

**CALIFORNIA COASTAL COMMISSION**

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

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



# F 13b

Filed: March 17, 2008  
49<sup>th</sup> Day: May 5, 2008  
Staff: Tiffany S. Tauber  
Staff Report: March 28, 2008  
Hearing Date: April 11, 2008  
Commission Action:

**STAFF REPORT: APPEAL**

**SUBSTANTIAL ISSUE**

APPEAL NO.: **A-1-MEN-08-015**

APPLICANTS: Bower Limited Partnership

AGENT: RAU & Associates, Julie Price

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: On the west side of Highway One, upslope from the Gualala River estuary, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway One in Gualala, Mendocino County (APN 145-261-13).

PROJECT DESCRIPTION: (1) Construct a 285-foot-long retaining wall involving a vegetated earthen retention system known as "Geoweb," (2) install drainage improvements including 414 feet of drainpipe, a storm drain manhole, and a 6-foot stormwater treatment structure, and (3) relocate and upgrade underground septic tanks.

APPELLANTS: (1) Environmental Commons; Britt Bailey, et al; (2) Lori Hubbert; and (3) Julie Verran.

SUBSTANTIVE FILE: (1) Mendocino County CDP No. 55-2006;  
DOCUMENTS (2) Mendocino County Local Coastal Program

---

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with certified Local Coastal Program (LCP) policies relating to bluff development, geologic hazards, environmentally sensitive habitat areas, and the public access and recreation policies of the Coastal Act.

The development, as approved by the County, consists of (1) construction of a 285-foot-long retaining wall involving a vegetated earthen retention system known as "Geoweb," (2) installation of drainage improvements including 414 feet of drainpipe, a storm drain manhole, and a 6-foot stormwater treatment structure, and (3) relocation and upgrade of underground septic tanks.

The subject site is an approximately two-acre blufftop parcel located on the west side of Highway One, upslope from the Gualala River estuary, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway One in Gualala, Mendocino County (APN 145-261-13). The parcel is planned and zoned Gualala Village Mixed Use (GVMU) in the County's LCP. The subject parcel is developed with several commercial buildings and the recently constructed Gualala Bluff Trail, which provides public access along the bluff.

The Commission received three appeals of the County of Mendocino's decision to approve the development including an appeal from (1) Environmental Commons (Appellant 1), (2) Lori Hubbart (Appellant 2), and (3) Julie Verran (Appellant 3). Six of the seven contentions raised in the appeals present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding (1) limitations on the construction of retaining walls, (2) limitations on bluff face development and landform alteration, (3) siting and designing development to minimize geologic hazards and to avoid the need for shoreline protection devices, (4) protecting public access and visitor serving facilities, (5) protecting environmentally sensitive habitat areas, and (6) special protections for special neighborhoods.

All three appellants contend that the retaining wall approved by the County is inconsistent with the limitations on the construction of retaining walls set forth in LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1) that prohibit the development of retaining walls and other shoreline structures unless such structures are determined to be necessary for the protection of existing development, public beaches, or coastal dependent uses. The appellants contend that the retaining wall is not allowable under the LCP because it is not “*necessary for the protection of existing development.*” With the exception of an underground septic system that is proposed to be relocated and a public access easement that can be moved inland if necessary, the closest existing development at the site is located more than 100 feet from the bluff edge at its westernmost point; a distance that does not necessitate a need for protection from erosion. Furthermore, information contained in the geotechnical report indicates that, with the exception of several small debris flows caused by the erosion of the unengineered fill, the subject bluff is relatively stable and is not being threatened by active erosion or bluff retreat. The appellants further contend that the County failed to analyze whether less environmentally damaging feasible alternatives that would avoid the need for the construction of a retaining wall exist, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards.

Appellants 1 and 2 contend that the development approved by the County is inconsistent with the limitations on bluff face development set forth in LUP Policy 3.4-10, and Coastal Zoning Code Section 20.500.020(B)(4). The appellants contend that the development approved by the County, which involves development along the face of the bluff above the Gualala River estuary, is not an allowable form of development on a bluff face because it would not substantially further the public welfare as required by LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4), as the wall is not a public access project, and the wall would not serve coastal-dependent industry.

Appellants 1 and Appellant 2 also contend that the County’s approval of the proposed project is inconsistent with the geologic hazard provisions of the LCP requiring that development be sited and designed in a manner that will minimize geologic hazards and avoid the need for construction of bluff protective devices. Appellant 1 specifically notes that the County’s findings of approval state that the proposed relocation of the septic system *is* dependent on the retaining wall. The appellants allege that the retaining wall approved by the County is intended to facilitate the siting and design of future commercial development contemplated by the applicant at the site in a manner that would be inconsistent with provisions of the LCP regarding bluff setback requirements and limitations on shoreline protective devices, as the future development would also be dependent on the retaining wall. Although specific redevelopment of the site is not part of the approved project subject to appeal at this time, the retaining wall is the major component of the approved project and the appellants contend that by approving the retaining wall and fixing the bluff edge now when a retaining wall is not currently needed to protect existing structures or coastal dependent uses, the approval would have the effect of allowing future development to be located where it is dependent on the bluff retaining wall in a

location where it would otherwise not be allowed pursuant to LUP 3.4-7 and CZC Sections 20.500.010 and 20.500.020.

Appellant 3 contends that the project approved by the County is inconsistent with Coastal Act policies regarding the protection of public access and visitor-serving facilities because the development would result in direct impacts to the recently constructed Gualala Bluff Trail, a public access facility located along the subject bluff. The County's approval of the subject development does not include provisions to ensure the continuation of public access during construction, nor does it ensure that the trail will be fully restored following project completion.

Lastly, all three appellants contend that the project approved by the County is inconsistent with LCP policies regarding the protection of environmentally sensitive habitat areas. The appellants assert that the biological surveys performed for the proposed project are incomplete and/or inaccurate with regard to identifying the potential presence of rare plants, wetland habitat, and wildlife species at and adjacent to the site and thus, the County did not have sufficient evidence to determine that the approved project is consistent with LCP policies requiring the protection of environmentally sensitive habitat areas.

The degree of factual and legal support for the County's action is low, given that the County's approval fails to demonstrate that the approved development (1) is necessary for the protection of existing development, (2) would significantly further the public welfare, or otherwise be a development allowable on the bluff face, (3) would minimize the alteration of natural landforms, (4) would provide bluff setbacks that are of sufficient distance to eliminate the need for shoreline protective works, and (5) would protect existing public access opportunities. In addition, the significance of the resource affected is great in that the 285-foot-long retaining wall would be located on a high fragile bluff immediately adjacent to the Gualala River estuary, an environmentally sensitive habitat area. Additionally, the retaining wall would permanently alter the natural bluff landform which is located across the river and sand spit from Gualala Point Regional Park, a significant public access facility serving the northern Sonoma and southern Mendocino coastal area.

Therefore, staff recommends that the Commission find that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding (1) limitations on the construction of retaining walls, (2) limitations on bluff face development and landform alteration, (3) siting and designing development to minimize geologic hazards and to avoid the need for shoreline protection devices, and (4) protecting environmentally sensitive habitat areas. In addition, staff recommends that the Commission find that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the public access and recreation policies of the Coastal Act.

**The Motion to adopt the Staff Recommendation of Substantial Issue is found on page 6.**

---

**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, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within 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 site that is the subject of Mendocino County CDP No. 55-2006 is located on the west side of Highway One on a bluff top parcel above the Gualala River estuary. Therefore, the approved development is appealable to the Commission because the development is located (1) between the sea and the first public road paralleling the sea, (2) within one hundred feet of the Gualala River estuary, and (3) within three hundred feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

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.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant, and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public 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.

## **2. Filing of Appeal**

Three appeals were filed including an appeal from (1) Environmental Commons; Britt Bailey, et al, filed on March 17, 2008, (2) Lori Hubbard, filed on March 17, 2008, and (3) Julie Verran, filed on March 26, 2008. All three appeals were filed in a timely manner within 10 working days of receipt by the Commission of the County's Notice of Final Action on March 14, 2008 (Exhibit No. 8).

---

## **I. MOTION, STAFF RECOMMENDATION AND RESOLUTION**

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

### **MOTION:**

I move that the Commission determine that Appeal No. A-1-MEN-08-015 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

### **STAFF RECOMMENDATION:**

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

### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-MEN-08-015 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. APPELLANTS' CONTENTIONS**

The Commission received three appeals of the County of Mendocino's decision to approve the development including an appeal from (1) Environmental Commons (Appellant 1), (2) Lori Hubbart (Appellant 2), and (3) Julie Verran (Appellant 3).

The development, as approved by the County, consists of (1) construction of a 285-foot-long retaining wall involving a vegetated earthen retention system known as "Geoweb," (2) installation of drainage improvements including 414 feet of drainpipe, a storm drain manhole, and a 6-foot stormwater treatment structure, and (3) relocation and upgrade of underground septic tanks.

The subject site is an approximately two-acre blufftop parcel located on the west side of Highway One, upslope from the Gualala River estuary. The parcel is planned and zoned Gualala Village Mixed Use (GVMU) in the County's LCP. The subject parcel is developed with several commercial buildings and the recently constructed Gualala Bluff Trail, which provides public access along the bluff.

The appeals raise five contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below and the full texts of the three appeals are included as Exhibit Nos. 5, 6, and 7.

#### **1. Limitations on Construction of Retaining Walls**

Two of the appellants contend that the retaining wall approved by the County is inconsistent with the limitations on the construction of retaining walls set forth in LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1). The appellants contend that the retaining wall is not allowable under the LCP because it is not "*necessary for the protection of existing development*" as required by the LCP. The County approved the retaining wall, in part, to prevent bluff erosion from encroaching into an area of the site used informally for parking and to protect the recently constructed Gualala Bluff Trail. The appellants note that parking is not an authorized use of the site constituting "existing development," and that the public access trail can be relocated if and when it is threatened by erosion. The appellants further contend that the County failed to analyze whether less environmentally damaging feasible alternatives exist that would avoid the need for the construction of a retaining wall, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards.

**2. Limitations on Bluff Face Development and Landform Alteration**

Appellants 1 and 2 contend that the development approved by the County is inconsistent with the limitations on bluff face development set forth in LUP Policy 3.4-10, and Coastal Zoning Code Section 20.500.020(B)(4). The appellants contend that the development approved by the County, which involves development along the face of the bluff above the Gualala River estuary, is not an allowable form of development on a bluff face because it would not substantially further the public welfare, as it is not a public access project, nor would it serve coastal-dependent industry as required by LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4). Additionally, as noted above, the appellants contend that the County failed to analyze whether less environmentally damaging feasible alternatives that would avoid the need for structural development on the bluff face exist, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards. Similarly, Appellant 3 contends that the approved development is inconsistent with LCP Policy 3.5-1 requiring that alteration of landforms be minimized.

**3. Minimize Geologic Hazards**

Appellant 1 and Appellant 2 contend that the County's approval of the proposed project is inconsistent with the geologic hazard provisions of the LCP requiring that development be sited and designed in a manner that will minimize geologic hazards and avoid the need for construction of bluff protective devices. The appellants allege that the retaining wall approved by the County is intended to facilitate the siting and design of future commercial development at the site in a manner that would be inconsistent with provisions of the LCP regarding bluff setback requirements and limitations on shoreline protective devices, as the future development would be dependent on the retaining wall.

**4. Protection of Public Access**

Appellant 3 contends that the project approved by the County is inconsistent with Coastal Act policies regarding the protection of public access and visitor-serving facilities because the development would result in direct impacts that would not be mitigated to the recently constructed Gualala Bluff Trail, a public access facility located along the subject bluff. The County's approval of the subject development does not include provisions to ensure the continuation of public access during construction, nor does it include provisions to ensure that the trail will be fully restored following project completion.

**5. Protection of Environmentally Sensitive Habitat**

All three appellants contend that the project approved by the County is inconsistent with LCP policies regarding the protection of environmentally sensitive habitat areas. The appellants assert that the biological surveys performed for the proposed project are incomplete and/or



inaccurate with regard to identifying the potential presence of rare plants, wetland habitat, and wildlife species at and adjacent to the site. Thus, the appellants assert that the County did not have sufficient evidence to determine that the approved project is consistent with LCP policies requiring the protection of environmentally sensitive habitat areas.

**6. Gualala Special Neighborhood**

Appellant 3 contends that the project approved by the County would violate provisions regarding the protection of Gualala as a special neighborhood.

**7. Adequacy of California Environmental Quality Act Determination**

Appellant 3 asserts that the Negative Declaration prepared by the County for the subject development is inadequate because, in addition to the retaining wall development approved by the County, the appellant indicates that the applicant is planning additional future development at the site that was not considered in the environmental review of the project. The appellant contends that an Environmental Impact Report (EIR) should have been prepared.

**B. LOCAL GOVERNMENT ACTION**

On November 19, 2007, the Mendocino County Coastal Permit Administrator approved Coastal Development Permit No. 55-2006 for the construction of a 285-foot-long concrete block retaining wall and drainage improvements. The permit was approved with five special conditions of approval.

Special Condition No. 2 is of particular relevance to the contentions of the appeal pertaining to the protection of environmentally sensitive habitat areas. Special Condition No. 2 requires (1) establishment of a 50-foot buffer between the development and the Gualala River estuary/lagoon and associated estuarine/intertidal wetlands, (2) that all mitigation measures outlined in the botanical survey prepared for the site be implemented, and (3) submittal of a restoration and monitoring plan to restore the habitat values and slope stabilizing function of coastal scrub vegetation at the project site. Special Condition No. 2 also requires submittal of color samples of the Geoweb material prior to issuance of the grading permit.

Other special conditions of approval require (#1) submittal of an erosion control and Storm Water Pollution Prevention Plan prior to issuance of the grading permit, (#3) day-time hour limitations on noise generation during construction, (#4) submittal of all necessary permits from the Regional Water Quality Control Board, and (#5) that a copy of the staff report and CDP be provided to the contractor and all sub-contractors conducting the approved development.

The decision of the Coastal Permit Administrator was appealed at the local level to the County Board of Supervisors. Prior to the Board of Supervisors hearing on the local appeal, the applicant's agent submitted a letter dated January 25, 2008 that revised the retaining wall portion of the project from a concrete block design to a vegetated earth retention design known as

“Geoweb.” On February 26, 2008, the Board of Supervisors modified the Coastal Permit Administrator’s decision by approving the alternative Geoweb design and by revising Special Condition No. 2 to require submittal of color samples of the Geoweb material prior to issuance of the grading permit. All other project elements and special conditions were approved by the Board consistent with the Coastal Permit Administrator’s approval.

The County then issued a Notice of Final Action, which was received by Commission staff on March 3, 2008. On March 6, 2008, Commission staff notified the County that the Notice of Final Action was deficient because the project description and conditions of approval were unclear. The County then issued a Revised Notice of Final Action, which was received by Commission staff on March 14, 2008. The project was appealed to the Commission in a timely manner by all appellants on March 17, 2008 and March 26, 2008, within 10 working days after receipt by the Commission of the Revised Notice of Final Local Action.

### **C. BACKGROUND**

#### Permit History

In 1977, the North Coast Regional Commission approved CDP NCR-77-C-115 to John and Ida Bower for a land division of 4.5 acres into 3 lots of 1.9, 1.0, and 1.6 acres in Gualala, Mendocino County (APNs 145-261-11, 145-261-12, and 145-261-13). APNs 145-261-11 and 145-261-12 are developed with motels and APN 145-261-13, the site that is the subject of Appeal No. A-1-MEN-08-015, is developed with a strip of commercial units bordering Highway One which are leased by separate commercial entities. The subject parcel, Parcel 13, is the southernmost of this group of three parcels. As a condition of the 1977 land division, the Commission required recordation of an offer to dedicate an ambulatory 25-foot-wide lateral bluff top access easement and a five-foot-wide vertical access easement from Highway One to the mean high water line of the Gualala River.

In 1981, the North Coast Regional Commission approved CDP NCR-80-P-75, granted to the Redwood Empire Title Company, for the building of Surf Supermarket located on Parcel 5 directly adjacent and to the south of the subject parcel (APN 145-261-05). As a condition of approval, CDP NCR-80-P-75 also required recordation of an offer to dedicate a 25-foot-wide easement for public access and passive recreation along the bluff. John J. and Ida L. Bower recorded the offers to dedicate in both permits and the Commission issued the CDPs for both the subdivision and for the construction of Surf Supermarket. CDP Nos. NCR-77-C-115 and NCR-80-P-75 do not authorize use of any portion of the easement for a parking lot or placement of any structures or materials in any portion of the easement.

CDP 80-P-75 specified that the supermarket building would be set back 35 feet at its northwest corner and 55 feet at its southwest corner from the bluff edge. However, the building was constructed so that the southwest corner is set back only 24 feet from the bluff edge and the constructed building was therefore placed directly within the area offered for public access along the bluff constituting a violation of CDP 80-P-75. In an effort to protect the public access

required by CDP NCR-80-P-75, the Commission subsequently approved CDP 1-83-270 authorizing a 120-foot-long wood retaining wall west of the market along the edge of the bluff. Special Condition No. 1 of CDP No. 1-83-270 requires the retaining wall be maintained for the life of the development on the site. To comply with Special Condition No. 1 of CDP No. 1-83-270, a coastal development permit amendment application has been submitted to the Coastal Commission by Bower Limited Partnership to replace the failing retaining wall behind the supermarket. Specifically, pending CDP Application No. 1-83-270-A1 requests authorization to (1) replace the wood retaining wall with a new retaining wall (that would extend across APN 145-261-05 and the parcel to the north within the area of Mendocino County's coastal permit jurisdiction (APN 145-261-13) that is the subject of County CDP Application No. 55-2006), and (2) install drainage improvements.

### Gualala Bluff Trail

In 1994, the Redwood Coast Land Conservancy (RCLC) accepted the offers-to-dedicate public access easements described above. The RCLC has received CDPs from Mendocino County to construct a bluff top trail, known as the Gualala Bluff Trail. Phase I of this trail, in a portion of the easement resulting from CDP NCR-77-C-115 (three-lot subdivision), was completed in 1998. The CDP for Phase II of this trail, which includes Parcel 13, the Surf Supermarket property, and another parcel further south (Oceansong Restaurant), was approved by Mendocino County in 2004 (CDP 23-03).

Following issuance of the CDP for Phase II of the Gualala Bluff Trail in 2004, Bower Limited Partnership initiated litigation against RCLC, with a cross-complaint filed by the Coastal Commission, over several issues regarding the easements on Parcels 5 and 13, including the validity of RCLC's acceptance of the easement on Parcel 13, the permissible scope of development of public pedestrian access on the parcels, the location of the public pedestrian access easements on the parcels, and alleged Coastal Act violations for unpermitted development within the easements.

### Mutual Settlement Agreement and Release Between Involved Parties

A Mutual Settlement Agreement and Release by and between Bower Limited Partnership (BLP), John H. Bower, Redwood Coast Land Conservancy (RCLC), Shirley Eberly, Lois Lutz, and California Coastal Commission was established in 2007 (Case No. SCUk CVG 0594172). The agreement provides, in part, to the applicant (Bower Limited Partnership) access and use of the easement area for uses that are "*not inconsistent with the public pedestrian access authorized by the May 2004 Mendocino County coastal development permit.*" The agreement specifies that such access and use may include, but is not limited to, replacement of the retaining wall on Parcel 5, installation of a retaining wall on Parcel 13, and installation and relocation of necessary utilities on Parcels 5 and 13, provided that BLP obtains all necessary permits for such work, including coastal development permits where required. The agreement also states that RCLC understands and agrees that such work may result in temporary disruption and/or temporary relocation of pedestrian access on RCLC's easement area and that BLP further agrees that to the

extent that any of its use of or access to the easement area damages the public pedestrian access amenities constructed by RCLC, BLP will expeditiously repair such damage at BLP's expense. While the agreement establishes that uses "*not inconsistent with the public pedestrian access authorized by the May 2004 Mendocino County coastal development permit*" may be located within the public access easement area, the agreement in no way obligates the County or the Coastal Commission to approve a CDP for such uses but rather, expressly requires the applicant to obtain all necessary permits from the County or the commission for any development located within the public access easement area.

#### **D. SITE & PROJECT DESCRIPTION**

The subject site is an approximately two-acre blufftop parcel located on the west side of Highway One, upslope from the Gualala River estuary, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway One in Gualala, Mendocino County (APN 145-261-13). The parcel is planned and zoned Gualala Village Mixed Use (GVMU) in the County's LCP. The subject parcel is developed with several commercial buildings and the recently constructed Gualala Bluff Trail, which provides public access along the bluff.

The development, as approved by the County, consists of (1) construction of a 285-foot-long retaining wall involving a vegetated earthen retention system known as "Geoweb," (2) installation of drainage improvements including 414 feet of drainpipe, a storm drain manhole, and a 6-foot stormwater treatment structure, and (3) relocation and upgrade of underground septic tanks.

The approved development would involve approximately 2,700 cubic yards of grading within an excavation area of approximately 9,500 square feet along the bluff. Additionally, the approved development would involve the removal of approximately 4,350 square feet of vegetation along the bluff comprised of invasive, ruderal plant species as well as areas of native northern coastal scrub habitat.

The retaining wall approved by the County is proposed to connect to a similarly proposed retaining wall on the adjacent parcel to the south that is the subject of a separate pending permit amendment application submitted to the Coastal Commission. The pending coastal permit amendment application (CDP Amendment Application No. 1-83-270-A1) requests authorization to replace a 70-foot-long wood failed retaining wall with a new retaining wall that would extend across the parcel to the south of the subject site (APN 145-261-05).

