approximately ¼ mile north of the town of Elk, in an area along the Mendocino coastline designated as highly scenic (Exhibits 1 and 2).

The project site is an approximately 11-acre parcel located on a coastal terrace. The southeast, southwest, and northwest sides of the property are surrounded by ocean water. A chain of large, rock islands extends out into the ocean to the southwest. Greenwood Cove is on the southeast side of the rock/island chain, and Cuffey's Cove is on the northwest side. The coastal bluffs within the westerly three-fifths of the property are approximately 90 to 100 feet in vertical height above sea level. The easterly two-fifths of the property have bluffs that are approximately 120 feet in vertical height. Six small to medium size sea caves are located at the toe of the easterly two-fifths of the bluffs. A sandy beach is located at the bluff toe in the western portion of the property. A dirt road goes partially down the bluff toward this beach. The lower portion of this road becomes a rough hiking trail down to the beach. There is another sandy beach at the northwest end of the property where the mouth of Laurel Creek meets the ocean. A dirt road goes partially down the bluff toward this beach. The property is predominantly grassland, with coastal bluff scrub on the bluff edge and bluff face, and a riparian plant community associated with the immediate banks of Laurel Creek, near the northwest corner of the site. An unnamed tributary to Laurel Creek forms the northerly boundary of the property. There are scattered stands of Bishop pine, Monterey cypress, and Douglas-fir. The riparian vegetation along the creek constitutes an ESHA for which a 100-foot buffer has been recommended. Populations of the Mendocino coast paintbrush—*Castilleja latifolia* spp. *mendocinensis*—were located growing on the bluff edge and bluff face. No development is proposed within 100 feet of this rare plant ESHA.

The existing house located near Highway One at the southeast entrance to the property is built along a steep-sided ravine and is dilapidated and presently uninhabited. The ground has dropped from beneath several supporting piers of that structure.

A mobile home is located in the approximate north-central portion of the property. The proposed house would be located in the southwest portion of the property. The parcel is bordered by agricultural rangeland to the north and east.

An ancient geologic fault line extends up the west side of the ravine, approximately 100 feet from the dilapidated original house. The ravine was created by weathering and erosion along the inactive fault. The active San Andreas Fault is located offshore, approximately four miles to the southwest.

Approval has been granted by the County for the proposed development, which would consist of an 18-foot-high, 3,710-square-foot, single-story, single-family residence. The proposed three bedroom house would include 3,025-square-feet of living space, and a 685-square-foot attached garage. The residence would be located south of an existing barn, west of the original dilapidated residence (to be demolished), and would be served by an existing driveway. A 768-square-foot residence would be constructed as a second residential unit at the site of the existing legal non-conforming mobile home. The proposed 16 ½-foot-high second residence would occupy the same footprint, and be equal in size to the existing mobile home. New wood fencing would be built along the wall line of the existing original house near Highway One, and the old wooden fences along Highway One would be repaired and maintained. A new wooden gate would be installed at the driveway entrance to match the wooden fence. Existing telephone and electric lines would be extended to the proposed building site from an existing power pole underground at the center of the existing driveway. Elk water service would be provided underground to the new residence, and connected to the existing hook-up at the site of the mobile home. A new guest parking area would be created at an existing road turnout and a new driveway spur and turnaround would be installed to the proposed attached garage. A new 1,000-gallon underground propane tank would be placed with service to the house. A new septic system would be installed northwest of the new building site to serve the proposed three-bedroom residence and the proposed second residential unit.

The proposed new house construction would be highly visible from Greenwood State Park, approximately ½ mile south of the project site. The most visible portion of the structure would be the southeast elevation where the master bedroom would be located. Also, this proposed residence would be partially visible from historic public viewing and photographic points adjacent to Cuffey's Cove Cemetery to the north.

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."

All of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises 6 substantial issues related to LCP provisions regarding the protection of visual resources as they relate to protection of special community neighborhoods, color, reflectivity of building materials, and style of architecture. The contentions also allege that the County approval raises substantial issue related to LCP provisions regarding geologic hazards and non-conforming uses.

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., tit. 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. 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;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations regarding: (1) the protection of visual resources as they relate to the color, reflectivity, and style of architecture of the approved development; (2) geologic hazards, and (3) non-conforming uses, 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 the protection of the visual resources of a special community, the development as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

Allegations Raising Substantial Issue

a. Protection of Visual Resources

The appellant contends that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas, particularly with regard to the development's color, reflectivity, and style of architecture. The appellant cites LUP Section 3.5 et seq. and Coastal Zoning Code Section 20.504.015 et seq. as reasons for the appeal:

LCP Policies:

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,' within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes..."*

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the 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.*

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

LUP Policy 3.5-4 states: *"Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of

natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.”

Coastal Zoning Code Section 20.504.015 states in applicable part, “(A) *The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting... (C)(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... (C)(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures... (C)(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings... (C)(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.”*

Discussion:

The site lies within a designated “highly scenic” area and is subject to the visual resource policies within the Mendocino County Coastal Element and Chapter 20.504 of the County Zoning Code. This particular coastline, in and around the town of Elk, is one of the most scenic areas along the California coast. The appellant contends that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas. New development in highly scenic areas is required to be sited and designed to protect views to and along scenic coastal areas, and be visually subordinate to the character of the natural setting.

The appellant asserts that the project as approved would be too reflective as seen from public viewing areas including views from coastal trails, parks, and waters used for recreational purposes. Specifically, the appellant contends that the development would be “very visible from Greenwood State Park and coastal trails,” and that the color and roof would be too reflective.

Additionally, the appellant refers to structural components of the approved project, including the "skylight, curved window-wall and lighted reflecting pool," as too reflective. LUP Policy 3.5-1 requires that permitted development be sited to "protect views to and along the ocean and scenic coastal areas," and to be "visually compatible with the character of surrounding areas..." Policy 3.5-3 reiterates this requirement by stipulating that any development in highly scenic areas "shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes." Policy 3.5-3 goes on to require that new development "...shall be subordinate to the setting and minimize reflective surfaces." Section 20.504.015(C)(3) of the Coastal Zoning Code re-enforces Policy 3.5-3 by also requiring that new development "...shall be subordinate to the natural setting and minimize reflective surfaces. This ordinance goes on to add that in highly scenic areas, "building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings."

The appellant also points out that according to LUP Policy 3.5-4, development on coastal terraces must be designed "to be in scale with [the] rural character of the area." The appellant contends that the style of architecture of the approved development is extremely modern, and does not blend with the nearby historic town, or with the natural setting.

The applicant proposes to use cement-plaster stucco for the siding, "Gacoflex" flat membrane material for the roof, stainless steel exterior flue pipe for the chimney, and dark bronze anodized aluminum sash windows. Initially, as contained in the County Staff Report, the colors for these materials were to be "muslin-beige" for the stucco siding, "shale" for the roofing, and "medium gray" for the stainless steel chimney, but were changed to other colors as proposed by the applicant at the Planning Commission hearing. County staff has expressed concern that the approved colors are not dark enough to blend in hue and brightness with their surroundings. The initial County Staff Report indicated that County staff believed the proposed colors of the building materials were too light as indicated by the following excerpt:

"Staff asserted that a darker exterior stucco color would help the structure blend in hue and brightness with the surroundings and reduce its dominance. However, staff was unable to come to an agreement with the applicant for a darker color. A color sample was provided by the applicant of 34 colors available from Highland Stucco & Lime Products with three selections from the applicant. The selections included 2026 Apricot Ice, 171 Valencia, and 449 Santa Fe. These colors had the same brightness as the earlier requested color and would also create a contrast with the backdrop of evergreen trees behind the structure. As a compromise, staff found the color 882 Shadow (offered by the same company) to be acceptable, but the applicant declined to agree. The exterior color of the stucco is still unresolved. Experience has shown that the exterior colors of blufftop residences can make a big difference in the development's visual impact on public views. The darker the hue, brightness and color value of the exterior colors, the more the structure blends in with the natural environment. Due to the visibility of the residence from the park and the comments received from the State Park District

Superintendent, staff has added Condition #7 to request a darker color finish for the stucco walls. The color 822 Shadow would be appropriate or another 'dark' color with a similar hue and brightness."

The Planning Commission revised Special Condition 7 of the County staff report to alter the colors. The portion of the special condition saying: "...the colors shall be dark earthtones that will blend with the dark evergreen tree backdrop. Tan, beige or other 'light' colors shall not be appropriate," was stricken and replaced with: "The exterior stucco shall be the stone grey color as submitted at the public hearing on May 16, 2002."

The California Department of Parks and Recreation's superintendent for the Mendocino District, Mr. Greg Picard, sent a letter to the County to comment on the project. In his letter dated March 7, 2000 he stated that "any structure in a highly scenic coastal view shed should be built in a manner and location that has the least impact on coastal views from other properties in the area, and in particular from public use properties like Greenwood State Beach." In regard to concerns related to reflectivity, he specifically commented that the structure "use non-reflective glass in the windows, and maintain dark materials for siding and roofing."

The approved new structure would be highly visible from Greenwood/Elk State Park approximately ½ mile south of the project site. The most visible portion of the structure would be the southeast elevation where the master bedroom would be located. The south elevation would be mostly glass oriented toward the ocean, with a portion of this glass-wall visible from park view. The initial design for the master bedroom with a greenhouse-type enclosure was modified by the applicant after the County expressed concern over the high degree of visibility from the park. The applicant reduced the amount of glass oriented toward the park views, and replaced the curved greenhouse-type enclosure with a typical window. While the revision helps reduce the amount of glass, the appellant still maintains that the quantity of glass and the light "stone grey" color of the approved project would be too reflective. Because the approved colors for the roof and siding are not dark earthtones, and because there is a large amount of glass surface, the Commission finds that there is a substantial issue raised whether the building materials approved for the development would blend in hue and brightness with their surroundings as required by CZC 20.504.015(C)(3) and minimize reflective surfaces as required by LUP Policy 3.5-3.

In its letter of March 7, 2002, State Parks agrees with the appellant's contention that the County approved a style of architecture incompatible with its surroundings. "In the present case the proposed structure is highly visible from the park in many prime-viewing locations and unfortunately continues the natural view shed degradation further north from the town of Elk." Because the approved style of architecture is extremely modern, contains a large amount of potentially reflective glass, has building material colors that are not dark earthtones, and because the approved development would be very visible from Greenwood State Park, a substantial issue is raised as to whether the style of architecture and its location in respect to public viewing areas is consistent with the certified LCP. Given the project's close proximity to Greenwood State Beach and other public viewing areas frequently used by the public, the coastal resources

affected by the County's decision are significant. Therefore, the Commission finds that there is a substantial issue of whether the approved project would be subordinate to the character of its setting as required under LUP Policy 3.5-1, and CZC Section 20.504.015.

b. Geologic Hazard

The appellant contends that the approved project raises a substantial issue regarding conformance with requirements of Mendocino County LCP policies and standards relating to geologic hazard. The appellant cites LUP Section 3.4 et seq. and Coastal Zoning Code Sections 20.500.020 and 20.532.070. The appellant specifically refers to LUP Policy 3.4-7 and asserts that the project is inconsistent with the Mendocino County LCP because the approved development's geologic hazard setback "*may not be adequate.*" The appellant refers to the "geologic hazard of six sea caves, two fault lines and two landslides."

LCP Policies:

LUP Section 3.4-7 states: "*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. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications cited in the Uniform Building Code or the engineering geologists report.

Coastal Zoning Code Section 20.500.020 dealing with geologic hazards, siting, and land use restrictions states:

(A) Faults.

- (1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.*
- (2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.*

(B) Bluffs.

- (1) New structures shall 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 (seventy-five (75) years). New development shall be set back from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.

- (2) Drought tolerant vegetation shall be required within the blufftop setback.*
 - (3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*
 - (4) No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase access ways to beaches and pipelines to serve coastal-dependent industry. These developments shall only be allowed as conditional uses, following a full environmental, geologic and engineering review and upon a finding that no feasible, less environmentally damaging alternative is available. Mitigation measures shall be required to minimize all adverse environmental effects.*
- (C) Tsunami. In tsunami inundation areas, as illustrated on resource maps or land use maps, only harbor development and related uses shall be allowed. These uses shall be allowed only if a tsunami warning plan has been developed.*

(D) Landslides.

- (1) New development shall avoid, where feasible, existing and prehistoric landslides. Development in areas where landslides cannot be avoided shall also provide for stabilization measures such as retaining walls, drainage improvements and the like. These measures shall only be allowed following a full environmental, geologic and engineering review pursuant to Chapter 20532 and upon a finding that no feasible, less environmentally damaging alternative is available.*
- (2) Where landslides pose an immediate threat to existing development, emergency steps to stabilize the slide may be taken without benefit of the reviews specified above, but must conform with Section 20.536.055 of this Division for permits for approval of emergency work.*

(E) Erosion.

- (1) 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, public beaches or coastal dependent uses. Environmental geologic and engineering 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 significant adverse environmental effects.*
- (2) 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.*
- (3) All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineer's report and Chapter 20.492 of this Division. (Ord. No. 3785 (part), adopted 1991)*

Section 20.500.020 Geologic Hazards – Siting and Land Use Restrictions.

(A) Bluffs.

- (1) New structures shall 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 (seventy-five (75) years). New development shall be set back from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

Setback (meters) = structure life (75 years) x retreat rate (meters/year)

Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.

