

CALIFORNIA COASTAL COMMISSION

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Filed: June 27, 2002
49th Day: August 15, 2002
Staff: Randall Stemler
Staff Report: July 25, 2002
Hearing Date: August 7, 2002
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-02-030

APPLICANT: John W. McClure

AGENT: David Coddington

PROJECT LOCATION: 27600 South Highway One, near Schooner Gulch, approximately 2½ miles south of Point Arena, Mendocino County (APN 027-421-08).

PROJECT DESCRIPTION: Construction of a 1,850-square-foot, single-family residence with a 400-square-foot attached garage for a total of 2,250 square feet. Average height from natural grade to be 20 feet. Installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.

APPELLANTS:

- 1) Friends of Schooner Gulch,
Attn: Peter Reimuller,
- 2) Richard S. Calone

SUBSTANTIVE FILE DOCUMENTS:

- 1) Mendocino County CDP No. 44-00; and
- 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed. These grounds include alleged project inconsistencies with Mendocino County's certified Local Coastal Program (LCP) policies pertaining to geologic hazards, visual resources, and adequacy of water to serve the development. The appellants have not raised any substantial issue with the local government's action and its consistency with the certified LCP.

The development, as approved by the County, consists of an 1,850-square-foot, 20-foot-high, single-family residence with a 400-square-foot attached garage and installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.

The contentions regarding geologic hazard and insufficiency of information necessary for establishing adequate bluff setback restrictions do not raise a substantial issue of conformance with the geologic hazard policies of the LCP. A geologic setback designed to protect the approved house from bluff erosion and cliff retreat over a 75-year economic lifespan was established based on an examination of aerial photographs and a complete geotechnical investigation.

The contentions regarding the protection of visual resources also do not raise a substantial issue of conformance with the visual resource policies or standards of the LCP. Because of the orientation of the proposed structure on the parcel, and the elevation of the house relative to the highway, the location of the proposed structure would not block a view to the ocean from Highway One or any other public vantage point, including the Ross Creek and Whiskey Shoals public access trails, Bowling Ball Beach, Schooner Beach and its publicly accessed headlands, and the open ocean. In addition, the house would be largely screened from view of these vantage points by existing and required landscaping. Furthermore, the approved two-story house is compatible with the four existing residences in the same subdivision, which are all two stories in height. Therefore, no substantial issue is raised that the approved residential development would be out of character with surrounding structures, or would not be subordinate to the character of its setting.

Finally, the contentions regarding the adequacy of available water to serve the development also do not raise a substantial issue of conformance of the approved project with the requirements of the LCP. The applicant drilled a test well and provided adequate studies and relevant data in sufficient detail to enable the County to determine that adequate water would be provided by the well to serve the approved residence. For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project

with the certified LCP and the public access policies of the Coastal Act. The motion to adopt the staff recommendation of No 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

Appeals were filed by (1) Friends of Schooner Gulch, represented by Peter Reimuller; and (2) Richard S. Calone (Exhibit No. 4). Both appeals were filed with the Commission in a timely manner on June 27, 2002 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 3) on June 13, 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 no 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-02-030 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 YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo 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 NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-02-030 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS.

The Commission received two appeals of the County of Mendocino's decision to approve the development, which is located along the Mendocino County coastline, south of Point Arena, on the west side of Highway One south of Ross Creek, at 27600 South Highway One.

The project as approved by the County consists of construction of a 20-foot-high, 1,850-square-foot, single-family residence with a 400-square-foot attached garage. The development would include installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities

The appeals were received from Peter Reimuller representing Friends of Schooner Gulch; and Richard S. Calone, the owner of property immediately to the north of the subject property. The appeals raise contentions involving inconsistency of the approved project with the County's LCP policies regarding geologic hazard, visual resources, and proof of adequate water. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 4.

1. Geologic Hazard

The appellants contend that approval of the project is inconsistent with LCP policies and standards designed to protect coastal bluff-top development from impacts associated with slope stability and bluff retreat. The appellants believe that the development is susceptible to landslides, and that a quantitative slope stability analysis should have been performed. Appellant Friends of Schooner Gulch asserts that the geotechnical study and report performed for the project is incomplete because it does not address claims regarding accelerated cliff recession due to global warming and a rising sea level. Additionally, both appellants contend that information is lacking concerning drainage from the face of the cliff on the subject property. Appellant Richard Calone states: "*none of the drainage reports currently identify the perched water table seeping from the face of the bluff. None of the reports address the developmental impacts on this seepage. For*

instance, will the location of the leach field increase this seepage and accelerate the instability of the bluff?" The appellants cite provisions of the Mendocino County certified Land Use Plan (LUP) and the Mendocino County certified Coastal Zoning Code (CZC) and assert that the approval of this development is inconsistent with the requirements of LUP Policies 3.1 et seq. (specifically 3.1-25), 3.4-1, 3.4-7, 3.4-9, and Appendix 3; and CZC 20.488 et seq., 20.492 et seq., 20.496 et seq., 20.500 et seq., and 20.532 et seq.

2. Visual Resources

The appellants contend that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas. The visual resources of the Schooner Gulch, Bowling Ball Beach, Saunders Reef Scenic View Corridor and hiking trails to the north of the subject parcel offer premiere coastal viewing opportunities for the public. The subject property is designated as a highly scenic area in the Local Coastal Plan. New development in highly scenic areas is required to be sited and designed to protect views to and along scenic coastal areas, and be subordinate to the character of its setting.

The appellants assert that the landscape screening required for the development is insufficient. It is alleged that the proposed house would be visible from the public trails at Ross Creek and at Whiskey Shoals Subdivision to the north. Appellant Friends of Schooner Gulch asserts that trees on the neighboring property to the north *"are not sufficient to serve as part of the permanent landscape buffer. Should the [neighboring] Calone development be changed or be removed because it is endangered by a bluff failure, then nothing would remain to shield the McClure development from the public trails to the north."* Additionally, Friends of Schooner Gulch asserts that *"[t]he revised Landscape Plan is materially incomplete,"* because *"[n]ot all of the necessary screening trees which are located on the property are shown on the revised Landscape Plan—especially the trees on the Highway One (east) side of the lot. Yet, Special Condition of Approval #6 states: 'All trees shown on the revised Landscape Plan provide a significant visual buffer from Hwy 1...and shall be...retained....' The specified trees are not shown on the plan, and yet must be on the plan for the condition to apply. Future landscape screening from Highway One would be a problem if those trees were to be removed or die. The revised Landscape Plan is materially incomplete."* Mr. Richard Calone's appeal refers to a particular pine tree that should be protected. The appellants cite provisions of the Mendocino County certified Land Use Plan (LUP) and the Mendocino County certified Coastal Zoning Code (CZC) and assert that the approval of this development is inconsistent with the requirements of LUP Policies 3.5-3, 3.5-5; and CZC 20.504 et seq., and 20.532 et seq.

3. Proof of Adequate Water

Appellants Friends of Schooner Gulch asserts that the well that was drilled on the subject parcel to serve the residence is a deep well that is approximately 100 feet below sea level and that *"it is inevitable that the well will draw some proportion of salt water after it is used for a period of time if it is not salty already. ... When fresh water is pulled from wells which are below the level of the nearby sea, it is often replaced by the abundant salt water which displaces fresh water by virtue of its greater weight. This does not always happen right away. Sometimes there is a six-month's or a year's worth of fresh water available before the water turns salty in the well."* The appellants contend that there is no guarantee that fresh water found in the approved test well will be adequate to serve the development in the long run. The appellants cite provisions of the Mendocino County certified Land Use Plan (LUP) and Mendocino County certified Coastal Zoning Code (CZC) and assert that the approval of this development is inconsistent with the requirements of LUP Policy 3.8-9; and CZC 20.516 et seq.

B. LOCAL GOVERNMENT ACTION.

On May 28, 2002 the Coastal Permit Administrator for Mendocino County approved a Coastal Development Permit for a 1,850 square-foot, 20-foot-high, single-family residence with a 400-square-foot attached garage for a total of 2,250 square feet and installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.

The Coastal Permit Administrator attached a number of Special Conditions to the permit. The full text of the conditions is found on pages 8-11 of Exhibit 3 (the Notice of Final Local Action). The conditions include requirements that:

1. Prior to construction, the geotechnical setback shall be staked or fenced with temporary fencing.
2. All recommendations of the Geotechnical Investigations be incorporated into the design and construction of the project.
3. Prior to the issuance of the Coastal Development Permit, the applicant as landowner execute and record a deed restriction acceptable to the Coastal Permit Administrator that provides that: (1) the landowner understands that the site may be subject to extraordinary geologic hazard and assumes the risk from such hazards; (2) the landowner shall not construct any bluff or shoreline protective devices to protect the subject development in the event that these structures are subject to erosional hazards in the future; and (3) the landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened.

4. All exterior building materials and finishes match those specified in the coastal development permit application, except that the entry deck may be of concrete in lieu of redwood decking. 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;
5. The evergreen trees surrounding the proposed residence indicated in the revised landscaping plan shall be retained, and no tree removal or limbing of the existing trees shall occur without prior review and approval by the Coastal Permit Administrator. 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. All required new landscaping shall be installed prior to occupancy, and shall be maintained in perpetuity; and.
6. All exterior lighting shall be downcast and shielded and shall not allow glare beyond the project site.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on June 13, 2002 (Exhibit 3). The project was appealed to the Coastal Commission in a timely manner on June 13, 2002 within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION.

The project site is a blufftop parcel above Bowling Ball Beach, approximately $\frac{3}{4}$ of a mile north of the existing shoreline access to the beach at Schooner Gulch. The parcel location is approximately $2\frac{1}{2}$ miles south of Point Arena, one mile northwest of Schooner Gulch, and approximately 1,200 feet south of Ross Creek (See Exhibits 1 and 2).

The subject property is generally vegetated by grassland and shrubs, with mature Cypress, Monterey pine, and Bishop pine trees located along the south boundary. In addition, four Monterey pine trees are spaced relatively evenly north to south along the coastal bluff. The subject property also is partially screened by a line of ten trees (three cypress, and seven shore pine) planted along the north property boundary on the adjoining parcel, and required to be maintained in perpetuity by condition of a Coastal Development Permit granted for development on that neighboring parcel. There are no indications of Environmentally Sensitive Habitat Areas on the property. The coastal bluff rises about 80 feet above sea level, and the parcel is slightly more than two-thirds of an acre in size. The property is accessed by a paved, common driveway off Highway One to the north-northeast. Neighboring two-story single-family houses currently exist on both sides of the project site.

Approval has been granted by the County to construct an 1,850-square-foot, single-family residence, with a 400-square-foot attached garage (for a total of 2,250 square feet) as well as installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities. The majority of the one-story, 3-bedroom, 3-bathroom residence is 18 feet in height above natural grade on average, except for a small section in the center of the structure, which is for a dormer that would be 20 feet tall. The rectangular shaped house would measure 41 feet by 75 feet, with the longest profile in line with the coastal bluff. A 35-foot geologic setback for the development was recommended, but the development as proposed would maintain a 40-foot setback from the bluff edge. The approved building materials and colors include dark gray-green composition shingles for the roof, Mahogany stain siding, with natural cedar trim.

The parcel is in an area along the Mendocino coastline designated as highly scenic. The site for the approved residence is at an elevation above Highway One, because the highway opposite the proposed residence climbs up from the Ross Creek drainage, which is at a much lower elevation. Therefore, the approved development would not block views to or along the ocean from the highway, because from a point opposite the project site, the views from the highway are of a hillside rather than of the site on the ocean.

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 significant issues related to LCP provisions regarding: (1) geologic hazards; (2) visual resources; and (3) proof of adequate water.

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." (California

Code of Regulations, Title 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, appellants 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 all of the allegations below, no substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act.

Allegations Raising No Substantial Issue:

a. Geologic Hazard

The appellants contest the County approval of the project on the grounds that the approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to protect coastal development from bluff retreat. The appellants believe that a slope stability analysis should have been performed to provide more complete information regarding cliff recession, landslide susceptibility, and sub-surface seepage from the face of the coastal bluff on the subject property. Additionally, the appellants cite a lack of information supplied by the applicant regarding global warming and sea level rise and contend that the geotechnical evaluation that the county relied on to approve the development was incomplete. The pertinent Mendocino County certified Land Use Plan (LUP) policies and the Mendocino County certified Coastal Zoning Code (CZC) ordinances that support the appellant's contentions include:

LCP Policies and Ordinances

LUP Policy 3.4-1 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. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.”*

LUP Policy 3.4-2 states: *“The County shall specify the content of the geologic site investigation report required above. The specific requirements will be based upon the land use and building type as well as by the type and intensity of potential hazards. These site investigation requirements are detailed in Appendix3.”*

LUP Appendix 3—Geotechnical Evaluation Requirements states: *“The Hazards Maps incorporated in the Land Use Plan show geotechnical hazards in the coastal zone. The extent of additional geotechnical study needed before approval of a project depends on both the site and the type of project. Potential projects are ranked according to suitability for accepting risk, with those requiring the greatest caution listed first.*

Land Use and Building Types

Type 1: Public, High Occupancy and Critical Use...

Type 2: Low Occupancy...

Type 3: Residential (less than 8 attached units)...

Type 4: Open Space, Agriculture, Golf Courses, etc.

Potential Hazards...

Fault Rupture...

Tsunami...

Landsliding. *Because of the high potential for landsliding in almost all of the coastal zone, all development plans should undergo a preliminary evaluation of landsliding potential. The effect of the development on the landslide potential must be taken into account, because slides can result from excavation, drainage changes, and deforestation. If landslide conditions exist and cannot be avoided, positive stabilization measures should be taken to mitigate the hazard.*

Coastal Erosion. *Planning for an Eroding Shoreline* (#17, California Coastal Commission) describes areas requiring special studies based on bluff configuration. The *Statewide Interpretive Guidelines for Geologic Stability of Bluff Top Development* provide further development guidelines.