#### **E. 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."*

### **1. Appellants' Contentions Are Valid Grounds for Appeal**

Six of the seven contentions raised in the appeals present potentially valid grounds for appeal in that they allege the approved development's inconsistency with the policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding (1) limitations on the construction of retaining walls, (2) limitations on bluff face development and landform alteration, (3) siting and designing development to minimize geologic hazards and to avoid the need for shoreline protection devices, (4) protecting public access and visitor serving facilities, (5) protecting environmentally sensitive habitat areas, and (6) special protections for special neighborhoods.

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

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

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project as approved with the provisions regarding (1) limitations on the construction of retaining walls, (2) limitations on bluff face development and landform alteration, (3) siting and designing

development to minimize geologic hazards and to avoid the need for shoreline protection devices, (4) protecting public access and visitor serving facilities, and (5) protecting environmentally sensitive habitat areas, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP. In addition, the Commission finds that the appeal raises a substantial issue with regard to the appealed project's conformance with the public access and recreation policies of the Coastal Act.

**a. Allegations Raising Substantial Issue:**

**i. Limitations on Construction of Retaining Walls**

All three appellants contend that the retaining wall approved by the County is inconsistent with the limitations on the construction of retaining walls set forth in LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1). The appellants contend that the retaining wall is not allowable under the LCP because it is not "*necessary for the protection of existing development*" as required by the LCP provisions cited below. The appellants further contend that the County failed to analyze whether less environmentally damaging feasible alternatives that would avoid the need for the construction of a retaining wall exist, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards.

LCP Policies and Standards:

LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1) state:

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

Discussion:

In its findings for approval, the County states that the proposed retaining wall is intended to correct unstable bluff conditions, including several shallow surface failures that occurred in

2005, caused by the erosion of unengineered fill placed along the bluff edge approximately 20 to 30 years ago. The County's findings state that the retaining wall is necessary to "*preserve, to the extent possible, the existing unpaved parking area which is accessory to the existing on-site commercial development.*" The findings further state that the retaining wall would also serve to "*protect the existing and proposed onsite portions of the Gualala Bluff Trail, a coastal access trail, from erosion, and ...protect the downslope public beach area from erosion...*"

As cited above, LUP Policy 3.4-10 and Coastal Zoning Code Section 20.500.020(E)(1) prohibit the development of retaining walls and other shoreline structures unless such structures are determined to be necessary for the protection of existing development, public beaches, or coastal dependent uses. The County's approval fails to demonstrate that the proposed retaining wall is "*necessary for the protection of existing development*" as required by LUP Policy 3.4-12 and CZC Section 20.500.020(E)(1).

The approved retaining wall is not "*necessary for the protection of existing development*" because, with the exception of an underground septic system that is proposed to be relocated and a public access easement that can be moved inland if necessary, the closest existing development at the site is located more than 100 feet from the bluff edge at its westernmost point; a distance that does not necessitate a need for protection from erosion. Furthermore, there is no evidence to support the County's assertion that the retaining wall is necessary to protect the public beach downslope of the site from erosion. Information contained in the geotechnical report indicates that, with the exception of several small debris flows caused by the erosion of the unengineered fill, the subject bluff is relatively stable and is not being threatened by active erosion or bluff retreat.

The approved retaining wall is not necessary for the protection of the trail. The lateral access easement at the subject site (required pursuant to Coastal Commission CDP No. NCR-77-C-115) is described as "*A pedestrian easement across a strip 25 feet in width adjacent to and landward of the bluff edge along the ocean side of the following described real property [APN 145-261-13]...*" This easement is, in essence, a "floating" easement in that as the bluff edge retreats landward over time, the 25-foot-wide easement moves landward accordingly. Thus, the proposed retaining wall is not necessary to protect the trail easement from erosion, as the ambulatory nature of the easement itself establishes a mechanism for protection of the trail.

The approved retaining wall is not necessary for the protection of an area for parking because, although gravel portions of the site appear to be used informally for parking, parking near the bluff edge is not an authorized use of the site. None of the coastal development permits approved by the Commission and County for development on the property authorize use of the area near the bluff edge for parking. Therefore, the gravel area used without a necessary coastal development permit for parking does not constitute "existing development" as contemplated by LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1). Moreover, it is clear from the County's approval that the retaining wall is also intended to serve future redevelopment of the site. The County recently approved CDP No. 24-2007 which authorized the demolition of an existing commercial building at the subject site. The County's findings for the project now on

appeal contain several indications that the applicant is formulating plans to redevelop the subject site by reconfiguring the building and parking layout as the subject of a future CDP application. For example, the County's findings state, "*The applicant has indicated a desire to create a paved parking area in the general area at a future time in association with a future redevelopment plan. The proposed drainage improvements and retaining wall would facilitate such future parking improvements by reducing potential erosion and drainage impacts resulting from the creation of impervious surfaces in this area.*" The LCP clearly does not allow the construction of retaining walls to facilitate *future* development.

Nonetheless, even if it were demonstrated that a retaining wall were necessary to protect existing development, LUP Policy 3.4-10 and Coastal Zoning Code Section 20.500.020(E)(1) further require that a determination be made that "*no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate... adverse environmental effects.*" In its review of the project, the County failed to fully analyze whether less environmentally damaging feasible alternatives exist that would avoid the need for the construction of a retaining wall, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards.

The Commission finds that the degree of factual and legal support for the County's action is low, given that no evidence has been provided to justify that construction of a retaining wall is necessary for the protection of existing development. In addition, the significance of the resource affected is great in that the 285-foot-long retaining wall would be located on a high fragile bluff immediately adjacent to the Gualala River estuary, an environmentally sensitive habitat area. Additionally, the retaining wall would permanently alter the natural bluff landform which is located across the river and sand spit from Gualala Point Regional Park, a significant public access facility serving the northern Sonoma and southern Mendocino coastal area. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1) regarding limitations on the construction of retaining walls.

**ii. Limitations on Bluff Face Development**

Appellants 1 and 2 contend that the development approved by the County is inconsistent with the limitations on bluff face development set forth in LUP Policy 3.4-10, and Coastal Zoning Code Section 20.500.020(B)(4). The appellants contend that the development approved by the County, which involves development along the face of the bluff above the Gualala River estuary, is not an allowable form of development on a bluff face because it would not substantially further the public welfare as required by LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4), as the wall is not a public access project, and the wall would not serve coastal-dependent industry. Additionally, as noted above, the appellants contend that the County failed to analyze whether less environmentally damaging feasible alternatives exist that would avoid the need for structural development on the bluff face, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-



compacting these areas consistent with current engineering standards. Similarly, Appellant 3 contends that the approved development is inconsistent with LCP Policy 3.5-1 requiring that alteration of landforms be minimized.

LCP Policies and Standards:

LUP Policy 3.4-10 and Coastal Zoning Code Section 20.500.020(B)(4) state:

*No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.*

LUP 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... (emphasis added)*

Discussion:

The development approved by the County would involve development along the face of the bluff above the Gualala River estuary. LUP Policy 3.4-10 and Coastal Zoning Code Section 20.500.020(B)(4) generally prohibit development on the bluff face because of the fragility of this environment. LUP Policy 3.4-10 and Coastal Zoning Code Section 20.500.020(B)(4) allows bluff face development only where such development would substantially further the public welfare, such as staircase accessways to beaches or pipelines to serve coastal-dependent industry and then only when it is determined that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

As discussed above, the County approved the retaining wall to protect the informal unpaved parking area, to facilitate a future paved parking area, and to protect the Gualala Bluff Trail. The retaining wall approved by the County raises a substantial issue as to whether the wall would substantially further the public welfare as required by LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4), as the wall is not a public access project, and the wall would not serve coastal-dependent industry. The project site is planned and zoned Gualala Mixed Use Village (GVMU) and does not support, or allow for, coastal dependant industrial uses at the site. Additionally, as discussed above, the site is developed with an existing trail that currently

contributes to the public welfare. Rather than *further* the public welfare, the development as approved by the County would have at least temporary adverse impacts on the public welfare in that the approved development would result in disturbance to a portion of the public access trail during construction. As discussed further below in the appeal contention related to public access, the County's approval fails to incorporate measures requiring that the trail be re-routed, or that equivalent public access be provided while the trail is temporarily closed during construction. Furthermore, the County's approval fails to incorporate measures to ensure that the trail would be reconstructed and restored to pre-project conditions following completion of construction.

Nonetheless, even if it were demonstrated that the development as approved by the County would substantially further the public welfare, LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4) require that a determination be made that "*no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.*" In its review of the project, the County failed to fully analyze whether less environmentally damaging feasible alternatives exist that would (1) avoid the need for structural development on the bluff face, and (2) minimize the alteration of landforms, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the County's approval fails to demonstrate that the approved development would (1) significantly further the public welfare, or otherwise be a development allowable on the bluff face, and (2) minimize the alteration of natural landforms. In addition, the significance of the resource affected is great in that the 285-foot-long retaining wall would be located on a high fragile bluff immediately adjacent to the Gualala River estuary, an environmentally sensitive habitat area. Additionally, the retaining wall would permanently alter the natural bluff landform which is located across the river and sand spit from Gualala Point Regional Park, a significant public access facility serving the northern Sonoma and southern Mendocino coastal area. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.4-12 and 3.5-1 and Coastal Zoning Code Sections 20.500.020(E)(1).

**iii. Minimize Geologic Hazards**

Appellant 1 and Appellant 2 contend that the County's approval of the proposed project is inconsistent with the geologic hazard provisions of the LCP requiring that development be sited and designed in a manner that will minimize geologic hazards and avoid the need for construction of bluff protective devices. The appellants allege that the retaining wall approved by the County is intended to facilitate the siting and design of future commercial development at the site in a manner that would be inconsistent with provisions of the LCP regarding bluff setback requirements and limitations on shoreline protective devices, as the future development would be dependent on the retaining wall.

LCP Policies and Standards:

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 Appendix 3.*

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: (emphasis added)*

*Setback (meters) = Structure life (years) x 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 3.4-8 states:

*Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.*

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 Section 20.500.010 states:

*(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:*

*(1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*

*(2) Assure structural integrity and stability; and*

*(3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991) (emphasis added)*

CZC Section 20.500.015 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)*

Sec. 20.500.020, "Geologic Hazards - Siting and Land Use Restrictions," states in applicable part:

**(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.*

**(C) Tsunami.** *In tsunami inundation areas, as illustrated on resource maps or land use maps, only harbor development and related uses shall be allowed. These uses shall be allowed only if a tsunami warning plan has been developed.*

**(D) Landslides.**

...

**(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. (emphasis added)*

*(2) The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access and shall minimize visual impacts through all available means.*

*(3) All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineer's report and [Chapter 20.492](#) of this Division.*

*(4) Within the Gualala Town Plan planning area, a special condition shall be attached to all coastal permits for blufftop residential or commercial development, requiring recordation of a deed restriction that states the following:*

*(a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and the landowner assumes the risk from such hazards;*

*(b) The landowner agrees that any adverse impacts to property caused by the permitted project shall be fully the responsibility of the applicant;*

*(c) The landowner shall not construct any bluff or shoreline protective devices to protect the subject permitted residence, guest cottage, garage, septic system, or other improvements in the event that these structures are subject to damage, or other natural hazards in the future;*

*(d) The landowner shall remove the subject permitted house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the subject permitted 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 landowner shall bear all costs associated with such removal.*

*(e) The requirements of Subsection (d) shall not apply to residences or associated improvements on the property that pre-date the subject coastal permit. (Ord. No. 3785 (part), adopted 1991, Ord. No. 4083, adopted 2002)*

Discussion:

As cited above, LUP Policy 3.4-7 requires 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 span and that the setback be of sufficient distance to eliminate the need for shoreline protective works. Additionally, CZC Section 20.500.010 requires development (1) minimize risk to life and property in areas of high geologic hazard, (2) assure structural integrity and stability, and (3) neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Furthermore, CZC Section 20.500.020(E)(1) states that retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches, or coastal dependent uses.

The appellants contend that approval of the retaining wall, as discussed in Section E(1)(a)(i) above, is not necessary to protect existing development. The appellants allege that the retaining wall approved by the County is actually intended to facilitate future commercial development at the site by stabilizing and “fixing” the bluff edge in a static location. As noted above, there is an existing lateral public access easement located along the edge of the bluff which is, in essence, a “floating” easement in that as the bluff edge retreats landward over time, the 25-foot-wide easement moves landward accordingly. Thus, under existing conditions, future development of the area landward of the lateral public access easement along the bluff edge must take into account the need to reserve the first 25 feet of remaining bluff edge for public access use as bluff retreat affects the site.

Appellant 1 specifically states that the relocation of the septic tanks as approved by the County is inconsistent with LUP Policy 3.4-7 requiring 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 span and that the setback be of sufficient distance to eliminate the need for shoreline protective works. The appellant states that the County’s approval does not include a geotechnical analysis demonstrating that the septic tanks have been relocated in a manner consistent with the requirements of LUP Policy 3.4-7. Rather, the County’s findings specifically state that the proposed location of the septic system *is* dependent on the retaining wall. The County’s findings state, “*From a geotechnical stand point, the replacement areas are dependant upon approval of the retaining wall, in that the relocation areas were chosen based upon the assumption that the retaining wall would be installed.*”

The appellants note, and the County’s staff report acknowledges, that the applicant is preparing a redevelopment plan for the site that would involve demolition of existing commercial structures, reconstruction of the commercial structures to approximately the same square-footage but sited with a different orientation, and construction of a paved, landscaped parking area. The plan proposes development immediately adjacent to the existing location of the 25-foot-wide lateral public access easement, which assumes that the bluff edge will be fixed in place and that the floating access easement will not need to float landward over time due to bluff retreat as allowed by the easement. The County staff report notes that the County has already approved CDP 24-

2007 for the demolition of an existing commercial building at the subject site. Additionally, regarding future development at the site, the County's findings specifically state, "*The applicant has indicated a desire to create a paved parking area in the general area at a future time in association with a future redevelopment plan (see PAC 1-2007). The proposed drainage improvements and retaining wall would facilitate such future parking improvements by reducing potential erosion and drainage impacts...*"

Although specific redevelopment of the site is not part of the approved project subject to appeal at this time, the retaining wall is the major component of the approved project and the appellants contend that by approving the retaining wall and fixing the bluff edge now when a retaining wall is not currently needed to protect existing structures or coastal dependent uses, the approval would have the effect of allowing future development to be located where it is dependent on the bluff retaining wall in a location where it would otherwise not be allowed pursuant to LUP 3.4-7 and CZC Sections 20.500.010 and 20.500.020.

The appellants further allege that the County's approval of the retaining wall prior to the future review of site development is inconsistent with CZC Section 20.500.020(E)(4)(c) requiring that a deed restriction be recorded for bluff top commercial development that prohibits the construction of any bluff or shoreline protective in the event that development is subject to geologic hazards in the future. Section 20.500.020(E)(4)(c) sets forth an implementing mechanism for the standards contained in LUP Policy 3.4-7 and CZC Section 20.500.010 discussed above. Regarding the application of Section 20.500.020(E)(4) to the project approved by the County, the County's findings state that "*To apply the "no retaining wall" deed restriction to the proposed retaining wall... would not be appropriate. Therefore, the deed restriction requirement is not included in the subject CDP.*" The appellants assert that because the approved CDP is only one part of a much larger redevelopment project being contemplated by the applicant, by approving the retaining wall prior to the commercial redevelopment of the site, the County is effectively and erroneously precluding the requirements of CZC 20.500.020(E)(4)(c).

The appellants also note that there is no other aspect of the proposed development as approved by the County that would otherwise warrant construction of a retaining wall at this time. The proposed relocation and upgrade of the septic system and installation of drainage improvements could clearly be performed without the construction of a retaining wall. Thus, as a substantial issue is raised as to whether the retaining wall is needed to protect any existing structures or coastal dependent use as discussed in detail in Section E(1)(a)(i) above, a substantial issue is also raised as to whether the County's approval of a bluff retaining wall that would facilitate development that would be dependent on the wall for protection from geologic hazards is consistent with the provisions of LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the County's approval fails to demonstrate that the approved development (1) would provide bluff setbacks that are of sufficient distance to eliminate the need for shoreline protective works, or (2) is necessary for the protection of existing development, public beaches, or coastal



dependent uses. In addition, the significance of the resource affected is great in that the 285-foot-long retaining wall would be located on a high fragile bluff immediately adjacent to the Gualala River estuary, an environmentally sensitive habitat area. Additionally, the retaining wall would permanently alter the natural bluff landform which is located across the river and sand spit from Gualala Point Regional Park, a significant public access facility serving the northern Sonoma and southern Mendocino coastal area. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020.

**iv. Protection of Public Access**

Appellant 3 contends that the project approved by the County is inconsistent with Coastal Act policies regarding the protection of public access and visitor-serving facilities because the development would result in direct impacts to the recently constructed Gualala Bluff Trail, a public access facility located along the subject bluff. The County's approval of the subject development does not include provisions to ensure the continuation of public access during construction, nor does it ensure that the trail will be fully restored following project completion.

Coastal Act Public Access Policies:

Coastal Act Section 30210 states:

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

Coastal Act Section 30214 states in applicable part:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) *Topographic and geologic site characteristics.*
  - (2) *The capacity of the site to sustain use and at what level of intensity.*
  - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

- (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the*

Coastal Act Section 30213 states in applicable part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Discussion:

The approved development is located between the first public road and the sea and is therefore subject to the public access policies of the Coastal Act. In its approval of the project, the County did not address the project's consistency with the public access policies of the Coastal Act as required by Section 30604(C) of the Coastal Act and Coastal Zoning Code Section 20.532.095(B)(1).

The project approved by the County is located within the easement of the Gualala Bluff Trail, a lateral access easement originally required pursuant to Coastal Commission CDP No. NCR-77-C-115. The trail and associated amenities have been recently constructed, and nearly completed, pursuant to Mendocino County CDP No. 23-2003. Appellant 3 asserts that the County's approval of the subject development is inconsistent with the Coastal Act sections cited above that require the provision and protection of public access opportunities and visitor serving facilities.

The project description of the application does not include rerouting public access during construction or restoring the trail to pre-project conditions upon project completion. The County's findings for approval of the project acknowledge that the development would have impacts on the public access trail and state, "*The project would result in temporary direct impacts to the Gualala Bluff Trail, in that the portion of the trail within the project area would have to be temporarily closed or re-routed during construction activities.*" However, the County's approval of the project does not include provisions to *require* that the trail be re-routed, or that equivalent public access be provided while the trail is temporarily closed during construction. Furthermore, the County's approval fails to incorporate measures to ensure that the trail would be reconstructed and restored to pre-project conditions following completion of construction.

Thus, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that the development is consistent with the public access policies of the Coastal Act. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the public access policies of the Coastal Act.

v. **Protection of Environmentally Sensitive Habitat**

All three appellants contend that the project approved by the County is inconsistent with LCP policies regarding the protection of environmentally sensitive habitat areas. The appellants assert that the biological surveys performed for the proposed project are incomplete and/or inaccurate with regard to identifying the potential presence of rare plants, wetland habitat, and wildlife species at and adjacent to the site and thus, the County did not have sufficient evidence to determine that the approved project is consistent with LCP policies requiring the protection of environmentally sensitive habitat areas.

LCP Policies and Standards:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

*Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

*...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.*

Discussion:

The retaining wall approved by the County would be located along the bluff above the Gualala River estuary. The bluff supports invasive, ruderal plant species as well as native plants and northern coastal scrub habitat.

According to the County’s findings for approval of the project, botanical surveys of the project area occurred at various timeframes to encompass the blooming periods of all potentially present plant species of concern. According to the County, the botanical surveys concluded that no special status plant species were identified in the project area and that the project would have no impact on any unique, rare or endangered species of plants.

The three appellants assert that the biological surveys performed for the proposed project were incomplete and/or inaccurate with regard to identifying the potential presence of rare plants, wetland habitat, and sensitive wildlife species at and adjacent to the site. Specifically, the appellants allege that the botanical reports prepared for the project are inadequate because they

(1) do not adequately address the habitat value of the mature coastal scrub habitat and silk tassel-dominated plant communities present at the site, (2) fail to properly survey for the rare coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*), and (3) conclude an absence of wetlands based solely on soil conditions despite having identified the presence of several wetland plant species. Additionally, Appellant 3 asserts that the biological reports are inadequate because they fail to address potential impacts to wildlife associated with the Gualala River estuary including a known otter population at the base of the bluff and the Point Arena Mountain Beaver that may be present in the area.

Commission staff notes that as of the preparation of this staff report, staff has not received the local record from the County as requested in the Commission Notification of Appeal dated March 21, 2008. Complete copies of the biological reports prepared for the project and referenced by the appellants were not included as part of the County's Notice of Final Action received by the Commission. Therefore, Commission staff has not been in a position to review the biological information prepared for the proposed project against the allegations of the appellants to determine conclusively whether or not the allegations raise a substantial issue with regard to the project's consistency with LCP policies regarding the protection of environmentally sensitive habitat areas.

However, whether or not this particular contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the contentions discussed above regarding limitations on retaining walls and bluff face development, minimizing geologic hazards, and protecting public access raise a substantial issue of conformance of the project as approved with the certified LCP.

**b. Appeal Contention Not Raising Substantial Issue**

**i. Gualala Special Neighborhood**

LCP Policies and Standards:

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

*(A) The Town of Mendocino is the only recognized special community in the Coastal Element. Division III of Title 20 provides specific criteria for new development in Mendocino.*

*(B) The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C):*  
(emphasis added)

...