- (3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

Coastal Zoning Code Section 20.532.070 dealing with evaluation and supplemental application information for geological hazards states in applicable part:

Section 20.532.070 (A)(3)(b)- Landsliding - All development plans shall undergo a preliminary evaluation of landsliding potential.

Discussion:

The appellant raises a concern about geologic hazards related to the existence of six sea caves present at the site, as well as two geologic fault lines, and two landslides, and contends that the application accepted by the County did not provide enough information regarding potential hazards resulting from these geologic features sufficient to determine whether the approved development is consistent with the geologic hazard provisions of Coastal Zoning Code Sections 20.500.020, and 20.532.070. The appellant therefore contends that the approved project is inconsistent with the requirements of Coastal Zoning Code Sections 20.532.070 that the application shall include information in sufficient detail to determine if the development conforms with LCP standards.

An "Engineering Geologic Reconnaissance" was performed for the development. The reconnaissance included an analysis of two aerial photographs, researching published geologic maps, and conducting field reconnaissance. A November 15, 2001, letter reported site conditions and conclusions of the analysis. Among other things, the letter reported that six small to medium size sea caves are located at the toe southwest of the building site. The geologist conducting the reconnaissance kayaked into the larger of the caves and found them to be connected approximately 50 feet back of the cave mouth. The geologist reported that the "inside of the caves appeared sound with no evidence of significant, or recent erosion or rock falls. The cave walls and roof were coated with a multi-colored, organic stain." The recommendation for geologic setback that resulted from the reconnaissance was a 30-foot bluff edge setback determined based upon the calculated bluff retreat rate. Proposing a 5 or 10-foot setback from the back of the sea cave was dismissed after realizing that even a 10-foot setback from the rear of the sea caves would already be contained within the proposed 30-foot bluff edge setback.

The geologic reconnaissance letter submitted by the applicant does address some of the points that the appellant raises, including fault lines, landslides and sea caves. However, there is no slope stability analysis provided to assess the landsliding potential of the bluff face as required by Coastal Zoning Code Section 20.532.070 (A)(3)(b). This section of the zoning code requires that "all development plans shall undergo a preliminary evaluation of landsliding potential." Two landslides were identified on the property, but the geologic letter did not analyze slope stability or evaluate the future potential instability of the project site.

Because there was no evaluation of preliminary landslide potential performed, such as a slope stability analysis, a substantial issue is raised as to whether the project as approved conforms with the requirements of CZC Section 20.532.070(A)(3)(b) that all development shall undergo a preliminary evaluation of landslide potential. Without this information, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP provisions concerning landsliding and how that might affect bluff retreat. Therefore, the Commission finds that the approved project raises a substantial issue of conformance of the local approval with the requirements of LUP Policy 3.4-7 and Coastal

Zoning Code Section 20.500 that new structures shall be setback a sufficient distance from the edge of bluffs to ensure their safety from bluff retreat during their economic life spans.

c. Non-conforming Use

The appellant contends that the approved project raises a substantial issue regarding conformance with requirements of Mendocino County LCP policies and standards relating to non-conforming uses and structures. The LCP only allows one residential unit per parcel and the as it exists and as it would be redeveloped under the approved coastal development permit has two residential units on one parcel. The appellant questions the allowance of two residential units on a single lot in the coastal zone when both original non-conforming units are being removed, and the project proposes construction of an entirely new development. The appellant contends an inconsistency of the County approval with the policies related to non-conforming uses contained LUP Policy 2.2,; and Chapter 20.480 of the Coastal Zoning Code.

LCP Policies:

LUP Policy 2.2 in applicable part states:

1. *Allow the continuation of all existing legal non-conforming uses which do not conform to the type of uses designated on the land use map, but which conform to the following criteria:*
 - a. *If the existing use is contained within a structure built or modified to accommodate the existing use, conformance with the applicable Building Code and/or other ordinances and standards adopted by the County is required.*
 - b. *The use is compatible with adjacent land uses, such that its hours of operation, noise levels, aesthetic impacts, and traffic to the site do not now significantly adversely impact adjacent land uses.*
2. *All existing legal uses conforming with Section 1 above may be continued, buildings may be remodeled, rehabilitated, or reconstructed as long as the exterior dimensions of the building remain the same, and no increase in use results.*
3. *Existing legal non-conforming uses conforming with Section 1, above, may be expanded or reduced to a use of lesser intensity provided they satisfy the following four criteria:*
 - a. *That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation;*

- b. *That the use is and, after expansion, will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated;*
- c. *That the site is physically separate from surrounding properties such that continued non-conforming use is appropriate in that location; and*
- d. *Expansion of the non-conforming use will require a conditional use permit in each case. Such conditional use permit shall be granted only if affirmative findings can be made on the criteria listed above ((a) (b) & (c)), and only if the expansion is found consistent with all other applicable policies of the Coastal Element.*

Coastal Zoning Code 20.480.010(A) states: "A legal nonconforming use or structure may be continued if it conforms to the following criteria: (1) If the existing use is contained within a structure built or modified to accommodate the existing use, conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification."

Coastal Zoning Code 20.376.025 (C) states: "RR:L-5: One (1) unit per five (5) acres except as provided pursuant to Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit).

Discussion:

The subject property contains two residential structures. The LCP only allows one residential unit per parcel on the subject property and in most locations throughout the coastal zone. One of the residences is the dilapidated and abandoned, original house located next to the road that, as proposed, would be torn down. The approved project includes construction of a new residential structure on the parcel to replace the primary residence to be torn down. The legal non-conforming second residential structure is a mobile home currently serving as a single-family residence and installed prior to passage of the Coastal Initiative. This structure is not visible from public viewing areas, and is not located near the blufftop edge. The mobile home is located 50 feet from environmentally sensitive riparian habitat Laurel Creek near the northwest corner of the approved development. The mobile home, as approved by the County, would be replaced within the exact footprint of the existing structure to create a 16 ½-foot-high, non-conforming, second residential unit that would be equal in size, and has the same dimensions (although slightly taller in height) to the current mobile home.

In its staff report, the County states that through the issuance of a Coastal Development Use Permit, "expansion or reduction of a legal, nonconforming use to a use of lesser intensity" is allowed pursuant to LUP Policy 2.2(3) provided that the following four criteria are satisfied: (a) that it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation; (b) that the use is and, after

expansion, will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated; (c) that the site is physically separate from surrounding properties such that continued non-conforming use is appropriate in that location; and (d) expansion of the non-conforming use will require a conditional use permit in each case. Such conditional use permit shall be granted only if affirmative findings can be made on the criteria listed above ((a) (b) & (c)), and only if the expansion is found consistent with all other applicable policies of the Coastal Element. The County determined that construction of the replacement home for the mobile home conforms to these criteria and approved the non-conforming second residential unit as being consistent with LUP Policy 2.2(3).

However, it should be noted that neither an "expansion" nor "reduction" of a non-conforming residential use was approved, but rather a "continuation" of non-conforming use as the replacement structure for the second residential unit would be the same size. Continuation of non-conforming uses is addressed most directly by CZC Section 20.480.010(A), which states: "A legal nonconforming use or structure may be continued if it conforms to the following criteria: (1) If the existing use is contained within a structure built or modified to accommodate the existing use, conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification." The project as approved would "modify" the mobile home.

Consistent with Section 20.480.010(A), the replacement structure would need to be in conformance with "the applicable building code and/or zoning code in effect at the time of construction or modification." The appellant points out that the mobile home is not consistent with the ESHA buffer policies of the LCP. The appellant point out that the mobile home is located within 100 feet of a riparian Environmentally Sensitive Habitat Area (ESHA), and that approval of the permit by the County is inconsistent with CZC Section 20.496.020(A)(1), which requires that the width of an ESHA buffer shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. CZC Section 20.496.020 specifies standards for determining the appropriate width of the buffer area as follows:

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

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist,

the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

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

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;

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

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

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

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

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

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

In this case, the local record indicates that although a botanical survey and evaluation was prepared for the overall development, no specific analysis of why the present and approved 50-foot buffer between the structure and the ESHA along Laurel Creek is consistent with the buffer width criteria of CZC Section 20.496.020 was prepared. In addition, although the staff report indicates that the County attempted to solicit input on the appropriateness of a less than 100-foot buffer from the Department of Fish & Game, Fish & Game did not make a determination as to whether a 50-foot buffer would be sufficient for the development. As noted, CZC Section 20.496.020(A)(1) requires that an ESHA buffer shall be a minimum of 100 feet unless Fish & Game agrees that 100 feet is not necessary to protect the resources of the habitat area. Therefore, a substantial issue exists as to whether the approved replacement structure conforms to the ESHA buffer requirements of the LCP.

In order for the non-conforming second residential unit use to be continued in a reconstructed structure consistent with CZC Section 20.480.010(A), conformance to the Coastal Zoning Code is required. As discussed above, the County approval was granted inconsistent with requirements in the CZC regarding ESHA buffer setback, particularly the fact that no determination for an adequate buffer was performed pursuant to CZC 20.496.020(A)(1)(a-g).

The lack of an analysis of the appropriateness of a 50-foot buffer consistent with CZC Section 20.496.020 and the lack of a determination from Fish & Game that a 50-foot buffer is sufficient to protect the resource indicates that there is not a relatively high degree of factual support for finding the County's decision to approve the development as consistent with the provisions of the certified LCP. Therefore, a substantial issue exists as to whether the replacement structure for the non-conforming second residential unit is consistent with the requirements of CZC Section 20.380.010(A) that structure built to accommodate non-conforming uses must conform with the zoning code. Furthermore, the Commission finds that the local approval raises a substantial issue of consistency with the non-conforming use provisions of the certified LCP, including LUP Policy 2.2; CZC Chapter 20.480; CZC Section 20.376-025(C); and CZC Section 20.496.020.

Allegation Raising No Substantial Issue

As discussed below, the Commission finds that with respect to the appellant's allegation regarding development in a protected community neighborhood, the project as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

The appellant argues that the development as approved is inconsistent with provisions protecting special neighborhood communities. In support of this contention, LUP Policy 3.5-2 is cited because it requires "*communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester...*" to "*...have special protection to the extent that new development shall remain within the scope and character of existing development... [emphasis added]*" This policy relates to development within the communities and service centers cited, and does not, in this instance, relate to development adjoining the town of Elk. As indicated on Map 20 of the Mendocino County Coastal Zoning Maps, the proposed development is on property zoned Rural Residential, and is not included in the zoning for Rural Village delineated for the town of Elk.

Conclusion

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to contentions raised concerning protection of visual resources, geologic hazards, and non-conforming uses.

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.

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

Coastal Zoning Ordinance Section 17.82.010 instructs that a coastal permit shall assure that a project site is suitable and adequate for the proposed use. Given the above findings, *de novo* analysis of the coastal development permit application by the Commission would involve consideration of geologic hazard issues and associated policies and standards of the certified LCP. As discussed previously, a geotechnical investigation that provides a slope stability analysis and evaluates landslide potential has not been performed. The geotechnical information that was provided in the local record establishes bluff retreat rates and makes

certain recommendations with regard residential development, but additional information is needed in the form of an analysis and recommendations regarding slope stability.

As discussed above, the continuation of a non-conforming use requires adherence to Coastal Zoning Code provisions including those that require determination of adequate buffers for ESHA resources. Because no analysis of the riparian ESHA was performed to determine appropriate buffers, a determination of an adequate buffer is needed as prescribed in Coastal Zoning Code 20.496.020(A)(1)(a-g). Additionally, because the Department of Fish and Game (DFG) did not agree that the riparian ESHA buffer could be reduced below the required 100 feet, consultation and agreement by DFG that a protective buffer as determined pursuant to CZC 20.496.020 is adequate to protect the ESHA resource is required.