LUP 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 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 and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.”

LUP Policy 3.4-9 states: *“Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.”*

CZC Ordinance 20.532.070 related to Geologic Hazards—Evaluation and Supplemental Application Information states:

“(A) The extent of additional geotechnical study that must accompany Coastal Development applications depends on the site and type of project as follows:

...(3) Unspecified land uses shall be evaluated and assigned categories of investigation on an individual basis.

... (b) Landsliding. All development plans shall undergo a preliminary evaluation of landsliding potential. If landslide conditions are found to exist and cannot be avoided, positive stabilization measures shall be taken to mitigate the hazard.”

CZC Ordinance 20.500.015 General Criteria states:

“(A) Determination of Hazard Areas.

(1) Preliminary Investigation. *The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*

(2) Geologic Investigation and Report. *In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

(B) Mitigation Required. *Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)"*

CZC Ordinance Section 20.500.020 Geologic Hazards—Siting and Land Use Restrictions states:

(A) Faults...

(B) Bluffs.

(1) New structures shall be setback 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 setback 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 accessways 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...

(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 20.532 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. ... "*

Discussion

The appellants contend that the project as approved by the County is inconsistent with the certified LCP policies and standards related to geologic hazard as set forth above. The appellants state concerns that the development as approved would be "susceptible to

landslides,” that the project would be prone to “cliff recession,” and that sub-surface seepage from the face of the bluff warrants “an additional drainage report.”

(1) Landslides

LUP Policy 3.4-1 requires that the County review all applications for Coastal Development Permits to determine threats from geologic hazards, including landslides. In areas of potential geologic hazards such as bluff top lots, the County requires a geologic investigation and report. LUP Policy 3.4-2 requires that the County specify the content of the geotechnical report based upon criteria contained in LUP Appendix 3—Geotechnical Evaluation Requirements. As the appellants accurately point out, LUP Appendix 3 requires that an evaluation of landsliding potential be included in the geotechnical study and report. In addition, pursuant to LUP Policy 3.4-7, the determination of an adequate bluff-top development setback is required, so that new structures are set back a sufficient distance from the edges of coastal bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life span of 75 years. Finally, appellants cite LUP Policy 3.4-9, which requires that “[A]ny development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.”

Consistent with LUP Policies 3.4-1 and 3.4-2, the applicant conducted a geotechnical investigation of the proposed development and provided a report with recommendations. The study was performed by Earth Science Consultants, with a report dated October 21, 1995. In the section of the report describing site conditions, an evaluation of landsliding potential is provided:

“At the time of our investigation, we observed no evidence of large-scale landsliding or other evidence of gross site instability in the planned building area. However, it should be noted that the site soils and the upper portions of the highly weathered bedrock materials may be susceptible to normal hillside soil settlement and soil creep effects, as commonly occurs on almost all hillside locations. Also, the adjacent steep bluff composed of only modest-strength sedimentary rocks will gradually recede inward in future years in the form of erosion and local bluff sloughing.”

The appellants assert that a “quantitative slope stability analysis” is necessary in order to “evaluate the likelihood of landslide on the bluff.” However, although additional studies may offer more detailed information, quantitative analysis of landslide potential is not required for consistency with the LCP. Based on the statements in the geotechnical reports about landsliding, although a complete slope stability analysis does not appear to have been performed, the landslide potential of the bluff face was clearly evaluated for the project by the geotechnical investigations. A complete slope stability analysis is not

directly required by the LCP to be included in geotechnical analyses of new development in sites with geologic hazards. As discussed earlier, LUP Policy 3.4-2, and LUP Appendix 3 only require that all development plans should undergo a preliminary evaluation of landsliding potential [emphasis added]." As part of the required geotechnical investigation, Earth Science Consultants clearly performed a preliminary landslide evaluation that examined the landslide potential of the bluff face. Therefore, no substantial issue is raised with regard to the requirements of LUP Policy 3.4-2, LUP Appendix 3, and Coastal Zoning Code Sections 20.500.015 and 20.500.020(D) that an evaluation of landsliding potential be included in the geotechnical studies provided with an application for development. Furthermore, as the landsliding potential of the bluff face was considered in development of the geotechnical recommendations to keep the development safe from geologic hazards, no substantial issue is raised with regard to the requirements of LUP Policy 3.4-1 that threats from and impacts on geologic hazards arising from landslides shall be reviewed and appropriate mitigation measures required.

(2) Cliff Recession

The appellants also contend by inference that the recommended bluff setback is inadequate to protect the proposed development from cliff recession. As a preliminary matter, it should be noted that the appellants have not presented any contrary geotechnical evaluation indicating that a different bluff retreat rate should be used other than the one developed by the geotechnical consultants for the project as approved.

As part of the required geotechnical investigation and report, LUP Policy 3.4-7 requires the determination of an adequate blufftop setback so that new structures are setback a sufficient distance from the bluff edge: "*Adequate setback distances will be determined from information derived from the required geologic investigation.... The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*"

Earth Science Consultants determined the bluff retreat rate and recommended a blufftop setback. They state:

"In summary, based upon our review of the current site topography and comparison with the previous geologic report [dated October 24, 1980, that referred to aerial photos taken in 1952 and 1972] and the previous survey map and original property line and corner markers and observation of the 1967 aerial photo, it is our opinion that the average rate of bluff recession may be considered to be 0.348 feet per year or less, which would require a 75-year bluff setback of 26.1 feet."

The applicant retained Paoli Engineering & Surveying to update the 1995 geotechnical study performed by Earth Science Consultants, and verify accuracy of the findings and

recommendations. On June 28, 2000, licensed surveyor and engineer David Paoli sent a letter to the applicant concluding:

*"Earth Science Consultants has calculated the average rate of bluff recession of 0.25 to 0.348 feet per year; the higher rate yielded their recommended setback of 26.5 feet. The owner has plotted 'Top of Bluff' measurements made in 1995 and 2000. I was able to check and confirm his 2000 measurements. Based on his plots, I find a maximum recession of 2.5 feet and an average of one foot for the five years of record. This yields a rate of 0.2 to 0.5 feet per year. After due consideration of the information, I believe the Earth Science Consultants measurement is more reliable because it is based on a much longer period of record. Since it is risky to take even 33 years of record and extrapolate it to 75 years, I always like to add a factor of safety. Earth Science Consultants recommends a 26.5 foot setback; I would recommend this setback times a 1.33 factor of safety, or a 35-foot setback. The owner's site plan shows a 40-foot setback. The pier and grade beam system proposed by Earth Science Consultants is acceptable."*¹

The use of a "factor of safety" in addition to the calculated retreat rate allows for a cautious bluff setback determination that can help allow for anomalies and unknowns such as El Nino events and rising sea levels due to global warming. The appellants contend that:

"...global warming is a fact, and will cause sea levels to rise. Even if global warming does not cause this, then increased El Nino events and changes in weather patterns are causing greater wave heights and will therefore cause an acceleration in the rate of recession of the cliffs."

However, whether global warming will cause a rise in sea level or not, given the geotechnical investigation's use of a 1.33 factor of safety, no substantial issue is raised with regard to the conformance of the project as approved with the provisions of LUP Policy 3.4-7 requiring "*new structures be set back a sufficient distance from the edges of bluffs,*" and requiring the retreat rate "*...to be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*"

(3) Drainage

The appellants also contend "*there is a lack of information concerning subterranean and surface drainage on the subject property. Unmentioned throughout all of the reports is*

¹ The reference above to "33 years of record" should actually be 43 years of record, because, as documented above, Earth Science Consultants' earliest photographic record relied on for determining their setback recommendation, was dated 1952.

the drainage from the face of the cliff off of this lot.” Mr. Calone, one of the appellants asks: “...will the location of the leach field increase this seepage [from the face of the bluff] and accelerate the instability of the bluff? This question needs to be answered.” The appellants cite LUP Policy 3.4-9 in asserting that the approval was inconsistent with provisions of this policy, which require: “Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.” The applicant retained Paoli Engineering and Surveying to review existing data related to surface and subsurface drainage at the site, and recommend measures to ensure that the development would not contribute to erosion of the bluff face or to the instability of the bluff itself. In a letter dated May 26, 2002, Mr. Paoli states:

I have reviewed the septic site plan for this property prepared by David Miller in January of 2002. Mr. Miller shows his system as maintaining my recommended 35-foot setback from top of bluff. I have also reviewed the geotechnical update for [the neighbor to the north] Mr. Calone done by Jay Nelson in 1997. Jay includes in his report a 1980 report for the property now owned by [the applicant] Mr. McClure. This report was prepared by Ronald Rager, P.E., then employed by I.L. Welty Associates. In the report (page 20 we find “Except for some perched groundwater atop the Franciscan Formation immediately adjacent to the bluff edge, it is estimated that the groundwater under the remainder of the site flows away from the bluff and toward a natural drainage located considerably to the east of the site. It is estimated that seepage from the septic system will flow in this direction, although the possibility of bedrock dams...could channel this flow in other directions.” In my June 28, 2000 update letter, I stated that the building site slopes from west to east, a shallow septic system would be used and the subsurface runoff follows the ground slope. Also of interest in the 1980 report is the estimated rate of retreat of 1/4 foot per year, compared to Jay Nelson’s 0.35 foot per year estimate. The 1980 report (page 5) noticed occasional seeps of water on the seacliff face, but did not find this to be a problem. Finally, Welty and Associates has developed a Drainage Report for this property dated April, 2002. This plan would intercept all rainwater falling on the [applicant] McClure House roof and move it east to a dispersal area. This system is designed to handle up to 2,640 gallons of rainwater per hour. This should be compared with the septic system design flow of 450 gallons per day. To summarize the situation: the top three to nine feet of blufftop material is a low density, porous soil. This material sits on top of denser, much less pervious rock. Both of these materials are sloping approximately west to east. Most water introduced into the top layer of material will not flow over the bluff or into the rock below. Most will flow easterly. The collection of rainfall runoff from the house roof and diversion to the east will actually decrease the water introduced into the soil during the most

critical time of year for blufftop erosion, which is the winter period. Construction of this house with its drainage system and drilled pier foundation may actually decrease the rate of erosion at this site (emphasis added).

Dave Miller, a Registered Environmental Health Specialist, submitted a letter to the County, dated May 23, 2002, indicating that the septic system was designed based on the information within the Geotechnical Report. Furthermore, it should be noted that the septic system designed for this site is a non-standard aerobic treatment and drip emitter system able to overcome the shallow soils. These types of systems are applied to provide an equal application of the effluent across variable slope contours, minimize concentration of flows and minimize potential impacts to bluff stability. According to the soils evaluation, the depth of existing groundwater was considered with the design of this system. The soils engineer was granted a waiver by the Mendocino County Department of Environmental Health to reduce the required groundwater depth requirement from 60" to 36". Mr. Miller states: "No public health hazard or nuisance will be created by granting this waiver." Before recommending approval of this permit, County Planning and Building Department staff conferred with County Department of Environmental Health staff who confirmed that 36" would be adequate to protect the seep, and maintain bluff stability at the proposed distance from the bluff. As demonstrated by the foregoing technical reviews and analysis, and by specific design specifications proposed for construction of septic and drainage systems, all provisions required by LUP Policy 3.4-9 to address surface and subsurface drainage have been performed by the applicant. Therefore, no substantial issue is raised in regard to surface or subsurface drainage, or to allegations by the appellants that the sub-surface seepage from the face of the bluff has not been adequately addressed as required by provisions of the certified LCP.

Because (1) a geologic setback designed to protect the approved house from bluff erosion and cliff retreat over a 75-year economic lifespan was established based on an examination of aerial photographs and a geotechnical investigation; (2) a preliminary evaluation of landsliding potential was performed as required by the LCP; and (3) a professional review was conducted of existing data related to surface and subsurface drainage at the site, along with recommended construction measures to ensure that the development would not contribute to erosion of the bluff face, or to the instability of the bluff itself; there is a relatively high degree of factual support for the County's decision that the approved development is consistent with the geologic hazard policies of the certified LCP. Therefore, the Commission finds that the local approval does not raise a substantial issue of conformance of the approved project with the geologic hazard provisions of the certified LCP.

b. Visual Resources

The appellants contest the County approval of the project on the grounds that visual resources are not adequately protected by the proposed landscape screening for the subject property. The appellants cite provisions of the Mendocino County certified Land Use Plan (LUP) and the Mendocino County certified Coastal Zoning Code (CZC) and assert that the approval of this development is inconsistent with the requirements of the certified LCP, chief among these provisions are LUP Policies 3.5-1, 3.5-3, 3.5-5; and CZC 20.504.010, 20.504.015(C)(1); 20.504.015 (C)(7)(b); and 20.504.015(C)(10).

The pertinent Mendocino County certified Land Use Plan (LUP) policies and the Mendocino County certified Coastal Zoning Code (CZC) ordinances that relate to the appellant's contentions include the following:

LCP Policies and Ordinances

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 protected 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 south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

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

resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies."

Policy 3.5-5 states in applicable part, "*...Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged...*"

Coastal Zoning Ordinance Section 20.504.010 states in applicable part, "*The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.*"

Coastal Zoning Ordinance Section 20.504.015 states in applicable part, "*(C1) 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)(7) Minimize visual impacts of development on terraces by the following criteria: ... (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; ... (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 project location is on a blufftop parcel directly above Bowling Ball Beach in southern Mendocino County. The Schooner Gulch, Bowling Ball Beach, Saunders Reef Scenic View Corridor and hiking trails to the north of the subject parcel along Ross Creek and Moat Creek trails offer premiere coastal viewing opportunities for the public. These views are specifically recognized in the Local Coastal Program and the subject property is designated as highly scenic.