*(3) Gualala: The Sonoma County Line on the south to Big Gulch on the north including all commercial and industrially zoned parcels on the east side of Highway 1 and all parcels west of Highway 1. (emphasis added)*

*(C) Development Criteria.*

*(1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.*

*(2) New development shall be sited such that public coastal views are protected.*

*(3) The location and scale of a proposed structure will not have an adverse effect on nearby historic structures greater than an alternative design providing the same floor area. Historic structure, as used in this subsection, means any structure where the construction date has been identified, its history has been substantiated, and only minor alterations have been made in character with the original architecture.*

*(4) Building materials and exterior colors shall be compatible with those of existing structures.*

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

Discussion:

The appellant contends that the project approved by the County would violate provisions regarding the protection of Gualala as a special neighborhood. However, the appellant does not clearly indicate how they feel the County's actions did not conform with the LCP in this regard. The appellant states only that the project approved by the County would adversely impact adjacent property owners by lowering her and others' property values. Thus, because the contention does not clearly allege how the local approval is inconsistent with the certified LCP and the Commission is unable to identify an inconsistency, the Commission finds that this contention does not raise a substantial issue of conformity of the approved development with the certified LCP.

However, whether or not this particular contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the

contentions discussed above regarding limitations on retaining walls and bluff face development, minimizing geologic hazards, and protecting public access raise a substantial issue of conformance of the project as approved with the certified LCP.

**c. Appeal Contentions Not Valid Grounds for Appeal**

Appellant 3 raises one contention that is not valid grounds for appeal. As discussed below, the contention raised regarding CEQA documentation does not allege the local approval's inconsistency with policies and standards of the certified LCP and thus is not potentially valid grounds for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

**i. Adequacy of California Environmental Quality Act Determination**

The appellant asserts that the Negative Declaration prepared by the County for the subject development is inadequate because, in addition to the retaining wall development approved by the County, the appellant indicates that the applicant is planning additional future development at the site that was not considered in the environmental review of the project. The appellant contends that an Environmental Impact Report (EIR) should have been prepared.

However, the appellant does not cite a specific LCP policy that she feels the County's actions did not conform with in this regard. The concerns raised by the appellant do not allege an inconsistency of the local approval with the certified LCP. Rather, the appellant alleges that the Negative Declaration that was prepared and adopted with the approval of the project is insufficient to comply with CEQA. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that this contention is not a valid ground for appeal.

**d. Conclusion**

The foregoing contentions raised by the appellants have been evaluated against the claim that the approved development raises a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the appeals of the project as approved by the County raise a substantial issue of conformance with the certified LCP regarding (1) limitations on the construction of retaining walls, (2) limitations on bluff face development and landform alteration, (3) siting development to minimize geologic hazards and to avoid the need for shoreline protection devices, (4) protecting public access and visitor serving facilities, and (5) protecting environmentally sensitive habitat areas.

**F. INFORMATION NEEDED FOR DE NOVO REVIEW OF APPLICATION**

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

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development. Staff notes that as of the date of this report, Commission staff has not received a copy of the local record from the County which may contain some of the following information.

1. Alternatives Analysis

As discussed above, authorization of allowable uses for retaining walls and bluff face development is contingent on making findings that there is no feasible less environmentally damaging alternative. The County staff report does not fully analyze all potential feasible less environmentally damaging alternatives to the proposed project. Therefore, to evaluate the consistency of the proposed project with LCP policies regarding retaining walls, bluff face development, and minimizing geologic hazards, a comprehensive alternatives analysis is required. This analysis should include, but not be limited to, a review of whether less environmentally damaging feasible alternatives exist that would (1) avoid the need for structural development on the bluff face, (2) minimize the alteration of landforms, including but not limited to, removing the non-engineered fill that may be contributing to the risk of erosion along the top of the bluff, and re-compacting these areas consistent with current engineering standards; and (3) provide scale-appropriate erosion control measures to remediate the isolated “shallow surface failures” along the bluff.

2. Environmentally Sensitive Habitat Area Assessment

As discussed in Section E(1)(a)(v) above, it is not clear whether the biological reports prepared for the proposed project accurately and comprehensively assess all of the environmentally sensitive habitat areas at and adjacent to the project site, including rare plant species and/or communities, wetland habitats, and wildlife associated with the Gualala River estuary. The Mendocino County LCP incorporates Coastal Act Sections 30107.5 and 30240 that define

environmentally sensitive habitat areas and provide for the protection of these areas from development impacts.

Section 30107.5 of the Coastal Act defines "environmentally sensitive habitat area" as:

*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 30240 of the Coastal Act states in part that:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

To evaluate the consistency of the proposed project with LCP policies regarding development within and adjacent to ESHA, an assessment of all environmentally sensitive habitat areas at and adjacent to the site is required. The assessment should be prepared by a qualified biologist and should include: (1) a survey of the plants and wildlife that inhabit and/or utilize the bluff, estuary, and adjacent habitat, (2) a delineation of all wetland habitats as defined by LUP Policy 3.1-2, (3) an evaluation of the potential impacts and disturbance to the ESHA as a result of the proposed development, and (4) a discussion of any recommended mitigation measures to ensure that the development would be sited and designed in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the ESHA habitat. The ESHA should also be considered in all of the development alternatives and constraints that are considered pursuant to Item #1 above.

### 3. Information on the Placement of Fill Material

The County staff report states that the proposed retaining wall is intended, in part, to correct bluff erosion caused by non-compacted fill placed at the site approximately 20 to 30 years ago. In order to evaluate the proposed development for consistency with the policies of the LCP, additional information is needed from the applicant including, (1) the amount and location of fill material that existed at the site prior to 1972 when coastal development permit requirements went into effect, (2) the amount and location of fill material that has been placed at the site since coastal development permit requirements went into effect, and (3) copies of any local or state permits that were obtained for placement of the fill material.

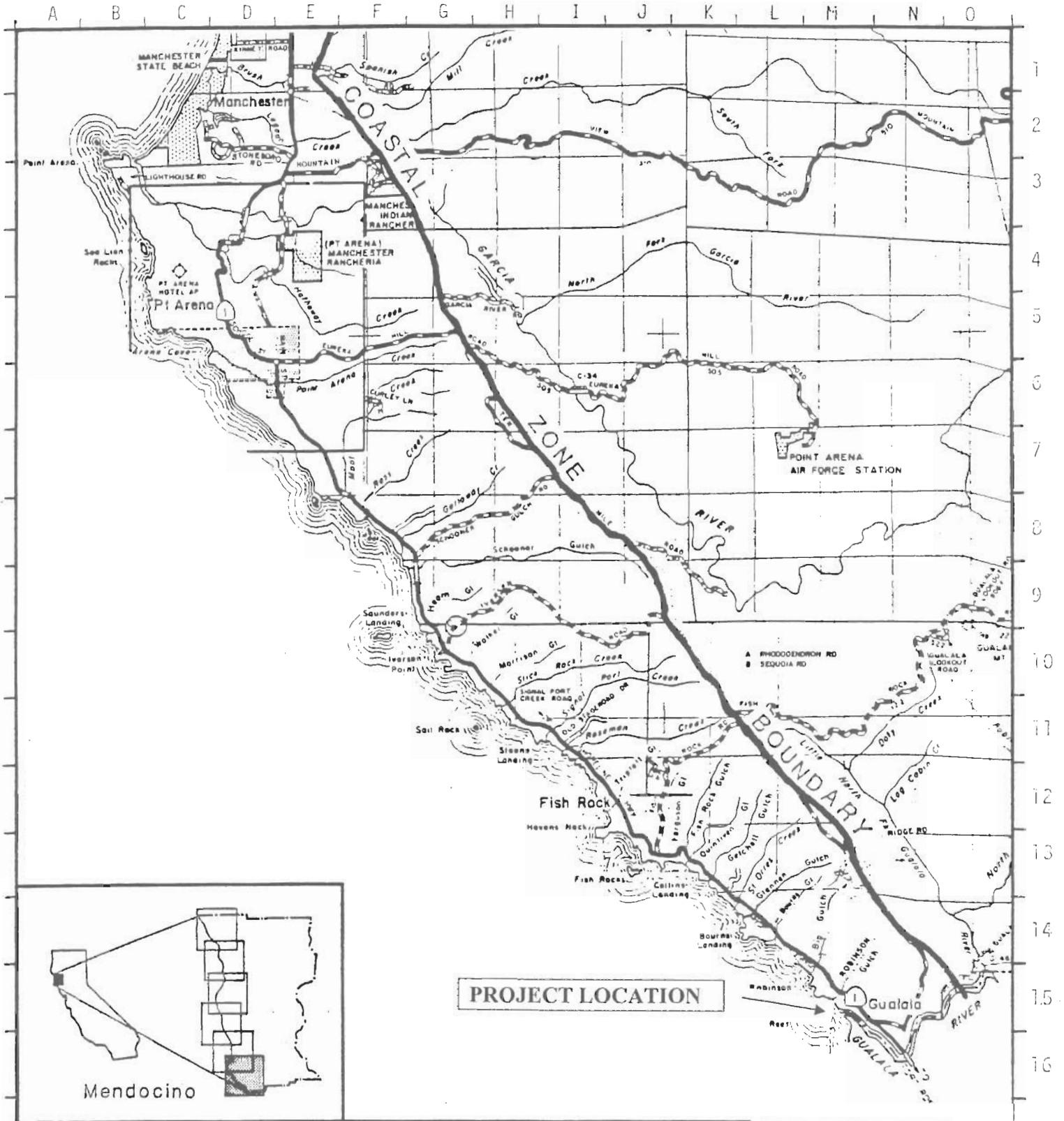


4. Geotechnical Analysis for the Relocation of Septic System

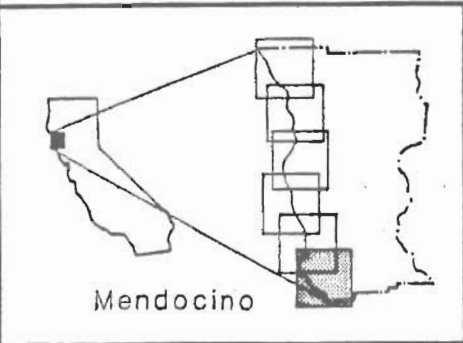
The proposed project includes “upgrading” and relocating existing septic system infrastructure away from the bluff edge to an area located within the public access easement. As discussed in Section E(1)(a)(iii) above, the County staff report indicates that the proposed relocation sites were based on the assumption that the retaining wall would be installed. To evaluate the consistency of the proposed project with LCP policies regarding siting and designing development to minimize hazards, a geotechnical analysis, prepared by a qualified geologist, is required to demonstrate that the septic system would be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion during its economic life span without reliance on a retaining wall or other shoreline protective structure. Additionally, it is not clear what is involved in the proposed “upgrade” of the septic system. Further detail is required on the extent of the upgrade, the development that the upgraded system is intended to serve, and evidence that the proposed septic system upgrade and relocation is consistent with all applicable County Department of Environmental Health and Regional Water Quality Control Board requirements.

**Exhibits:**

1. Regional Location Map
2. Vicinity Map
3. Site Map
4. Project Plans Approved by the County
5. Appeal #1 (Environmental Commons)
6. Appeal #2 (Lori Hubbart)
7. Appeal #3 (Julie Verran)
8. Notice of Final Local Action & County Findings
9. Correspondence

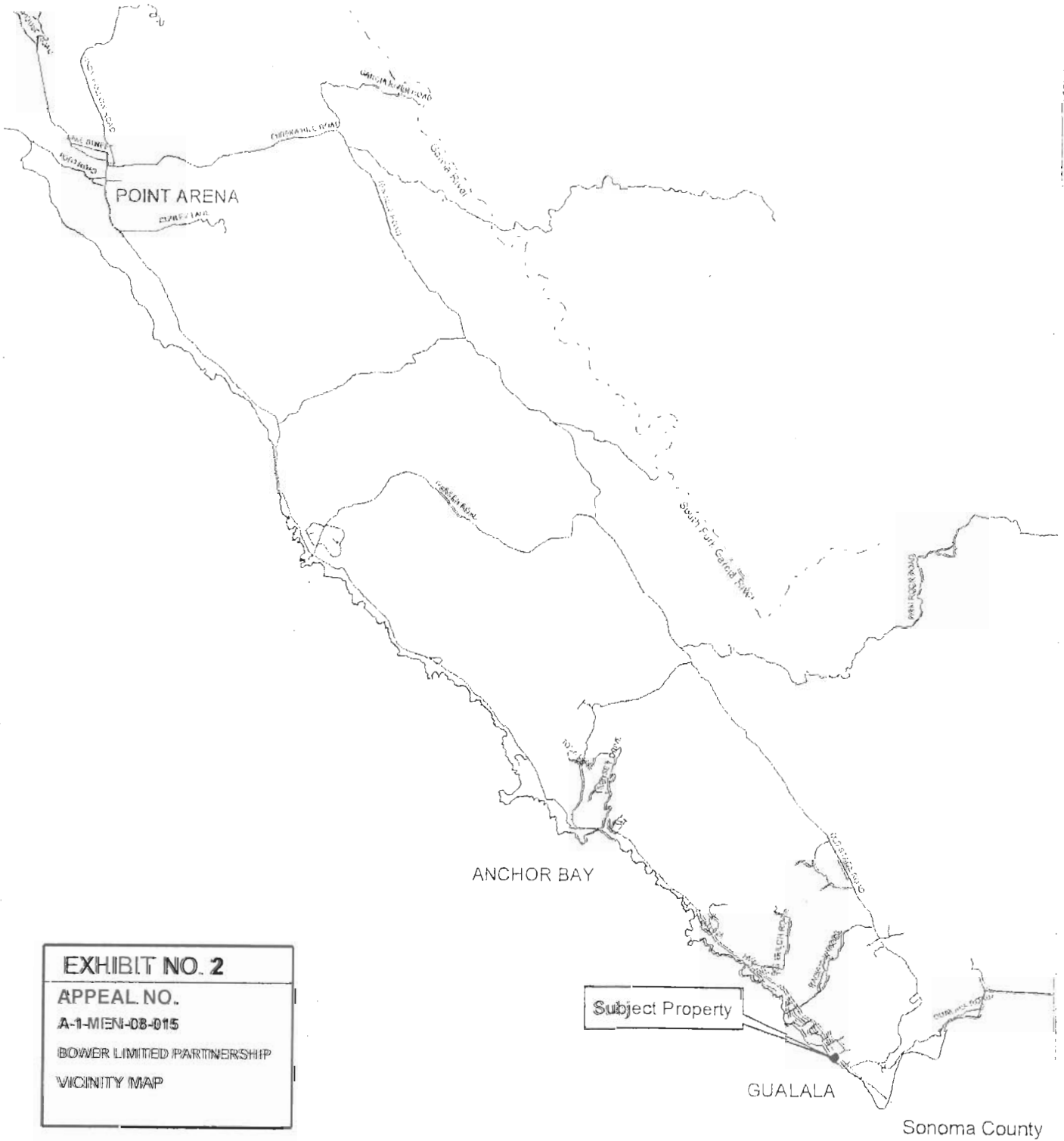


**PROJECT LOCATION**



**EXHIBIT NO. 1**  
**APPEAL NO.**  
 A-1-MEN-08-015  
 BOWER LIMITED PARTNERSHIP  
 REGIONAL LOCATION MAP





**EXHIBIT NO. 2**  
APPEAL NO.  
A-1-MEN-08-015  
BOWER LIMITED PARTNERSHIP  
VICINITY MAP

**LOCATION MAP**

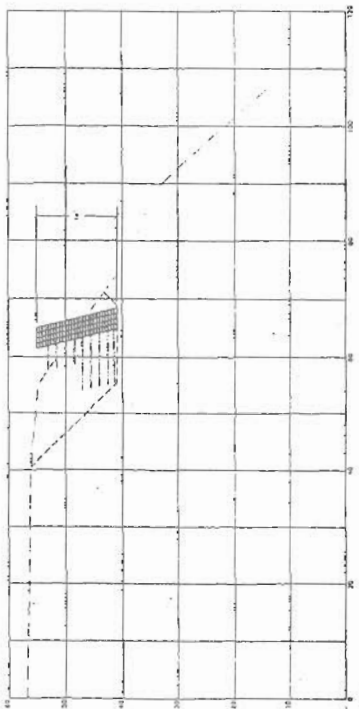


N

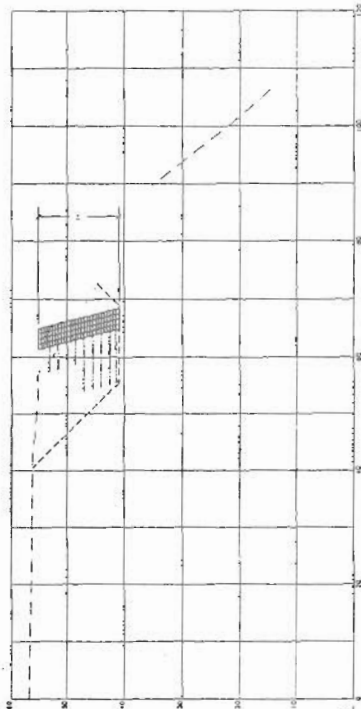




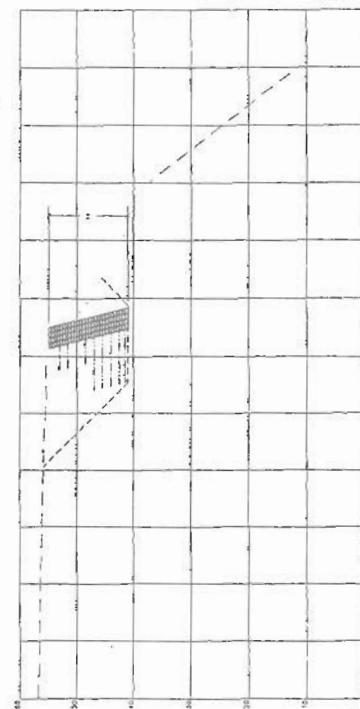
DATE: 11/29/88	SCALE: AS SHOWN	PROJECT: SUFF MARKET IMPROVEMENTS	OWNER: BOWER LIMITED PARTNERSHIP	LOCATION: 39200 - 39250 S. HIGHWAY 1	CITY: GUALALUPA, CALIFORNIA	
DATE: 11/29/88	SCALE: AS SHOWN	PROJECT: SUFF MARKET IMPROVEMENTS	OWNER: BOWER LIMITED PARTNERSHIP	LOCATION: 39200 - 39250 S. HIGHWAY 1	CITY: GUALALUPA, CALIFORNIA	
DATE: 11/29/88	SCALE: AS SHOWN	PROJECT: SUFF MARKET IMPROVEMENTS	OWNER: BOWER LIMITED PARTNERSHIP	LOCATION: 39200 - 39250 S. HIGHWAY 1	CITY: GUALALUPA, CALIFORNIA	<b>RAV AND ASSOCIATES INC.</b> CIVIL ENGINEERS - LAND SURVEYORS 100 NORTH PINE STREET - P.O. BOX 4538 - SUITE 100 - GUALALUPA, CA 95024
DATE: 11/29/88	SCALE: AS SHOWN	PROJECT: SUFF MARKET IMPROVEMENTS	OWNER: BOWER LIMITED PARTNERSHIP	LOCATION: 39200 - 39250 S. HIGHWAY 1	CITY: GUALALUPA, CALIFORNIA	DRAWING: SECTIONS - STA: 0+30 to 0+80 RETAINING WALL - ALTERNATE DATE: 11/29/88 BY: RAV



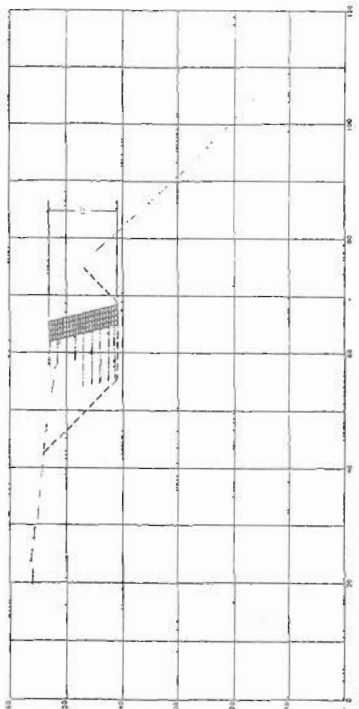
DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+30



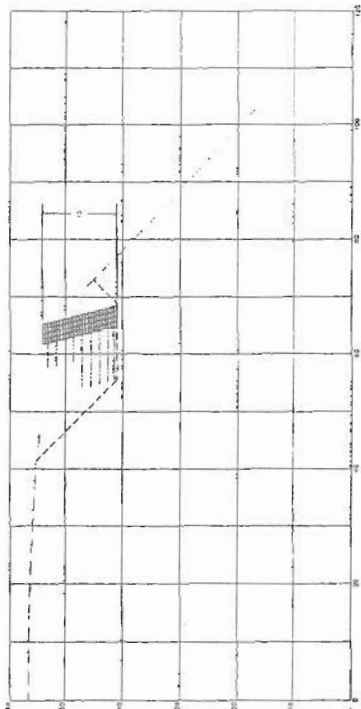
DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+40



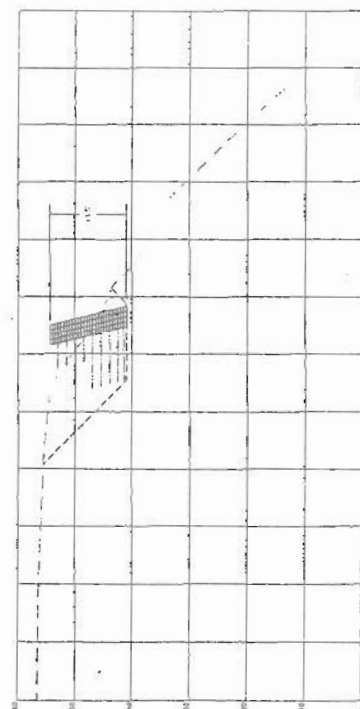
DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+50



DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+60



DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+70



DATUM ELEV. 0.00  
GROUP BACK SECTION  
SECTION STA 0+80



SCALE: AS SHOWN

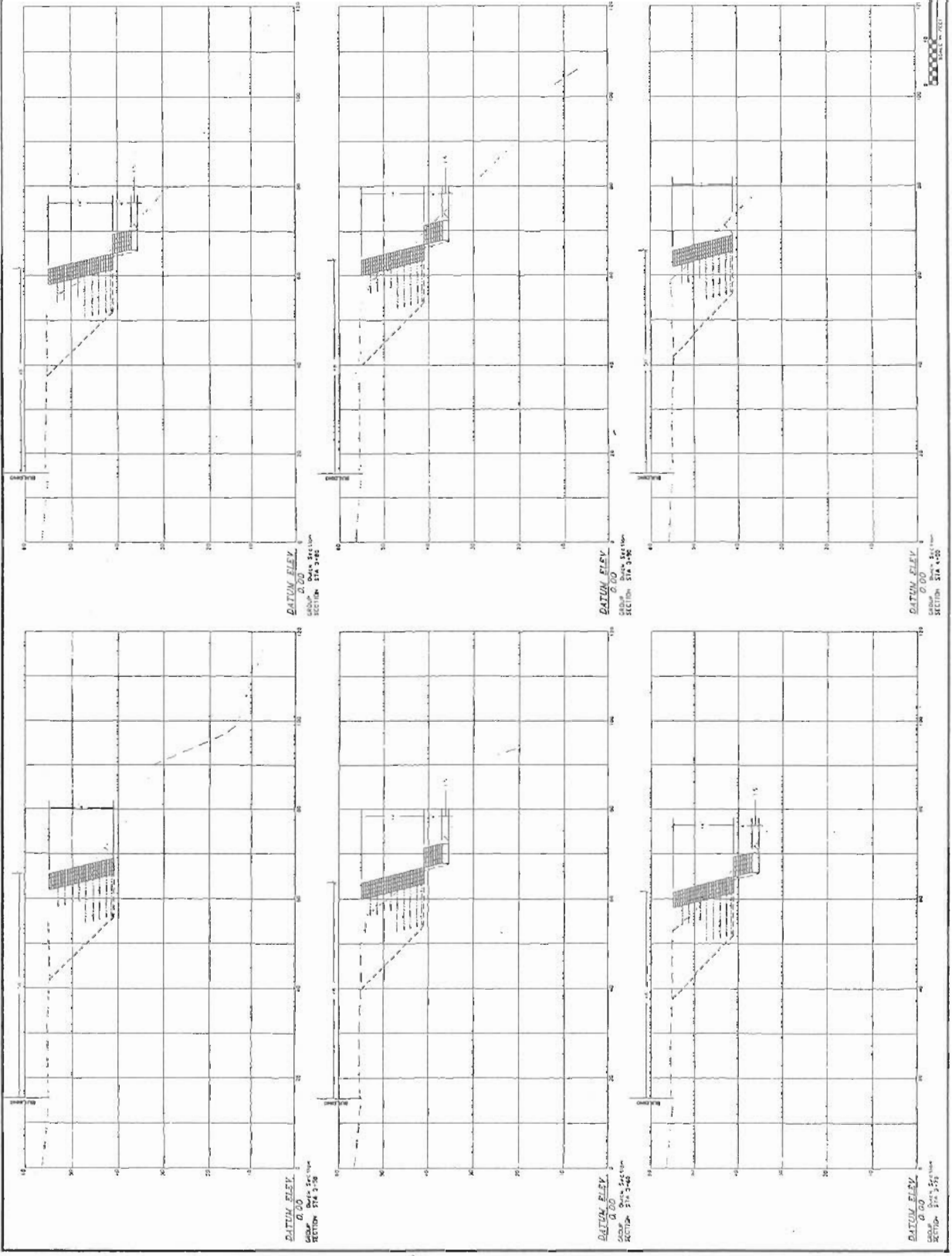
2077



DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS	DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS
BY	MTM/SHK	DATE	12/10/07	BY	MTM/SHK	DATE	12/10/07
CHKD		DATE		CHKD		DATE	
APP		DATE		APP		DATE	
REV		DATE		REV		DATE	
NO		DATE		NO		DATE	
DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400	DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400
DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS	DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS
BY	MTM/SHK	DATE	12/10/07	BY	MTM/SHK	DATE	12/10/07
CHKD		DATE		CHKD		DATE	
APP		DATE		APP		DATE	
REV		DATE		REV		DATE	
NO		DATE		NO		DATE	
DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400	DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400
DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS	DATE	12/10/07	PROJECT	SURF MARKET IMPROVEMENTS
BY	MTM/SHK	DATE	12/10/07	BY	MTM/SHK	DATE	12/10/07
CHKD		DATE		CHKD		DATE	
APP		DATE		APP		DATE	
REV		DATE		REV		DATE	
NO		DATE		NO		DATE	
DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400	DESCRIPTION	RETAINING WALL - ALTERNATE	SECTION	STA 3450 TO 4400

BOWER LIMITED PARTNERSHIP  
 39200 - 39250 S HIGHWAY 1  
 GUALALA, CALIFORNIA  
 39200 - 39250 S HIGHWAY 1  
 GUALALA, CALIFORNIA

**RAV** LAND ASSOCIATES INC.  
 G.M. DOWNEY, LAND SURVEYOR  
 1010 W. 14th Street, Suite 200  
 Ukiah, CA 95568



4 of 7



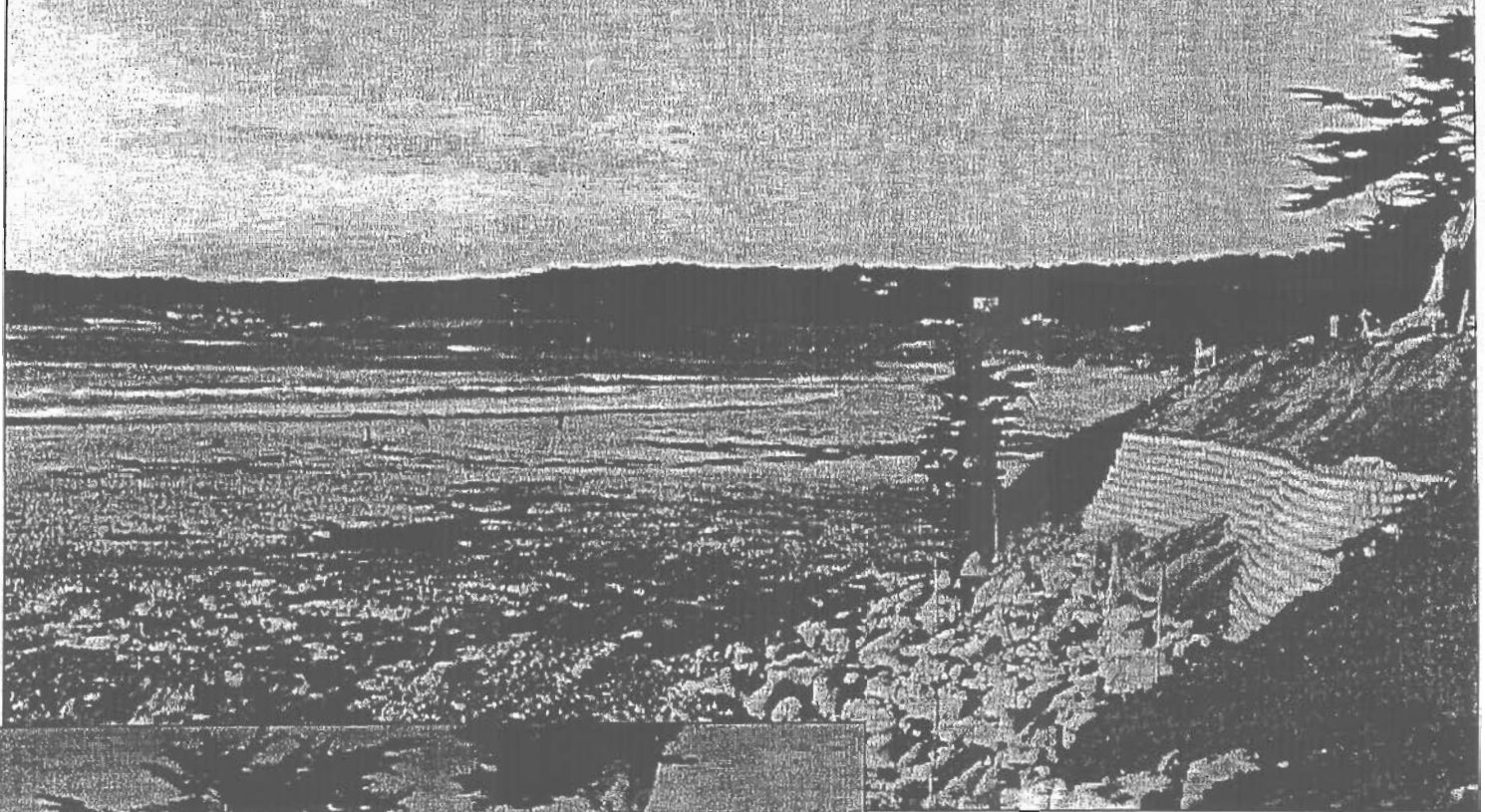
Project Statistics: Ultrablock Wall vs. Geoweb System

		Original Design (Ultrablock)	New Design (Geoweb)	Δ
1. Excavation Volume (cy)	145-261-13	6,024	2,706	-3,318
	145-261-05	2,008	902	-1,106
	Total	8,032	3,608	-4,424
2. Average Depth of Excavation and Wall Construction (ft)	145-261-13	18	13	-5
	145-261-05	22.5	17	-5.5
	Total	N/A	N/A	N/A
3. Maximum Depth of Excavation and Wall Construction (ft)	145-261-13	25	14	-11
	145-261-05	30	19.5	-10.5
	Total	N/A	N/A	N/A
4. Total Surface Area of Disturbance (sf)	145-261-13	23,485	9,508	-13,977
	145-261-05	7,521	3,547	-3,974
	Total	31,006	13,055	-17,951
5. Area of Vegetation Removal (sf)	145-261-13	9,685	4,353	-5,332
	145-261-05	7,521	3,547	-3,974
	Total	17,206	7,900	-9,306
6. Area to be Revegetated (does not include wall face)(sf)	145-261-13	8,343	4,154	-4,189
	145-261-05	6,853	3,171	-3,682
	Total	15,196	7,325	-7,871
7. Average Exposed Surface Area (sf)	145-261-13	2,523	2,288	-235
	145-261-05	1,175	940	-235
	Total	3,698	3,228	-470
8. Average Planted Wall Area (sf)	145-261-13	0	2,288	2,288
	145-261-05	0	940	940
	Total	0	3,228	3,228
9. Maximum Height of Structure (ft)	145-261-13	25	14	-11
	145-261-05	30	19.5	-10.5
	Total	N/A	N/A	N/A
10. Maximum Height of Structure above Existing & Finished Grade (ft)	145-261-13	11	10	-1
	145-261-05	25	15	-10
	Total	N/A	N/A	N/A
11. Length of Retaining Structure (ft)	145-261-13	286	286	0
	145-261-05	94	94	0
	Total	380	380	0

597

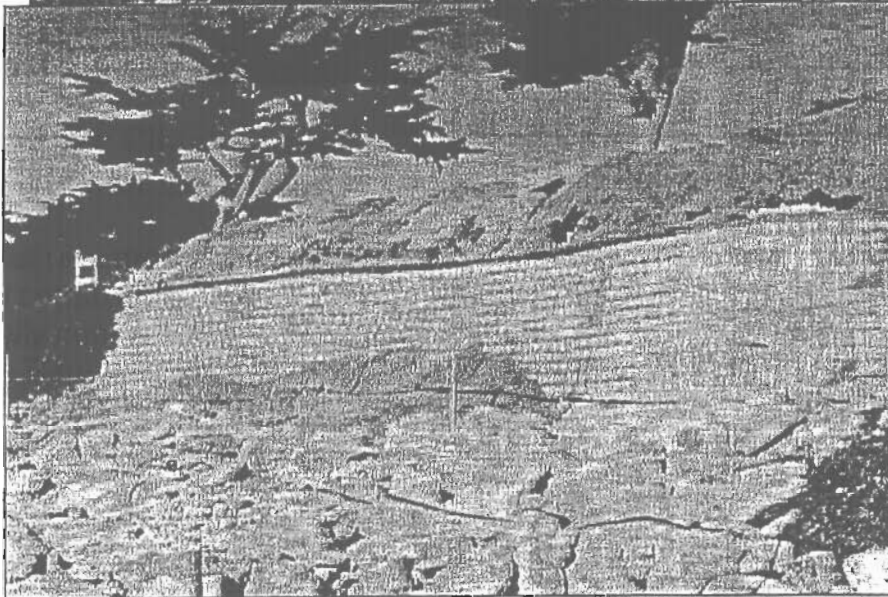
# CALIFORNIA COASTAL PROTECTION PROJECT

Utilizing the **GEOWEB®** Cellular Confinement System



Owner: City of Carmel  
Carmel, California

Views of revegetating wall (below),  
newly constructed wall (left), and  
newly constructed wall with  
Pebble Beach beyond Carmel Bay  
(above)



Soil  
Stabilization  
Products  
Company, Inc.

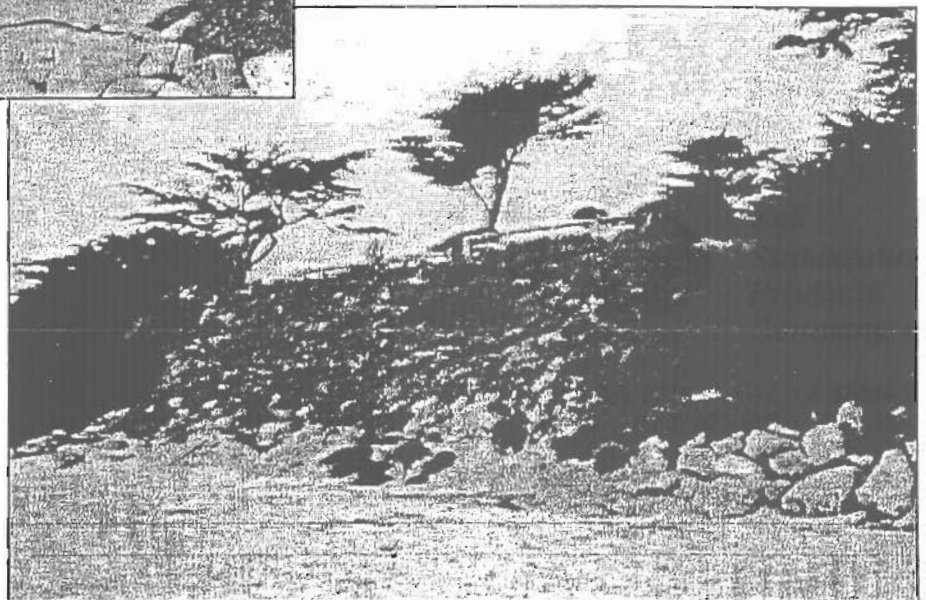
PO Box 2779 Merced, CA 95344-0779

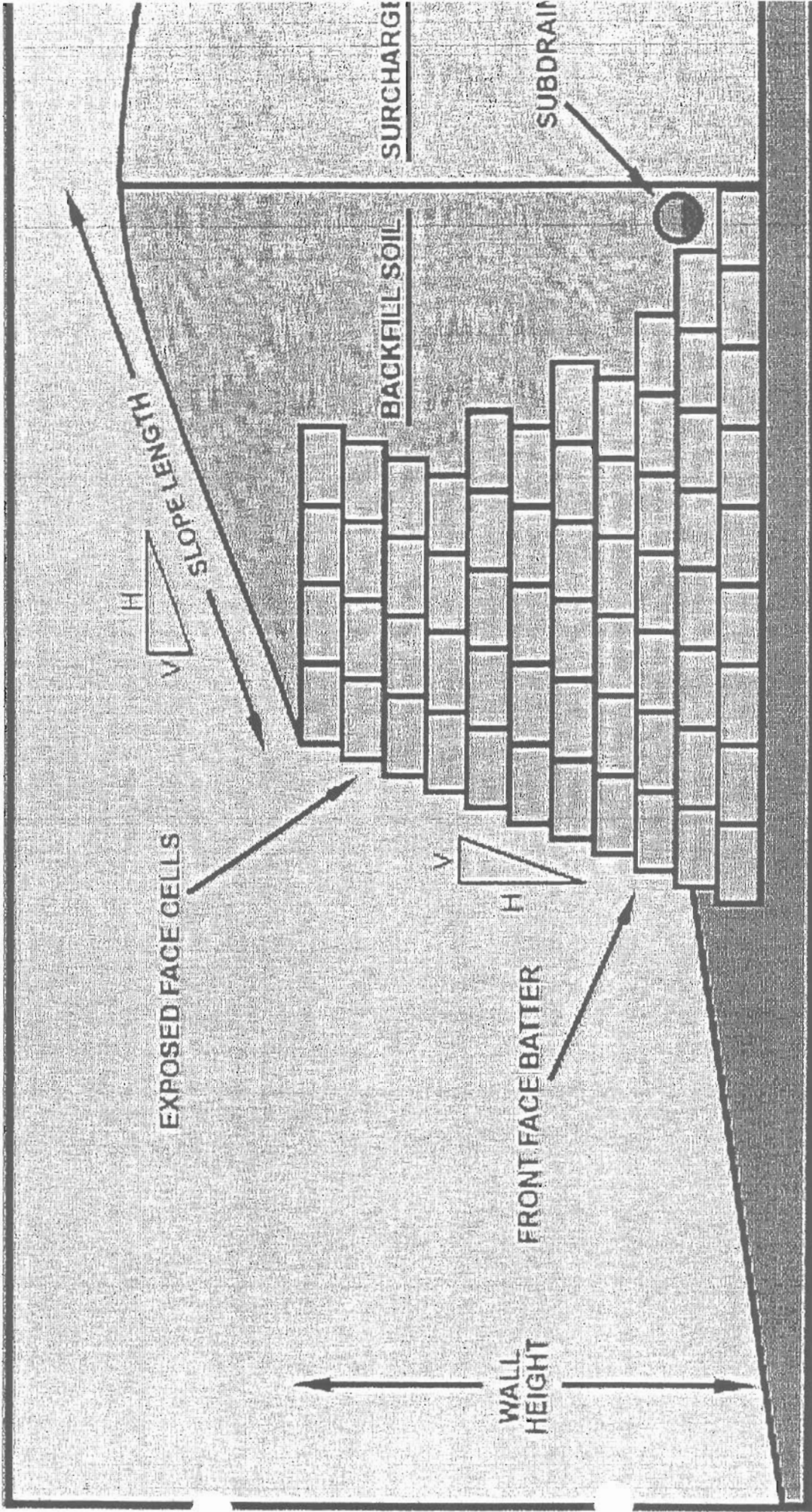
Phone: (800) 523-992 or (209) 383-3296

Fax: (209) 383-7849

E-mail: [info@sspco.org](mailto:info@sspco.org) Website: <http://www.sspco.org>

697  
GEOWEB is a registered trademark of Preslo Products Company  
(c) Copyright 2000 - Soil Stabilization Products Company, Inc.





707

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Environmental Commons, Britt Bailey: see additional appellants attached

Mailing Address: PO Box 1135

City: Gualala

Zip Code: CA

Phone: 95445

**SECTION II. Decision Being Appealed****RECEIVED**

MAR 07 2008

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Construct a 285' retaining wall to connect to a proposed 105' retaining wall on adjacent lot to the south (APN 145-261-05 - Coastal Commission jurisdiction). Project includes associated drainage, septic upgrades, stormwater treatment septor. The proposed project is part of a much larger redevelopment involving two parcels and at least four permit applications.

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

In the Coastal Zone, in the town of Gualala on the west side of Highway One. 39200 South Highway One (APN 145-261-13)

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

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

**EXHIBIT NO. 5****APPEAL NO.**

A-1-MEN-08-015

BOWER LIMITED PARTNERSHIP

APPEAL #1 (ENVIRONMENTAL  
COMMONS) (1 of 12)

**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-08-015

DATE FILED:

3/17/08

DISTRICT:

North Coast

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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: FEBRUARY 26, 2008

7. Local government's file number (if any): CDP 55-2006

**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:

Bower Limited Trust  
PO Box 1000  
Gualala CA 95445

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

(1) California Native Plant Society- Dorothy King Young Chapter, PO Box 577, Gualala, CA 95445: Friends of the Gualala River , PO Box 1543, Gualala, CA 95445: Moat Creek Managing Agency, PO Box 404, Point Arena 95468: Coastwalk 825 Gravenstein Highway, N. Ste. 8, Sebastopol, CA 95472: Sierra Club, Mendocino Trails Committee, 27401 Albion Ridge Road, Albion, CA 95410

(2) Rau & Associates , 100 N. Pine St. , Ukiah, CA 95482

(3) Mendocino County Board of Supervisors, 501 Low Gap Rd. , Room 1090, Ukiah CA 95482: Mendocino County Planning and Building, 790 S. Franklin St., Ft. Bragg, CA 95437

(4) Redwood Coast Land Conservancy, PO Box 1511, Gualala, CA 95445

2912

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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

The proposed project is inconsistent with the Mendocino County Local Coastal Program policies and coastal zoning codes as follows:

1. LCP 3.4-10 : "No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects."

**Comment:**

CDP55-2006 does not further public welfare. Contrary to furthering public welfare, the proposed 285' retaining wall would diminish the riparian corridor, destroy a mature bluff face, and the public trail would be closed for an undetermined amount of time. In addition, available and feasible less damaging alternatives were not completely explored. The two alternatives explored involved "no project" and reducing the slope to a 2:1 ratio, both of which were dismissed due to them not meeting the applicant's needs. Other possible alternatives, which were not considered, involve removing the non-engineered fill and re-compacting the area consistent with engineering standards or re-grading and installing adequate drainage that would prevent surface run-off from reaching the bluff face. These alternatives would not require dismantling and closing the Gualala Bluff Trail or damaging the current stable bluff face.