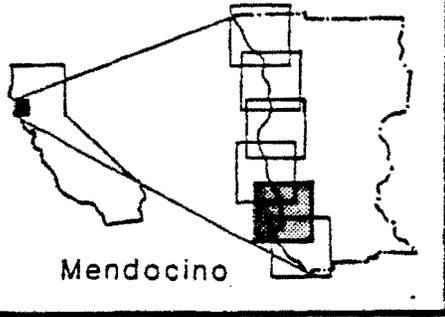
Without the above information, the Commission cannot reach a final determination concerning the project's consistency of the project with the geologic hazard and drainage policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

EXHIBITS

1. Regional Location Map
2. Vicinity Location Map
3. Project Plans
4. Notice of Final Action
5. Appeal
6. Letter from State Parks

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18



PROJECT SITE

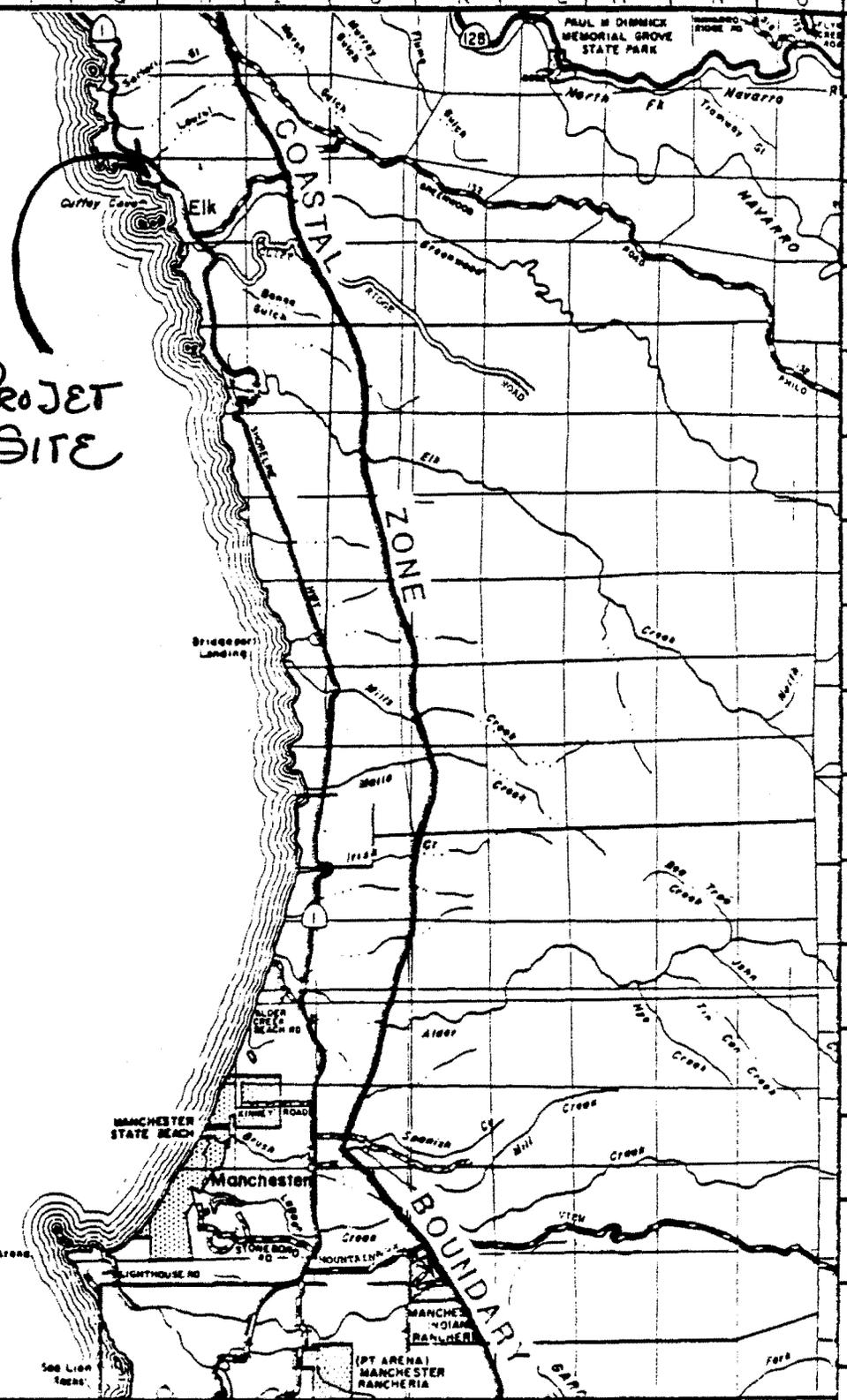
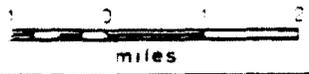


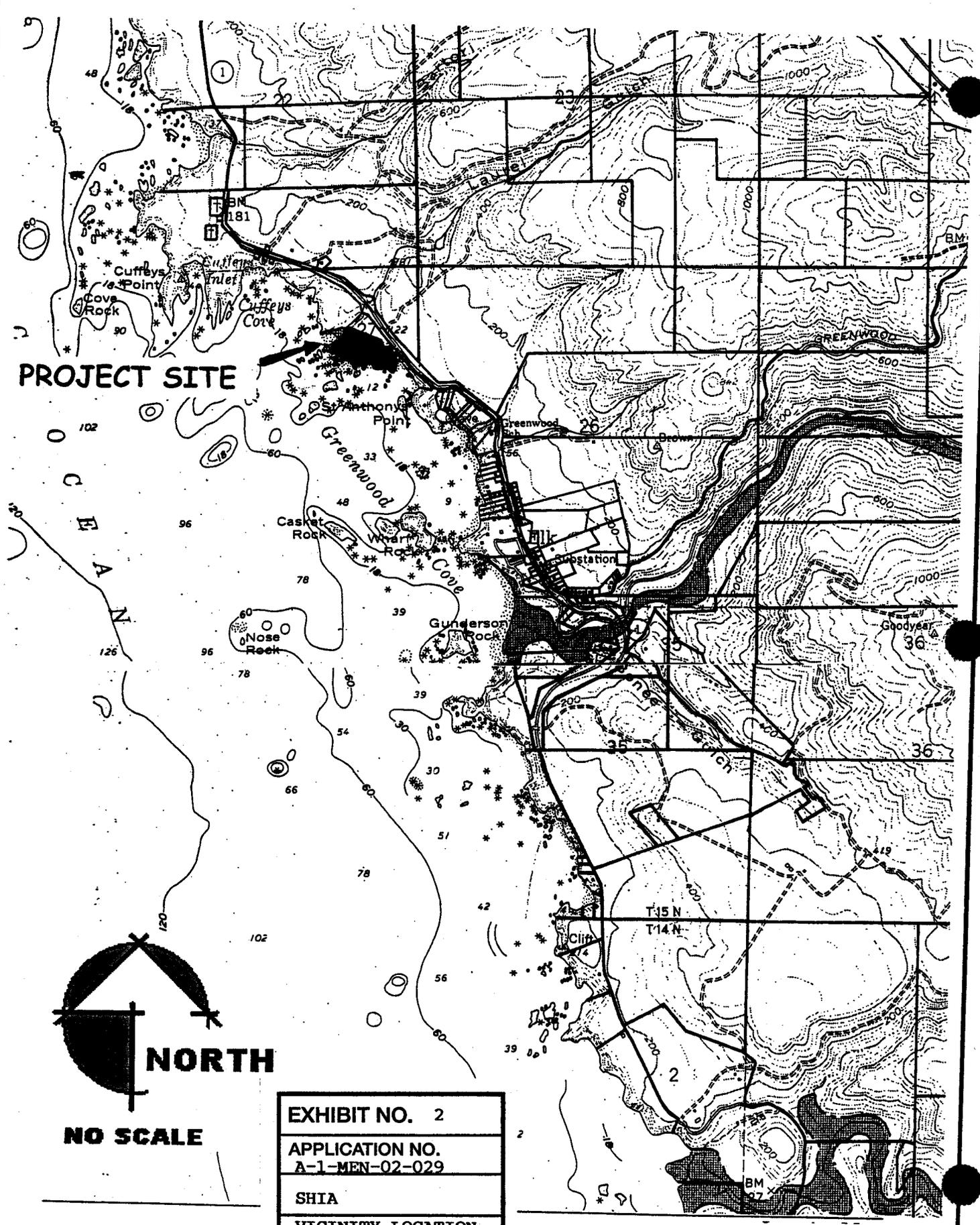
EXHIBIT NO.	1
APPLICATION NO.	A-1-MEN-02-029
SHIA	
REGIONAL LOCATION MAP	

LOCATION MAP

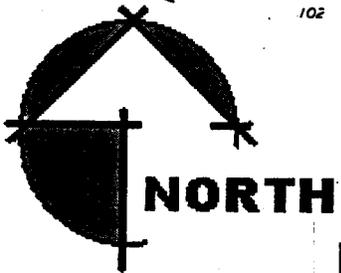


California Coastal Commission

County of Mendocino



PROJECT SITE



NO SCALE

EXHIBIT NO. 2
APPLICATION NO. A-1-MEN-02-029
SHIA
VICINITY LOCATION MAP

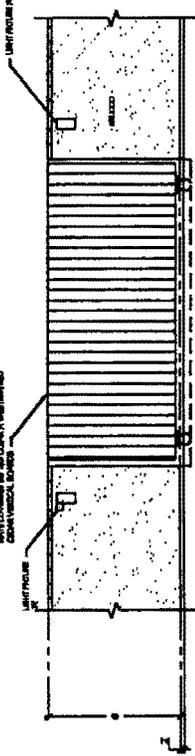
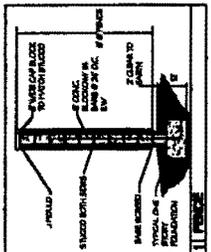
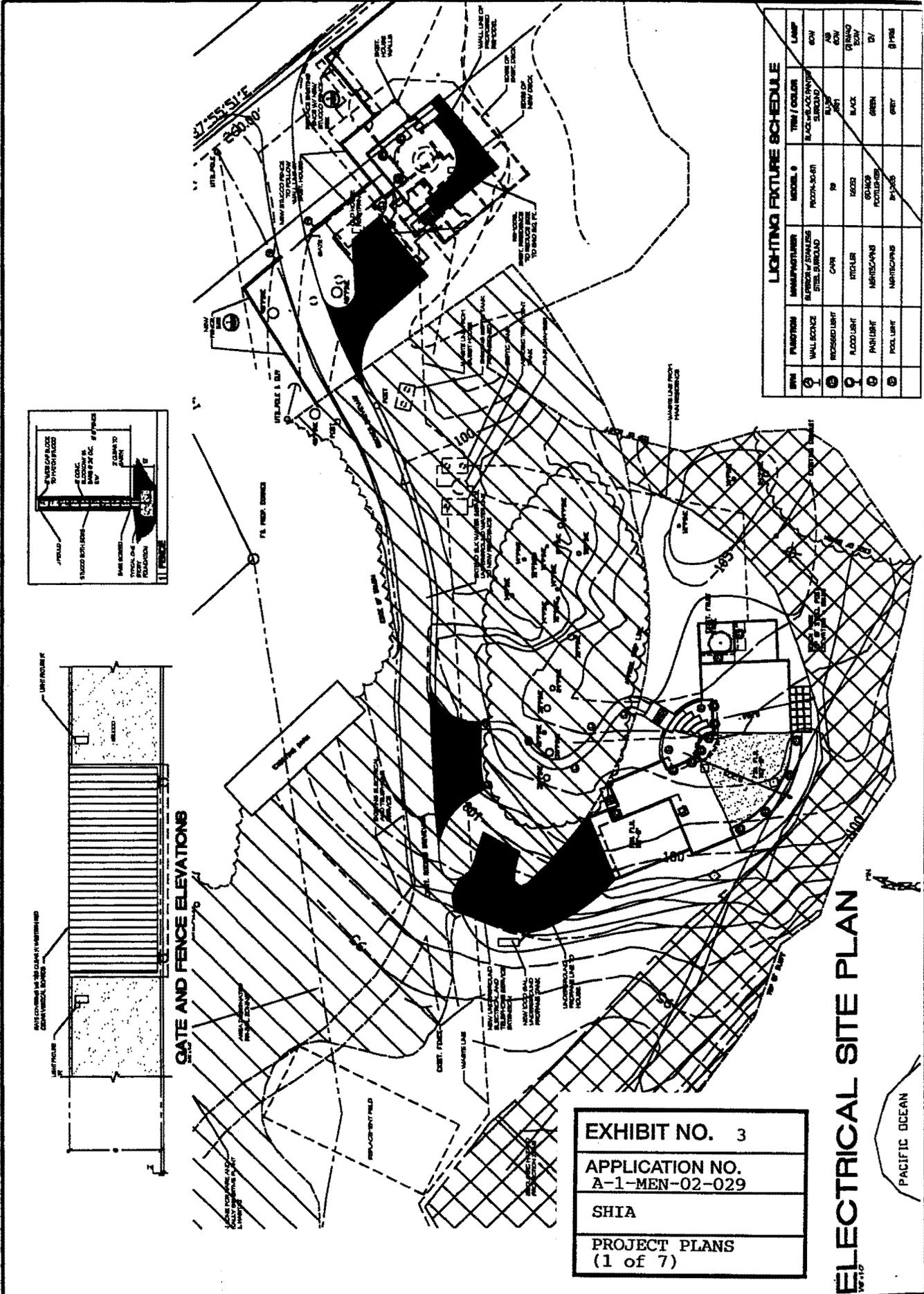


**ELECTRICAL SITE PLAN
AND
GATE + FENCE DETAILS**

**New Residence and Guest House for
Dan and Rosemary
5280 South Highway One
Elk, California 95431**

DATE	
BY	
CHECKED	
IN CHARGE	
PROJECT NO.	
TITLE	
SCALE	
DATE	

A1.3



SYM	FUNCTION	MANUFACTURER	MODEL #	TYPE / COLOR	LAMP
1	WALL SCONCE	BRONX / SULLAGE	PROCON-80-81	BLACK-OR. CO. FINISH SURROUND	60W
2	RECESSED LIGHT	CHYR	78	BLACK	40W
3	ACQUA LIGHT	REITER	8002	BLACK	25W
4	PARK LIGHT	MARICAPAS	60-109	GREEN	50W
5	POOL LIGHT	MARICAPAS	8-1005	GREY	150W

EXHIBIT NO. 3
APPLICATION NO.
 A-1-MEN-02-029
SHIA
PROJECT PLANS
 (1 of 7)