The appellants contend that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas.

According to LUP Policy 3.5-1, and Chapter 20.504 of the Coastal Zoning Code, new development in highly scenic areas is required to be sited and designed to protect views to and along scenic coastal areas, and must be subordinate to the character of its setting. According to LUP Policy 3.5-3, new development in highly scenic areas must provide for the protection of ocean and coastal views from public areas including highways, coastal trails, and beaches.

The subject property is located at an elevation that is above Highway One. Therefore, the house would not block views from the Highway looking west toward the ocean because no such views exist; the view to the west is of the intervening hillside, rather than of the ocean. In recommending approval of the proposed development, County staff viewed the project site from Highway One, from public viewing areas to the south, from the beach, and from the Ross Creek / Moat Creek public trail to the northwest of the subject property. County staff confirmed that the project would not be visible from the south, from Highway One, or from the beach. The County staff did find that the project would be visible from a section of the Ross / Creek public access trail located at the Whiskey Shoals headlands to the north.

In an effort to minimize visual impacts from public areas, the applicant reduced the originally proposed height of the house from a two-story structure (other two-story structures exist on either side of the subject property), to a one-story building, and erected story poles so that County staff could determine if the proposed structure would be visible from public areas. The materials and colors proposed for the exterior of the residence are dark and would help blend the structure into its environment.

The applicant also retained the services of licensed consultant Jenny Griffin Landscaping to review plans for the proposed development, and prepare a landscape plan that would meet the requirements of the certified LCP visual resource protection provisions. An excerpt from the report dated March 2, 2001, states:

“Based on my site visit of February 25, 2001, it is my opinion that existing mixed conifers located along your southern boundary line currently provide a significant visual buffer from any public view areas to the south. Furthermore, existing conifers located between your proposed residence and the bluff’s edge in addition to a row of mixed conifers located along your shared northern boundary line will soon provide a very effective visual buffer from any public viewing areas to the north: these trees were apparently planted several years ago, and have reached a current average height of five to six feet. Given the above, I see no need for additional planting and irrigation notes for the replacement of existing conifers.”

As a result, the landscape plan that was originally prepared for the project did not propose any new landscaping but only indicated the location of the existing trees and included notes indicating how the existing trees on the applicant’s property would be replaced if they were to die. During the local review process, the appellants asserted that the landscape plan would be insufficient because some of the screen trees to the south are not on the applicant’s property, and may be removed by the adjacent owner. The applicants assert that “[f]uture landscape screening from Highway One would be a problem if those trees were to be removed or die.”

In response to these concerns, the applicant revised the proposed landscape plan prior to the continued public hearing on the project to supplement the existing screen trees with nine (9) shore pines along the southeast property boundary to further assure visual resource protection of views from the south should the existing trees that currently screen the house site die.

After reviewing the changes to the landscaping plan and prior to County action on the permit, the appellants asserted that the revised landscape screening required for the development was still insufficient. The applicants alleged that the proposed house would be visible from the public trails at Ross Creek and at Whiskey Shoals Subdivision to the north. The appellants asserted that trees on the neighboring property to the north would not be sufficient to serve as part of the permanent landscape buffer. Should the [neighboring] Calone development be changed or be removed because of bluff failure, the appellants asserted that nothing would remain to shield the McClure development from the public trails to the north.

The applicant acknowledged that without additional landscaping, or if existing trees on neighboring parcels that help screen the approved development were to die and not be replaced, the single-family residence would be visible from certain vantage points, in particular, from the Ross Creek/Whiskey Shoals public access trails looking east toward the house. In response to this additional concern, the applicant agreed at the continued public hearing to plant three (3) ten-gallon shore pines northwest of the proposed residence to provide additional visual screening. The permit as approved contains Special Condition 6, as amended at the public hearing, to require submittal of a revised Landscape Plan that includes these additional plantings on the subject property. The condition also requires maintenance and replacement of landscaping and existing trees on the property and includes restrictions on tree removal and limbing. The revised Special Condition 6 is as follows:

"The applicant shall submit a revised Landscape Plan which includes the addition of three—ten gallon shore pines to be planted northwest of the proposed dwelling to provide additional screening from the Ross Creek/Whiskey Shoals trail. The revised Landscape Plan shall include the evergreen trees surrounding the proposed residence indicated in Exhibit F. All trees shown on the revised Landscape Plan provide a significant visual buffer from Hwy 1 and the Ross Creek/Whiskey Shoals trail and shall be planted and/or retained. No tree removal or limbing of the existing trees shall occur without prior approval by the Coastal Permit Administrator. 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. All required new landscaping indicated on the revised Landscaping Plan shall be established in accordance with the submitted specifications including species, size and establishment techniques, (e.g. irrigation, fertilization, etc.). Said landscaping shall be installed prior to

the final inspection of the dwelling or occupancy, whichever occurs first, and shall be maintained in perpetuity."

The appellants contend that the project as approved with Special Condition No. 6 still does not provide adequate landscape screening to mitigate the visual impacts of the development as viewed from vantage points to the north. The contentions imply that with respect to protecting views from public viewing points such as those afforded from the Whiskey Shoals and Ross Creek trails to the north of the site, the project as approved with this alleged landscaping inadequacy is inconsistent both with the requirements of LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Code Section 20.504015 that development in highly scenic areas must be sited and designed to protect views to and along the ocean and scenic coastal areas and with other requirements of these LCP provisions that new development in highly scenic areas be subordinate to the character of its setting. Appellant Friends of Schooner Gulch states the following:

"Should the Calone development [the property to the north] be changed, or be removed because it is endangered by a bluff failure, then nothing would remain to shield the McClure development from the public trails to the north. Therefore a landscaping screen (preferably shore pines needs to be installed along the entire north line of the McClure lot."

Appellant Richard Calone indicates in his appeal that the applicant should have been required to submit a landscaping plan of ten mixed conifers in 10-gallon buckets planted on the north property line to augment the screen on the neighbor's property to the north.

Appellant Friends of Schooner Gulch also indicates that the landscaping plan is inadequate for protecting views from Highway One, as not all of the trees that exist on the east side of the property that have screening value are shown on landscape plan. As such, these trees are not protected by the requirements of Special Condition No. 6 that only requires the maintenance and replacement of new and existing trees shown on the plan. Without protection of these existing trees that provide screening value, the appellant implies that with respects to views of the development from Highway One, the project is inconsistent with the requirements of the aforementioned policies and Coastal Zoning Code standard that require the protection of views to and along the ocean and scenic coastal areas be protected and that new development in highly scenic areas be subordinate to the character of its setting.

The Commission finds that these contentions concerning protecting views from public vantage points to the north and east of the site do not raise substantial issues of conformance with the visual resource policies of the LCP. As discussed above, the applicant's proposed landscaping plan has been supplemented with the planting of nine trees along the southwest corner of the property to screen any views of the development from the southwest and three additional trees northwest of the proposed dwelling to provide additional screening from the Ross Creek/Whiskey Shoals trail. This

landscaping is required pursuant to Special Condition No. 6 of the County coastal development permit and the condition also requires that existing trees shown on the landscaping plan be maintained and replaced in the event they die. Although it is true that not every existing tree on the property is shown on the landscaping plan and that Special Condition No. 6 could be interpreted as not requiring maintenance and replacement of those trees not shown on the plan between the new landscaping proposed and the other existing trees that are shown on the plan and would have to be protected pursuant to Special Condition No. 6, numerous trees on the property itself would screen the proposed development from view of public vantage points to the north to the east, and elsewhere.

In addition, the trees on the neighboring parcel to the north along its shared property boundary with the applicant were planted as a requirement of the Coastal Development Permit for the development of that neighboring parcel, and are already required to be maintained in perpetuity.

Furthermore, although it is possible that in future years bluff erosion of the property may claim the land underneath these trees, based on the geotechnical report's projection of a bluff retreat rate of 0.25 to 0.348 feet per year, many years of bluff retreat would have to occur before many of the trees on the neighboring property would be eliminated. When bluff retreat reaches the point where the neighboring house is threatened and would need to be moved or removed, it is likely that such erosion would also be affecting the subject property, as the approved home would be set back from the bluff edge a similar distance. The terms of Special Condition No. 4(e) of the local coastal development permit require the applicant's house and foundation to be removed when the house is threatened by bluff retreat. Thus, when bluff retreat reaches that point, the development itself would be eliminated and there would be no further need for landscape screening to screen the development.

The Commission also notes that the approved house is infill development within an existing string of several houses. The houses are spaced relatively close together for the rural setting of the subdivision, on average about 150 feet apart from each other. Many of these houses are closer and far more prominent within the views to the south from public trails at Whiskey Shoals and Ross Creek. Therefore, to the extent that the required landscaping does not screen all views of the house, the views of the house that remain will have less prominence than if the house were proposed along a section of the Mendocino coast where relatively little development currently exists.

With the requirements that existing and planned trees be retained and replaced if they die, the project as approved would ensure that the development would continue to be screened over time. The specific requirements of the certified LCP with regard to landscaping are contained in the provisions of LUP Policy 3.5-5 which simply requires that tree planting to screen buildings shall be encouraged, provided that the trees will not block public views to the ocean. As discussed above, there are no views through the site to the ocean. Because the approved project would not block public views to the ocean, and would

provide for additional landscaping to screen the proposed structure from public vantage points, the Commission finds that there is no substantial issue of conformance of the project as approved with the landscaping provisions of the certified LCP, including LUP Policy 3.5-5 that tree planting to screen buildings be encouraged providing that trees will not block public views.

The Commission finds that the project as approved raises no substantial issue with regard to visual resource protection requirements of the LCP that new development be subordinate to the character of its setting, because 1) the existing trees, the required landscaping, and the geographic setting of the proposed residence would screen the approved house from all public vantage points including Highway One, the Ross Creek / Moat Creek and Whiskey Shoals public access trails, Bowling Ball Beach, Schooner Beach and its publicly accessed headlands, and the open ocean; 2) the one-story 20-foot tall structure would be in character with the other homes in the subdivision because they are all two-story houses of greater height; and 3) there is no substantial issue of conformance of the project as approved with the LCP visual policies regarding landscaping. Furthermore, as (1) the visual issue raised is limited to a dispute as to the number of trees that will be sufficient to screen views of the house from public vantage points a significant distance away, (2) the views involved do not include views of the oceans, and (3) any view of the house will be less prominent than views of other closer houses with less landscape screening from these same vantage points, the significance of the coastal resource affected by County's decision to approve the development with conditions is not great. Therefore, the Commission finds that the local approval does not raise a substantial issue of consistency with the visual resource provisions of the certified LCP, including LUP Policies 3.5-1, 3.5-3, and 3.5-5; and Chapter 20.504 of the Coastal Zoning Code.

c. Proof of Adequate Water

The Friends of Schooner Gulch, one of the appellants, contests the County approval of the project on the basis that there is no proof of adequate water, and maintains that the domestic water well drilled as a test well on the property "will draw some proportion of salt water after it is used for a period of time if it is not salty already." The appellant cites provisions of the Mendocino County certified Land Use Plan (LUP) and Mendocino County certified Coastal Zoning Code (CZC) and asserts that the approval of this development is inconsistent with the requirements of the certified LCP including LUP Policy 3.8-9 and CZC Chapter 20.516.

The pertinent Mendocino County certified Land Use Plan (LUP) policies, and the Mendocino County certified Coastal Zoning Code (CZC) ordinances that support the appellant's contentions include the following:

LCP Policies and Ordinances

LUP Policy 3.8-1 states: *“Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits. On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies. Highway capacity impacts shall be considered in determining land use classifications and density changes.”*

LUP Policy 3.8-9 in applicable part states: *“Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised. (Appendix 6)”*

CZC Section 20.516.015 in applicable part states:

“New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.

(B) Water Supply.

(1) Approval of the creation of any new parcels or additional building sites shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.

(2) Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to final approval of the proposed use.

(3) In order to be developed to the smaller parcel size, areas indicated on the adopted Land Use Map as having a variable density zoning classification shall be required to be served by a public water system which utilizes surface waters, and which does not impact upon the ground water resource, or by completion of a hydrological study, to the satisfaction of the Mendocino County Health Officer, which supports those greater densities.”

Discussion:

The certified LCP provisions cited above require that the availability of water, and sewage disposal system factors be considered when processing applications for coastal development permits for development of residences on existing lots or building sites.

The Friends of Schooner Gulch, in its appeal, maintains that the water available to the applicant from the test well on the property may not be potable, and if "...initially potable, it could be 'surface' water and could dry up or turn salty when a homeowner starts regularly pumping for domestic use and irrigation."

The site is within an area mapped as Critical Water Resources (CWR) by the County's Coastal Groundwater Study. The County staff report notes that the subdivision where this parcel is located was created in 1972 based on the subdivider providing a private water system to the parcels. Some of the parcels within the subdivision are served by a private water system while others are not. The parcel to the north of the McClure property was given special consideration by the County and allowed to be served by water in a holding tank that is supplied via water truck delivery. The McClure property is not served by the private water system. The report also indicates that in August 2000, the County wrote the applicant indicating that trucking water from an off-site source would not satisfy coastal zoning requirements for proof of adequate water. The County then approved a permit to drill a test well. The test well was drilled on the project site resulting in an estimated yield of 1 ½ gallons per minute as verified by the State of California—Well Completion Report—form No.778704 (Exhibit No. 6). The Mendocino County Department of Environmental Health considers ½ gallon per minute water-yield to be adequate for residential development, and according to that standard determined that 1 ½ gallons per minute (three times the minimum) is adequate for the applicant's proposed residential development.

The County Staff Report states: "A test well was drilled on the project site with an adequate supply to provide water for domestic purposes without a holding tank. The drilling of a test well will not create a permanent impact on groundwater resources. The well has a 50-foot deep seal; therefore, development of septic systems on this parcel and the undeveloped parcel to the south should not affect groundwater resources."