2. LCP 3.4-12: "Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means. "

**Comment:**

We contend that the proposed retaining wall is not necessary as feasible, less-damaging alternatives

3 of 12

exist. Additionally, we contend that the dirt parking, which was not in the parcel's original permits, should not be considered existing development. The septic tanks are proposed to be moved away from the bluff edge and so they would not require protection. The only other development on the parcel is the public trail easement and this is a moving easement in no need of protection. Considering unimproved dirt fill "existing development" and allowing armoring is contrary to the public's interest, the intent of the LCP, and constitutes a dangerous precedent.

3. Mendocino County Coastal Zoning Code 20.500.020 (E)(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."

Comment:

See Above #2

Not only has the least environmentally damaging alternative not been considered, but also the alternatives proposed are unnecessarily broad. The GeoWeb material has been proposed to span the entire length of the property even though there were only two small slides on the north of the property. Although details of the Geoweb product were sketchy, there appears to be flexibility in where it could be added and applied.

4. LCP 3.4-7 "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.

G3.8-5 The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

Comment:

This project includes relocation of septic systems that were placed too close to the bluff and the estuary where the possibility of leaks or spills could lead to environmental damage. The staff report does not indicate that there was a site analysis to determine where the best place for the new Interceptor Tanks should be located. The Redwood Coast Land Conservancy raised this question, but it was ignored in both hearings. We contend this is new development and that this is an opportunity to move the tanks farther away from the bluff and off the public trail easement where they detract from the use and enjoyment of the trail.

5. Mendocino County Coastal Zoning Code 20.500.020 (E)(4)(c)

" (4) Within the Gualala Town Plan planning area, a special condition shall be attached to all coastal permits for blufftop residential or commercial development, requiring recordation of a deed restriction that states the following:

4.12

(c) The landowner shall not construct any bluff or shoreline protective devices to protect the subject permitted residence, guest cottage, garage, septic system, or other improvements in the event that these structures are subject to damage, or other natural hazards in the future; "

Comment:

The proposed CDP is part of a much larger redevelopment project that spans two parcels and has been subject to a multitude of permit applications. On the subject parcel alone, the whole project has been segmented into three different permit applications. The County is treating each permit as stand-alone projects even though the applicant has shown the finished "Surf Center" redevelopment project at various public meetings and has even disclosed the full project to the County in a pre-application conference of April 2007. By segmenting the permits, in effect requesting the retaining wall prior to applying for the 7000 square feet of office/retail space and paved parking, the applicant has been able to circumvent 20.500.020(E)(4)(c) which would require a deed restriction prohibiting a retaining structure in the face of a hazard.

However, we also believe that within this permit application, "development" exists which should limit the building of a retaining structure. CDP 55-2006 proposes installation of drainage infrastructure including 414 linear feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure, as well as upgraded septic systems. The drainage should constitute "new development" thus calling into question the requirement for a deed restriction to disallow shoreline protective devices.

Section 20.308 of the Coastal Zoning Code defines "development" as:

"...on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

Given that the applicant has requested and received permits for the demolition of the existing structures on the site, the only reason that a stormwater treatment system and relocated/upgraded septic system would be required would be for a new parking lot and habitable structure, respectively. The stormwater treatment and relocated/improved septic systems have no independent utility and would not be required for a dirt parking lot or retaining wall. Thus, they are, by necessity, the infrastructure phase of development for the overall site.

Again, much of the parcel improvement is not solely associated with the development of a retaining wall. Therefore, the drainage improvements, stormwater treatment structure, and relocated/improved septic system should constitute "new development" which should

5 up 12



trigger a deed restriction limiting the construction of a retaining wall.

6. Gualala Town Plan, G3.8-5 & LCP 3.1-10

G3.8-5, "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

LCP 3.1-10, "Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor."

Comment:

This application proposes the removal of plants that should be protected. Mitigation measures are inadequate to protect the rare and irreplaceable old-growth bluff vegetation including the mature stands of *Garrya elliptica* (Silk Tassel). In addition we are not confident that the area in question was adequately searched to detect *Calystegia purpurata* ssp. *saxicola* which is rare and in need of protection. Although we acknowledge that there are a lot of weedy plants growing in the added fill, questions remain as to whether in the long run the GeoWeb solution would be an improvement. There is a greater chance that there will be more weeds than before since they will have a greater chance of growing in the fill and long term maintenance to establish new plantings on a steep slope has not been adequately addressed in the application.

**Additional Appellants:**

Friends of the Gualala River  
John Holland, President  
PO Box 1543  
Gualala, CA 95445

Mary Sue Ittner  
PO Box 587  
Gualala, CA 95445

Francis Drouillard, CE  
2021 Shady Lane  
Novato, CA 94945

Gail Hamilton  
P.O. Box 455  
38280 Ocean Ridge Drive  
Gualala, CA 95445

7/4/12

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

**SECTION V. Certification**

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

Signature on File

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 3/4/08

**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: \_\_\_\_\_

8 of 12

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

**SECTION V. Certification**

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

Signature on File

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 3/4/08

**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: \_\_\_\_\_

9/9/12



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

**SECTION V. Certification**

The information and facts stated above are correct to the best of my knowledge:

*[Handwritten Signature]*  
Signature on File

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 3/4/08

**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: \_\_\_\_\_

11 of 12

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

**SECTION V. Certification**

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

Signature on File	M	Signature of Appellant(s) or Authorized Agent
✓	Date: 3/1/08	FORMTEXT

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

**Section VI. Agent Authorization**

I/We hereby authorize

FORMTEXT

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

Signature of Appellant(s)	
Date:	FORMTEXT

STATE OF CALIFORNIA -- THE RESOURCES AGENCY  
ARNOLD SCHWARZENEGGER, Governor

**CALIFORNIA COASTAL COMMISSION**

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

12 of 12

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Lori Hubbart

Mailing Address: P.O. Box 985

City: Point Arena, CA

Zip Code: 95468

Phone: 707-882-1660

**SECTION II. Decision Being Appealed**

**RECEIVED**

MAR 07 2008

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Construction of retaining structure on a bluff parcel overlooking the Gualala River Estuary. This structure would be 285' long & 5' to 15' wide, meant to join up with a second retaining structure on adjoining parcel to the south (APN # 145-261-05). The project includes drainage, septic system upgrade, stormwater treatment. The project is needed to facilitate a larger re-development project encompassing both parcels & several additional permit applications.

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

In the unincorporated town of Gualala on the west side of Highway One, within the Coastal Zone - APN # 145-261-13.

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

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

**EXHIBIT NO. 6**

**APPEAL NO.**

A-1-MEN-08-015

BOWER LIMITED PARTNERSHIP

APPEAL #2 (LORI HUBBART)

(1 of 8)

**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-08-015

DATE FILED: 3/17/08

DISTRICT: North Coast



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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: February 26, 2008

7. Local government's file number (if any): CDP 55-2006

**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:

Bower Limited Trust  
P.O. Box 1000  
Gualala, CA 95445

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

(1) Rau & Associates  
100 N. Pine Street  
Ukiah, CA 95482

(2) California Native Plant Society, Dorothy King Young Chapter  
P. O. Box 577  
Gualala, CA 95445

(3) Environmental Commons  
P.O. Box 1135  
Gualala, CA 95445

(4) Friends of the Gualala River  
P.O. Box 1543  
Gualala, CA 95445

2008

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

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

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

Gualala, an unincorporated community, is subject to Mendocino County's certified Local Coastal Program (LCP), with Land Use Plan (LUP) contained in the County's Coastal Element.

This project is inconsistent with the LUP Policy 3.4-12 and Coastal Zoning Code Section 20.500.020(E)(1) concerning limits on seawalls and retaining walls. These sections prohibit retaining walls except as judged necessary for the protection of existing development, public beaches or coastal dependent uses.

The dirt parking lot on the parcel apparently includes an unauthorized use of the property, i.e., parking close to the bluff edge. Such a use cannot be considered existing development, therefore the retaining structure is not needed to protect it from erosion.

The only truly coastal dependent use on the parcel is the Gualala Bluff Trail. No retaining is needed to protect the trail, which has a deeded, moving easement 25' wide, allowing it to be relocated as needed. Nor are there any public beaches at issue in this case.

LCP Section 20.500.010 prohibits the "construction of protective devices that would substantially alter natural landforms along bluffs and cliffs" (from Ord. # 3785, adopted 1991). The bluff face is geologically stable, except for areas of improperly placed, un-compacted fill material. The bluff is characterized by an erosion-resistant bedrock base and mature, woody native vegetation.

The project applicant and the County of Mendocino have indicated that the proposed retaining structure is needed to allow for parking to serve commercial development. However, under the LCP, construction of seal walls or retaining walls to facilitate future parking for commercial development is not allowed.

Alternatives - While those opposed to this project believe the proposed retaining structure is not allowed under the above-cited policies, the County of Mendocino proceeded to permit the project as though it was. However, the County failed to consider feasible, less environmentally damaging alternatives.

Specifically, the County did not give due consideration to the viable alternative of removing the un-compacted fill, reducing the slope and installing adequate drainage. While drainage is a component of the permit application, please note that drainage improvements may be designed separately, and do not depend on construction of a retaining structure. In fact, with the new GeoWeb design does not control erosion and so the drainage must be designed separately.

398

The details of the drainage and stormwater improvements associated with this permit application are of a magnitude to constitute new development. Components include a 6' stormwater treatment unit, a manhole and 414 linear' of drainpipe, and a relocated septic system.

The Mendocino Co. Coastal Zoning Code Sec. 20.500.020 (E)(4) contains a provision requiring a deed restriction prohibiting shoreline protective devices, stating that a landowner shall "not construct any bluff or shoreline protective devices to protect the subject permitted residentd, guest cottage, garage, septic system, or other improvements in the event that these structures are subject to damage, or other natural hazards in the future."

LCP and precedent-setting projects: Although there are small retaining structures on the Mendocino coast, there are none of the size and scope proposed in this project. This structure would be precedent-setting at the regional level, bearing on local government's decision for future interpretations of LCPs.

The project would also set a precedent for the Mendocino coast in condoning project segmentation and over-designed, over-sized retaining structures.

Development on bluff face : LCP Section 3.4-10 states: "No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less enviornmentally damaging alternative is available and that feasible mitigatin measures have been provided to minimize all adverse environmental effects."

The environment on the bluff edge and face is indeed fragile, containing mature, woody native vegetation widespread and dense enough to support numerous wildlife. These strong habitat values persist, even though the bluff also supports some noxious weeds.

Develoments furthering the public welfare on such a site are meant to be coastal-dependent. There is no potential for beach access or coastal-dependent industry on the site. As stated above, there is already a coastal-dependent use of the site - i.e., the Gualala Bluff Trail. This trail would be virtually destroyed by the project, necessitating its reconstruction. The trail provides the public with the opportunity to view the ocean and wild habitats - a very rare opportunity in the local community. This access is free and available to persons of limited income.

Public disclosure: No detailed, written restoration plan was presented for public review. The county placed a condition on the permit that a detailed plan would be submitted, but we are uncertain that such a plan even exists. This is relevant because CNPS finds that: Native plants are unlikely to grow in a compacted, sterilized fill mix; noxious weeds, rampant on the site, require a long-term control plan; neither restoration planting and maintenance nor weed control are easily accomplished on a steep bluff face. Without details, the public cannot evaluate the feasibility of the project's restoration aspects.

Further, no written, detailed explanation of the consultant's methodology for determining the presence of rare plants (one taxon in particular) or rare vegetation types or wetlands were presented for public review. The lead agency relied on the decision of consultants, and while those consultants may be qualified, determinations in these areas are difficult and controversial. If the methodology was presented

for public scrutiny, then members of the public would have had the opportunity to submit the information to outside experts for review.

**Wetlands:** The Botanical Report lists nine wetland species, which is at odds with its denial of the presence of wetlands on the basis of soil structure alone. CNPS believes the wetland issues associated with this project have not been satisfactorily resolved.

**Rare plant community:** The CA Dept. of Fish & Game (DFG) has not yet published a full and accurate classification of all the plant associations found on the Mendocino coast. CNPS believes the project contains remnants of a rare silk tassel-dominated plant community designated by DFG as rare, but usually found in Humboldt County. The applicant's consultant wrongly stated that there is just one clump of mature silk tassel plants, whereas they are actually distributed over the bluff (including some that were killed by the applicant).

**Habitat value:** While the applicant's consultant stated that there is no coastal bluff scrub on the site, local botanists have noted the presence of mature coastal scrub stands with understory of native forbs. Despite the presence of noxious weeds that came in with earlier placement of fill, the bluff still contains enough intact native vegetation to constitute a viable plant community that supports wildlife.

**Project segmentation:** The permit application in this case is clearly part of a much broader re-development plan for both parcels. There have been separate permit applications, and additional applications are expected. The applicant has presented detailed plans in public meetings, posted plans showing the completed development of the parcels, and given media interviews explaining these development plans, including the applicant's intention of getting the trail easement changed from a floating easement to a fixed easement. (Evidence provided upon request.) The applicant is also rumored to have participated in a pre-application conference with the County planning staff.

The County upheld CDP 55-2006 partly on the basis of the perceived benefits of the future re-development, even though such plans were not included in the application. The applicant has given the impression that designs for the parcels as part of an ongoing project, with additional phases to be completed as soon as possible. However, at the County appeal hearing, both the applicant and the County Planning Director stated that such development was five to 10 years away.

If the County treated the development projects for these parcels as one entire project, the LCP deed restriction prohibiting retaining structures would be triggered. This might explain the County's reluctance to admit that the applicants plans constitute one project, even though CDP 55-2006 and related individual permit applications would be needed only in conjunction with a larger development scheme that has not been fully disclosed in a formal planning process.

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

**SECTION V. Certification**

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

\_\_\_\_\_  
Signature on File  
\_\_\_\_\_  
Appellant(s) or Authorized Agent  
Date: March 2, 2008

**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: \_\_\_\_\_

6 of 8

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL INFORMATION SHEET  
LOCAL COASTAL PROGRAM DEVELOPMENT PERMITS**

**Please read these instructions before completing the appeal application - Appeal from Coastal Permit Decision of Local Government.**

Appeals to the Coastal Commission from local government decisions on coastal permit applications are limited to certain types of decisions. The information below outline the limitations and also describes the requirements for filing appeals.

**Time Frame for Filing an Appeal.** An appeal must be filed by 5:00 P.M. of the 10<sup>th</sup> working day after a sufficient local government notice of final action on the permit application was received by the Commission. 14 Cal. Admin Code Section 13110. (The local government is required to send a notice of final local action to the Commission within 7 calendar days of a final local action.) The appeal must be filed in the Commission district office having jurisdiction over the affected local government. The final date for filing appeal is available from the local permit decision notices posted in the Commission's offices and may also be obtained by calling the local Commission district office.

**Persons Eligible to Appeal.** The applicant, any aggrieved person or any two members of the Commission may appeal. P.R.C. Section 30625. An "aggrieved person", is any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision being appealed, or who, by other appropriate means prior to a hearing, informed the local government of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit. P.R.C. Section 30801.

**Decisions Which May Be Appealed.** (P.R.C. Section 30603)

- A. Within the appeals area, as shown on the Commission-adopted Post-LCP Certification Permit and Appeal Jurisdiction Map, any approval decision is appealable.
- B. In coastal counties only, an approval decision on a development that is not designated as the principal permitted use under the certified zoning ordinance, or zoning district map, is appealable.
- C. Any decision on a major works project or major energy facility is appealable.

798

**Proper Grounds for an Appeal.** (P.R.C Section 30603 AS AMENDED 1/1/92)

- A. The grounds for an appeal...[of an approval project] 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 the Coastal Act].
- B. The grounds for an appeal of a denial of a permit...[for development which constitutes a major public works or a major energy facility] shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies...[of the Coastal Act].

**Exhaustion of Local Appeals.** Pursuant to 14 Cal. Admin Code Section 13111 and 13573, the process of appealing a local decision to the Commission cannot begin until all possible appeals to local appellate bodies first have been made and have been exhausted; except that exhaustion of local appeals is not required if any of the following occur:

- A. The local government requires an appellant to appeal to more local appellate bodies than have been certified in the implementation section of the local coastal program, or designated in the LUP implementing procedures, as appellate bodies for permits in the coastal zone.
- B. An appellant was denied the right of initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.
- C. An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of Article 17 (LCP Implementation Regulations) of the California Administrative Code.
- D. The local government charges a fee for the filing of processing of appeals.

**Appellant Notification of Appeals.** Section III of the appeal application form is for the identification of persons interested in the project being appealed. An additional important step is that the appellant notify these persons **and** the local government of the appeal filing, within one week of the filing. Notification must be by mailing or delivering a copy of the completed appeal application form, including any attachments, to all interested parties, at the addresses provided to the local government. Failure to provide the required notification may be grounds for Commission dismissal of the appeal. 14 Cal. Admin. Code Section 13111(c).

**Commission Review of an Appeal.** If the Commission hears a coastal development permit on appeal, the Commission shall approve the permit if it finds that the proposed development is in conformity with the certified local coastal program (P.R.C. Section 30604(b)). Furthermore, every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (P.R.C. Section 30604(c)). In determining whether a proposed development is in conformity with the certified LCP, the Commission may consider aspects of the project other than those identified by the appellant in the appeal itself, and may ultimately change conditions of approval or deny a permit altogether.

8-09-8

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET, SUITE 200  
EUREKA, CA 95501  
VOICE (707) 446-7833 FAX (707) 446-7877

EXHIBIT NO. 7

APPEAL NO.

A-1-MEN-08-015

BOWER LIMITED PARTNERSHIP

APPEAL #3 (JULIE VERRAN)  
(1 of 6)



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Julie A Verran

Mailing Address: P.O. Box 382

City: Eureka, CA 95445

Zip Code:

Phone: (707) 884-3740

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Proposed bluff-top retaining wall which would require (at least) temporary removal of the Gualala Bluff Trails central, most used section and its associated protections from cars, benches, and flowerbeds; overlooking the Recreational Wild and Scenic Gualala River Estuary and intruding onto the ESTIA thence. The wall would protect an unimproved parking lot

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

In the Coastal Zone, in the unincorporated County of Mendocino, in the Gualala Village Mixed Use Zone of the County LCP, at 39200 S. Hugh, on APN 145-261-13.

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

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

RECEIVED

MAR 25 2008

CALIFORNIA  
COASTAL COMMISSION

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-08-015

DATE FILED: 3/25/08

DISTRICT: North Coast



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

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

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision:

February 26, 2008

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

Coastal Development Permit # 55-2006

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:

Bowser Limited Trust  
P.O. Box 1000  
Gualala, CA 95445

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

(1) Friends of the Gualala River, P.O. Box 1543, Gualala,  
CA 95445

(2) California Native Plant Society, DKV Chapter, P.O. Box 577,  
Gualala, CA 95445

(3) Sierra Club Redwood Chapter, P.O. Box 466, Santa Rosa,  
CA 95402-0466

(4) Friends of Schooner Gulch, P.O. Box 4, Point Arena,  
CA 95468

2096

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

*Please see attached letters.*

*A list of CTR policies will follow, as well as other documents.*  
*J. R. W.*

*346*

2.

I believe Mendocino County CDP #55-2006 may not conform to the following sections of the Coastal Act, and their corresponding sections in the Mendocino County LCP and the Gualala Town Plan.

300001. Key values to be protected by the commission.

30001.5 Basic goals

30212. (a) and b(4) Public access; New development includes seawalls constructed or "seaward of the location of the former structure," applies to the wall on the contiguous parcel.

30212.5 Area-wide distribution of public facilities including parking.

30213. "Lower coast visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." That is what the Commission, the Coastal Conservancy and the Redwood Coast Land Conservancy did when they worked together to create the trail, flower beds, protective fencing and benches.

30214. Public access policies. The trail was created in an orderly fashion pursuant to this section.

30221. Protection of ocean front land for recreational use unless "already adequately provided for in the area." The Gualala Bluff Trail is the only such provision in the GTP area.

30230. Protection of marine resources. A 2005 scientific study of the Gualala River Estuary funded by the Coastal Conservancy found the estuary is an important rearing area for steelhead and also supports coho.

30231. Maintaining and restoring biological productivity, including natural vegetation buffer areas that protect riparian habitat, and minimizing alteration of coastal streams.

30240(a) and (b) Protection of Environmentally Sensitive Habitat Areas.

30251. Protecting scenic and visual qualities and minimizing alteration of coastal landforms.

30252 (1-6) Maintain and enhance public access, especially (6) "correlating the amount of development with local park acquisition."

30253 (1-5) especially (2), "protect ... special neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses." A Special Neighborhood was designated in the Mendocino County LCP in what is now the Gualala Village Mixed Use and Gualala Highway Mixed Use Zoning Districts and adjacent residential zones.

Sincerely,

Signature on File

Wan, March 25, 2008

496

February 24, 2008

Re: CDP #55-2006, OPPOSE

Mendocino County Board of Supervisors

By Hand and by Fax

Dear Supervisors and County Staff,

I am an affected property owner in the Special Neighborhood in Gualala, and not an appellant at the county level, so I expect to speak only for three minutes. The more I thought about what to say, the more ideas came up; not just my ideas, but those of others during the past 25 years. Hence this last-minute list of reasons to deny this permit.