ELECTRICAL SITE PLAN

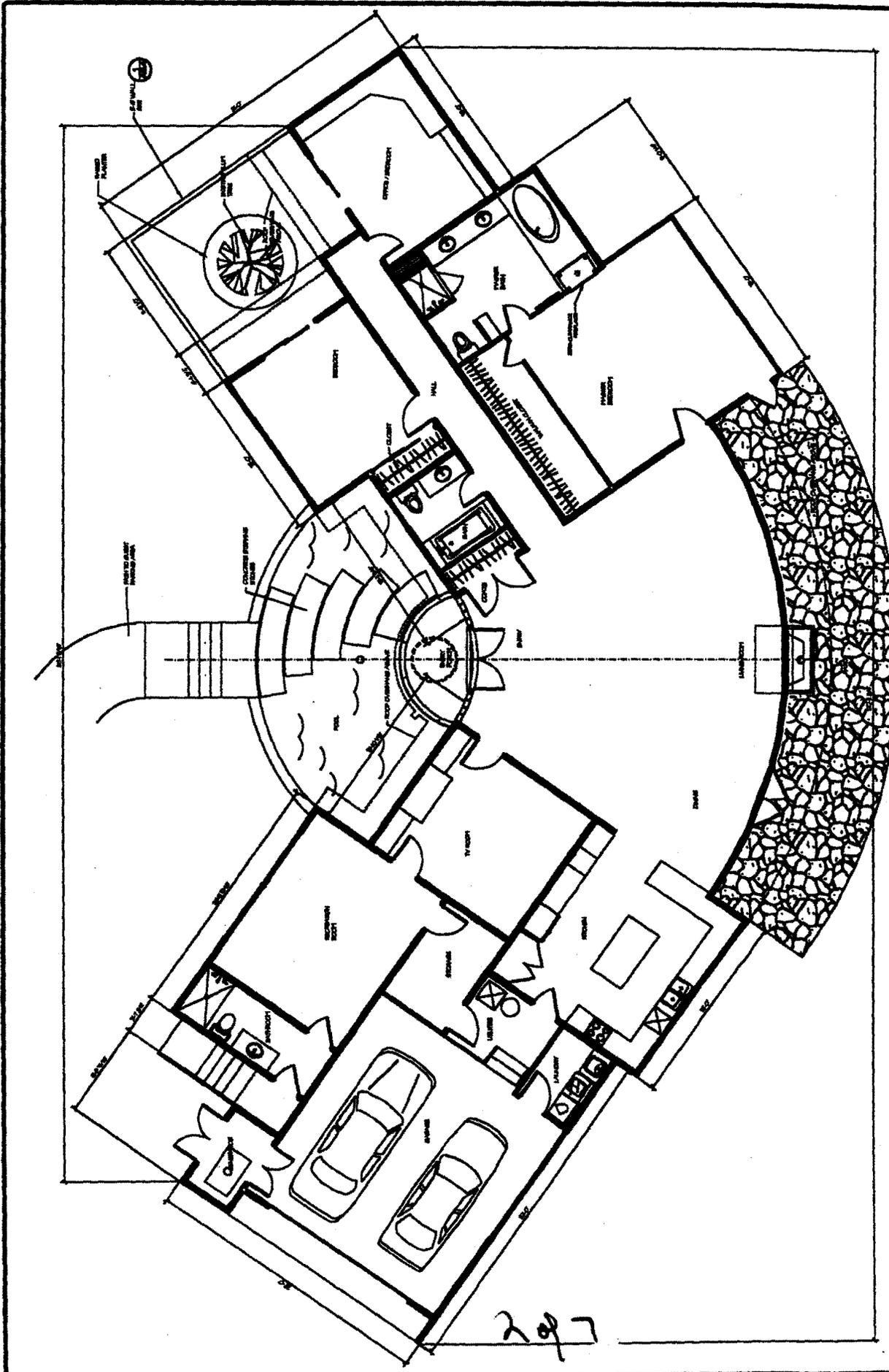
PACIFIC OCEAN



FLOOR PLAN

New Residence and Guest House for
Dan and Rosemary
8880 South Highway One
Escondido, California 92026

A2.1



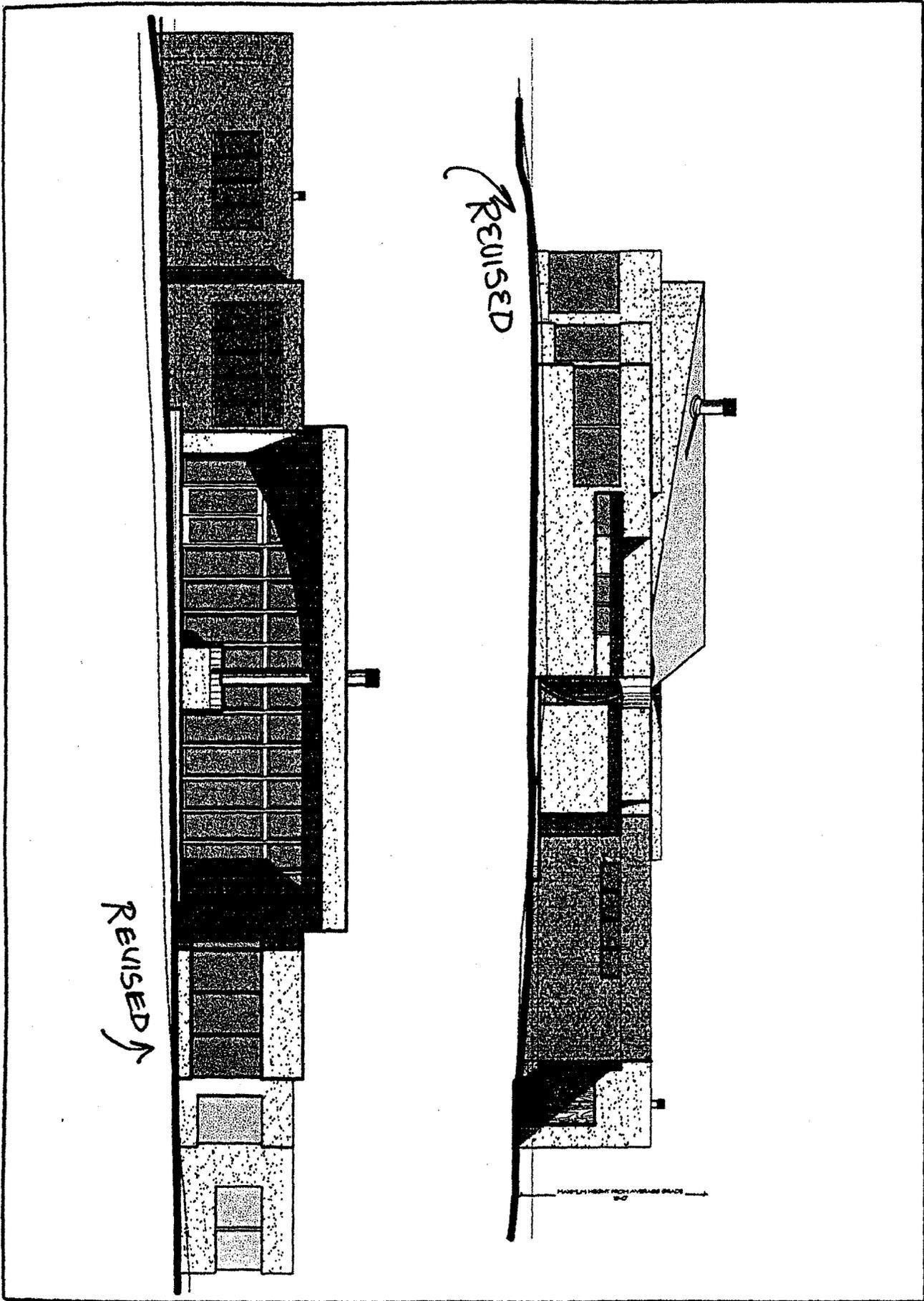
2 of 7

FLOOR PLAN

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106



LOG



REVISED ↘

REVISED ↗

MAXIMUM HEIGHT FOR AVIATION BRIDGE

New Residence And Guest House for
SHIA
 5200 South Highway One
 Elk, California 96432



Sheet 4 of 7

ELEVATIONS

NEW RESIDENCE AND GUEST HOUSE FOR DAN AND HOLLY

1850 South Highway 100
COLUMBIA, SOUTH CAROLINA 29204

DATE: _____

BY: _____

SCALE: _____

A3.1

EXTERIOR MATERIALS

ROOF AND CEILING: LAMIN (PINECO)
 EXTERIOR: STUCCO
 INTERIOR: STUCCO
 FLOOR: POLISHED CONCRETE
 WALLS: BRICK
 WINDOWS: ALUMINUM
 DOORS: ALUMINUM
 SIDERING: METAL
 ROOFING: METAL
 PAINT: EXTERIOR: WHITE
 INTERIOR: WHITE
 ALL EXPOSED METALS TO BE STAINLESS STEEL, RIBBON TYPE

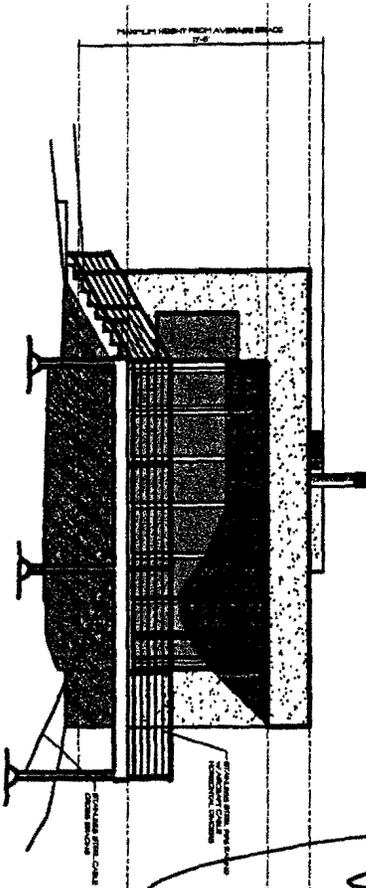
EXTERIOR MATERIALS

ROOF AND CEILING: LAMIN (PINECO)
 EXTERIOR: STUCCO
 INTERIOR: STUCCO
 FLOOR: POLISHED CONCRETE
 WALLS: BRICK
 WINDOWS: ALUMINUM
 DOORS: ALUMINUM
 SIDERING: METAL
 ROOFING: METAL
 PAINT: EXTERIOR: WHITE
 INTERIOR: WHITE
 ALL EXPOSED METALS TO BE STAINLESS STEEL, RIBBON TYPE

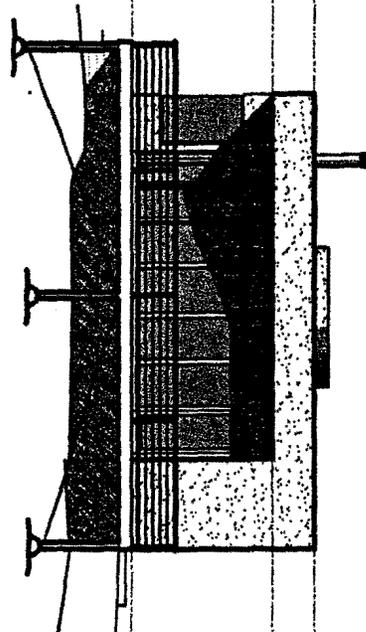
ELEVATIONS

GUESTHOUSE

WEST

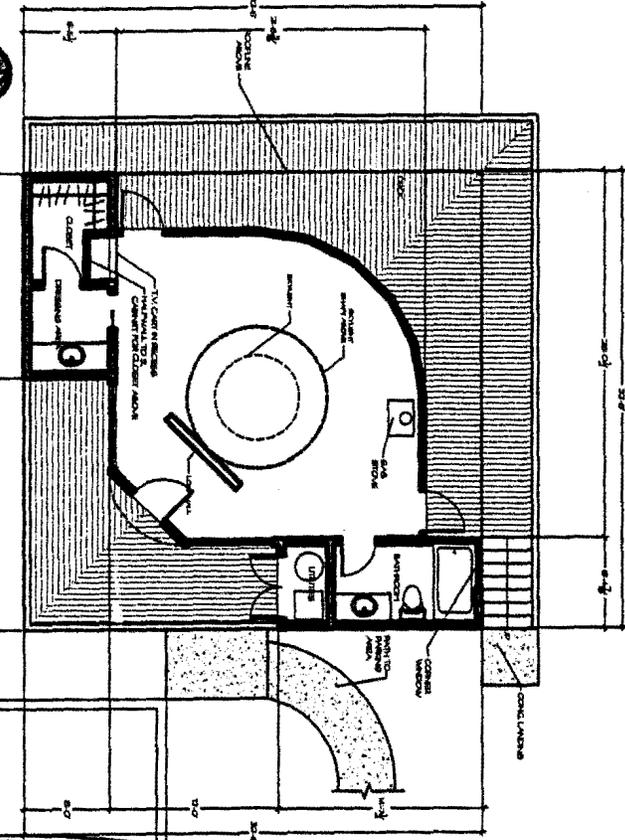


SOUTH



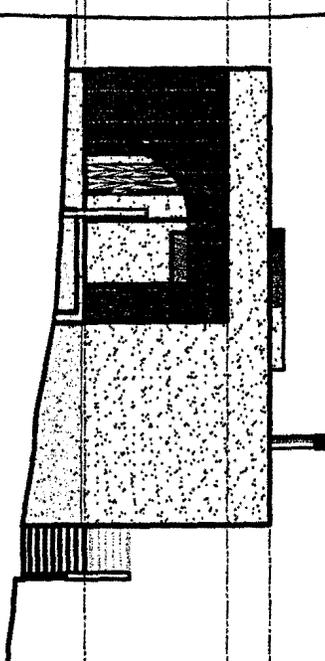
PLAN

NORTH

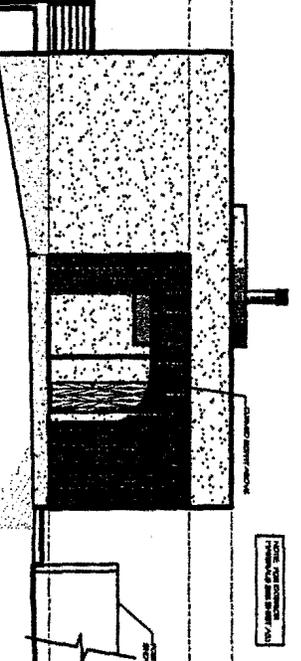


SUPERSEDED

NORTH



EAST



747

A2.2

DATE	BY	CHKD

New Residence and Guest House for
Dan and Rosanna
SHIA
 8280 South Highway One
 Bk. California 95432