Appellant Friends of Schooner Gulch raises concerns that the water supply discovered by the test well could dry up or turn salty after prolonged withdrawal for use by the approved development. The provisions of LUP Policy 3.8-1 simply require that "the availability of water...be considered when considering applications for development permits." The LCP contains no standards for reliance on well water requiring that a continuing supply of water be demonstrated over a set period of years and no standard for salinity or mineral content. According to consultations between Commission staff and staff of the Mendocino County Department of Environmental Health, the County has no other standards requiring that the level of salinity or dissolved mineral content of a

proposed domestic water supply be tested or that the total volume of the groundwater source that a proposed domestic well would tap into be demonstrated before the house can be approved. Should the well eventually run dry or become too salty to consume, the applicant would eventually need to drill a replacement well as many other residents have had to do in other locations.

The information that the applicant provided allowed the County to make a decision regarding the conformance of the proposed development with the existing policies and standards of the LCP concerning the availability of water. The County considered the "availability of water" as a "known planning factor" while processing the application for residential development of the parcel.

Therefore, the Commission finds that the project as approved raises no substantial issue with regard to public utilities or proof of adequate water requirements of the LCP because (1) the County considered the availability of water as a known planning factor while processing the application for residential development of the parcel; (2) the County Department of Environmental Health and County Planning and Building Department determined that the 1 ½ gallons of water per minute yield from the approved test well on the applicant's parcel is adequate, and (3) there is no requirement in the LCP for meeting specified water quality standards related to salinity levels, dissolved mineral content, or total available supply of groundwater. These factors together present a relatively high degree of factual support for the County's decision that the development is consistent with the provisions of the certified LCP regarding utilities and proof of water. Therefore, the Commission finds that the local approval does not raise a substantial issue of consistency with the utilities or proof of water provisions of the certified LCP, including LUP Policies 3.8-1, 3.8-9, and Chapter 20.516 of the Coastal Zoning Code.

Conclusion

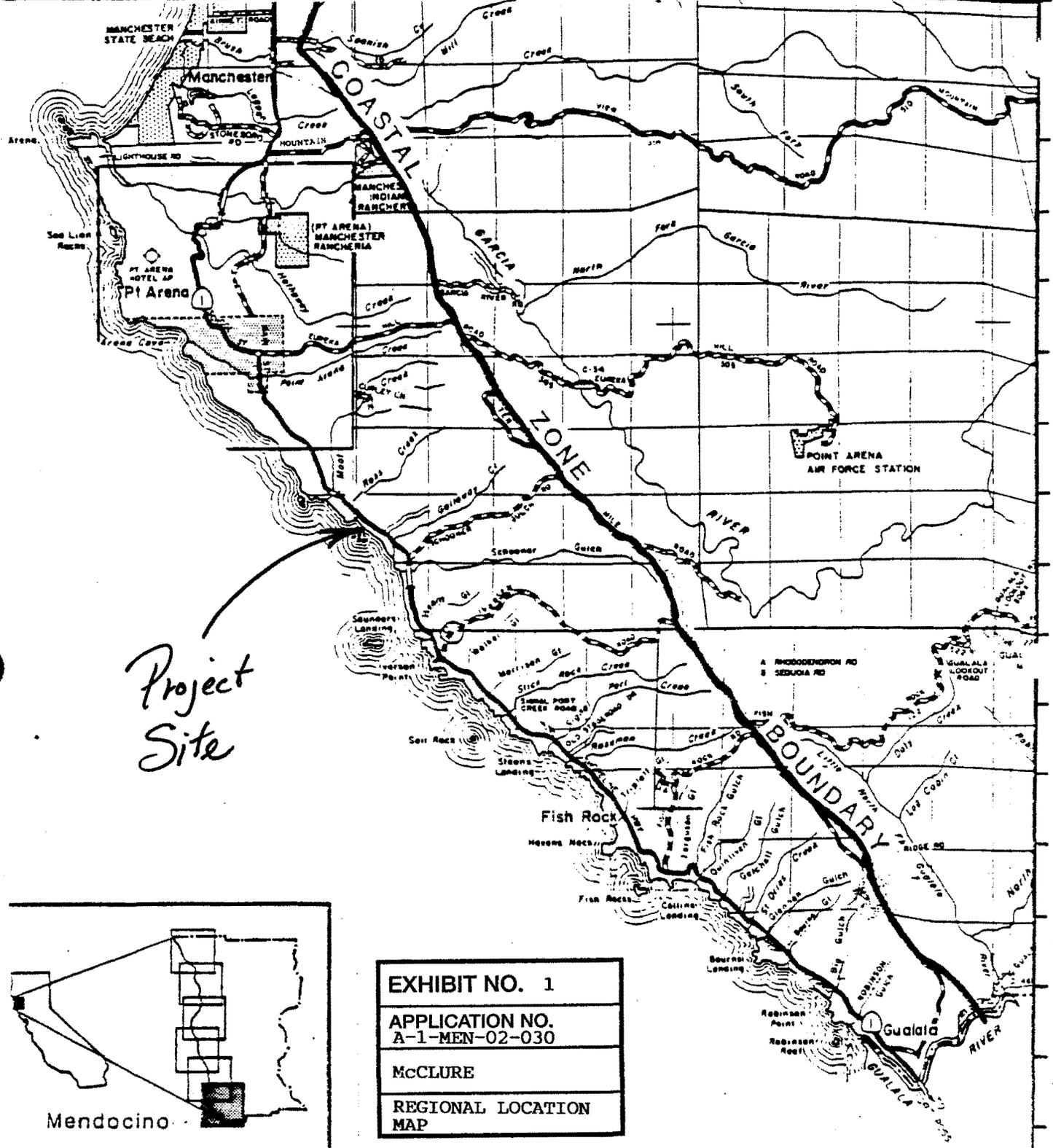
The Commission finds that for the reasons stated above regarding geologic hazard, visual resources, and proof of adequate water, the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

EXHIBITS

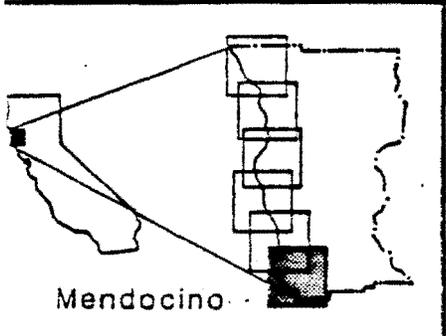
1. Regional Location Map
2. Vicinity Location Map
3. Notice of Final Action
4. Appeals
5. Well Completion Report



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



Project Site



Mendocino

EXHIBIT NO. 1
APPLICATION NO. A-1-MEN-02-030
McCLURE
REGIONAL LOCATION MAP

LOCATION MAP



California Coastal Commission

County of Mendocino

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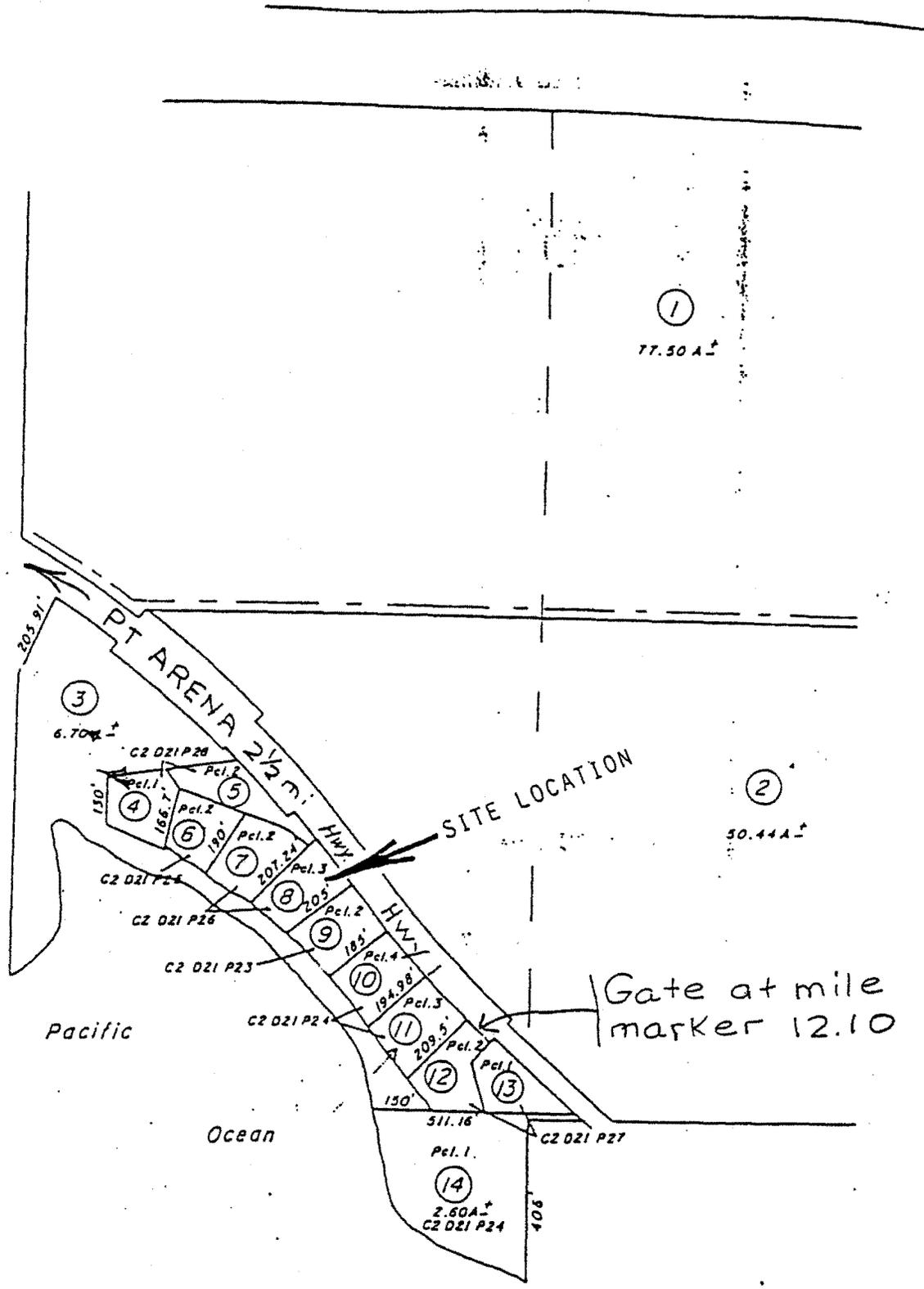


EXHIBIT NO. 2
APPLICATION NO. A-1-MEN-02-030
McCLURE
VICINITY LOCATION MAP



1 MEN-02-099

AYMOND HALL
DIRECTOR

TELEPHONE
(707) 964-5379

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS:
790 SO. FRANKLIN
FORT BRAGG, CA 95437

RECEIVED

JUN 13 2002

CALIFORNIA
COASTAL COMMISSION

June 10, 2002

NOTICE OF FINAL ACTION

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

- CASE#:** CDP #44-00
- OWNER:** John W. McClure
- REQUEST:** Construction of a 1,850 square-foot, single-family residence with a 400 square-foot attached garage for a total of 2,250 square feet. Average height from natural grade to be 20'. Installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.
- LOCATION:** On the west side of Highway 1, approximately 2 1/2 miles south of Pt. Arena (APN: 027-421-08).
- PROJECT COORDINATOR:** Doug Zanini

HEARING DATE: May 28, 2002

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 3
APPLICATION NO. A-1-MEN-02-030
McCLURE
NOTICE OF FINAL ACTION (1 of 18)

MENDOCINO COUNTY MEMORANDUM

TO: CDP 44-00 McClure file
FROM: Raymond Hall, Coastal Permit Administrator
SUBJECT: CPA Hearing on 5/28/02
DATE: May 28, 2002

At today's CPA hearing I reviewed two documents that were prepared subsequent to the May 23 meeting. The two documents were a letter/report dated 5/26 from Civil Engineer Dave Paoli and a memo dated 5/28 from Senior Planner Doug Zanini. Both discussed drainage on the McClure site.

I approved CDP 44-00 finding that proper notice had been given and further finding that the project was categorically exempt from CEQA.

In addition I made the findings for approval contained in the Staff Report and approved the project with the conditions contained in the Staff Report as modified below:

5. All exterior building materials and finishes shall match those specified on page 5 of the Staff Report. All windows shall be non-reflective glass. Any change in the approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project. No change in colors or materials shall be approved which are lighter or more reflective than that described on page 5 of the Staff Report.
6. The applicant shall submit a revised Landscape Plan which includes the addition of three – ten gallon shore pines to be planted northwest of the proposed dwelling to provide additional screening from the Ross Creek/Whiskey Shoals trail. The revised Landscape Plan shall include the evergreen trees surrounding the proposed residence indicated in Exhibit F. All trees shown on the revised Landscape Plan provide a significant visual buffer from Hwy 1 and the Ross Creek/Whiskey Shoals trail and shall be planted and/or retained. No tree removal or limbing of the existing trees shall occur without prior approval by the Coastal Permit Administrator. 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. All required new landscaping indicated on the revised Landscaping Plan shall be established in accordance with the submitted specifications including species, size and establishment techniques, (e.g. irrigation, fertilization, etc.). Said landscaping shall be installed prior to the final inspection of the dwelling or occupancy, whichever occurs first, and shall be maintained in perpetuity.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 44-00
April 25, 2002
CPA-1

1-MEN-02-099

OWNER:

John W. McClure
25070 Ward Ave.
Fort Bragg, CA 95437

REQUEST:

RECEIVED

APR 19 2002

CALIFORNIA
COASTAL COMMISSION

Construction of a 1,850 square-foot, single-family residence with a 400 square foot attached garage for a total of 2,250 square feet, average height from natural grade to be 20 feet; installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.