- ✚ There has been much disclosure by the applicant of possible future projects. If taken as a foretaste of the future project discussion required by the California Environmental Quality Act for an Environmental Impact Report, it is clear that a Negative Declaration for this bluff-top wall proposal is inadequate. An EIR is indicated.
- ✚ The biological report is incomplete because it does not mention the otter (*Lontra canadensis*) population that uses the bank below the proposed wall so extensively that the otters are a tourist attraction comparable to Point Arena's Laysan Albatross. The biological report also does not indicate that the author checked for Point Arena Mountain Beaver, though she is an expert in this animal and it may be in the area. The biological report is also incomplete because it fails to recognize the value of the bluff top as a wildlife corridor. See the California Atlas of Biodiversity.
- ✚ The botanical report is incomplete because it does not list and recommend buffers for Coastal Bluff Morning Glory aka Pacific False-bindweed, (*Calystegia purpurata* ssp. *saxicola*). I am the owner of the property mentioned in Jon Thompson's letter in the appellants' packet, where Dr. Richard Brummitt of Kew, who defined the genus *Calystegia*, identified and collected it in the presence of Prof. Teresa Sholars of College of the Redwoods Mendocino Coast, Clare Golec of Dept. Fish and Game, and Barbara Ertter of Jepson Herbarium, UC Berkeley. I am currently working on an independent study project on the plant, supervised by Prof. Sholars. Please notify me of any meetings regarding the plant so I can attend and answer questions.
- ✚ Is there a drainage plan, or just a proposal for a wall with drainage elements? There appears to be no geotechnical report, which would be required under the Coastal Act even for a modest home, and no bluff retreat analysis, ditto. This may raise what the Coastal Commission commonly calls "a Sundstrom problem," referring to a key provision in the *Sundstrom v. County of Mendocino* decision disallowing approval of coastal projects with studies yet to come. The current project is within the part of Gualala covered in the Sundstrom suit.

596

- ✚ The project would alter a coastal landform, and it does not appear to conform to the Coastal Commission Landform Alteration Policy Guidelines. See the website, [www.coastal.ca.gov](http://www.coastal.ca.gov), section on Publications.
- ✚ The project would reduce low-income visitor serving facilities: that is, the bluff-top promenade and seating area. Such facilities are favored by the Coastal Act.
- ✚ Three Planned Development sections, one belonging to the applicants, are already approved in the LCP as part of the Gualala Town Plan. These should be developed before large-scale projects resembling Planned Developments, but lacking the public process, are undertaken. The applicants recently logged their PD zone over the written objection of the County. As a mitigation, they could complete the public PD process for that property, which would be more appropriate for a larger supermarket than the bluff-top site associated with CDP #55-2006.
- ✚ The National Oceanic and Atmospheric Administration is currently working on base maps for tsunami hazard mapping. Large-scale development of low-lying sites on the ocean side of Highway 1 such as this one, which is also subject to river flooding, would best await those maps.
- ✚ A modest reconfiguration of existing structures would gain many of the applicants' goals while preserving scenic and natural resources. The old gas station, now a video store, could be removed along with its underground storage tanks. That would widen the access to the parking area, allowing applicants to apply for a permit for the parking lot and to remove the No Trespassing sign. The former market, more recently a pharmacy, which is now vacant except for occasional charitable projects, could become stock storage with easier truck access than the current storage area at the back of the Surf market. The back of the Surf could be converted to a deli/coffee/souvenir area that would provide a low-income visitor serving facility with a gorgeous ocean view. This is a simple change people often say they wish for. In my opinion, these changes would substantially increase sales at the market and throughout the Mixed Use Zones.
- ✚ The wall proposed in CDP #55-2006 would violate the Gualala Special Neighborhood protection in the LCP, a Coastal Commission designation applied to built-up areas that need protections similar to those of Highly Scenic Areas. That would harm me and 100-200 property owners similarly situated by lowering property values, in my opinion.

Thank you for hearing the appellants, the public, and the applicants.

Yours sincerely,

Signature on File



P.O. Box 382  
Gualala, CA 95445-0382

6 of 6



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

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

RECEIVED

MAR 14 2008

CALIFORNIA  
COASTAL COMMISSION

MARCH 11, 2008

REVISED 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 #55-2006

**OWNER:** BOWER LTD. TRUST

**APPLICANT:** BOWER LTD. PARTNERSHIP

**AGENT:** RAU & ASSOCIATES INC.

**REQUEST:** Construct a 285-foot long concrete block retaining wall to connect to a proposed 70-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 – coastal commission jurisdiction). Associated drainage improvements include the installation of 414 length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure.

**APPEALABLE AREA:** Yes

**LOCATION:** In the Coastal Zone, in the town of Gualala, on the west side of Highway 1, parallel to and upslope from the Gualala River, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway 1 (APN 145-261-13).

**PROJECT COORDINATOR:** TERESA BEDDOE

**ACTION TAKEN:**

The Coastal Permit Administrator, on November 19, 2007, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level to the Mendocino County Board of Supervisors and as a result was heard on Tuesday, February 26, 2008. The Mendocino County Board of Supervisors modified the Coastal Permit Administrator's decision, approving an alternative geoweb structure (replacing the proposed concrete block material), revising Special Condition Number 2 of the staff report as discussed in the Summary, concluding that the alternative material (geoweb vs conventional retaining wall) further reduces impacts resulting from the project.

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

Attachments: Revised Special Condition Number 2 of the Staff Report for CDP 55-2006.

cc: Coastal Commission  
Assessor

EXHIBIT NO. 8

APPEAL NO.

A-1-MEN-08-015

BOWER LIMITED PARTNERSHIP

NOTICE OF FINAL LOCAL  
ACTION & COUNTY FINDINGS

(1 of 52)

**COUNTY OF MENDOCINO  
ENVIRONMENTAL REVIEW GUIDELINES  
NEGATIVE DECLARATION**

**I. DESCRIPTION OF PROJECT.**

DATE: March 11, 2008

**CASE#:** CDP #55-2006

**OWNER:** BOWER LTD. TRUST

**APPLICANT:** BOWER LTD. PARTNERSHIP

**AGENT:** RAU & ASSOCIATES INC.

**REQUEST:** Construct a 285-foot long concrete block retaining wall to connect to a proposed 70-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 – coastal commission jurisdiction). Associated drainage improvements include the installation of 414 length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure.

Note: After project approval by the Coastal Permit Administrator on November 19, 2007, the applicant proposed substituting a geoweb structure for the concrete block retaining wall and the Board of Supervisors accepted this environmentally superior structural modification on February 26, 2008.

**APPEALABLE AREA:** Yes

**LOCATION:** In the Coastal Zone, in the town of Gualala, on the west side of Highway 1, parallel to and upslope from the Gualala River, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway 1 (APN 145-261-13).

**PROJECT COORDINATOR:** TERESA BEDDOE

**II. DETERMINATION.**

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, a **NEGATIVE DECLARATION** is adopted.

The attached Initial Study, staff report, and letter from RAU and Associates to PBS dated January 25, 2008 (independently reviewed and accepted by the County) incorporate all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

Mendocino County Dept. of Planning & Building Services  
Coastal Planning Division  
790 South Franklin Street  
Fort Bragg, CA 95437  
707 964-5379 (tel) • 707 961-2427 (fax)

## MEMORANDUM

TO: California Coastal Commission, CDP file  
FROM: Teresa Beddoe, Planner I  
DATE: March 11, 2008  
SUBJECT: CDP 55-2006 (Bower), revised Special Condition Number 2 of the Staff Report

---

As outlined in the Board Summary (agenda date February 26, 2008) County Planning Staff recommended, and the Board of Supervisors approved the following modification to Special Condition Number 2 in the staff report, to accommodate the geoweb design revision (~~strike through~~ indicates text to be deleted; **bold** indicates text to be added):

2. The Gualala River estuary/lagoon and associated estuarine/intertidal wetland shall be protected in perpetuity on-site with a minimum 50 foot buffer. No development or placement of materials shall occur within the Environmentally Sensitive Habitat Areas or 50 foot buffer area with the exception of the proposed weed control and habitat restoration activities. All mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, are hereby required as a mandatory condition of approval of the subject Coastal Development Permit:

Prior to issuance of the Coastal Development Permit, the applicant shall submit for approval to the Coastal Permit Administrator, a comprehensive, long-term plan to restore the original habitat values and slope stabilizing function of coastal scrub vegetation at the Project Site. The plan shall utilize native plantings based on the results of the plant inventory (Appendix C of the botanical survey report by BioConsultant, dated August 2007) and habitat conditions, and shall be designed to revegetate disturbed areas and bare soil, restore stable northern coastal scrub all along the length of the bluff, visually buffer the retaining wall from the Gualala Point Regional Park (including native vine type plants that can grow up the wall), and eliminate invasive weeds. The plan shall be implemented by a professional restoration company and shall incorporate a restoration monitoring component. Cooperative efforts between the landowner and RCLC, the Dorothy King Young chapter of the California Native Plant Society, and the Mendocino Coast Cooperative Weed Management Area is encouraged. The following guidelines as outlined in the botanical survey report shall guide the final restoration plan:

- ❖ Schedule a site visit by a restoration professional prior to the onset of construction activities to examine pre-construction conditions and to locate occurrences of invasive weeds, noting in particular those areas where invasive weeds are rooted in the middle slope and lower bluff toe areas.
- ❖ Retain as many of the existing large blue blossom and silk tassel bush as possible.



- ❖ Utilize existing native shrub species in the plantings: silk tassel bush, blue blossom, coyote brush, thimbleberry, California blackberry, and oso berry.
- ❖ Use large-size (5 gal. or greater) container shrubs and provide irrigation as needed. Install erosion control fabric on filled areas and other bare soil, densely seeding these areas with fast-growing native perennial California brome to help hold the soil in the first year after construction and to outcompete non-native velvet grass and other weeds.
- ❖ Remove jubata grass and pride of Madeira (Echium) from the toe of the bluff, replacing these species with native shrubs.
- ❖ Focus weed eradication strategies on eliminating the most noxious of the invasive weeds (Himalayan blackberry, capeweed, greater periwinkle, jubata grass, ice plant, and pride of Madeira), and devise follow-up strategies to eliminate and/or control poison hemlock, wild radish, velvet grass, Harding grass, wild teasel, bull thistle, and Italian thistle.
- ❖ Design and implement a long-term monitoring effort and make modifications to the restoration plan as needed.

To mitigate for potential impacts to wildlife, the following measure, as outlined in the botanical survey report by BioConsultant, dated August 2007, shall be required:

- ❖ All excavation and vegetation removal activities shall occur after May 15<sup>th</sup>, with peak noise generating activities ceasing prior to August 15, and all ground disturbing activities ceasing October 15.

~~The retaining wall shall be faced with the proposed quarry rock facing. Sherwin-Williams stain number SW 7514 (Foothills) or equivalent as approved by the Coastal Permit Administrator, shall be applied to the retaining wall face by hand, prior to installation. The stain shall be applied in a manner that will create a natural looking contrast between the quarry rock portion of the face and the grout portion of the face. Prior to issuance of the grading permit, the applicant shall submit color samples of the proposed Geoweb material for approval by the Coastal Permit Administrator.~~ Maintenance shall occur as needed to assure that the face of the wall remains visually appealing over time.

GEORGE C. RAU, P.E.  
PRESIDENT

JAVIER J. RAU  
VICE PRESIDENT

WALTER HAYDON, P.L.S.

ROGER VINCENT, P.E.

CATHY A. McKEON, P.E.



AND ASSOCIATES INC.

CIVIL ENGINEERS • LAND SURVEYORS

January 25, 2008

Ms. Teresa Spade, Project Coordinator  
Mendocino County Department of  
Planning and Building Services  
790 South Franklin Street  
Fort Bragg, CA 95437

Job Number R05024

RE: CDP #55-2006 (BOWER LIMITED PARTNERSHIP); NEW GEOWEB DESIGN

Dear Ms. Spade:

We are pleased to inform you that we have been successful in finding an alternative system to the concrete block retaining wall which will both stabilize the bluff and be more visually appealing. The new design, Geoweb cellular confinement system (Geoweb), is a vegetated earth retention system, also known as a "green wall" or bioengineered wall, which provides slope stabilization without the use of concrete and allows for vegetation to grow on the face of the structure.

The Geoweb system has been constructed in many sensitive and challenging sites, including ocean bluffs in Carmel and Santa Barbara, and river banks of the Columbia River in Portland, OR and West Bouldin Creek in Austin, TX. The product has been used by Caltrans and local departments of transportation for road and slide repair projects. Information about this system is attached. Additional product information, case studies and photos can be viewed at the distributor's website:

[http://www.sspco.com/geoweb/geoweb\\_earthret.html](http://www.sspco.com/geoweb/geoweb_earthret.html).

Preliminary plans for the new design are attached for your review. The rest of the project, including drainage improvements, stormwater treatment facilities and relocation of interceptor tanks, remains unchanged. The new design will have a smaller footprint in that the limits of disturbance will not be as close to the estuary and excavation will not have to extend as far east into the parking lot. As a result, the amount of existing vegetation that will be disturbed is considerably less. See Tables 1 and 2 below and Sheet 1.1 (attached) for changes in grading volumes, excavation area, and revegetation areas, all of which are significantly reduced with the new design<sup>1</sup>.

Table 1. Changes in the Extent of Grading and Vegetation Removal<sup>2</sup>

	Original Design (Concrete Block Wall)	New Design (Geoweb System)	Δ	% Δ
Excavation Volume (cubic yards)	6,024 cy	2,706 cy	-3,318 cy	-55%
Excavation Area (square feet)	23,485 sf	9,508 sf	-13,977 sf	-60%
Revegetation Area (square feet) <sup>3</sup>	8,343 sf	4,154 sf	-4,189 sf	-50%

<sup>1</sup> The figures in Table 1 represent the portion of wall on APN 145-261-13. A similar reduction in the extent of grading and vegetation impacts is also noted on APN 145-261-05.

<sup>2</sup> The values in Table 1 are approximate. Values are based on preliminary improvement plans and estimated depth to bedrock, which is variable and cannot be fully known until excavation occurs.

<sup>3</sup> In order to accurately compare revegetation areas for both designs, the estimate in Table 1 does not include planting on the face of the Geoweb structure. The face of the Geoweb structure will also be planted with native vegetation, unlike the concrete block wall design which depended on climbing and hanging vine-like species planted at the base and top of the wall.

**Table 2. Changes to Construction Activity Zone in Relation to Gualala River**

Distance to Mean High Tide (Feet)	Original Design (Concrete Block Wall)	New Design (Geoweb System)	$\Delta^4$
Maximum Slope Distance	70.4±	92.8±	+22.4 feet
Minimum Slope Distance	49.5±	70.1±	+20.6 feet
Average Slope Distance	59.9±	81.5±	+21.6 feet

Because the fabric of the Geoweb system is flexible, it can be installed along contours on the slope face and will look more natural. The top of the new structure will be flush with the bluff top, unlike the concrete wall which extended up to 1.5 feet above finished grade. It should also be noted that the structure will not be located any further west than where the concrete wall was sited. Product materials consist of polymer-based fabric and anchors, aggregate and soil, so there will be no concrete materials near the estuary.

One of the primary concerns raised by project opponents was the appearance of the concrete wall and the ability to successfully conceal it with native vegetation. The new design will allow the face of the structure to be mostly vegetated within 1-2 years. We are consulting with Circuit Riders and a botanist who works specifically with the Geoweb system in order to ensure the proper selection of plant materials for the green wall. We will ask CNPS for their input about plant materials before designing the revegetation plan.

Other project-related impacts will also be reduced with the new design. A brief summary of these changes is provided below.

**Table 3. Changes to Project-Related Impacts**

Initial Study Checklist Items	
Item 1. Earth	Impacts reduced due to a reduction in the volume and area of excavation. See Tables 1 and 2 above.
Item 2. Air	No change.
Item 3. Water	No change.
Item 4. Plant Life	Impacts reduced. The extent of vegetation to be removed has dropped from 9,685 ft <sup>2</sup> to 4,353 ft <sup>2</sup> . Two (2) trees requiring removal under the old design can be preserved. The new structure is designed so that vegetation can successfully grow on the face of the structure. Cells within the structure are filled with topsoil and planted; vegetation grows through holes in the structure facing. The overall chances for vegetative success at the site are improved with the new design.
Item 5. Animal Life	Impacts slightly reduced due to vegetation growing on the face of the structure and the ability to support a larger variety of plant materials on the structure. Increased vegetative cover and more diverse plant life provides improved habitat for small animals, birds and insects.
Item 6. Noise	No change.
Item 7. Light and Glare	No change.

<sup>4</sup> The numbers in this column represent how much farther the construction activity zone will be from the estuary's edge (mean high tide) due to the new project design. Sources: Botanical Survey Exhibit Construction Activity Zone, August 2007 (concrete wall design) and January 2008 (Geoweb design).

Item 8. Land Use	No change.
Item 9. Natural Resources	No change.
Item 10. Population	No change.
Item 11. Housing	No change.
Item 12. Transportation/Circuiation	No change.
Item 13. Public Services	No change.
Item 14. Energy	No change.
Item 15. Utilities	No change.
Item 16. Human Health	No change.
Item 17. Aesthetics.	Impacts significantly reduced. The Geoweb system was designed so that it would, in a short period of time, become invisible in the natural landscape. The new green wall will be mostly vegetated within 1-2 years following construction. Within several years vegetation will completely cover the structure so that it blends with the natural environment. See "after" photos of case studies (attached).
Item 18. Public Access	No change.
Item 19. Cultural Resources	No change.

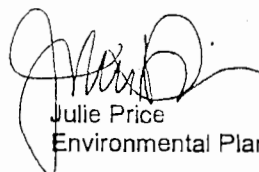
With regards to the conditions of approval, the last paragraph of Special Condition 2 no longer applies, and for consistency with the new design should be deleted, with the exception of the last sentence:

~~The retaining wall shall be faced with the proposed quarry rock facing. Sherwin Williams stain number SW-7514 (Foothills) or equivalent as approved by the Coastal Permit Administrator, shall be applied to the retaining wall face by hand, prior to installation. The stain shall be applied in a manner that will create a natural looking contrast between the quarry rock portion of the face and the grout portion of the face. Maintenance shall occur as needed to assure that the face of the wall remains visually appealing over time.~~

The Geoweb material can be black, white, green or tan. We believe the tan colored material will blend in the most favorably until vegetation covers the structure. The color of the Geoweb fabric could replace the deleted language in the above paragraph. From our review it appears that all other conditions still apply.

Please let us know if you need any additional information about the new design in preparation for the Board of Supervisors hearing.

Very truly yours,

  
Julie Price  
Environmental Planner

CC: John Bower, Bower Limited Partnership  
Tiffany Tauber, Coastal Commission

Attachments

T2-3475

AGENDA ITEM NO. 7D2 – PUBLIC HEARING TO CONSIDER AN APPEAL OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION ON NOVEMBER 19, 2007, APPROVING THE FOLLOWING PROJECT:  
CASE No.: CDP No. 55-2006 – BOWER LIMITED TRUST (OWNER); BOWER LIMITED PARTNERSHIP (APPLICANT); RAU AND ASSOCIATES, INC. (AGENT); CALIFORNIA NATIVE PLANT SOCIETY; ENVIRONMENTAL COMMONS; AND FRIENDS OF THE GUALALA RIVER (APPELLANTS); REQUEST: CONSTRUCT A 285±-FOOT LONG CONCRETE BLOCK RETAINING WALL TO CONNECT TO A PROPOSED 105±-FOOT LONG RETAINING WALL ON THE ADJACENT LOT TO THE SOUTH (APN 145-261-05 – COASTAL COMMISSION JURISDICTION); ASSOCIATED DRAINAGE IMPROVEMENTS INCLUDE THE INSTALLATION OF 414± LENGTH FEET OF DRAINPIPE, A STORM DRAIN MANHOLE, AND A SIX-FOOT STORMWATER TREATMENT STRUCTURE; RELOCATION AND UPGRADE OF UNDERGROUND SEPTIC SYSTEMS; LOCATION: IN THE COASTAL ZONE, IN THE TOWN OF GUALALA, ON THE WEST SIDE OF HIGHWAY ONE, PARALLEL TO AND UPSLOPE FROM THE GUALALA RIVER, APPROXIMATELY 500 FEET SOUTH OF ITS OUTLET TO THE PACIFIC OCEAN, AT 39200 SOUTH HIGHWAY ONE (APN 145-261-13) – SPONSORING DEPARTMENT: PLANNING AND BUILDING SERVICES

Presenter/s: Mr. Ray Hall, Director, Planning and Building Services, and Ms. Theresa Spade, Planning and Building Services.

Ms. Spade introduced the topic reporting that on November 19, 2007, Coastal Development Permit (CDP) No. 55-2006 was approved allowing for the construction of a 285±-foot long concrete block retaining wall to connect to a proposed 105±-foot long retaining wall on the adjacent lot to the south. The subject project is located at 39200 South Highway One (APN 145-261-13); the full length of the retaining wall (which is to prevent existing fill material from eroding down the bank) was considered in conjunction with correction of a failed retaining wall existing on the southerly adjacent lot (maintenance of this failed wall portion on the southerly lot is required by the California Coastal Commission). At its most visible point (on the Coastal Commission jurisdiction lot) the retaining wall would have a visible height of 25 feet (as seen from Sonoma County, across the estuary); the average visible height of the wall would otherwise be closer to five feet. She described elements of the project that include associated drainage improvements, the installation of 414± length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure. Associated development includes relocation and upgrade of underground septic systems.

In closing, Ms. Spade noted that after the initial approval of the CDP, Rau and Associates found an alternative to the retaining wall that would result in substantially reduced impacts to natural and visual resources, using Geoweb design. This alternative design would reduce the amount of grading needed, reduce the area of impact, reduce impacts to existing vegetation, locate impacts further from the sensitive estuary area, and substantially reduce long-term visual impacts. Planning staff has not identified any potential negative impacts that would result from the newly proposed mitigation. Staff has independently reviewed and agrees with the Agent's modifications to the Negative Declaration.