GUESTHOUSE
 PLAN and
 ELEVATIONS





COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

RAYMOND HALL, DIRECTOR
Telephone 707-463-4281
FAX 707-463-5709
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

RECEIVED

JUN 06 2002

June 3, 2002

NOTICE OF FINAL ACTION CALIFORNIA
COASTAL COMMISSION

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

CASE#: #CDU 15-2001

OWNER: DAN & ROSANNA SHIA

AGENT: LEVENTHAL / SCHLOSSER ARCHITECTS

REQUEST: Coastal Development Use Permit to construct a 3,710 sq. ft. single story single family residence with a maximum height of 18 feet above average natural grade. The proposed residence includes 3,025 sq. ft. of living space and a 685 sq. ft. attached garage. Replace an existing mobile home with a new 768 sq. ft. single story residence with a maximum height of 16'6" feet above average natural grade. Demolish an existing non-conforming residence. Install a new septic disposal system, add parking areas and turnouts to the existing driveway, extend underground utilities to the new building site, connect new residence to existing community water system and install a new underground propane tank. Build new wood fences and install a new wood gate.

LOCATION: In the Coastal Zone, on the west side of Highway 1, approximately ½ mile south of Cuffey's Cove Cemetery and ¼ mile north of the town of Elk, at 5260 South Highway 1 (AP# 127-130-04 and 127-130-05).

PROJECT COORDINATOR: Rick Miller

ACTION TAKEN:

The Planning Commission, on May 16, 2002, 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: Dan & Rosanne Shia
Leventhal & Schlosser
Coastal Commission
Assessor
Fort Bragg Planning

EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-02-029
SHIA	
NOTICE OF FINAL ACTION (1 of 24)	

MENDOCINO COUNTY PLANNING COMMISSION
MINUTES – DRAFT
MAY 16, 2002

4B. #CDU 15-2001 – DAN & ROSANNA SHIA – North of Elk

Request: Coastal Development Use Permit to construct a 3,710 square foot single story single family residence with a maximum height of 18 feet above average natural grade. The proposed residence includes 3,025 square feet of living space and a 685 square foot attached garage. Replace an existing mobile home with a new 768 square foot single story residence with a maximum height of 16 feet 6 inches above average natural grade. Demolish an existing non-conforming residence. Install a new septic disposal system, add parking areas and turnouts to the existing driveway, extend underground utilities to the new building site, connect new residence to existing community water system and install a new underground propane tank. Build new wood fences and install a new wood gate.

Mr. Lynch reviewed the staff report. Mr. Rick Miller reviewed an addendum to the staff report recommending a modification to Condition 7 to address skylights. Mr. Miller described the project and discussed the sea caves and bluff retreat. In response to Commissioner Nelson, Mr. Miller identified the location of agricultural preserve property to the north and east. In response to Commissioner Lipmanson, Mr. Miller indicated that staff did not refer this project to the Bureau of Land Management (BLM). Commissioner Lipmanson noted that a brochure prepared for BLM was submitted depicting this area. Commissioner Lipmanson advised that he site viewed this area and it appears that the main residence would be less visible if it were moved closer to the tree line and perhaps excavated to reduce the height. Mr. Miller discussed ESHA and visual protection polices and indicated that the site location took both of these issues into consideration. Given site constraints, Commissioner Lipmanson suggested a size reduction might be appropriate. Photographs of the site were circulated to Commissioners.

Mr. Lynch advised the Commission that copies of a letter from Jane Corey, accompanied by a brochure from BLM, was provided to Commissioners. No other correspondence has been received from the public.

RECESS: 10:26 – 10:40 a.m.

Mr. Robert Schlosser, representing the project, described the project and site constraints which resulted in the proposed location of the residence. He discussed visual aspects of the project and requested that the Commission approve the stone grey color proposed by the applicant. Mr. Schlosser reviewed revised drawings of the primary residence, which reduces the glass in the master bedroom by 50 percent as requested by staff in Condition 8. He requested that the Commission accept these drawings as meeting the requirement in Condition 8. Mr. Schlosser pointed out that the main residence is oriented in such a way that visual impacts are minimized from public viewing areas. He had concerns with moving the main residence closer to the tree line explaining that this could result in damage to tree roots during excavation. Mr. Schlosser submitted photographs of the site and of the Fladlien residence into the record. Mr. Schlosser indicated that the applicant is willing to relocate the dwelling that will replace the existing mobile home if the Commission feels it is necessary in order to provide more protection to the plant area. Mr. Schlosser identified an area where the replacement dwelling could be relocated.

Mr. Schlosser and staff responded to questions from Commissioners regarding relocation of the structures, impacts to existing trees, size reductions, exterior colors, height and size of other residences that have been issued coastal development permits in the recent past, landscaping, and site constraints (i.e., sea caves, ESHA, visual impacts).

2 of 24

The public hearing was declared open.

Dr. Hilary Adams discussed visual impacts from the project and impacts to the ESHA. She submitted photographs into the record, which she reviewed. Given the potential visual impacts from the project, Dr. Adams felt that the Department of Fish and Game should be consulted to determine what potential impacts would result if the 100-foot buffer is reduced in order to minimize visual impacts. Dr. Adams also discussed the importance of protecting the sea caves and recommended that the location of the caves be specifically identified. Protection of the caves is another reason for moving the structures farther back. She supported the staff recommendation to minimize impacts from skylights.

The public hearing was declared closed.

Discussion continued by the Commission with Mr. Schlosser and staff responding to questions. Mr. Schlosser indicated that the applicant is willing to add additional landscaping to minimize visual impacts.

Commissioner Calvert described exterior colors of other structures along the coast line and indicated that she could support the applicant's proposed stone grey color. She noted that the town of Elk can be seen from this area and pointed out that the barn roofs shown in the pictures submitted by Dr. Adams are very visible. She suggested that additional tree plantings may help minimize visual impacts. She stated that she does not believe skylights would be visible from public places. She stated that she will support the application.

Commissioner Barth discussed visual aspects of the project and suggested that additional landscaping be provided to minimize visual impacts from public places. She also stated that she could accept the proposed stone grey color. She also suggested that Condition 9 be modified to allow for removal of hazardous trees.

Commissioner Lipmanson voiced concerns with allowing massive and aesthetically out of place structures along the coast. He stated that the proposed structure is highly visible and will degrade the natural viewshed. He suggested that the Department of Fish and Game be consulted regarding the ESHA to determine the feasibility of moving the structure farther back in order to minimize visual impacts. He stated that he could not support the project as proposed.

Commissioner Nelson supported planting of additional trees to buffer the structure from the north and south. He also indicated that he could support the applicant's proposed stone grey color.

Chairman McCowen stated that he also has some concerns regarding the size of the structure as well as the potential for glare given the amount of glass on the structure. He stated that he could support reducing the 100-foot buffer to minimize visual impacts. Moving the structure closer to the ESHA buffer would also provide additional room to add landscaping to minimize visual impacts. He noted that the color of the structure is of less importance if landscaping is properly done.

Commissioner Lipmanson moved to deny the project (#CDU 15-2001) without prejudice and in order for the applicant to give more consideration to siting of structures to minimize visual impacts, provide additional visual representations in order for the Commission to determine visual impacts and consultation with BLM.

Chairman McCowen passed the gavel to Vice-chairman Little and seconded the motion to deny the permit.

The motion failed on the following roll call vote:

3424

AYES: Lipmanson, McCowen
NOES: Calvert, Nelson, Barth, Berry, Little
ABSENT: None

The gavel was returned to Chairman McCowen.

Commissioner Calvert requested a short recess in order to develop modifications to conditions of approval.

RECESS: 11:31 - 11:52 a.m.

Staff reviewed modifications to Conditions 7, 8 and 9, which were incorporated into the final motion for approval.

Upon motion by Commissioner Calvert, seconded by Commissioner Barth and carried by the following roll call vote, IT IS ORDERED that the Planning Commission approves #CDU 15-2001, making the following findings and subject to the following conditions of approval further finding that the application is Categorically Exempt from environmental review:

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the following conditions of approval.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

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

Supplemental Coastal Development Permit Findings:

1. The identified watercourse will not be significantly degraded by the proposed development.

4 of 24

2. There is no feasible less environmentally damaging alternative.
3. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

Nonconforming Use Findings:

1. That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan designation; and
2. That the use is, and, after expansion, will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated; and
3. That the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in this location; and
4. The expansion is consistent with all other applicable policies of the Coastal Element of the Mendocino County General Plan.

Project Findings: The Planning Commission, making the above findings, approves #CDU 15-2001 subject to the following conditions of approval.

CONDITIONS OF APPROVAL:

Conditions that must be met prior to use and/or occupancy and for the duration of this permit:

1. This permit shall become effective after all applicable appeal periods have expired or appeal processes exhausted. Failure of the permittee to make use of this permit within two years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
2. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith is mandatory, unless a modification has been approved by the Planning Commission.
3. All recommendations of the geotechnical report prepared by BACE Geotechnical dated October 11, 1999 shall be incorporated into the design and construction of the development. BACE shall review the project plans; verify the setbacks in the field when the house corners have been staked; and observe the foundation excavations during construction.
4. Prior to the issuance of the Coastal Development Use Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Director of the Department of Planning and Building Services that shall provide that:
 - a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and the landowner assumes the risk from such hazards;
 - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney's fees and costs of the suit) arising out of the design, construction, operation,

5 of 24

maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;

- c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d. The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e. The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;
 - f. The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
5. The applicant shall obtain an encroachment permit from Caltrans for all work within the State right-of-way.
 6. Prior to issuance of a building permit, the applicant shall submit to the Department of Planning and Building Services written verification from the Division of Environmental Health that approval of the site disposal system plan has been obtained.
 7. ~~Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, color samples for the proposed residences. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Section 20.504.015(C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones that will blend with the dark evergreen tree backdrop. Tan, beige or other "light" colors shall not be appropriate. The exterior stucco color shall be the stone grey color as submitted at the public hearing on May 16, 2002. All other exterior building materials and finishes shall match those specified in the coastal development permit approval. Windows and the skylight shall be made of non-reflective glass and shall not be frosted. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.~~
 8. ~~Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, a revised south and east building elevation for the primary residence which reduces the glass ("greenhouse feature") in the master bedroom by approximately 50 percent. The building plans shall be consistent with the revised elevation drawings labeled Exhibit A and dated May 16, 2002 depicting the south and west elevations with reduced glass treatment for the master bedroom.~~
 9. The evergreen trees surrounding the proposed residence and shown on the site plan provide a significant visual buffer from public view areas and shall be retained. A revised landscape plan

6 of 24

shall be submitted to the Coastal Permit Administrator. The new plan shall provide for three or more groupings of two or three native pines north and east of the currently proposed additional landscaping shown on the site plan. No tree removal or limbing of the existing trees shall occur without prior review and approval by the Department of Planning and Building Services. In cases of emergencies such as diseased, damaged or dying trees, verbal approval from the Coastal Permit Administrator shall be obtained and replacements shall be provided where feasible. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.

Prior to the final building inspection, all required landscaping indicated on the site plan shall be installed, irrigated and staked. All required landscaping shall be maintained, and replaced, as necessary, to ensure that a vegetative screen is established and maintained in perpetuity for the life of the project.

10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
- 11.- The riparian habitat associated with the watercourse and described by Mary Rhyne and Gordon McBride shall be protected with a 100-foot buffer from the edge of the riparian habitat. No development, disturbance, or tree removal shall occur within the buffer except as explicitly described in this permit. Prior to removal and replacement of the mobile home, a temporary protective fence or hay bale barrier shall be extended at least ten feet beyond the footprint of the existing mobile home. Construction debris, disturbance or material storage shall not be allowed between the barrier and the riparian plant community. Construction vehicles shall not be permitted to park or drive between the barrier and the riparian plant community. The fence or barrier shall remain in place until the final building inspection of the proposed residence.
12. Prior to issuance of a demolition permit for the residence adjacent to Highway 1, the applicant shall submit written approval from the Air Quality Management District to perform the work.
13. An amendment to this coastal use permit shall be obtained prior to construction of any additions, additional structures, or placement of exterior lighting on any portion of the site within view of public access areas or Highway 1.
14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
16. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one (1) or more of the following grounds:
 - a. That such permit was obtained or extended by fraud.