LOCATION:

On the west side of Highway One, approximately 2-1/2 miles south of Point Arena at 27600 S. Highway One. (APN: 027-421-08.)

APPEALABLE AREA:

Yes (blufftop lot)

PERMIT TYPE:

Standard

TOTAL ACREAGE:

0.68 acre

ZONING:

RR:L-5-DL

GENERAL PLAN:

RR-5

EXISTING USES:

Vacant (test well)

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 3a

OTHER RELATED APPLICATIONS: CDP 18-01 test well (approved)

PROJECT DESCRIPTION/BACKGROUND: The applicant proposes to construct a 1,850 square-foot, single-family residence with a 400 square foot attached garage for a total of 2,250 square feet. The proposed average height of the dwelling from natural grade is to be 20 feet. The project includes the installation of a new septic system, drainage system, connection to an existing test well, and connection to utilities.

The parcel was created at this small size in 1972 based on the subdivider providing a private water system to the parcels. Some of the parcels within the subdivision are served by a private water system while others are not. The parcel to the north of the McClure property was given special consideration to be served by water in a holding tank that is supplied via water truck delivery. The McClure property is one of the parcels that is not served by the private water system. This application was put on hold status pending, among other things, a solution to the water availability issue on this parcel.

On August 10, 2000, County Chief Planner Alan Falleri sent Mr. Bud Kamb, the agent for Mr. McClure on CDP 44-00, a letter indicating that trucking water from an off-site source does not satisfy Coastal Zoning requirements for proof of an adequate water supply. Mr. Falleri gave Mr. McClure the option to perform water testing to demonstrate proof of water on the parcel.

30918

CDP 18-01 was approved in June 2001 to allow the owner to drill a test well on the property. The test well was dug and an adequate water supply was achieved.

The project as originally submitted was a two-story structure with greater height and bulk. The project was revised from the original application to reduce the size and height of the proposed residence.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below. A indicates that the statement regarding policy consistency applies to the proposed project.

Land Use

The proposed single-family residence is a principal permitted use in the Rural Residential zoning district. Per Section 20.376.045 of the Coastal Zoning Code, the minimum building setback from property lines is 20 feet in the front and 6 feet on the sides. The proposed building is located a minimum of 20 feet from the closest property line; therefore, the proposed project meets the required setbacks. The project is located in a designated highly scenic area. Per policy 3.5-3 of the Coastal Element and Section 20.504.015 of the Coastal Zoning Code, the maximum allowable building height in this location is 18 feet (average) above natural grade (and one-story) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. If those two criteria can be met, the building height can be raised to a maximum of 28 feet. The proposed residence would be 20 feet tall. The majority of the residence is 18 feet tall except for a small section in the center of the building which is for a dormer.

The four residences in the same neighborhood are all two-stories in height. The implementation of this project at the requested height would not substantially block additional ocean views. Therefore, based on the analysis in the visual resources section below, the proposed building height complies with the Local Coastal Plan policies and ordinances relating to height limitations.

Public Access

The project is on a blufftop parcel. The property is situated approximately 1,200 feet south of the Ross Creek shoreline access and approximately 3/4 mile north of the existing shoreline access at Schooner Gulch/Bowling Ball Beach.

Proposed lateral coastal access is identified on the County's Land Use Map on the beach west of this parcel. The Coastal Element indicates the intention of establishing a blufftop trail in this location as well. Establishing a contiguous trail along the blufftop in this location is problematic in that small parcels have been created in this area which would create conflicts with public access along the blufftop. Furthermore, a nexus cannot be established linking the project's impact on public access facilities to the benefits derived from the exaction of an access easement across the property. No prescriptive trails were identified as a result of staff's site visit. Therefore, no dedication for a public trail has been required for this application.

Hazards

For the application for the test well a letter had been received from Richard Calone, the owner of the neighboring parcel to the north. Mr. Calone has raised an issue regarding the presence of large equipment on the bluff and the potential to do damage by accelerating erosion. Mr. Calone requests that as part of the permit process, a soils engineer's report be provided addressing the potential acceleration of the

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erosion to the cliff. Mr. Calone states that any heavy equipment placed on the property would be dangerous to the environment.

A geotechnical report was prepared for this parcel by Earth Science Associates in 1995 and an updated investigation was performed by David Paoli, Civil Engineer, on June 28, 2000. Mr. Paoli's report recommends a geotechnical setback of 35 feet for structures to survive 75 years. The 35-foot setback includes a factor of safety of 1.33. All components of the project are located further than 35 feet from the edge of the bluff. Staff recommends Special Condition #1 to require that the geotechnical setback be staked or fenced and that, during construction, no heavy equipment, material storage, etc., be permitted on the ocean side of that boundary.

In response to comments on by the Friends of Schooner Gulch on nearby properties, Mr. Paoli has prepared a statement dated April 10, 2002, regarding the inclusion of the impact of a rising sea level in the calculation of the blufftop setback.

"I have spent some time reading recent articles on the Internet about global warming and rise in sea level. I did not find a consensus on these points. There may be global warming occurring, but even this is not certain. The prestigious National Academy of Sciences states that temperatures have been rising and humans have contributed to the rise. However, they are uncertain that these temperature increases will continue at the same rate or even continue at all. The state of human knowledge just isn't great enough at this point.

Other studies point out that an increase in average temperature does not necessarily equal a rise in sea level. While glaciers and icepacks have been receding in some areas, the main ice cap in Antarctica has become thicker and the average temperature has fallen over the last 35 years. This was reported in the January 18, 2002 edition of the "Christian Science Monitor".

Finally, several scientists postulate that a rising average temperature will result in increasing cloudiness, leading to more snowfall and an increase in ice mass at the poles with a resultant drop in sea level."

Mr. Paoli concludes "postulating a rising sea level in the next 75 years is highly speculative" and should not be included in his report. Staff concurs with Mr. Paoli.

The project site is less than one-acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process.

The Development Limitation (DL) combining district overlay was assigned to parcels which, according to available data, have serious constraints that may prevent or seriously limit development. The parcels along Bowling Ball Beach, including the subject parcel, were given the DL designation due to narrow parcel width and a steep and fragile bluff face.

Section 20.500.020 (B) (1) of the Mendocino County Coastal Zoning Code states:

"New structures shall be setback 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). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geological investigation..."

Policy 3.4-9 states:

5018

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

The proposed residence has been set back 40 feet from the bluff. Therefore, the proposal meets the 75-year requirement. Special Condition #2 is included to ensure that all the recommendations of Earth Science Associates and Dave Paoli are followed.

In addition, an incorrectly designed septic system may have a detrimental impact on the bluff stability. As such, the applicant has retained the services of Lee Welty and Associates to design a drainage system that will not exacerbate the bluff's instability. On April 12, 2002, staff discussed the drainage concept with Lee Welty. Mr. Welty stated that he will have a completed design prior to the public hearing on this proposal, however staff is confident that the drainage concept pursued by the engineer is feasible and will not negatively affect bluff stability. The concept is to collect the water in excess of the pre-construction conditions and convey it to an area east of the proposed residence. Mr. Welty has assured staff that slope stability will not be affected. Special Condition #3 recommends that a final drainage plan be submitted prior to issuance of the Coastal Development Permit.

The 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 that might fall onto a beach. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. Staff recommends including Special Condition #4 to address this issue.

Visual Resources

The proposed project 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. The applicant has erected story poles so that staff could conduct a visual resource analysis for this project.

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..."

Colors/Materials: The materials/colors proposed for the exterior of the residence are:

- Roof: composition shingles – dark gray-green (see sample in the planning file)
- Siding: Hardiplank with two coats of Mason's Select #6701 - Mahogany stain (see sample)
- Trim: Natural cedar – no stain or color proposed

The selected materials are dark and will help blend the structure into its environment. Color samples are located in the planning file for CDP44-00. Special Condition #5 ensures that the building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

Policy 3.5-5 states:

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

The applicant retained the services of Jenny Griffin Landscaping to identify existing screening trees and analyze the site for the need for additional screening landscaping. Ms. Griffin states:

"Based on my site visit of February 25, 2001, it is my opinion that existing mixed conifers located along your south boundary line currently provide a significant visual buffer from any public view areas to the south. Furthermore, existing conifers located between your proposed residence and the bluff's edge in addition to a row of mixed conifers located along your shared northern boundary line will soon provide a very effective visual buffer from any public view areas to the north; these trees were apparently planted several years ago, and have reached a current average height of five to six feet."

Staff concurs with Ms. Griffin's assessment. However, some of the screen trees to the south are not on the applicant's property and may be removed by the adjacent owner. At staff's request, the applicant has proposed to supplement existing screen trees with additional evergreen trees located at the southeast corner of the site west of the access road. The trees on the neighboring parcel to the north along its southern boundary were a requirement of the Coastal Development Permit for the development of that parcel and are already required to be maintained in perpetuity. All proposed trees are shore pines which adapt well to the coastal environment. The landscaping plan includes notes on maintenance, irrigation, wind protection, etc. Special Condition #6 requires that existing screen trees be protected and retained and that proposed screen trees be installed and maintained in perpetuity. Since the site is located above the highway no views to the ocean would be impacted by additional tree plantings.

"Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed."

The applicant has stated that all exterior lighting will be downcast and shielded. As of the writing of this report staff and the applicant are attempting to reach a consensus with regard to the lighting selection. Special Condition #7 requires that the lighting fixtures be reviewed and approved by the Coastal Permit Administrator prior to issuance of the building permits for this project.

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Natural Resources

There are no known rare or endangered plant or animal species located on or in close proximity to the project site. There are no environmentally sensitive habitat areas located within 100' of the proposed development.

The parcel to the east of the subject site is zoned as "Rangeland", which is afforded protection as an agricultural resource in the County Zoning Code. Section 20.508.015 (A) (1) states:

"No new dwellings in a residential area shall be located closer than two hundred (200) feet from an agriculturally designated parcel unless there is no other feasible building site on the parcel."

The subject residence is separated from the RL designated land by Highway 1 and the private road. The proposed residence would be elevated above the RL land. Therefore, it is not anticipated that there would be a conflict with the agricultural uses to the east. Also, there is no alternative building site within the parcel that would meet the requirement of the 200-foot setback; therefore, the proposed project is consistent with this requirement.

Archaeological/Cultural Resources

The project site is in an area that is unlikely to impact archaeological and/or cultural resources. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Groundwater Resources

The site is located within an area mapped as Critical Water Resources (CWR) by the County's Coastal Groundwater Study. A test well was drilled on the project site with an adequate supply to provide water for domestic purposes without a holding tank. The drilling of a test well will not create a permanent impact on groundwater resources. The well has a 50-foot deep seal; therefore, development of septic systems on this parcel and the undeveloped parcel to the south should not affect groundwater resources.

The County Division of Environmental Health (DEH) has requested that as a condition of approval, prior to commencement of any site work, there be a meeting with the building contractor, the septic contractor, the septic consultant and Environmental Health staff to discuss methods to protect the septic system areas from damage during house construction. DEH reserves the right to require fencing of the septic areas during house construction. Special Condition #8 is recommended to ensure compliance with this requirement.

Transportation/Circulation

The property is accessed from Highway 1 via a private road that serves the existing subdivision. The project would not involve any alterations to the existing paved road. The project would contribute incrementally to cumulative traffic volumes on Highway 1 and other local roadways. It has been determined that these traffic impacts are not significant. Therefore, no mitigation is required.

Zoning Requirements

- The project complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

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

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.

9918

3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (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.

SPECIAL CONDITIONS:

1. Prior to construction, the geotechnical setback shall be staked or fenced with temporary fencing. No heavy equipment, material storage, etc., shall be permitted on the ocean side of the geotechnical setback. Prior to the final building inspection the stakes or the fencing shall be removed.
2. All recommendations within the Geotechnical Investigation by Earth Science Consultants, dated October 21, 1995, and the Geotechnical Update by David Paoli, dated June 28, 2000, shall be incorporated into the design and construction of the project.

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3. Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, a final drainage plan implementing the drainage concept discussed in the hazard section of this report.
4. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator 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.
5. All exterior building materials and finishes shall match those specified in the coastal development permit approval. All windows shall be 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.
6. The evergreen trees surrounding the proposed residence indicated in Exhibit F provide a significant visual buffer from Highway One and shall be retained. No tree removal or limbing of the existing trees shall occur without prior review and approval by the Coastal Permit Administrator. 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. All required new landscaping indicated on Exhibit F shall be established in accordance with the submitted specifications including species, size, and establishment techniques, (e.g. irrigation,

11 9 18

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 44-00
April 25, 2002
CPA-10

fertilization, etc.). Said landscape plan shall be installed prior to the final inspection of the dwelling, or occupancy, whichever occurs first, and shall be maintained in perpetuity.

7. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall not allow glare beyond the project site.
8. Prior to commencement of any site work, there shall be a meeting with the building contractor, the septic contractor, the septic consultant and Division of Environmental Health staff to discuss methods to protect the septic system areas from damage during house construction. DEH reserves the right to require fencing of the septic areas during house construction.