Proper Notice was established by the Clerk of the Board and the PUBLIC HEARING WAS OPENED.

**Appellant Presentation:** Appellants Ms. Britt Bailey, Director, Environmental Commons; Mr. Frank Dilliard, representing Friends of the Gualala River; and Ms. Lori Hubbart, California Native Plant Society, addressed the Board seeking denial of the Coastal Development Permit. Ms. Bailey described that the project does not comply with CEQA (review of a project *in its entirety*); and does not comply with the Local Coastal Program (does not permit retaining walls). She provided a brief PowerPoint presentation illustrating slides and photos of the project area, within

the jurisdiction of the County of Mendocino, as well as the jurisdiction of the California Coastal Commission.

Mr. Frank Dilliard, representing Friends of the Gualala River, described the reasons for opposing the project primarily relating to the wall.

Ms. Lori Hubbart, speaking on behalf of the California Native Plant Society, described the detrimental impacts to plants and revegetation concerns.

**Applicant Presentation** Mr. John Bower, Bower Limited Partnership (Applicant); Mr. George Rau, Rau and Associates, Inc. (Agent); and Ms. Kim Fitz, Consultant, addressed the Board on behalf of the project. The Applicant and Agent referenced opposition to the project and the efforts to mitigate the visual impacts with a new design proposal for the installation of a Geoweb structure. The Applicant reported that the project protects existing development (specifically the existing parking area and septic infrastructure); the project improves drainage (treating it and taking it offsite, away from the trail area); the project decreases erosion, and treats parking lot stormwater not currently treated. They further noted that the project is located in the Gualala Village Mixed Use (GVMU) Zoning District, a District that under the Gualala Town Plan is to accommodate development in this area.

Mr. George Rau, Project Engineer, also distributed illustrations associated with the project design, describing the positive impacts to the community should the project, under its new Geoweb design, be approved.

T3-1760

**Public Comment:** Mr. William Hay, Jr.; Mr. Sid Waterman; Mr. John Williams; Ms. Julie Verran; Mr. Steve May; Ms. Naomi Schwartz, also reading a statement on behalf of Mr. Michael Bower; Mr. William Spiegelhalter, representing five businesses near the project; Mr. Bob Rutemoeller; Ms. Mary Sue Ittner; Mr. Marshall Sayegh; and Mr. John Graff, representing the Employers Council of Mendocino County.

T4

Following public comment on the issue, Mr. Hall provided his rationale for approving the project, describing the information as contained within the staff report.

Speaking as the District Supervisor, Supervisor Colfax described the challenge with GMAC's split vote on the issue, and his District's Planning Commissioner serving as a co-appellant on the case. He inquired as to the regulatory standards for bluff top design and related matters, followed by additional Board inquiry associated with the botanical impacts, the LUP policies, the Coastal Commission's jurisdiction/appeal process, exploration of less impactful alternatives, the special conditions as recommended by staff, and the resulting improvements to the community and the trail.

THE PUBLIC HEARING WAS CLOSED.

T4-900

**Board Action:** Upon motion by Supervisor Pinches, seconded by Supervisor Delbar, and carried (4/1, with Supervisor Colfax dissenting); IT IS ORDERED that the Board of Supervisors denies the appeal and modifies the approval of Coastal Development Permit No. 55-2006, revising Special Condition No. 2 of the staff report as described in the agenda summary, concluding that the alternative material (Geoweb vs. conventional retaining wall) further reduces impacts resulting from the project.

**Discussion on Motion:** Supervisor Colfax reiterated his inability to support the project.

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE      MAILING ADDRESS:  
710 F STREET • SUITE 200      P. O. BOX 4908  
EUREKA, CA 95501-1865      EUREKA, CA 95502-4908  
VOICE: (707) 445-7833  
FACSIMILE (707) 445-7877



March 6, 2008

Teresa Spade  
Mendocino County Planning and Building Services  
790 South Franklin St.  
Fort Bragg, CA 95437

SUBJECT: Notice of Final Action Deficiency - CDP #55-2006 (Bower Limited Partnership)

Dear Ms. Spade:

On March 3, 2008, our office received a Notice of Final Action for CDP #55-2006 (Bower Limited Partnership) following action taken by the Board of Supervisors on the subject CDP. However, as further described below, the Notice of Final Action is deficient because the project description and conditions of approval are not clear. Therefore, the effective date of the Board of Supervisor's action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office.

The Notice of Final Action cover page describes the project as follows:

*Construct a 285-foot long concrete block retaining wall to connect to a proposed 70-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 – Coastal Commission jurisdiction). Associated drainage improvements include the installation of 414 length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure.*

The Notice of Final Action cover page further states:

*The above project was appealed at the local level to the Mendocino County Board of Supervisors and as a result was heard on Tuesday, February 26, 2008. The Mendocino County Board of Supervisors upheld the Coastal Permit Administrator's decision and approved the project.*

As quoted above, the Notice of Final Action (NOFA) states that the Board of Supervisors upheld the Coastal Permit Administrator's decision, thus indicating that the Board approved the same project that was previously approved by the Coastal Permit Administrator (i.e., a 285-foot long concrete block retaining wall, etc.) with the same

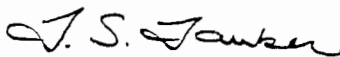
Teresa Spade, Mendocino County Planning  
CDP #55-2006 (Bower Limited Partnership)  
March 6, 2008

conditions imposed by the Coastal Permit Administrator. However, information attached to the NOFA cover page, including an Agenda Summary to the Board of Supervisors dated January 30, 2008, indicates that the project was revised by the applicant subsequent to the Coastal Permit Administrator's Action on the application, but prior to the February 26, 2008 Board of Supervisors hearing to include, in part, a "Geoweb" design alternative to the concrete block retaining wall that was previously approved by the Coastal Permit Administrator. Additionally, the Agenda Summary includes a staff recommended modification to one of the special conditions previously approved by the Coastal Permit Administrator. The "Board Action" section at the bottom of this Agenda Summary is not completed in the version of the NOFA submitted to this office, nor is the "Board Action" described elsewhere in the NOFA. Therefore, it is not clear from the Notice of Final Action whether the Board approved: (1) the project as it was approved by the Coastal Permit Administrator with the concrete block wall construction and the same special conditions imposed by the Coastal Permit Administrator, (2) the project as modified by the applicant with the modification to the special condition recommended by County staff in the Agenda Summary, or (3) whether the Board made other changes to the project and/or the conditions of approval.

Please submit a revised Notice of Final Action that clarifies what action was actually taken by the Board, and provides an accurate and comprehensive description of the approved development and lists the conditions of approval. As stated above, the effective date of the Board of Supervisors action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received by this office.

Please feel free to contact me if you have any questions.

Sincerely,



Tiffany S. Tauber  
Coastal Planner

cc: Julie Price, RAU and Associates  
John Bower, Bower Limited Partnership





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

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

FEBRUARY 27, 2008

RECEIVED

MAR 03 2008

3 -17

CALIFORNIA  
COASTAL COMMISSION

NOTICE OF FINAL ACTION

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

**CASE#:** CDP #55-2006

**OWNER:** BOWER LTD. TRUST

**APPLICANT:** BOWER LTD. PARTNERSHIP

**AGENT:** RAU & ASSOCIATES INC.

**REQUEST:** Construct a 285-foot long concrete block retaining wall to connect to a proposed 70-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 – coastal commission jurisdiction). Associated drainage improvements include the installation of 414 length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure.

**APPEALABLE AREA:** Yes

**LOCATION:** In the Coastal Zone, in the town of Gualala, on the west side of Highway 1, parallel to and upslope from the Gualala River, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway 1 (APN 145-261-13).

**PROJECT COORDINATOR:** TERESA BEDDOE

**ACTION TAKEN:**

The Coastal Permit Administrator, on November 19, 2007, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level to the Mendocino County Board of Supervisors and as a result was heard on Tuesday, February 26, 2008. The Mendocino County Board of Supervisors upheld the Coastal Permit Administrator's decision and approved the project.

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

Attachments

cc: Coastal Commission  
Assessor

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

CDP# 55-2006 (Bower)  
November 19, 2007  
CPA-1

**OWNER:** Bower Limited Trust  
P.O. Box 1,000  
Gualala, CA 95445

**AGENT:** Rau and Associates, Inc.  
100 N. Pine St.  
Ukiah, CA 95482

**APPLICANT:** Bower Limited Partnership  
P.O. Box 1,000  
Gualala, CA 95445

**REQUEST:** Construct a 285±-foot long concrete block retaining wall to connect to a proposed 105±-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 – Coastal Commission jurisdiction). Associated drainage improvements include the installation of 414± length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure. Relocation and upgrade of underground septic systems.

**LOCATION:** In the Coastal Zone, in the town of Gualala, on the west side of Highway 1, parallel to and upslope from the Gualala River, approximately 500 feet south of its outlet to the Pacific Ocean, at 39200 South Highway 1 (APN 145-261-13).

**APPEALABLE AREA:** Yes – Bluff top lot, special neighborhood, ESHAs

**PERMIT TYPE:** Standard

**TOTAL ACREAGE:** 1.89± Acres

**GENERAL PLAN:** Gualala Village Mixed Use (GVMU)

**ZONING:** GVMU L: 6K; Flood Plain (FP)

**EXISTING USES:** Commercial, Public Trail

**ADJACENT ZONING:** GVMU

**SURROUNDING LAND USES:** North: Surf Motel  
East: Highway 1  
South: Surf Supermarket  
West: Gualala River Estuary

**SUPERVISORIAL DISTRICT:** 5

**CA COASTAL RECORDS PROJECT:** Image 200504204

**ENVIRONMENTAL DETERMINATION:**

An Initial Study was completed in conjunction with the subject staff report. As outlined in the Environmental Review portion of this report, staff finds that with proposed mitigations, the project would not result in significant environmental impacts, therefore a Mitigated Negative Declaration is indicated to comply with California Environmental Quality Act (CEQA) requirements. Staff finds that the project does not constitute "piecemealing" under CEQA. The initial study was conducted with all other project aspects in mind, including "Phase 1" of the onsite redevelopment plan, consisting of the demolition of the pharmacy building and removal of underground storage tanks, approved as CDP 24-2007 on September 27, 2007. CDP 24-2007 was found to be Categorically Exempt from CEQA, Class 1 (1)(3), and does not include project components deemed environmentally significant. The initial study was also completed with a possible "Phase 2" in mind. "Phase 2" of the redevelopment plan includes a possible boundary line adjustment between the subject parcel and parcel APN 145-261-05, demolition of other existing commercial structures, to be reconstructed to roughly the same square footage as pre-redevelopment (but situated in a different orientation), and the creation of a paved, landscaped parking area, effectively opening views to and along the ocean. This later phase was the subject of PAC 1-2007. The subject project appears to be the only aspect of the project with potential environmental impacts, and they can be mitigated to a level of less than significant. In regard to CEQA compliance, "piecemealing" is only relevant in association with an EIR or potential EIR. The subject project and all its associated known past and future aspects do not appear to justify an EIR.

**OTHER RELATED APPLICATIONS:**

**Coastal Commission 1-83-270-A1** – Concurrently filed modification to 1-83-270 for the 105 feet of retaining wall proposed on the Surf Supermarket (APN 145-261-05) parcel to the adjacent south. The Coastal Commission retains jurisdiction of this permit because they processed 1-83-270.

**CDP 24-2007** – Coastal Development Permit for the subject parcel, approved at the September 27, 2007 CPA hearing for the demolition and removal of an existing 4,710± sq. foot commercial pharmacy building with a maximum height of 18± feet above average finished grade; asphalt paving within the demolition footprint, and temporary use of the area for parking; removal of 3 to 4 underground storage tanks associated with a previously existing gas station at this site.

**PAC 1-2007** – Pre-application Conference for a larger onsite project which involves the demolition of existing commercial buildings, creation of a central parking area, and construction of new commercial structures.

**CDP 23-2003** – Approved on April 24, 2004, for Phase Two of the Gualala Bluff Trail for the Redwood Coast Land Conservancy (RCLC) located on the subject parcel. Phase Two proceeds south from the existing trail (Phase One) for approximately 700 feet along the bluff above the Gualala River. Includes a pedestrian bridge over a drainage swale, stairs along the blufftop, placement of sitting benches at viewing areas, sheep fencing, and signage.

**CDP 22-1996** – Approved on May 17, 1997, for Phase One of the Gualala Bluff Trail for the Redwood Coast Land Conservancy on APNs 145-261-11 and -12, located just north of the subject parcel. The trail consists of a 300 foot vertical access from Highway 1 to the blufftop and a 500 foot lateral access along the bluff. The first phase included approval for a native plant landscaped pathway, sheep fencing for safety, benches for viewing and picnicking, refuse containers and signs.

Coastal Commission 1-83-270 – Approved on December 13, 1983, the construction of a 120 foot-long wooden retaining wall, west of an existing market adjacent to the bluff edge on Gualala River, Mendocino County (on the southerly adjacent parcel number 145-261-05).

**PROJECT DESCRIPTION:** The following is the description of the project as submitted by the applicant:

The applicant requests a Coastal Development Permit for the construction of a concrete block retaining wall along the westerly edge of the property (Gualala River) and associated drainage improvements. The retaining wall will span the length of the subject property, and the parcel to the south (APN 145-261-05). At its lowest point on the subject property, the proposed retaining wall will be located 45± feet above mean high tide (on Coastal Commission jurisdiction lot).

The portion of the wall that will be located on APN 145-261-13 (Mendocino County jurisdiction) and subject to this permit is 285 feet in length. The portion of the wall that will be located on APN 145-261-05 (Coastal Commission jurisdiction) is 105 feet in length. The total length of the wall will be 390 feet.

Drainage improvements will also involve both parcels. Drainage improvements located on APN 145-261-13 (Mendocino County) include 304 linear feet of 12" SD, (2) 24" x 24" drop inlets, (1) storm drain manhole, 110 linear feet of 6" slot drain and (1) 6' stormwater treatment structure. Drainage improvements located on APN 145-261-05 (Coastal Commission) include the installation of 118 linear feet of 12"SD and (1) 24" x 24" storm drain manhole.

Minor vegetation will be removed as a result of construction activities, including 7,795 square feet of shrubs and herbaceous vegetation from the subject parcel. Erosion control will consist of native seed. Any required revegetation will consist of native plant materials, and will be consistent with the Landscape Plan submitted by RCLC for the access trail (attached). The rearrangement of the sanitary sewer system will be performed by the applicant under supervision of the Gualala Community Services District.

**GUALALA MUNICIPAL ADVISORY COUNCIL:** At the regularly scheduled meeting held December 7, 2006, GMAC reviewed the subject project, and voted (4-2) that the project be accepted. GMAC noted that the situation of the RCLC bluff trail and Bower's development is still not fully resolved. The Council expressed hopes that two parties reach a satisfactory negotiation soon concerning visual impact and vegetation removal and replacement that are part of this proposal.

On February 16, 2007, an agreement was reached between RCLC and Bower. The agreement is outlined in the Stipulation for Entry of Judgement and Proposed Judgement, Mendocino County Superior Court Case No. SCUK CVG 0594172.

#### **ENVIRONMENTAL REVIEW:**

##### Earth (Item 1):

A. Unstable earth conditions or changes in geologic substructures: The project is proposed to correct unstable earth conditions: approximately twelve to fourteen feet of old fill (placed approximately 20 to 30 years ago) is present in the project location. The fill is not compacted by today's building standards, and there are concerns that organic material, which may increase instability, may be present in the fill (Ashcraft 2007). Shallow surface failures occurred in December of 2005, which the wall is proposed to remediate. It is anticipated that construction of the retaining wall will require careful excavation of the bedrock in order to penetrate into the sandstone as minimally required for wall foundation support (RAU 2006). Such penetrations would not result in substantial impacts to

geologic substructures. Overall, the project would result in improvements to existing unstable earth conditions.

- B. Disruptions, displacements, compaction, or over covering of the soil: The project proposes the excavation of approximately 6,464 cubic yards of existing fill material. The fill material would have any organic components removed, and would then be replaced and compacted to current building standards. Approximately 1,705 cubic yards of additional imported materials is anticipated to achieve proper installation and compaction. Disruptions would occur to areas already disturbed, where imported fill is currently present. Excavation, fill and wall construction are expected to occur to an average depth of 17.5 feet and to an anticipated maximum depth of approximately 25 feet on the subject parcel. The retaining wall would span the approximate 285 foot length of the parcel along the western bluff top. The project would result in excavation of soils and re-compaction, in the vicinity of the recently constructed portion of the Gualala Bluff Trail along approximately half the length of the subject parcel. While the project proposes disruptions and compaction of the soil, any potential detrimental effects can be mitigated to a level of less than significant, and overall the project would result in improvements to the current state of the soil in the project vicinity.

Section 20.492.005 through 20.492.010 of the Mendocino County Coastal Zoning Code (MCCZC) states in pertinent part:

*Sec. 20.492.005 Purpose and Applicability.*

*The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are required, specifically development projects within Development Limitations Combining Districts. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.492.010 Grading Standards.*

- (A) *Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.*
- (B) *Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.*
- (C) *Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.*
- (D) *The cut face of earth excavations and fills shall not be steeper than the safe angle of repose for materials encountered. Where consistent with the recommendations of a soils engineer or engineering geologist, a variety of slope ratios shall be applied to any cut or fill slope in excess of two hundred (200) feet in length or ten (10) feet in height. For individually developed lots, a variety of slope ratios shall be applied to all cut or fill slopes when a building pad area exceeds four thousand five hundred (4,500) square feet, or when the total graded area of the lot exceeds nine thousand (9,000) square feet. The steepest permissible slope ratio shall be two to one (2:1), corresponding to a fifty (50) percent slope.*

*(E) The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.*

*(F) Adjoining property shall be protected from excavation and filling operations and potential soil erosion.*

*(G) The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans. (Ord. No. 3785 (part), adopted 1991)*

For the subject parcel, the project includes the installation drainage infrastructure including 414 linear feet of drainpipe, a storm drain manhole, and a six foot stormwater treatment structure. The proposed drainage improvements would treat an already existing drainage issue on the parcel. Overall, the project would impact drainage by decreasing roof and parking area runoff. The project would therefore be of overall benefit to the downslope estuary in that runoff and erosion into the estuary would be decreased.

Three separate failures of fill material occurred during December 2005 storms. Because of the condition of the existing fill (not compacted to standards and may contain organic material), excavations of the existing fill are necessary. Installation of the proposed retaining wall is the least damaging option in that: 1. The no project alternative would result in continued erosion and stormwater runoff into the estuary, 2. Smaller retaining structures would be inadequate in the long term, 3. Installation to address separate failures as they occur would result in more extensive impacts overall<sup>1</sup>, and 4. Transitioning or rounding of the contours would impact existing development including an existing trailer, loading ramp, unpaved parking area, and sewer tank on the subject parcel, and would require that the majority of the bluff trail easement would be located on the slope. Option 4 would not serve the needs of the applicant (preservation of the unpaved on-site parking area), so an investment in that option is unlikely. Staff finds that due to the nature of the project (a retaining wall) Section 20.492.010(G) of the Mendocino County Coastal Zoning Code as outlined above, requiring a maximum allowable slope ratio of 50% does not apply to the project. The purpose of the project is to stabilize the slope. Further, Coastal Commission Permit 1-83-270, approved a wooden retaining wall with steeper slopes on the adjacent parcel to the south. This project is associated with the subject project in that a portion of retaining wall (105 linear feet) is co-proposed to correct a failure of said retaining wall, and proposed to connect to the subject retaining wall. Coastal Commission Permit 1-83-270 approved the retaining wall on slopes ranging from ¾:1 to 1:1 (Fodge 1983 (page 2)). The applicants propose to stabilize and revegetate exposed faces of earth cuts and fills with native seed. Required vegetation is proposed to consist of native plant materials, consistent with the Landscape Plan submitted by RCLC for the access trail. Special Condition Number 1 is recommended to mitigate for any potentially detrimental impacts resulting from disruptions, displacements, compaction, or overcovering of the soil, and to comply with Sections 20.492.010(E-G) as outlined above.

---

<sup>1</sup> In the letter from RAU and Associates to Tiffany Tauber dated October 13, 2006, RAU states: "...it was considered what would be done if another debris flow were to occur. In order to construct another segment of the wall, part of the existing wall would have to be dis-assembled and part of the compacted fill behind the wall which was constructed would have to be removed and re-compacted again. The wall modules are 5 feet long and typically the wall is 6 modules to 8 modules high. This would require dis-assembling 30 to 40 feet of wall and excavating and re-compacting 150 to 200 cubic yards every time the wall was added to. Thus, it appears the most cost effective and least disturbing over the long term to do the entire length of the wall at one time (RAU, Oct 2006)."

- C. Change in topography or ground surface relief features: The project consists of the installation of a retaining wall to correct existing and potential failures of existing fill material. In the localized area of the proposed retaining wall, the surface relief will be minimally impacted due to the presence of the retaining wall, which will result in a minimal break in slope. The topography is artificially altered in this vicinity by the presence of fill materials which were compacted and flattened, and the retaining wall would support this graded area which is currently used for commercial parking, contains a bluff trail, and contains commercially related structures including sewage tanks and lines, a trailer, and may be present as far back as to impact the existing concrete loading ramp on the subject parcel. The project would not result in significant changes to existing topography or ground surface relief features. Alternatives, such as the no project alternative or transitioning/rounding of contours would have greater overall long-term impacts to existing topography than the proposed project in that significant amounts of fill material would either be removed or would erode over time into the estuary/lagoon.
- D. The destruction, covering, or modification of any unique geologic or physical features: No unique geologic or physical features have been identified in the project area. The project would not impact any known geologic or physical features.
- E. Any increase in wind or water erosion of soils, either on or off the site: The project would not result in increases in wind or water erosion of soils, either on or off the site. On the contrary, the project would correct existing water erosion issues including the sheeting of stormwater runoff from the existing unimproved parking area and commercial structures into the Gualala River estuary/lagoon, pooling of stormwater runoff along the bluff edge just west of the parking area and proposed/temporary trail area, and erosion of fill materials which has already resulted in failures, and is apparent as cracking of the parking surface area. The project would result in no impact to wind erosion, and long-term positive impacts to water erosion of soils. Because the potential for short-term erosion related impacts during construction may exist, Special Condition Number 1 is recommended to mitigate any potential short-term impacts to water erosion of soils during construction activities.