70924

- b. That one or more of the conditions upon which such permit was granted have been violated.
- c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

Any such revocation shall proceed as specified in Title 20 of the Mendocino County Code.

- 17. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

AYES: Nelson, Berry, Little, Barth, Calvert

NOES: Lipmanson, McCowen

ABSENT: None

8 of 24

STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

CDU 15-2001
May 16, 2002
PAGE PC-1

OWNER: DAN & ROSANNA SHIA
5553 PERUGIA CIRCLE
SAN JOSE, CA 95138

AGENT: LEVENTHAL / SCHLOSSER ARCHITECTS
435 NORTH MAIN STREET
FORT BRAGG, CA 95437

REQUEST: Coastal Development Use Permit to construct a 3,710 sq. ft. single story single family residence with a maximum height of 18 feet above average natural grade. The proposed residence includes 3,025 sq. ft. of living space and a 685 sq. ft. attached garage. Replace an existing mobile home with a new 768 sq. ft. single story residence with a maximum height of 16'6" feet above average natural grade. Demolish an existing non-conforming residence. Install a new septic disposal system, add parking areas and turnouts to the existing driveway, extend underground utilities to the new building site; connect new residence to existing community water system and install a new underground propane tank. Build new wood fences and install a new wood gate.

LOCATION: In the Coastal Zone, on the west side of Highway 1, approximately 1/2 mile south of Cuffey's Cove Cemetery and 1/4 mile north of the town of Elk, at 5260 S Highway 1 (AP# 127-130-04/C5).

TOTAL ACREAGE: 11 +- acres

ZONING: RR: L-5 (DL)

ADJACENT ZONING: North and East: RL
South & West: Pacific Ocean

GENERAL PLAN: RR - 5 (DL)

ADJACENT GENERAL PLAN: North and East: RL-160
South & West: Pacific Ocean

EXISTING USES: Residential

SURROUNDING LAND USES: North and East: Type II agricultural preserve
South and West: Pacific Ocean

SURROUNDING LOT SIZES: North: 22 - acres

9 of 24

East: 20 + acres
South: Pacific Ocean
West: Pacific Ocean

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 2 & Class 3(a)

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: Use Permit U 15-84, approved on May 10, 1984, expired on May 30, 1987, allowed a temporary mobile home for use by an agricultural employee (BF #7264) on the subject property. The temporary mobile home has been removed. Pre-Application Conferences #5-96, #1-99 & #6-99, which discuss applicable sections of the Coastal Zoning Code that apply to the subject property for prospective buyers.

PROJECT HISTORY: The proposed development underwent a series of revisions based on several environmental/feasibility studies, input from staff and discussions with the agent. However, no revisions were made for the location of the proposed 3,710 sq. ft. residence and attached garage. The original proposal included the conversion of the existing single family residence adjacent to Highway 1 into a guest cottage and the removal of the mobile home. After reviewing various geotechnical reports and conducting a site view, staff asserted that the existing residence location along Highway 1 was problematic based on the three factors. First, the building site would be highly visible from Highway 1, as demonstrated by the visibility of the existing residence. Second, the proposed guest cottage structure would not meet the geotechnical setback requirements for new structures. Third, the replacement structure would be located within the designated 100-foot environmentally sensitive habitat area (ESHA) buffer setback.

The revised request to replace the mobile home and demolish the residence along Highway 1 eliminates two of the problems discussed above. The mobile home site is not visible from public view areas and is not located near the blufftop edge. The mobile home is located within the 100 foot ESHA buffer but is to be replaced on the exact footprint of the existing mobile home.

The project requires a Coastal Development Use Permit because Section 20.480.025 (A) of the Coastal Zoning Code states in pertinent part:

"Existing legal nonconforming uses conforming with Section 20.480.010 may be expanded or reduced to a use of lesser intensity through the issuance of a Coastal Development Use Permit..."

PROJECT DESCRIPTION: The property site is located west of Highway 1, on the coastal bluff approximately ½ mile north of Elk. The residential parcel is bordered by agricultural/range land to the north and east, and by the Pacific Ocean to the south and west. At present, the site is developed with two legal nonconforming residences and a barn. A rocked driveway accesses the site from Highway 1.

The applicant-proposes to construct a 3,710 sq. ft. single story single family residence with a maximum height of 18 feet above average natural grade. The proposed three bedroom residence includes 3,025 sq. of living space and a 685 sq. ft. attached two-car garage. The residence would be located south of an existing barn, west of the residence to be demolished and would be served by an existing driveway. A second 768 sq. ft. residence would be constructed at the site of an existing mobile home (mobile home is a legal non-conforming second residential unit). The proposed second residence would share the same footprint and be equal in size to the mobile home. The residence would have a maximum height of 16'6"

10424

feet above average natural grade. The non-conforming residence and garage framing located along Highway 1 would be demolished at the conclusion of construction activities. New wood fences would be built to follow the wall line of the existing house. The existing wood fence along the highway would be repaired and maintained. A new wood gate would be installed to match the fence. Existing power and telephone lines would be extended to the proposed building site from an existing power pole underground at the center of the existing driveway. Elk water service would be extended underground to the new residence and connected to the existing hook-up for the mobile home. A new guest parking area would be created at an existing road turnout and a new driveway spur and turnaround would be installed to the proposed attached garage. A new 1,000 gallon underground propane tank would be placed and an underground propane line would be established to the house. A new septic system would be installed northwest of the new building site to serve the proposed three bedroom residence and the proposed second residential unit.

At the time this recommendation was prepared, staff had not received any comments from the public either in favor of or against the project.

Public Access: The project site is located west of Highway 1 along the ocean bluff. The Land Use Plan does not designate the property as a potential coastal access trail. The nearest location providing public access to the coast is Greenwood/Elk State Park approximately ½ mile south of the subject parcel. Cuffey's Point, located 1 mile north of Elk, is identified on LUP map #20 as a location for potential public access. As discussed in the Visual Resources section of this report, Policy 4.10-6 of the Coastal Element states Caltrans should acquire an area west of Highway 1 to construct a parking area and vista point overlooking Cuffey's Cove. To date, no public access has been acquired by Caltrans. The area is privately owned and supports two cemeteries. On the subject parcel, a sandy beach is located at the bluff toe in the western portion of the property. A dirt road goes partially down the bluff toward this beach. The lower portion of the road becomes a rough hiking trail down to the beach according to a geotechnical survey conducted in October of 1999. No documentation was discovered from the applicable files on the property or in the Land Use Plan to indicate public use of the old road.

Geology/Blufftop Parcel: The southeast, southwest, and northwest sides of the property are surrounded by ocean water. The bluffs within the westerly three-fifths of the property are approximately 90 to 100 feet in vertical height; the easterly two-fifths of the property bluffs are approximately 120 feet in vertical height. An indentation into the bluff separates the two terrace areas and another bluff indentation forms a steeply sloping ravine on the southwest side of the existing residence adjacent to Highway One. Six small to medium size caves are located at the toe of the easterly two-fifths of the bluffs. Two of the medium size caves are connected about 50 feet back into the bluff. Due to the slope of the bluff in this area, the caves do not extend more than a few feet beyond the upper bluff edge. The smaller caves are only about 10 to 30 feet in length.

Policy 3.4-1 of the Coastal Element [Hazards Management] states:

"The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site."

11 of 24

In addition, Policy 3.4-7 states:

"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. Adequate setback distances will be determined from information derived from the required geologic investigation..."

A Geotechnical Report was prepared by BACE Geotechnical dated October 11, 1999, to evaluate the ocean bluff stability at the property in order to determine building feasibility and setback criteria for the proposed residence. BACE also performed reconnaissance of the site on August 5 (for a previous client) and September 13, 1999. The September reconnaissance included the exploration of the sea caves at the property by use of a kayak.

The bluffs are comprised of sandstone and minor shale of the Cretaceous-Tertiary Franciscan Complex coastal belt. Weathering and erosion along an ancient, inactive fault created the bluff indentation separating the two terrace levels. The near vertical fault strikes to the north. A lineament (possible fault) described as a "linear feature of unknown origin observed (regionally) on aerial photographs" is shown going through the southeasterly bluff indentation on Open File Report 84-12. BACE saw a north striking, near vertical, ancient fault trending up the west side of the ravine, approximately 100 feet from the existing residence. The active San Andreas Fault is located offshore, approximately four miles to the southwest. An area of shallow landsliding or slope creep was observed on the bluff face above the sandy beach at the northwest end of the property. The landslide may have been caused by past road construction in the area. The landslide has destroyed the dirt road that once went to the beach in this area. One other small landslide was observed on the upper slope of the ravine at the southwest corner of the existing residence adjacent to Highway One. The landslide has undermined a support pier at the residence corner.

In the area of the proposed residence, the required blufftop setback ranges between 30 and 50 feet. The Report offers the following conclusions and recommendations:

"The setbacks for those portions of the bluffs in direct contact with ocean waves were based upon an average retreat rate of 2-1/4 inches per year for 75 years (considered to be the economic lifespan of a house by the California Coastal Commission) times a safety factor of two (then rounded up slightly). Other portions of the bluffs have slightly higher setbacks based upon the bluff stability (landsliding) or susceptibility to bluff face erosion unrelated to wave erosion. Conventional footing foundations can be used with the recommended setbacks provided that BACE reviews the project plans; verifies the setbacks in the field when the house corners have been staked; and observes the foundation excavations during construction. The presence of weak superficial soils may require that footings be deepened beyond Uniform Building Code minimums to gain uniform support in underlying firm soil or rock. As typical of the Mendocino County coast, the site will be subject to ground shaking during future, nearby earthquakes. Since BACE found no evidence of active faulting in the property vicinity, the risk of fault rupture at the site is considered to be relatively low."

Based on the conclusions of the Geotechnical Report, the blufftop setback depicted on the site plan is considered to be satisfactory. There shall be a minimum 30-foot setback for all development from the blufftop edge. Staff recommends that the applicant be required to follow the design and construction

12 of 24

guidelines as stated in the Report. Specifically, BACE shall review the final project plans, verify the setbacks in the field when the house corners have been staked and observe the foundation excavations during construction. Condition #3 has been added to assure that all the recommendations of the geotechnical investigation are incorporated into the building design and construction of the project.

The California Coastal Commission and Mendocino County have been applying a deed restriction for blufftop parcels where the development is within 100 feet of the bluff prohibiting the construction of seawalls with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. Therefore, staff recommends including Condition #4 to address this issue.

Transportation/Circulation: The project site is presently developed and the proposed project would not increase the intensity of use at the site. The project would use an existing driveway approach onto Highway 1 that has served the development on the property for many years. Caltrans responded to the application with a generic requirement that any work within the state right of way, including access improvements, would require a current encroachment permit and that any new driveway must be constructed to meet Caltrans standards for a single family road approach. There is no request to construct a new driveway in conjunction with the project but Condition #5 is added to require the applicant to obtain an encroachment permit for any work within the right-of-way. The County Department of Transportation offered no comment. A new gate would be installed approximately 50 feet from the front property line. This setback should provide a safe distance for entering and existing vehicles. The existing rocked driveway would be extended to the proposed building site and new parking areas would be established.

Groundwater Resources: The site is located within an area mapped as Critical Water Resources. The Elk Water District would serve the proposed development and the project should not adversely affect this resource. The Division of Environmental Health is prepared to issue a clearance for the proposed single family residence and replacement residential septic system. The septic system for the second residence is expected to either connect to an existing system currently serving the mobile home or connect to the proposed system for the primary residence. As discussed in the project history section of this report, the proposed guest cottage structure (which has been eliminated from the project request) would have been connected to the new septic system. Condition #6 requires the applicant to submit written approval from the Division of Environmental Health to the Department of Planning and Building Services prior to the issuance of building permits.

Visual Resources: The subject property is located in a designated Highly Scenic Area (HSA) west of Highway 1. Several Local Coastal Plan (LCP) policies and corresponding sections of the Coastal Zoning Code apply to the project. In general, staff finds the project design to be consistent with the required policies. As discussed below, exterior color and landscaping conditions are recommended to ensure the project is consistent with the requirements for development in a HSA. The demolition of the residence adjacent to Highway 1 will have a positive visual affect in the area. The structure has become dilapidated, is painted a light beige color and is highly visible from the road. Story poles were erected for the proposed residence the last week of January 2002.

The consistency of the proposed project design with LCP visual resource protection policies is addressed below:

13 of 24

Policy 3.5-1 of the Mendocino County Coastal Element states:

"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:

"Any development permitted in [highly scenic] areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes".

"...In addition to other visual policy requirements, new development west of Highway One in designated highly scenic areas is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures...New development shall be subordinate to the setting and minimize reflective surfaces. Variances from this standard may be allowed for planned unit development(s) that provides clustering and other forms of meaningful mitigation."

3.5-4 *"Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists..."*

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

Sec. 20.504.015 (C) (3) of the Coastal Zoning Code states in part:

"New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings."

Section 20.504.015 (C) (2) of the Coastal Zoning Code states:

"In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures."