Staff Report Prepared By:

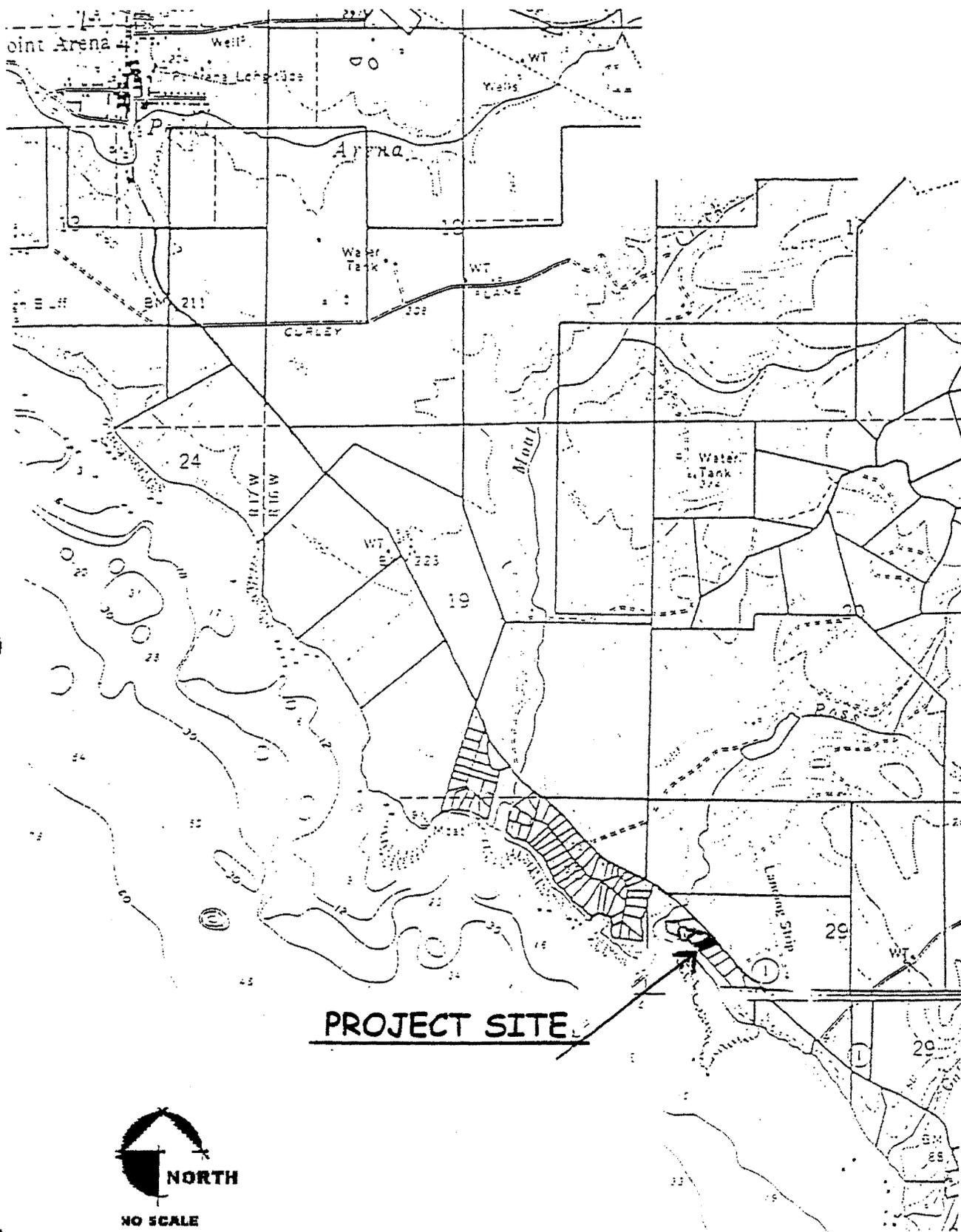
4/16/02
Date

Doug Zanini
Doug Zanini
Supervising Planner

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Floor Plan
Exhibit D: Elevations
Exhibit E: Elevations
Exhibit F: Landscape Plan

Appeal Period: 10 days
Appeal Fee: \$555

12918



CDP # 44-00
April 25, 2002

JOHN MCCLURE
SITE: 27600 SO. HWY. 1 PT. ARENA
ACC. NO. 027-421-08
REVISED 1-20-02

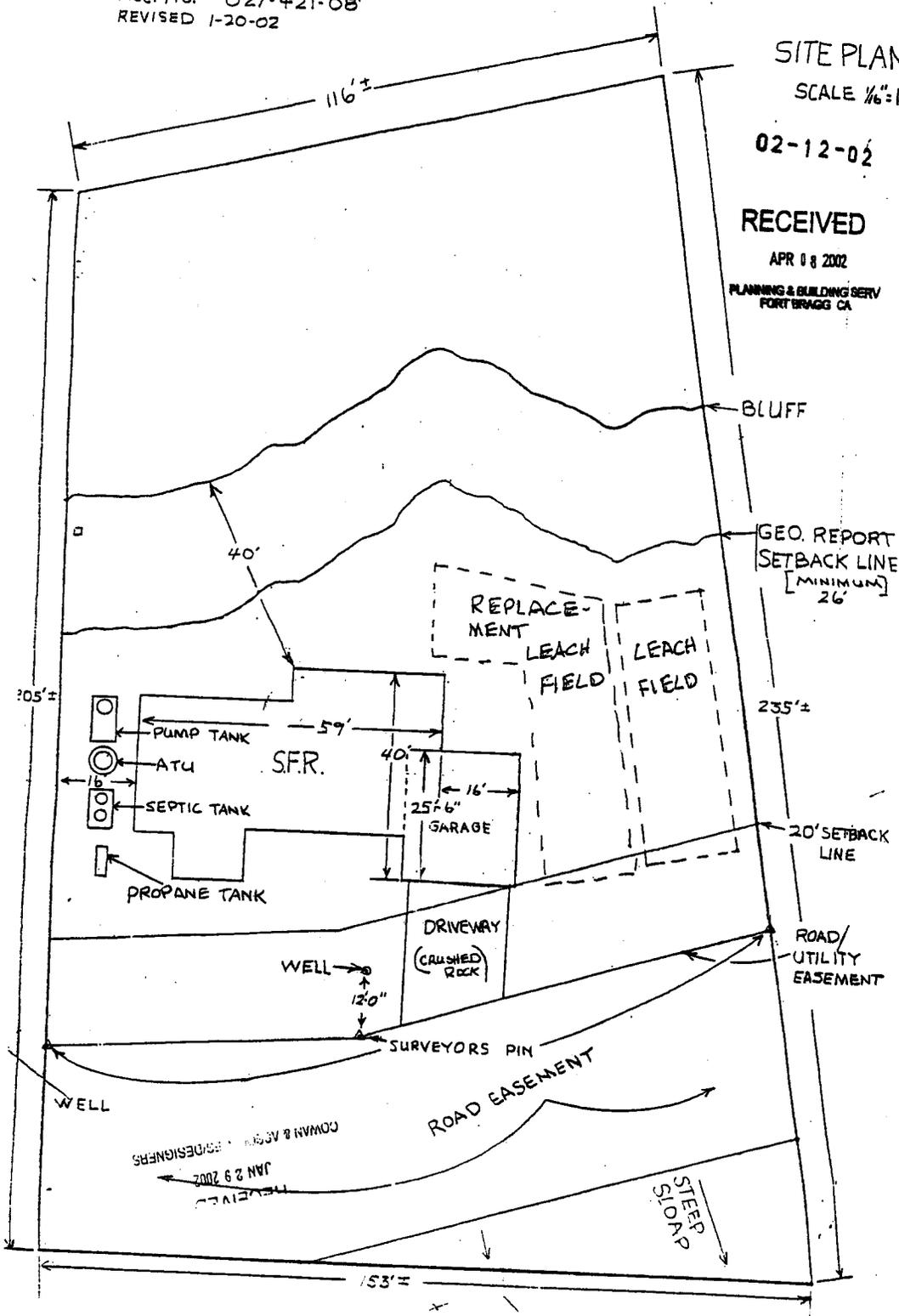
SITE PLAN
SCALE 1/8"=1'

02-12-02

RECEIVED

APR 18 2002

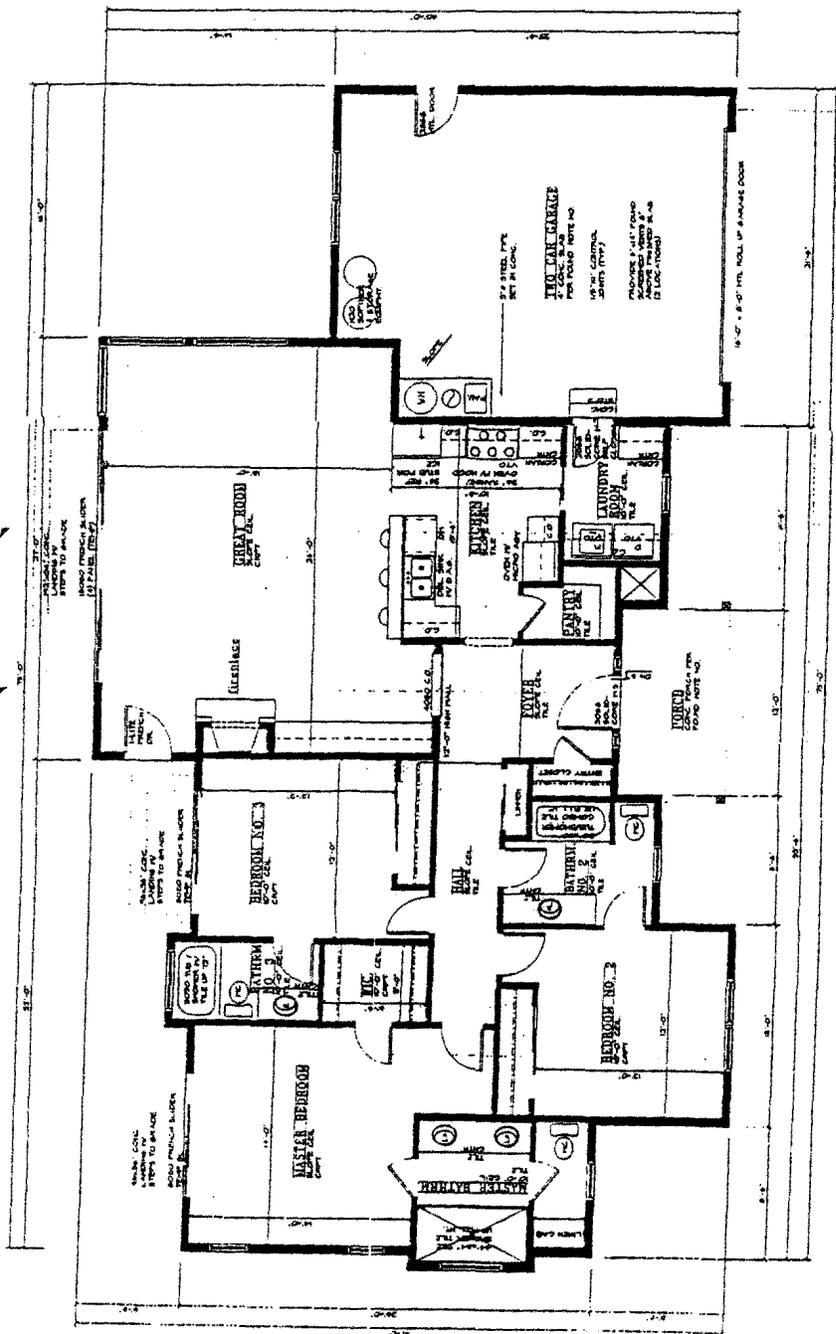
PLANNING & BUILDING SERV
FORT BRAGG CA



RECEIVED
JAN 29 2002
DESIGNERS
COWAN & ASSOCIATES

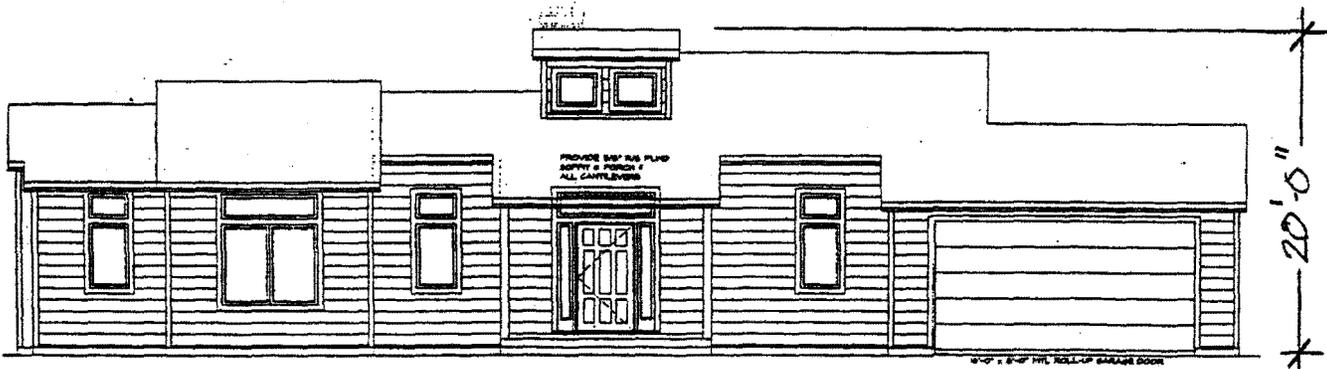
GENERAL NOTE:
RESPONSIBILITY NOTIFICATION
 LET IT BE KNOWN THAT THESE DOCUMENTS OF DESIGN AND CONSTRUCTION ARE THE PROPERTY OF THE ARCHITECT AND ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE, REPRODUCTION, OR TRANSMISSION OF THESE DOCUMENTS WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT IS STRICTLY PROHIBITED. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS, OMISSIONS, OR INADEQUACIES IN THESE DOCUMENTS, WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE, AND ACCEPTS NO LIABILITY FOR ANY CONSTRUCTION DEFECTS OR OTHER DEFICIENCIES THAT MAY OCCUR DURING OR AFTER CONSTRUCTION, UNLESS SUCH DEFECTS OR DEFICIENCIES ARE CAUSED BY THE ARCHITECT'S NEGLIGENCE OR OTHER PROFESSIONAL MALPRACTICE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROPER CONSTRUCTION AND MAINTENANCE OF THE PROJECT.