The replacement of the mobile home with a new single story residence will not have a significant impact on visual resources. The existing mobile home is not visible from Highway 1 or from the Greenwood/Elk State Park to the south. The 768 sq. ft. single story residence would have a maximum height of 16' 6"

14 of 24

above average natural grade. White story poles were erected to indicate the height of the structure and its visibility from public view areas. Staff was unable to see the poles from the highway or the State Park. The structure would be clad with with stucco, dark bronze anodized aluminum sash windows and asphalt composition shingle roofing. No landscaping or exterior material changes are required to bring the structure into compliance. Therefore, the proposed second residential unit is consistent with the applicable policies highlighted above.

The proposed 3,710 sq. ft. single story single family residence would have a maximum height of 18 feet above average natural grade. The proposed three bedroom residence includes 3,025 sq. of living space and a 685 sq. ft. attached two-car garage. The location of the structure was mainly determined by the ESHA setback and the geotechnical bluff top setback. The residence is positioned to comply with these required setbacks. There is a stand of pine trees to the north and east of the building site which provides substantial screening from Highway 1.

The proposed exterior surfaces and colors of the 3,710 residence would be comprised of the following:

Siding: Portland cement plaster (stucco) to be a smooth finish with Benjamin Moore #OC-12 (muslin -beige) exterior paint.

Roofing: Gacoflex flat roof membrane to be a shale color

Chimney: exterior flue pipe to be stainless steel painted low luster Benjamin Moore #71 Medium Gray exterior paint finish.

Windows: dark bronze anodized aluminum sash

Staff asserted that a darker exterior stucco color would help the structure blend in hue and brightness with the surroundings and reduce its dominance. However, staff was unable to come to an agreement with the applicant for a darker color. A color sample was provided by the applicant of 34 colors available from Highland Stucco & Lime Products with three selections from the applicant. The selections included 2026 Apricot Ice, 171 Valencia and 449 Santa Fe. These colors had the same brightness as the earlier requested color and would also create a contrast with the backdrop of evergreen trees behind the structure. As a compromise, staff found the color 882 Shadow (offered by the same company) to be acceptable, but the applicant declined to agree. The exterior color of the stucco is still unresolved. Experience has shown that the exterior colors of blufftop residences can make a big difference in the development's visual impact on public views. The darker the hue, brightness and color value of the exterior colors, the more the structure blends in with the natural environment. Due to the visibility of the residence from the park and the comments received from the State Park District Superintendent, staff has added Condition #7 to request a darker color finish for the stucco walls. The color 822 Shadow would be appropriate or another "dark" color with a similar hue and brightness.

The State Parks Department has reviewed this proposal and has the following comment:

"In the present case, the proposed structure is highly visible from the park in many prime viewing locations and unfortunately continues the natural viewshed degradation further north from the town of Elk. For the structure to be built in a manner taking this concern into account it needs to be sited as far back from the bluff edge as possible considering construction limitations, be screened by native tree species that screen and break up the presence of the house, use non-reflective glass in the windows, and maintain dark materials for the siding and roofing."

15 of 24

As stated above, the single story structure will be highly visible from Greenwood/Elk State Park approximately ½ mile south of the project site. The most visible portion of the structure would be the southeast elevation where the master bedroom is located. The south elevation is mostly glass but will be oriented out to the ocean and only a portion of this glass wall will be visible from the park view. The applicant has proposed a "greenhouse" type enclosure for the master bedroom which will be oriented directly towards the park. Staff expressed concern about the amount of glass and reflective surface of this feature. The proposed residence would be partially visible from an historic public viewing and photographic point adjacent to Cuffey's Cove Cemetery to the north. Upon conducting several site views to view the story poles, staff determined that the residence would not be visible from the actual roadway but would be seen from the public cemetery west of the highway at Cuffey's Cove. Page 189 of the Coastal Element states:

"Cuffey's Point

Location: 1 mile north of Elk

Ownership: Private

*Characteristics: Superb view of coast across Greenwood Cove and setbacks to south.
Suitable for viewpoint, not shoreline access.*

Potential Development: Turnout and parking area; picnic tables.

Policy 4.10-6 Caltrans should acquire an area west of Highway 1 of sufficient area to construct a parking area and vista point overlooking Cuffey's Cove. An offer to dedicate a parking area and vista point overlooking Cuffey's Cove. An offer to dedicate a parking area and vista point at this location shall be obtained consistent with Policy 3.6-5 if Caltrans is not successful in acquiring this area prior to application for a coastal development permit. If the land use on this large area changes in the future, an offer to dedicate an easement for public access shall be required for the area delineated on the Land Use Map, consistent with Policy 3.6-5."

At this time there has been no change in the land use on this parcel and staff has no knowledge of Caltrans acquiring the area. Nonetheless, the view from the headlands looking south would be affected by the proposed residence. This is an area of historic public viewing. As seen from the southern portion of Cuffey's Cove Cemetery the structure would be backdropped by the town of Elk in the distance. A substantial stand of trees would shield a majority of the development from this view but the garage on the west end of the house would be visible. This end of the structure has very little glass and is mostly a stucco wall with a height of 13 to 14 feet above grade. The brightness and color of the stucco will make a big difference as to how much the structure stands out from the surrounding environment.

3.5-5 "Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged... New development shall not allow trees to block ocean views."

The applicant has indicated planting two Shore Pines and one Monterey Cypress tree to shield the master bedroom "green house" feature from public view at the park. The site plan shows two other existing pine trees east of the three proposed trees. Landscaping should be used as a last resort to help a project comply with the visual resource policies. The project should be designed to comply with the HSA policies. The placement of this "greenhouse" feature is not consistent with the requirement that exterior materials and finishes blend in with the surrounding area and be non-reflective. Staff is further concerned that the light from the master bedroom at night would be directly in view from the park. Landscaping is requested

16 of 24

regardless of this glass feature to help break up the architecture and shield the development. Condition #8 is added to require the applicant to reduce the proposed glass in the master bedroom by at least 50 %. The applicant could employ skylights and more conventional windows to accomplish the goal of reducing the amount of glass and reflective surfaces in the master bedroom. The landscaping is intended to screen and break up the presence of the house. Condition #9 is added to require the submitted landscaping to be installed and that the existing trees be retained in perpetuity due to the screening they would provide from public view areas.

3.5-15 "...No lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible."

The applicant has submitted the exterior lighting fixtures. There are to be wall sconce lights with copper shields on the residence and on the fence, downlights at soffits, underwater uplights in the reflecting pool at the entry and path lights along the path and around the guest parking area. All the light fixtures are downcast and shielded. No lighting would distract motorist. Therefore, proposed lighting is in compliance with exterior lighting requirements of Policy 3.5-15 and Section 20.504.035 of the MCC.

Fire Protection: The project is located within the local responsibility area of the Elk Community Services District, with shared responsibility by the California Department of Forestry and Fire Protection (CDF). The property has a moderate fire hazard classification. The applicants have obtained a clearance from CDF (#233-01) which requires that the project meet the Defensible Space Standard of thirty feet from all property lines and addressing and driveway standards.

Archaeological/Cultural Resources. The project site is currently developed. Max A. Neri of North Coast Resource Management prepared an archaeological assessment of the subject parcel dated October 21, 1999. The investigation resulted in the discovery of one prehistoric site. The survey was reviewed and accepted by the Mendocino County Archaeological Commission on November 14, 2001. The Archaeological Commission recommended further analysis prior to any development that might impact the site, pursuant to the report. The identified site would not be impacted by the development proposed in this permit. Nonetheless, Condition #10 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Natural Resources. According to Gordon E. McBride, Ph. D., the property is situated on the youngest coastal terrace. Three plant communities are represented on the site. Non-native grassland is on most of the level portion that was originally coastal bluff scrub and or coastal terrace prairie, but has been subject to regular mowing for many years. Coastal bluff scrub is present on the bluff edge and bluff face. Lastly, a riparian plant community associated with the immediate banks of a small tributary of Laurel Creek traverses the site from southeast to northwest. The majority of the developed area, up to the edge of riparian habitat, is lawn. Mary Rhyne, Botanical Surveyor and Gordon E. McBride, Ph.D. have prepared several botanical reports for the subject parcel. Due to changes in the project and the relocation of some of the proposed septic system waste lines, many of the reports and subsequent addenda are irrelevant. The parcel has been surveyed for the presence of rare or endangered plant species, the riparian vegetation has been identified and the upland extent of the vegetation has been marked with flagging.

Dr. McBride's report, dated July 14, 1999, discovered one Mendocino Paintbrush, a listed rare plant, growing on the edge of the bluff near the area where the historical road goes down to the beach. There were also several populations of the Mendocino Paintbrush on the bluff face. The Mendocino Paintbrush should be protected from disturbance and none of the proposed development would have an impact on the

17 of 24

identified resource. No other rare or endangered plants were discovered on the site as a result of the survey. Therefore, no mitigation is required for rare plants.

In her report dated April 2, 2001, Mary Rhyne identified the upland limit of the riparian vegetation growing on the sides of Laurel Creek which drains water from the east side of Highway One. The creek is a natural channel that follows along the northern boundaries of the subject property and empties water into the Pacific Ocean. Dr. McBride states that Alder, Thimbleberry, Salmon Berry, Sedge, Elderberry and associated plants represent the riparian community. Watercourses and their associated riparian habitat are considered to be environmentally sensitive habitat areas (ESHA's) as defined by the Local Coastal Plan and the Coastal Act.

Chapter 20.496 and Section 20.532.060, et. seq. of the Coastal Zoning Code contains specific requirements for protection of ESHA's and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA's from disturbances related to proposed development. Section 20.496.020 requires that:

"The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width."

Both botanists recommend that a 100-foot non-disturbance setback be measured from the upland limit of the riparian habitat for new development. It is important to note that all of the existing development on the parcel (the residence adjacent to Highway One, the mobile home, the workshop and the driveway) are located within the recommended ESHA buffer setback. The new 3,710 sq. ft. residence and the new septic system will be outside of the required setback. All underground utility extensions will be located within the driveway. The new turnaround and parking area can not be practically located outside of the buffer area due to the location of the existing driveway. The second residential unit would be connected to either the existing septic system for the mobile home or would be connected to the new system installed outside of the ESHA buffer. There is the potential that components of the connection to the new septic system would have to pass through the ESHA buffer.

Per section 20.532.100 (A) (1) of the Coastal Zoning code, development shall be allowed within an ESHA only in accordance with the following findings:

- (a) The identified watercourse 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.*

The existing second residential unit (mobile home) is situated outside of the upland limit of the riparian habitat but is within the 100-foot ESHA buffer setback established for new development. Dr. McBride prepared a supplemental report dated March 13, 2002, which recommended mitigation for the construction of a new second residential unit on the footprint of the existing mobile home. He states although the new structure would be within the recommended 100 foot buffer, it would not pose a threat to the adjacent riparian plant community beyond that which is posed by the existing mobile home. He

18 of 24

recommends mitigation during construction. The riparian habitat should be protected from damage or disturbance by either a plastic debris fence held in place by metal fence posts or by a row of straw bales placed end to end. Either form of barrier should be extended at least ten feet beyond the footprint of the existing mobile home. Construction debris, disturbance or material storage should not be allowed between the barrier and the riparian plant community. Construction vehicles should not be permitted to park or drive between the barrier and the riparian plant community. The recommended mitigation is very similar to the condition normally applied to projects with a reduced ESHA buffer setback. Staff recommends mitigation be either form of barrier suggested by Dr. McBride. The barrier should be placed approximately 10 feet from the edge of the upland limit of the riparian habitat and should extend 50 feet on either side of the building footprint. A copy of the botanical report and recommended setback along with the coastal permit application were sent to the California Department of Fish and Game for comment. Liam Davis, Environmental Specialist III, responded with a phone call on April 5, 2002 stating he had no comment on the project, the ESHA setback or the mitigation recommended by Dr. McBride. Condition #11 will ensure that human intrusion or disturbance does not negatively impact the ESHA and that the mitigation recommended by Dr. McBride and staff is incorporated into the project. According to Dr. McBride, the mitigation measures, if properly implemented, should ensure there is no loss of habitat on the project site. Further, supplemental findings 8, 9 and 10 have been added as is required by Section 20.532.100 (A) (1) MCC to allow for the proposed development.

Planning Criteria: The proposed single family residence is compatible with the Rural Residential Zoning District and is designated as a principal permitted use per Section 20.376.010 (A) of MCC. The proposed garage is permitted as an accessory structure per Section 20.456.015 (A) of MCC. The proposed development complies with the maximum building height and setback requirements of the Rural Residential Zoning District and corridor preservation setbacks from Highway One.

Section 2.2 of the Coastal Element and Chapter 20.480 of the Coastal Zoning Code [Nonconforming Uses] allows expansion or reduction of a legal, nonconforming use to a use of lesser intensity through the issuance of a Coastal Development Use Permit uses provided the following four criteria are satisfied:

- (a) That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation;
- (b) That the use is and, after expansion, will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated;
- (c) That the site is physically separate from surrounding properties such that continued non-conforming use is appropriate in that location; and
- (d) Expansion of the non-conforming use will require a conditional use permit in each case. Such conditional use permit shall be granted only if affirmative findings can be made on the criteria listed above (a) (b) and (c), and only if the expansion is found consistent with all other applicable policies of the Coastal Element.

The replacement structure would be in the same location and be the same size as the mobile home. Although the proposed 16' 6" maximum average height would be slightly higher than the existing structure it is not considered an expansion of use. The proposed project would result in the same housing density (two single-family residences) as currently exists. The elimination of the residence adjacent to Highway One is a beneficial result of the project. The residence to be removed is within the corridor preservation setback and is being undermined by a landslide and a retreating blufftop.

19924

Section 20.508.020 of the Coastal Zoning Code requires buffer areas for development adjacent to agriculturally designated parcels.

Section 20.508.020(A)(1) states:

"No new dwellings in a residential area shall be located closer than two hundred feet from an agriculturally designated parcel unless there is no other feasible building site on the parcel."

The parcel is approximately 250 wide at the thinnest point and is heavily constrained. The replacement second residential unit would be sited in an established location adjacent to the agriculturally designated parcel to the north. The other residence would be as far south away from the agriculturally zoned parcel and as close to the blufftop edge as the geologic setback would allow. The project would result in the same level of residential intensity that has previously been established.

Condition #12 has been added to require the applicant to obtain a permit from the Air Quality Management District prior to the demolition of the residence adjacent to Highway 1.

GENERAL PLAN CONSISTENCY RECOMMENDATION: The proposed project is consistent with applicable goals and policies of the General Plan and Local Coastal Plan, specifically as they relate to geology, blufftop parcels, hazards, visual resources, and nonconforming uses.

PROJECT RECOMMENDATIONS: staff recommends that the Planning Commission approve Coastal Development Use Permit #CDU 47-2001, finding the project to be consistent with the goals and policies of the General Plan and Local Coastal Plan.

RECOMMENDED MOTION:

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

20 of 24

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

SUPPLEMENTAL FINDINGS:

8. The identified watercourse will not be significantly degraded by the proposed development.
9. There is no feasible less environmentally damaging alternative.
10. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

Project Findings: The Planning Commission, making the above findings, approves #CDU 15-2001 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS:**Conditions which must be met prior to use and/or occupancy and for the duration of this permit:**

1. This permit shall become effective after all applicable appeal periods have been expired or appeal processes exhausted. Failure of the permittee to make use of this permit within two years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
2. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith is mandatory, unless a modification has been approved by the Planning Commission.
3. All recommendations of the geotechnical report prepared by BACE Geotechnical dated October 11, 1999 shall be incorporated into the design and construction of the development. BACE shall review the project plans; verify the setbacks in the field when the house corners have been staked; and observe the foundation excavations during construction.
4. Prior to the issuance of the Coastal Development Use Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Planning Commission that shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and the landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including

21 of 24

without limitation attorney's fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;

- c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;
 - f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
5. The applicant shall obtain an encroachment permit from Caltrans for all work within the State Right-of-Way.
 6. Prior to issuance of a building permit, the applicant shall submit to the Department of Planning and Building Services written verification from the Division of Environmental Health that approval of the site disposal system plan has been obtained.
 7. Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, color samples for the proposed residences. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Sec. 20.504.015 (C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones which will blend with the dark evergreen tree backdrop. Tan, beige or other "light" colors shall not be appropriate. All other exterior building materials and finishes shall match those specified in the coastal development permit approval. Windows shall be made of non-reflective glass. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
 8. Prior to the issuance of the coastal development permit the applicant shall submit for the review and approval of the Coastal Permit Administrator, a revised south and east building elevation for the primary residence which reduces the glass ("greenhouse feature") in the master bedroom by approximately 50%.
 9. The evergreen trees surrounding the proposed residence and shown on the site plan provide a significant visual buffer from public view areas and shall be retained. No tree removal or limbing of the existing trees shall occur without prior review and approval by the Department of Planning

22 of 24

and Building Services. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.

Prior to the final building inspection, all required landscaping indicated on the site plan shall be installed, irrigated and staked. All required landscaping shall be maintained, and replaced, as necessary, to ensure that a vegetative screen is established and maintained in perpetuity for the life of the project.

10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
11. The riparian habitat associated with the watercourse and described by Mary Rhyne and Gordon McBride shall be protected with a 100-foot buffer from the edge of the riparian habitat. No development, disturbance, or tree removal shall occur within the buffer except as explicitly described in this permit. Prior to removal and replacement of the mobile home, a temporary protective fence or hay bale barrier shall be extended at least ten feet beyond the footprint of the existing mobile home. Construction debris, disturbance or material storage shall not be allowed between the barrier and the riparian plant community. Construction vehicles shall not be permitted to park or drive between the barrier and the riparian plant community. The fence or barrier shall remain in place until the final building inspection of the proposed residence.
12. Prior to issuance of a demolition permit for the residence adjacent to Highway 1, the applicant shall submit written approval from the Air Quality Management District to perform the work.
13. An amendment to this coastal use permit shall be obtained prior to construction of any additions, additional structures, or placement of exterior lighting on any portion of the site within view of public access areas or Highway 1.
14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. That this permit be subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
16. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one (1) or more of the following grounds:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.

23 of 24

- c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

Any such revocation shall proceed as specified in Title 20 of the Mendocino County Code.

- 17. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.

DATE

Rick Miller
 Coastal Planner II

- Attachments: Exhibit A- Location Map
 Exhibit B- Site Plan
 Exhibit C- Plot Plan
 Exhibit D- Second Residential Unit Plans
 Exhibit E- Residence Elevations
 Exhibit F- Residence Elevations
 Exhibit G- Residence Floor Plan

Appeal Fee - \$600.00
 Appeal Period - 10 days

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
-------------------	-----------------------	-----------------------------------	-------------------

Dept. of Fish & Game		X	
Transportation		X	
Environmental Health- Ft Bragg			X
Building Inspection - Ft Bragg Assessor		X	
Caltrans			X
Dept of Forestry			X
Coastal Commission	X		
Sonoma State (Arch.)			X
Elk Water District	X		
State Parks			X
Pt. Arena City Hall -	Posted for public review		

24 of 24

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
110 E STREET - SUITE 200
EUREKA, CA 95501-1866
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

RECEIVED

JUN 19 2002



CALIFORNIA
COASTAL COMMISSION

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):

Dr. Hillary Adams

P. O. Box 1936

Mendocino, CA. 95460

(707) 877-3527

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: County of Mendocino

2. Brief description of development being
appealed:

Demolish an existing, non-conforming use residence (sq. ft. and ht. ?); construct a
3,710 sq. ft. single family residence and attached garage, of 18' ht. (average natural
grade). Remove an existing mobile home; construct a second residence of 768 sq. ft., (over)

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

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

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-02-029

DATE FILED: 6/19/02

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 5
APPLICATION NO. A-1-MEN-02-029
SHIA
APPEAL (1 of 6)

Project
Description: cont'd

16'6" ht.(average natural grade). Extremely modern design for both units: wall of windows, skylight and lighted reflecting pool. Six foot fence with gate. 1/4 mile north of Greenwood/Elk, west side of highway One; highly scenic. RR:L-5

296

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: May 16, 2002

7. Local government's file number (if any): CDU- 15-2001

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: Leventhal/Schlosser Architects
- Dan and Rosanna Shia _____ 433 North Main Street
- 5553 Perugia Circle _____ Fort Bragg, CA. 95437 (agent)
- San Jose, CA. 95138 _____

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) Supt. Greg Picard _____
- Calif. Dept. of Parks and Recreation _____
- P. O. Box 440 _____
- Mendocino, CA. 95432 _____
- (2) _____
Ms. Jane Corey _____
P. O. Boxholder _____
Elk, CA. 95432 _____
- (3) _____

- (4) _____

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.

3 of 6

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.)

Reasons for appeal: (See Attachment A)

Very visible from Greenwood State Park and coastal trails. Six foot high fence and gate impact scenic Highway One. Impact on Bureau of Land Management National Monument of Elk Sea Stacks. Extremely modern architecture does not blend with nearby historic town or with natural setting. Color and roofing too light and reflective; skylight, curved window-wall and lighted reflecting pool. Safety - Geologic hazard setback may not be adequate considering; sea caves, fault lines, landslides; and landscaping placed in geologic hazard zone.

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.

Hillary de M. Adams, appellant
Joseph J Brecher
Signature of Appellant(s) or
Authorized Agent

Date 6/18/02

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

Section VI. Agent Authorization

I/We hereby authorize Joseph Brecher to act as my/our representative and to bind me/us in all matters concerning this appeal.

Hillary de M. Adams
Signature of Appellant(s)

Date June 8, 2002

4 of 6

Coastal Act: 30603 (a)(1) and (b)(2): "fails to protect public views...from a recreational area to and along the coast;" and (5): landscape requirement "does not comply with shoreline erosion and geologic setback requirements."

Coastal Act: 30001 et seq., especially (a) and (b); and 3001.5 (a): "protect, maintain, enhance and restore...coastal zone environment and its natural and artificial resources;" 30251: "the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance etc.;" 30253 (hazard) especially (1), (2) and(5).

Impact on Greenwood/Elk and Greenwood State Park, coastal trails Sea Stack National Monument and Highway One: "New development shall...where appropriate, protect special communities...which, because of their unique characteristics, are popular visitor destination points for recreational uses." LCP 3.5 et seq., especially LUP 3.5- 1 (visual resources) including six-foot high gate and fence which impact highway One; 3.5-2 (special communities: Elk), 3.5-3 (coastal views from coastal trails, parks, waters used for recreational purposes [Elk has a nationally known kayak business named Force Ten]; 3.5-5 (landscape; needs to be outside of geologic hazard zone). CZC 20.504.015 et seq., especially (C)(3) (subordinate to natural setting) and LUP 3.5-5 (landscape; presently in area of geologic hazard);

Geologic hazard of six sea caves, two fault lines and two landslides: LCP 3.4 et seq., especially LUP 3.4-7 (setback) and 12; CZC 20. 500.020 and 20.532.070 (geologic hazards) Geologic setback may not be adequate (sea caves, faults and landslides). Because of the extreme geologic hazard and the visual impacts on numerous coastal resources, and because the riparian area habitat has been mowed since the 1970's and the gate, fence, road, and second residential unit are all within the 100' setback area (CZC 20. 632.100), the ESHA riparian area of less than 100 foot setback [CZC 20.496.020(A) (1)] in this case should be subordinate to visual impacts and geologic hazard and the 50' minimum buffer allowed. Moving the main residence back to the 50 feet' ESHA setback will provide room for mitigating landscape outside the geologic hazard setback.

Question: Why are two residential units allowed on a single lot in the coastal zone when both original non-conforming units (a house and a mobile home) are being removed, and the project is an entirely new development? (CZC 20.376-025 (C) one dwelling unit per 5 acres for RR;L-5)

546

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen years and not a party to the within action. My address is 436 14th Street, Suite 1300, Oakland, California 94612.

I am familiar with the practices of this office whereby each document is placed in an envelope, sealed, postage applied and the sealed envelope is placed in a U.S. mailbox at or before the close of each day's business. On June 18, 2002 I served the following document(s): **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT** on the following person by placing a true copy of said document(s) in a sealed envelope, with first class postage prepaid, and deposited in the U.S. mail at Oakland, California, addressed as follows:

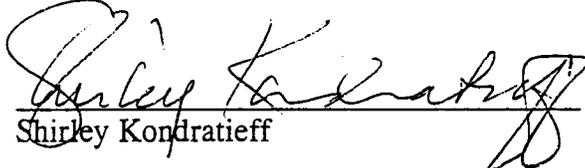
Dan and Rosanna Shia
5553 Perugia Circle
San Jose, CA 95138

Supt. Greg Picard
California Department of Parks and
Recreation
P. O. Box 440
Mendocino, CA 95432

Ms. Jane Corey
P. O. Boxholder
Elk, CA 95432

Leventhal/Schlosser Architects
433 North Main Street
Fort Bragg, CA 95437

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California on June 18, 2002.


Shirley Kondratieff



DEPARTMENT OF PARKS AND RECREATION

Ruth G. Coleman, Acting Director

Mendocino District
P.O. Box 440
Mendocino, CA 95460
(707) 937-5804

RECEIVED

JUL 08 2002

July 1, 2002

CALIFORNIA
COASTAL COMMISSION

Robert Merrill
California Coastal Commission
North Coast District Office
P.O. Box 4908
Eureka, CA 95502-4908

Dear Mr. Merrill,

We would like to join in support of the appeal to the Coastal Commission by Dr. Hillary Adams of the permit CDU 15-01 (Shia) at 5260 South Highway One. We believe her comments to be valid and would like to see the concerns she raised be addressed during the appeal process.

In our opinion, any structure in a highly scenic coastal viewshed should be built in a manner and location that has the least impact on coastal views from other properties in the area, and in particular from public use properties like Greenwood State Beach. In the present case the proposed structure is highly visible from the park in many prime-viewing locations and unfortunately continues the natural viewshed degradation even further north from the town of Elk. For the structure to be built in a manner taking this concern into account it needs to be sited as far back from the bluff edge as possible considering construction limitations, be screened by native tree species that screen and break up the presence of the house, use non-reflective glass in the windows, and maintain dark materials for siding and roofing. This structure appears to be very far forward on the property and thus might be less visible, while still affording the residents an adequate view, if moved back further on the lot. If movement of the building envelope results in placement of the structure inside the riparian environmentally sensitive habitat area then we would request that mitigation for that impact be a condition of the permit. We believe mitigation for the riparian impact can be more effectively and easily accomplished than can impacts to viewshed and geological hazards.

Sincerely,

Greg Picard
District Superintendent

EXHIBIT NO. 6
APPLICATION NO. A-1-MEN-02-029
SHIA
LETTER FROM STATE PARKS