SEE SHEET FOR
 SERVICE BAYS

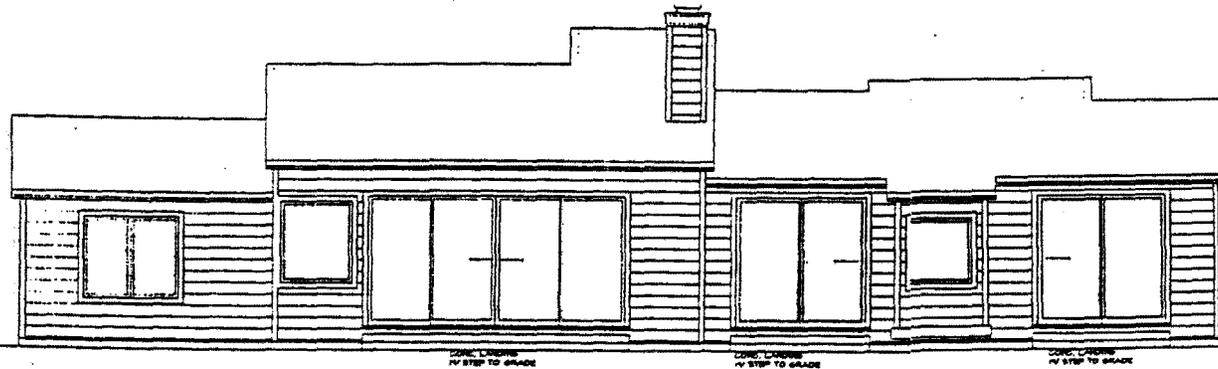


NO. OF SHEETS	30
NO. OF SHEETS USED	28
TOTAL AREA	48,887 S.F.
AREA USED	48,887 S.F.

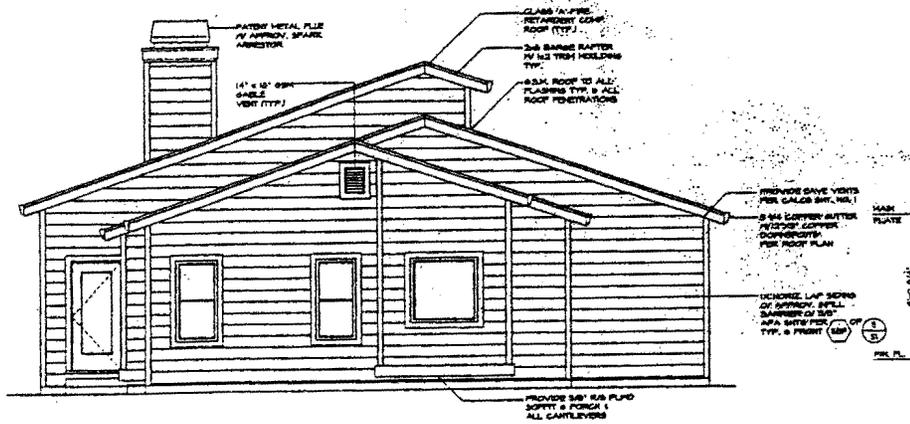
MAIN FLOOR PLAN
 SCALE: 1/8" = 1'-0"



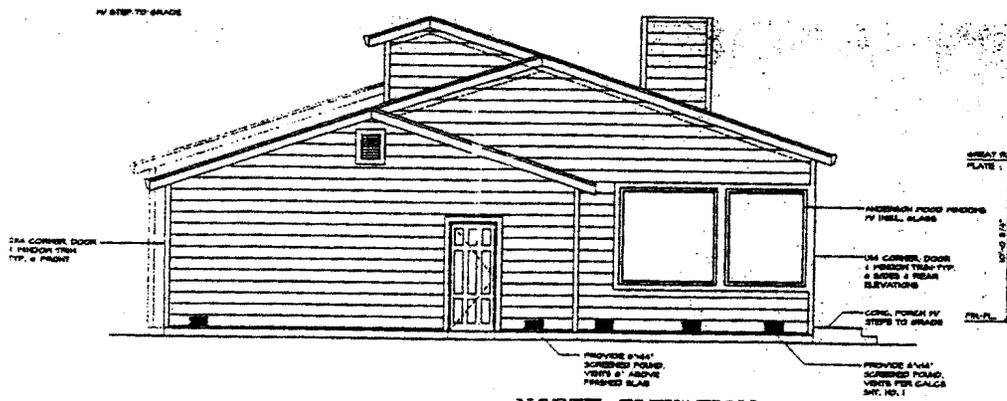
EAST ELEVATION
SCALE 1/4" = 1'-0"



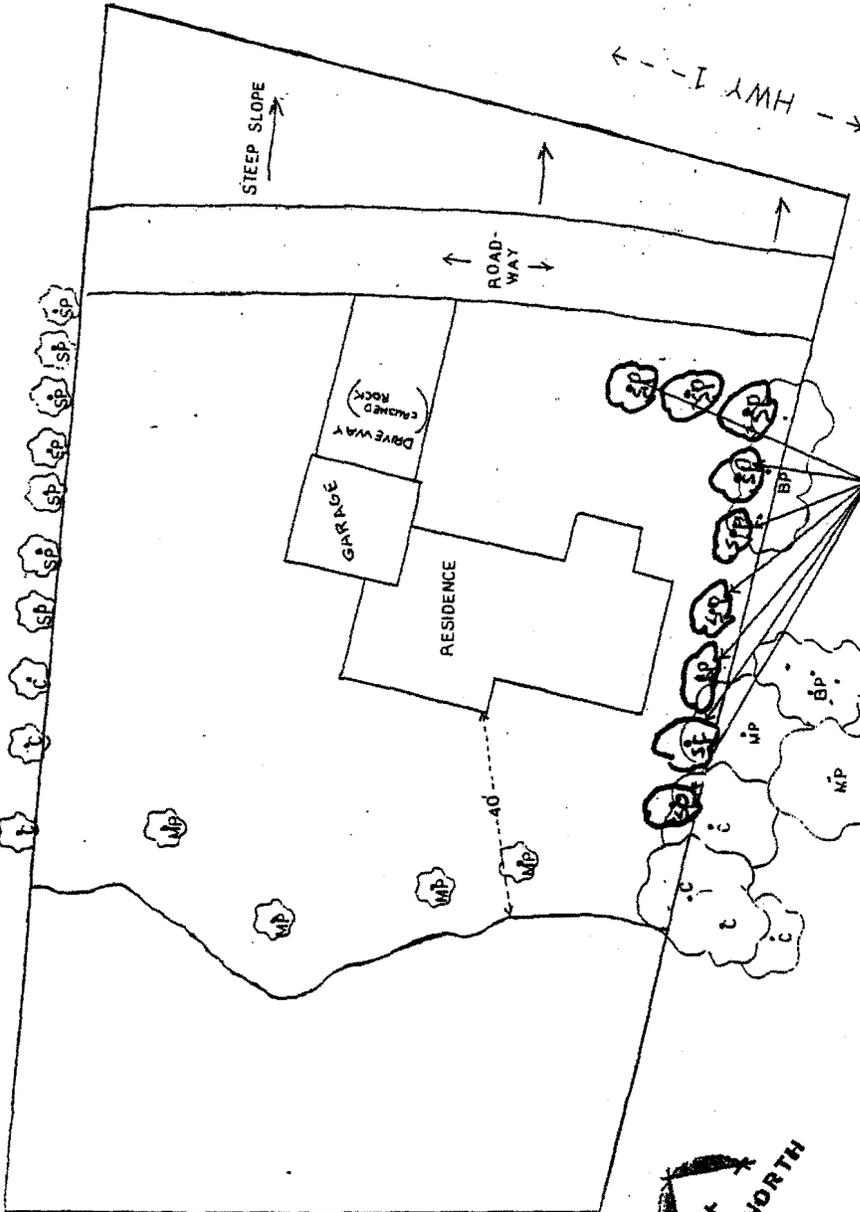
WEST ELEVATION
SCALE 1/4" = 1'-0"



SOUTH ELEVATION
 SCALE 1/4" = 1'-0"



NORTH ELEVATION
 SCALE 1/4" = 1'-0"

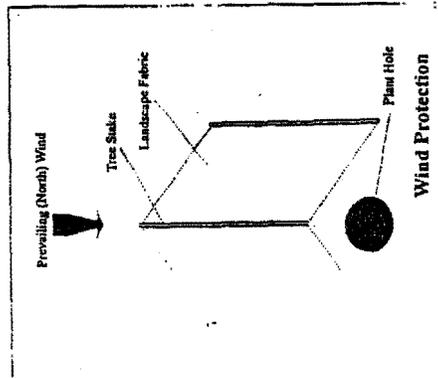


PLANT LEGEND
 (Including Screening Trees)

Symbol	Common Name
C	Cypress
SP	Shore Pine
BP	Bishop Pine
MP	Monterey Pine

REPLACEMENT TREE PLANTING NOTES:

- Existing screening trees shall be replaced as they die or substantially decline.
- Soil preparation: Importing of soil is neither necessary nor recommended at this site. The topsoil horizon is sandy loam with an approximate depth of three feet.
- Plant holes shall be twice the diameter and depth of the root ball. Backfill for the plant holes shall be on-site native soil plus Compost (or comparable brand) Controlled Release Formula (18-6-12, 4 month formula), per manufacturer's recommendations.
- All plants shall be top quality nursery stock, free of disease and insect pests. Plants shall be normal size for container, vigorous, and true to name and variety.
- When planted, crown of plants shall be 1 1/2" above grade. Prepare a water basin by forming a soil ring at least 3" wide high and as wide around as the outer edge of the new plant hole. Water thoroughly to eliminate air pockets.
- For wind protection (depending on location at this site) during years 1-2, use three 1 1/2" high redwood or landscape stakes of 2" diameter per plant, set a minimum of 12" into undisturbed substrate below the rootball. Stakes shall be set 20" from center, forming a 90 degree angle facing away from prevailing north winds (see diagram). High quality woven landscape fabric shall be stapled securely to the poles in anticipation of strong winds.
- Irrigation for years 1-2 shall be accomplished via an automated, permanent drip system. Install three 1/2 GPH drip-emitters per tree, evenly spaced 4-6" from the trunk. The irrigation system shall be installed in final landscape plan for the life of the structure.



STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
10 E STREET - SUITE 200
EUREKA, CA 95501-1985
PHONE (707) 445-7833
FACSIMILE (707) 445-7877

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

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JUN 27 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):

FRIENDS OF SCHOONER GULCH
BOX 4
PT. ARENA CA 95468 (707) 882-2001
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MENDOCINO COUNTY

2. Brief description of development being appealed: single family dwelling

3. Development's location (street address, assessor's parcel no., cross street, etc.): 27600 S. HWY 1 APN 027-421-08 W. SIDE HWY ONE, 2 1/2 MI SOUTH OF PT. ARENA, MM 12.1

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

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-02-030

DATE FILED: 6/27/02

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-02-030
FRIENDS OF SCHOONER GULCH APPEAL (1-7)
RICHARD S. CALONE APPEAL (8-13)

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

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

LETTER HEREWITH

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.

Peter Reimiller

Signature of Appellant(s) or Authorized Agent

Date June 27, 2002

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

Section VI. Agent Authorization

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

Friends of Schooner Gulch
Signature of Appellant(s)

Date June 27, 2002

20913

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 28, 2002

7. Local government's file number (if any): CDP 44-00

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:

JOHN W. WELCHURE
25070 WARD AVE.
FT BRAGG CA 95437

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) JULIE VERRAN, BOX 382, GUALALA CA 95445

- (2) ROANNE WITHERS, BOX 198, FT. BRAGG CA 95437

- (3) HILLARY ADAMS, BOX 1936, MENDOCINO CA 95460

- (4) RICH CAWNE, 1810 GRAND CANAL BLVD
STOCKTON CA 95207

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.

3913

Friends of Schooner Gulch

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

Executive Committee:

Lucie Marshall
Charles Peterson
Peter Reimuller

June 27, 2002

California Coastal Commissioners
and Executive Director
Box 4908
710 "E" Street
Eureka, CA 95501
via fax: (707) 445-7877

RE: McClure Appeal (CDP 44-00)

Dear Commissioners and Executive Director:

Cliff recession

The proposed McClure development would be perched on an unstable cliff which is composed of the very weak "Schooner Gulch" geological formation, and which is susceptible to landslides. The geotechnical report does not include a quantitative slope stability analysis. Such an analysis is necessary to evaluate the likelihood of landslide on the bluff. We understand that the Commission's geologist is requiring said analysis on the Kennedy and Williams appeals, which are currently under review.

The cliffs in this area are receding at an accelerating rate due to global warming and the rising sea level. The geotechnical report is incomplete because it does not address this matter. Please see our submittals to you for the Kennedy and Williams appeals for our factual proof of this claim, and its associated claims regarding an acceleration in the rate of cliff recession. Said claims are included herein by reference.

The geotechnical engineer on the case, Mr. Paoli, submitted this statement regarding the property: "Construction...may actually decrease the rate of erosion at this site." As such, this is an insufficient professional opinion on which to base the permit approval. His use of the word "may" actually means that the construction also may not decrease the rate of erosion or may increase the rate of erosion, and he has left those possibilities implied and unsaid.

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

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Mr. Paoli goes on to state, regarding global warming, that "the state of human knowledge just isn't great enough at this point." He attributes his geotechnical research to an article in the Christian Science Monitor, and continues that "postulating a rising sea level in the next 75 years is highly speculative." It is our contention that global warming is a fact, and will cause sea levels to rise. Even if global warming does not cause this, then increased El Nino events and changes in weather patterns are causing greater wave heights and will therefore cause an acceleration in the rate of recession of the cliffs. None of these matters are sufficiently considered by the geotechnical report. This is a matter of statewide significance and precedent for the Commission to consider with this permit.

The spring which shows on the cliff face is insufficiently addressed in the geotechnical report. The engineering report for the septic system does not sufficiently discuss how it will affect this perched spring and the stability of the cliff. It would appear to the lay person that the spring appears on the cliff face because the impermeable layers of shale underlying the spring actually slope toward the cliff. Yet the engineering reports submitted with the permit say that the impermeable layers actually slope toward the east, that is toward Highway One. This appears to be a conflict of fact versus engineering report. A quantitative slope stability analysis is necessary to bring the truth to light.

[20.488 et seq, 20.492 et seq, 20.496 et seq, 20.500 et seq, 20.532 et seq; LUP 3.1 et seq (30230) (30231) (30240), 3.1-25, 3.4 (30253), 3.4-1, 3.4-7, 3.4-9, A3-1. Citations are not exhaustive.]

Landscape screen

The trees on the Calone development, to the north, are not sufficient to serve as part of the permanent landscape buffer. Should the Calone development be changed, or be removed because it is endangered by a bluff failure, then nothing would remain to shield the McClure development from the public trails to the north. Therefore a landscaping screen (preferably shore pines) needs to be installed along the entire north line of the McClure lot.

Not all of the necessary screening trees which are located on the property are shown on the revised Landscape Plan--especially the trees on the Highway One (east) side of the lot. Yet, Special Condition of Approval #6 states: "All trees shown on the revised Landscape Plan provide a significant visual buffer from Hwy 1 ... and shall be ...

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retained." There is a failure of communication here. The specified trees are not shown on the plan, and yet must be on the plan for the Condition to apply. Future landscape screening from Highway one would be a problem if those trees were to be removed or die. The revised Landscape Plan is materially incomplete.

[20.504 et seq, 20.532 et seq, LUP 3.5-3, 3.5-5. Citations are not exhaustive.]

Well will be salt water

The well is 180 feet deep. That elevation is therefore approximately 100 feet below sea level, and it is inevitable that the well will draw some proportion of salt water after it is used for a period of time if it is not salty already. The aquifers in the area are very low volume and do not contain much water. Other wells in the neighborhood also have very little water because of the low volume aquifers.

The neighbor next door (Calone) was not able to find well water at all on his lot. Mr. Calone was granted a permit with the provision that trucked water would meet his water requirement. As we understand from Commission staff, if the Calone permit had been appealed to the Commission it would have been very unlikely that the trucked water solution would have been allowed for that lot. Consequently, proving well water is of extreme importance to McClure, otherwise a permit would not be issued.

For salt water to be acceptable for domestic use, a reverse osmosis water treatment plant would be required to make it potable. Such a water treatment plant on the property would require a wastewater discharge permit to allow the brine to be discharged on the property. Brine discharge would also impact the tide pools below the property, vegetation in the area, and other nearby wells.

In other cases along the coast in nearby areas, the water that has been brought up from the wells has proven to be contaminated by salt water. When fresh water is pulled from wells which are below the level of the nearby sea, it is often replaced by the abundant salt water which displaces fresh water by virtue of its greater weight. This does not always happen right away. Sometimes there is six-month's or a year's worth of fresh water available before the water turns salty in the well.

Two other wells in the immediate neighborhood (Johnson and Brubeck) are already providing non-potable water and are equipped with water treatment plants to make them potable. (A major septic dump site is located several hundred feet across Highway One to the east. That fact alone should be

enough to convince a landowner that the local groundwater may be non-potable or even contaminated.)

In such cases, the owner has really only one way to solve the problem, and that is to install a reverse-osmosis water purification system to separate the salty component from the sea water and purify the water to a potable standard. (Even after being treated, the water is marginal and a potential health problem for many people, because not all the salt is removed with such a system.) Distillation systems for water purification are generally considered impractical because of their extreme energy costs.

In either case, when the water is desalinized with any system the salt component must be discarded. Therefore, with any system for salt water purification, a wastewater discharge permit for the salt component would be required. Such a permit would require a discharge area and a replacement area for discharge, and would most likely impact the beaches and tide pools below the lot. Certainly such a discharge would also bring the danger of contaminating the neighbors' wells.

Testing of the water by the well driller, when the well is installed, is meaningless because there could easily be enough fresh water in the well to make the test come out potable. Well drillers do not test for salt anyway. If initially potable, it could be "surface" water and could dry up or turn salty when a home owner starts regularly pumping for domestic use and irrigation.

An area of the lot must be set aside for potential wastewater discharge.

[20.516 et seq, LUP 3.8-9. Citations are not exhaustive.]

Sincerely,



Peter Reimuller
Secretary

7913

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1700 W. STREET, SUITE 200
EUREKA, CA 95501-3888
VOICE (707) 445-7822
FACSIMILE (707) 445-7877

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

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JUN 27 2002

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Richard S. Calone

1810 Grand Canal Blvd., Suite 6

Stockton, CA 95207

209) 952-4545

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port
government: Mendocino County

2. Brief description of development being
appealed: single family dwelling

3. Development's location (street address, assessor's parcel
no., cross street, etc.): 27600 S. Highway 1, APN: 027-421-08
West side of Highway 1; 2-1/2 miles South of Point Arena, Milemarker 12

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: _____

Note: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-02-030

DATE FILED: 6/27/02

DISTRICT: North Coast

H5: 4/88

8913

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 28, 2002

7. Local government's file number (if any): CDP 44-00

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:

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) _____

(2) _____

(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.

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

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Letter Dated June 26, 2002 attached hereto and incorporated in full by this reference

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.

Richard S. Carlson

Signature of Appellant(s) or Authorized Agent

Date June 27, 2002

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

10 9 13

Richard S. Calone *
Scott G. Beattie **
William F. Cook
Jason W. Harrel

* Certified Specialist, Taxation Law,
State Bar of California Board of Legal Specialization

** Certified Specialist, Estate Planning, Trust and Probate
Law, State Bar of California Board of Legal Specialization

RICHARD S. CALONE, LLP

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AND COUNSELORS AT LAW

1810 Grand Canal Boulevard, Suite 6
Stockton, California 95207-8110

Lisa M. Miles Fugazi
Cindy K. McNutt

Tele: (209) 952-4545 Fax: (209) 952-8751
E-Mail Address: RSC@rsctaxbusters.com

June 26, 2002

Via Facsimile & Regular Mail

FAX NUMBER: (707) 445-7877

Coastal Commission Appeals
County of Mendocino
710 E Street, Suite 200
Eureka, CA 95501

**RE: NOTICE OF APPEAL - CPA Hearing on May 28, 2002
CDP 44-00 - John McClure Application for Building Permit**

To Whom It May Concern:

Notice is hereby given that the undersigned appeals the CPA decision of May 28, 2002 to approve the above-referenced project as set forth below.

In reviewing the Staff Report in conjunction with the soils engineering reports, it would appear that there is lack of information concerning subterranean and surface drainage on the subject property. Unmentioned throughout all of the reports is the drainage from the face of the cliff off of this lot. When it is mentioned, it is based on data from a neighboring lot that does not have a spring running from the fact of its cliff.

We would also like to note that none of the drainage reports currently identify the perched water table seeping from the face of the bluff. None of the reports address the developmental impacts on this seepage. For instance, will the location of the leach field increase this seepage and accelerate the instability of the bluff? This question needs to be answered. The opinions rendered are equivocal and unsubstantiated by data from the lot in question.

We also note that soil engineer's opinion concerning drainage, at Page 15 of his report, sets forth the following:

"Drainage - our general recommendation for site drainage for new structures is provided in Appendix 1. However, some of those recommendations may not be applicable to this site due to its near-bluff location. We understand that the County of Mendocino and Coastal Commission will not allow a drainage pipe to be carried to the base of the bluff area. Therefore, we believe the only other

11.9.13

alternative would be to try to re-establish natural sheet flow by utilization of a surface manifold disbursal pipe similar to that shown on Appendix 1.1."

This general recommendation needs to be developed further, and thus, my request for an additional drainage report which has not been provided after several requests.

In reviewing the Staff Report, I note that there is no septic system report. Since an improperly designed septic system could have a detrimental impact on the bluff's stability, I believe that is essential to have this reviewed before you proceed to the hearing.

For this reason, and for reasons set forth below, we believe that additional research should be conducted and certain proposed conditions, as set forth hereinafter, incorporated into any final permit.

The report from Earth Science Consultants dated October 20, 1995 for Job Number 95-2928, on Page 2, states:

"Our scope of work performed included only subsurface conditions within the actual proposed structure, and did not include accessory areas such as sidewalks, porches, decks, landscaping, garden and yard areas."

Thus, the subsurface conditions and drainage impacts for the whole lot have not been addressed in this report.

Please note, at Page 8 of the Earth Science Consultants report, the following recommendation is made:

"We recommend that the proposed development be planned, designed, constructed and maintained so as not to impact upon, or influence, or surcharge, or UNDERMINE in anyway adjacent land and development."

The Earth Science Consultants report further states:

"Another reason for not cutting is that subsurface waters flow and seep below the ground surface, and cutting usually intercepts such natural drainage seepage courses and may increase site drainage problems."

The report is deficient as to the impacts on below-ground drainage and seepage. Therefore, we recommend the following special conditions be adopted as part of the permit:

"Prior to commencement of construction, Applicant shall obtain the opinions of

12413

Mr. Lee Welty, Hydrology Engineer and Mr. David Miller, Soils Engineer (designer of the septic system) that surface and subsurface drainage and seepage will not be impacted by the development and surface and subsurface drainage shall not accelerate the rate of bluff erosion or collateral and subjacent support to the neighboring lots to the North and South."

We also request that this special condition be adopted pursuant to the recommendation of the soils engineer:

"Prior to construction, Applicant will obtain an opinion of counsel for the developer and owner, stating that discharging subsurface and surface drainage at this site is done in a legal manner."

This special condition is based upon the recommendation contained in Appendix I, "Site Drainage", to Earth Science Consultants Report dated October 21, 1995.

We also note that Exhibit "F" should be re-prepared to designate the location of the existing large pine tree northwest of the leach field. In order to protect this pine tree, we recommend that the following special condition be imposed:

"Prior to construction, this existing large pine tree located northwest of the leach field be fenced with temporary fencing. No heavy equipment, materials, storage, excavating, digging, etc., shall be permitted within ten (10) feet of this large pine tree."

We also recommend that the following special condition be imposed to guarantee that the permit will have a screen to the north side of the lot as follows:

"Prior to issuance of the building permit, the Applicant shall submit a landscaping plan of ten mixed conifers in 10-gallon buckets planted on his northerly boundary in between the opposing line of mixed conifers on the northerly neighbor's boundary line to augment his screen to the south and Applicant's screen to the north."

Very truly yours,

RICHARD S. CALONE, LLP



Richard S. Calone, Esq.

STATE OF CALIFORNIA
WELL COMPLETION REPORT

No. **778704**

DWR USE ONLY --- DO NOT FILL IN

STATE WELL NO. STATION NO.

LATITUDE LONGITUDE

APN / TRS / OTHER

OWNER'S WELL No. 4542
 Date Work Began 8/16/01 Ended 8/16/01
 Local Permit Agency Mendocino

Permit No. 12567 Permit Date 8/10/2001

GEOLOGIC LOG

WELL OWNER

DEPTH FROM SURFACE	DEPTH TO FIRST WATER (ft.) BELOW SURFACE	DESCRIPTION
0	2	topsoil
2	22	brown sandy clay
22	220	brown silt stone

Orientation Vertical Degree of Angle John McClure
 25070 Ward Ave.
 Fort Bragg CA 95437
 Address 27600 S. Hwy. 1
 City Ft. Bragg County Mendocino
 Apr Book 027 Page 421 Parcel 08
 or
 Township Range Section 1/4 1/4
 or
 Latitude NORTH Longitude WEST
 Deg. Min. Sec. Deg. Min. Sec.
 LOCATION SKETCH

EXHIBIT NO. 5
APPLICATION NO. A-1-MEN-02-030
McCLURE
WELL COMPLETION REPORT

RECEIVED

JUL 19 2002

CALIFORNIA
 COASTAL COMMISSION

ACTIVITY NEW WELL PLANNED USE(S) Domestic Water
 DRILLING METHOD ROTARY AIR FLUID
 DEPTH OF STATIC WATER LEVEL 160 (Ft.) & DATE MEASURED Aug. 16, 2001
 ESTIMATED YIELD * .15 (G.P.M.) & TEST TYPE Airlift
 TEST LENGTH .2 (Hrs.) TOTAL DRAWDOWN .215 (FT.)
 *May not be representative of a well's long-term yield.

CASING							ANNULAR MATERIAL		
DEPTH FROM SURFACE	BORE-HOLE	TYPE	Material / Grade	Dia.	Gauge	Slot size	FL. To Ft.	Seal Material	Filter Pack (Type / Size)
0	60	10.5/8	Blank	F480 PVC	5	160	0	50	Bentonite
60	160	7.7/8	Blank	F480 PVC	5	160	50	220	Pea Gravel
160	220	7.7/8	Perfs	F480 PVC	5	160			

- 01... Attachments
- 02... Geologic Log
- 03... Well Construction Diagram
- 04... Geophysical Logs
- 05... Soil Water Chemical Analyses
- 06... Other

CERTIFICATION STATEMENT
 I, the undersigned, certify that this report is complete and accurate to the best of my knowledge and belief.

NAME Fisch Bros. Drilling, Inc.
 (PERSON, FIRM, OR CORPORATION) (TYPED OR PRINTED)
5001 Gravenstein Hwy. No. Sebastopol CA 95472

Signed Dale Theiss Carol Hughes 8-20-01 399226
 WELL DRILLER / AUTHORIZED REPRESENTATIVE DATE SIGNED C-57 LICENSE NUMBER