Regarding erosion control, Section 20.492.015 of the MCCZC states in pertinent part:

*(A) The erosion rate shall not exceed the natural or existing level before development.*

*(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*

*(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily.*

Due to the size of the area to be graded and the proximity of the Gualala River estuary/lagoon, Special Condition Number 1 is included to require that an erosion control plan that complies with the MCCZC be submitted prior to the issuance of the building permit.

Sections 20.500.020(E)(1-2) state as follows:

*(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.*

The proposed retaining wall is necessary to preserve, to the extent possible, the existing unpaved parking area which is accessory to the existing on-site commercial development. Parking in Gualala is a limited resource, and is particularly in demand in the summer season. The retaining wall would also serve to protect the existing and proposed onsite portions of the Gualala Bluff Trail, a coastal access trail, from erosion, and proposed retaining wall and drainage improvements would protect the downslope public beach area from erosion and currently untreated storm water runoff from the onsite structures and compacted unpaved parking areas. Site specific environmental geologic and engineering information has been provided by RAU and Associates as outlined in Section 20.500.020 of the Mendocino County Coastal Zoning Code, and staff finds that no feasible less environmentally damaging alternative is available. Contouring of the fill has been considered as an alternative, however this option would not preserve existing parking space on the site, and therefore would not meet the needs of the applicant. Consequently such an option is not realistic. Staff additionally finds that the structure has been designed to eliminate or mitigate adverse impacts upon the local shoreline sand supply and to minimize adverse environmental effects. According to the botanical survey report by BioConsultant (page 14):

...the only possible alternative would be no project. As discussed in the Project Site Description section of this report, [under the no project alternative] the bluff will remain susceptible to slides and accelerated erosion rates with the consequent risk of future catastrophic sediment input into the Gualala estuary, and loss of land supporting the coastal scrub community, Surf Center buildings, and the Gualala Bluff Trail. The "no project" alternative would not implement a program to control invasive weeds, which are encroaching upon and crowding out native species. In the long term, the Project as proposed is less environmentally damaging than the "no project" alternative (BioConsultant, August 2007).

As mitigated, the project would not have significant impacts to earth resources.

- F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify the channel of a river, stream, inlet, or bay? The project is designed to remediate existing erosion threats to the estuary/lagoon from unstable old fill material. The project would result in decreases in fill and runoff into the estuary/lagoon. As mitigated, no significant impacts would result to the estuary/lagoon from short-term construction activities.
- G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards: The project is designed to correct existing ground failures and prevent future ground failures resulting from unstable fill material. There are no known earthquake fault lines in the immediate project vicinity. The project would not result in the increased exposure of people or property to geologic or other hazards.



Air (Item 2):

- A. Substantial emissions or deterioration of ambient air quality: The project would not result in the production of substantial air emissions, nor would the project result in deterioration of ambient air quality.
- B. The creation of objectionable odors: The project is not expected to result in objectionable odors. No odor impact would occur.
- C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally: The project would not result in significant local or regional alteration of air movement, moisture, or temperature, or any change in climate.

Water (Item 3):

- A. Changes in currents, or the course of water movements, in either fresh or marine waters: The project would not impact current or the course of fresh or marine waters.
- B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff: The project would result in overall improvements to existing drainage patterns, and would insignificantly impact absorption rates and the rate or amount of surface runoff. Existing onsite drainage is problematic in that stormwater runoff from the onsite commercial structures and unpaved parking areas sheets to the west due to a slight downhill slope, which has resulted in cracking of the unpaved parking area, pooling in the vicinity of the Gualala Bluff Trail, and ground failures. Proposed drainage improvements would correct existing stormwater runoff problems.
- C. Alterations to the course of flow of floodwaters: The project is not located in any flood zones and would have no impact on the course of flow of floodwaters.
- D. Change in the amount of surface water in any water body: The project would not impact the amount of surface water in any water body.
- E. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity: As mitigated, the project would not result in significant impacts resulting from discharge into surface waters or in any significant alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity.

A stormwater treatment system is proposed to collect and treat existing stormwater runoff. Treated surface water would discharge from an existing culvert outlet just south of the subject parcels, which currently drains water from Highway 1 over the bluff edge and into the Gualala estuary/lagoon. Jan Goebel of the North Coast Regional Water Quality Control Board (NCRWQCB) was contacted regarding the project and commented as follows:

1. A construction stormwater pollution prevention plan is required for this project.
2. The proposed retaining wall is located downgradient of the Unocal Gualala gasoline station groundwater contamination. Any dewatering of the trench for construction purposes must be contained and sampled. This water may not be discharged to surface waters without a permit.

Ms. Goebel additionally commented that she would like Paul Keiran of her office to look at the

proposed stormwater treatment system. Staff spoke with Mr. Keiran over the phone on October 18, 2007. Mr. Keiran reiterated the comments made by Ms. Goebel and additionally commented that staff should clarify the party responsible for maintenance of the stormwater treatment system. Special Condition Number 4 is recommended to address NCRWQCB comments.

The project would occur less than 100 feet upslope from the Gualala River Estuary/Lagoon and esturine/intertidal wetlands. As required by the Mendocino County Coastal Zoning Code, a reduced buffer analysis per Section 20.496.020 has been conducted by BioConsultant, the biological consulting firm. The reduced buffer analysis is included as Appendix A. The buffer width has been set at 50 feet. On the subject parcel, minimum distance from the project area to the resource area is 50 feet. No development would occur within the buffer area with the exception of restoration planting and invasive species removal. A representative from the California Department of Fish and Game visited the site with County planning staff on September 20, 2007, and agreed that the 50 foot buffer is adequate to protect the resource area. As outlined on page 16 of the BioConsultant LLC Botanical Survey dated August, 2007, the project includes extensive measures to avoid impacts to the downslope Gualala River Estuary/Lagoon and esturine/intertidal wetland ESHAs during and after construction, as follows:

- ❖ Implementation of a Storm Water Pollution Prevention Plan (SWPPP) consisting of site-specific measures to reduce impacts to water quality and protect the adjacent estuarine habitats during construction.
- ❖ Adoption of 20-25 construction site best management practices (BMPs) in the SWPPP.
- ❖ Use of the reinforced "Super Silt Fence" at the limits of construction to prevent sediment, rock, debris and/or other materials from entering the ESHAs during construction.
- ❖ The implementation of the comprehensive restoration plan will not only revegetate disturbed areas reducing the potential for erosion, but also will restore the historically altered coastal scrub habitat all along the length of the bluff and eliminate the widespread invasive weeds. The restored coastal scrub habitat will produce greater native plant biodiversity, in turn creating higher quality wildlife habitat with pleasing aesthetic and scenic values.
- ❖ Scheduling project activities during the dry season.
- ❖ Early completion of the project to allow vegetative erosion control measures to start to become effective prior to the rainy season (BioConsultant, August 2007).

Special Condition Number 2 is recommended to require all mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, as a mandatory condition of approval of the subject Coastal Development Permit.

- F. Alteration in the rate of flow of groundwater. The project would not significantly impact the rate of flow of ground water.
- G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations: While the project proposes to improve existing surface water drainage, no impacts to groundwater are indicated.
- H. Substantial reduction in the amount of water otherwise available for public water supplies: The project would not impact public water supplies.

- I. Exposure of people or property to water related hazards such as flooding or tsunamis: According to FEMA maps, the project area is upslope of the 100 year flood area. The project area is not subject to flooding, and is not located in a tsunami hazard zone. The project would not result in exposure to people or property to water related hazards such as flooding or tsunamis.

**Plant Life (Item 4):**

- A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants: Botanical surveys of the project area occurred on May 3, June 13, and July 5, 2007, adequately spaced to encompass blooming windows of all potentially present plant species of concern, as outlined in Appendix B of the botanical survey report dated August, 2007. According to the survey report, the project would result in impacts to the existing vegetated hillside, including existing invasive and ruderal plants, and northern coastal scrub habitat. While the northern coastal scrub habitat is not protected as a rare or endangered plant community under the Coastal Act, as outlined on page 14 of the botanical survey report by BioConsultant, the habitat is valuable for its biological values and functions and aesthetics. BioConsultant proposes a comprehensive, long-term plan to restore the original habitat values and slope stabilizing function of the coastal scrub vegetation to mitigate potential impacts to a level of less than significant. The specific recommendations shown as follows are outlined on page 15 of BioConsultant's botanical survey report:

- ❖ Schedule a site visit by a restoration professional prior to the onset of construction activities to examine pre-construction conditions and to locate occurrences of invasive weeds, noting in particular those areas where invasive weeds are rooted in the middle slope and lower bluff toe areas.
- ❖ Retain as many of the existing large blue blossom and silk tassel bush as possible.
- ❖ Utilize existing native shrub species in the plantings: silk tassel bush, blue blossom, coyote brush, thimbleberry, California blackberry, and oso berry.
- ❖ Use large-size (5 gal. or greater) container shrubs and provide irrigation as needed. Install erosion control fabric on filled areas and other bare soil, densely seeding these areas with fast-growing native perennial California brome to help hold the soil in the first year after construction and to outcompete non-native velvet grass and other weeds.
- ❖ Remove jubata grass and pride of Madeira (Echium) from the toe of the bluff, replacing these species with native shrubs.
- ❖ Focus weed eradication strategies on eliminating the most noxious of the invasive weeds (Himalayan blackberry, capeweed, greater periwinkle, jubata grass, ice plant, and pride of Madeira), and devise follow-up strategies to eliminate and/or control poison hemlock, wild radish, velvet grass, Harding grass, wild teasel, bull thistle, and Italian thistle.
- ❖ Design and implement a long-term monitoring effort and make modifications to the restoration plan as needed (BioConsultant, August 2007).

Special Condition Number 2 is recommended to require all mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, as a mandatory condition of approval of the subject Coastal Development Permit. As mitigated, the project would have a less than significant impact on plant diversity and populations.

- B. Reduction of the numbers of any unique, rare, or endangered species of plants: Botanical surveys of the project area occurred on May 3, June 13, and July 5, 2007, adequately spaced to encompass blooming windows of all potentially present plant species of concern, as outlined on pages seven and eight (Table 1.) of the botanical survey report dated August, 2007. As summarized on page nine of the botanical survey report, no special status plant species were identified in the project area. The project would have no impact on any unique, rare or endangered species of plants.
- C. Introduction of new species of plants into an area, or in a barrier to the migration or movement of animals: The project would result in 285 length feet of retaining wall with a height varying from approximately three to 12 feet above finished grade, and an average height of approximately six feet above finished grade on the subject parcel (see Exhibit B, wall profile). Cumulatively, the wall would span 390 length feet when connected to the proposed wall on the parcel to the immediate south. It is likely that the wall would provide a limited barrier to the movement of small animal species, however, the barrier effectively divides a natural area from a developed area. The area east of the proposed wall consists of the coastal access trail, with a parking area beyond, commercial buildings beyond that, and the highway beyond that. Therefore, since the barrier may actually prevent the movement of small animal species in the direction of the highway, therefore potentially protecting animals from vehicle related deaths, the barrier may have potential positive impacts to the movement of animals. The project is not likely to negatively impact the movement of animal species. The project would not result in a barrier to any known animal migrations. As mitigated, the project would result in the introduction of native plant species only, and would result in a decrease in exotic and invasive plants.
- D. Reduction, in acreage, of any agricultural crop: The project would not result in the reduction in acreage of any agricultural crop.

**Animal Life (Item 5):**

- A. Change in the diversity of species, or number of any species of animals, including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms: According to the botanical survey report by BioConsultant (page 16), the project has the potential to impact wildlife species due to noise generated during construction activities, and potential to impact common resident wildlife species during the excavation and removal phase. Common wildlife species found within the project area to be potentially impacted include resident white crowned sparrow (*Zonotrichia leucophrys nuttalli*), several species of common hummingbirds, raccoons (*Procyon lotor*) and woodrats (*Neotoma fuscipes*). The woodrat and raccoon habitat areas were found near the toe of the bluff, outside of the project impact area. BioConsultant contends that both woodrats and raccoons are highly adaptable to noise impacts, and are not expected to be significantly affected. BioConsultant recommends the following mitigation measures to minimize impacts to resident bird species:

- ❖ Schedule the excavation and vegetation removal activities after May 15<sup>th</sup>. This should allow the white-crowned sparrow and the hummingbirds sufficient time to successfully fledge one brood. Both the sparrow and the hummingbirds have relatively early nesting dates and usually lay several clutches.
- ❖ Implement the restoration plan and invasive weed control program to enhance the coastal scrub habitat, which in the long-term will support greater native plant biodiversity, and create high quality wildlife habitat for the resident avifauna (BioConsultant, August 2007).

Special Condition Number 2 is recommended to require all mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, as a mandatory condition of approval of the subject Coastal Development Permit. As mitigated, the project would have a less than significant impact on animal diversity and populations.

- B. Reduction in the number of any unique, rare, or endangered species of animals: As outlined on page 17 of the botanical survey report by BioConsultant, harbor seals (*Phoca vitulina*) and brown pelicans (*Pelecanus occidentalis*) are known to occur approximately ½ mile away, across the estuary/lagoon, at the Gualala Regional Point Park. Regarding these species, the botanical report states:

The distance, the physical barrier of the estuary, and the habituation capabilities of the harbor seal should be sufficient to avoid significant disturbance. The peak in the noise generating activities will occur prior to the late summer arrival of the brown pelican and therefore should not cause significant impacts (BioConsultant, August 2007).

As mitigated, the project is not likely to result in the reduction in number of any unique, rare, or endangered species of animals.

- C. Introduction of new species of animals into an area, or a barrier to the migration or movement of animals: The project does not propose nor would it be conducive to the introduction of new animal species into an area. There are no known animal migratory routes in the area.
- D. Deterioration of existing fish or wildlife habitat: As mitigated, the project would not cause deterioration of existing fish or wildlife habitat. The project would result overall in positive impacts to existing fish and wildlife habitat in that erosion and stormwater runoff would decrease, invasive plants would be removed, and community appropriate native plants would be established.

**Noise (Item 6):**

- A. Increases in existing noise levels: The only noteworthy noise generated by the project will be that of construction activity associated with project implementation. To reduce these temporary construction related noise impacts to nearby visitor serving facilities, Special Condition Number 3 is recommended, limiting noise related construction activities to occur between the hours of 8 am and 5 pm, Monday through Friday. As mitigated, noise impacts will not be significant.
- B. Exposure of people to severe noise levels: The project would not expose people to severe noise levels.

**Light and Glare (Item 7):**

- A. Production of new light and glare: The project does not include any exterior lighting or any glare producing infrastructure. No light or glare impacts would occur.

**Land Use (Item 8):**

- A. Substantial alteration of the present or planned use of a given area: The parcel is classified on the Coastal Plan Map and zoned as Gualala Village Mixed Use (GVMU). The proposed development is accessory to the existing on-site commercial development including the unpaved parking area, and coastal trail, which are principally permitted uses in the GVMU district, and consistent with the GVMU land use classification.

The site located west of the highway, therefore the height limit is 18 feet above average finished grade, except where exceptions apply. The proposed retaining wall would not rise significantly above grade and therefore complies with the height limit.

The project would not impact the existing view corridor in that views to the ocean would not be impeded by the retaining wall.

The retaining wall would not significantly impact lot coverage.

The proposed retaining wall would allow for continued use east of the retaining wall for the public access trail. The applicant has indicated a desire to create a paved parking area in the general area at a future time, in association with a future redevelopment plan (see PAC 1-2007). The proposed drainage improvements and retaining wall would facilitate such future parking improvements by reducing potential erosion and drainage impacts resulting from the creation of impervious surfaces in this area. Overall, the project would not result in substantial alteration of present or planned use of the given area, as the area would continue to be used for the public access trail within the 25 foot trail easement area, and may possibly continue to be used for parking associated with existing on-site commercial developments beyond the trail easement area.

**Natural Resources (Item 9):**

- A. Increase in the rate of use of any natural resources: The project would not result in increases in the rate of use of any natural resources.

**Population (Item 10):**

- A. Alterations in the location, distribution, density, or growth rate of human populations: The project would not affect the location, distribution, density or growth rate of human population.

**Housing (Item 11):**

- A. Will the proposal affect existing housing or create a demand for new housing? The project would not affect existing housing or create a demand for new housing.

**Transportation/Circulation (Item 12):**

- A. Generation of substantial additional vehicular movement? The project would minimally contribute to traffic on local and regional roadways in a temporary manner during construction activities. The project would not result in substantial additional vehicular movement.
- B. Effects on existing parking facilities, or demand for new parking? The project would not generate the need for parking. The existing unpaved parking area would be temporarily impacted.
- C. Substantial impact upon existing transportation systems? The project would not significantly impact existing transportation systems.
- D. Alterations to present patterns of circulation or movement of people and/or goods? The project area would not cause substantial hindrance to any existing circulation areas. Temporary impacts to

circulation of people on the coastal access trail would occur during construction (discussed in the Public Access and Recreation section, Item 18, below), and the project would temporarily impact the unpaved parking area. The project would not have long-term impacts on present patterns of circulation or movement of people and/or goods.

- E. Alterations to waterborne, rail, or air traffic? The project area would not result in alterations to waterborne, rail or air traffic.
- F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians. The project is not expected to result in an increase in traffic hazards to motor vehicles, bicyclists, or pedestrians.

**Public Services (Item 13):**

- A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas: Fire protection, police protection, schools, parks and other recreational facilities, other governmental services? The project would not impact government services, and would not result in the need for new or altered government services.
- Maintenance of public facilities, and roads? The project would have an insignificant effect upon public facilities, and would not result in the need for new or altered government services.

**Energy (Item 14):**

- A. Use of substantial amounts of fuel or energy? There would be no significant consumption of energy as a result of the proposed project.
- B. Substantial increase in demand upon existing sources of energy, or require the development of new energy sources? The project would not place a substantial increase in demand upon existing sources of energy, and would not require the development of new energy sources.

**Utilities (Item 15):**

- A. Will the project result in a need for new systems or substantial alterations to the following:
- Potable water: The project would not result in the need for a new water system.
- Sewerage, Energy or information transformation lines: The project includes the removal and relocation of two existing on-site septic tanks. The tanks serve the existing on-site commercial structures. These tanks serve as effluent collection and pumping tanks to the sewer mains in Highway 1 which are owned and operated by the Gualala Community Service District (GCSD). Therefore all effluent is treated and disposed at the GCSD plant and not onsite. The project was referred to the County Division of Environmental Health (DEH). David Jensen of DEH responded on May 9, 2007, that "DEH can clear this CDP with the revised new tank locations as indicated in RAU & Associates letter dated May 2, 2007." The project would not result in an intensification of on-site septic disposal, and the septic tanks would be relocated further from the bluff edge than the existing septic tanks, therefore potential environmental impacts would be decreased. Such replacement is allowable within the trail easement area, according to the Mutual Settlement Agreement and Release by and between Bower Limited Partnership, John H. Bower, Redwood Coast Land Conservancy, Shirley Eberly, Lois Lutz and California Coastal Commission (Case No. SCUK CVG 0594172), which reads as follows (pertinent part):

RCLC [Redwood Coast Land Conservancy] agrees that subject to the limitations in this agreement, BLP [Bower Limited Partnership] is entitled to access and use of the easement areas for uses that are not

inconsistent with the public pedestrian access authorized by the May 2004 Mendocino County coastal development permit. Such access and use may include, but is not limited to replacement of the retaining wall on Parcel 5, installation of a retaining wall on Parcel 13, installation and relocation of necessary utilities on Parcels 5 and 13, provided that BLP obtains all necessary permits for such work, including coastal development permits where required. RCLC understands and agrees that such work may result in temporary disruption and/or temporary relocation of pedestrian access on RCLC's easement area. BLP further agrees that to the extent that any of its use of or access to the easement area damages the public pedestrian access amenities constructed by RCLC, BLP will expeditiously repair such damage at BLP's expense (Bower Limited Partnership vs. Redwood Coast Land Conservancy and California Coastal Commission, 2007 (Item 10)).

The project will not result in the need for new septic systems or for substantial alterations. The relocation and upgrade are proposed because the timing is beneficial – it is advantageous to relocate and upgrade the tanks to more appropriate positions while the fill is being removed anyway. Existing septic location number 1, shown in Figure 1, straddling the boundary between parcels APN 145-261-13 and APN 145-261-05, is currently exposed due to erosion. The upgraded septic system in this area would be placed approximately 14 feet east of the retaining wall, entirely on parcel 145-261-05, which is under the Coastal Commission's jurisdiction. Therefore, the relocation and upgrade of this septic system requires approval by the Coastal Commission. Septic relocation number 1 is included in this report only because the tank would be relocated from part of the subject parcel. Septic relocation number 2 would be relocated from its present location, shown on Figure 1 as in the center of the subject parcel, approximately 15 feet east of the proposed retaining wall. Septic system 2 would be relocated further north, still approximately 15 east of the proposed retaining wall. From a geotechnical standpoint, the replacement areas are dependant upon approval of the retaining wall, in that the relocation areas were chosen based upon the assumption that the retaining wall would be installed.

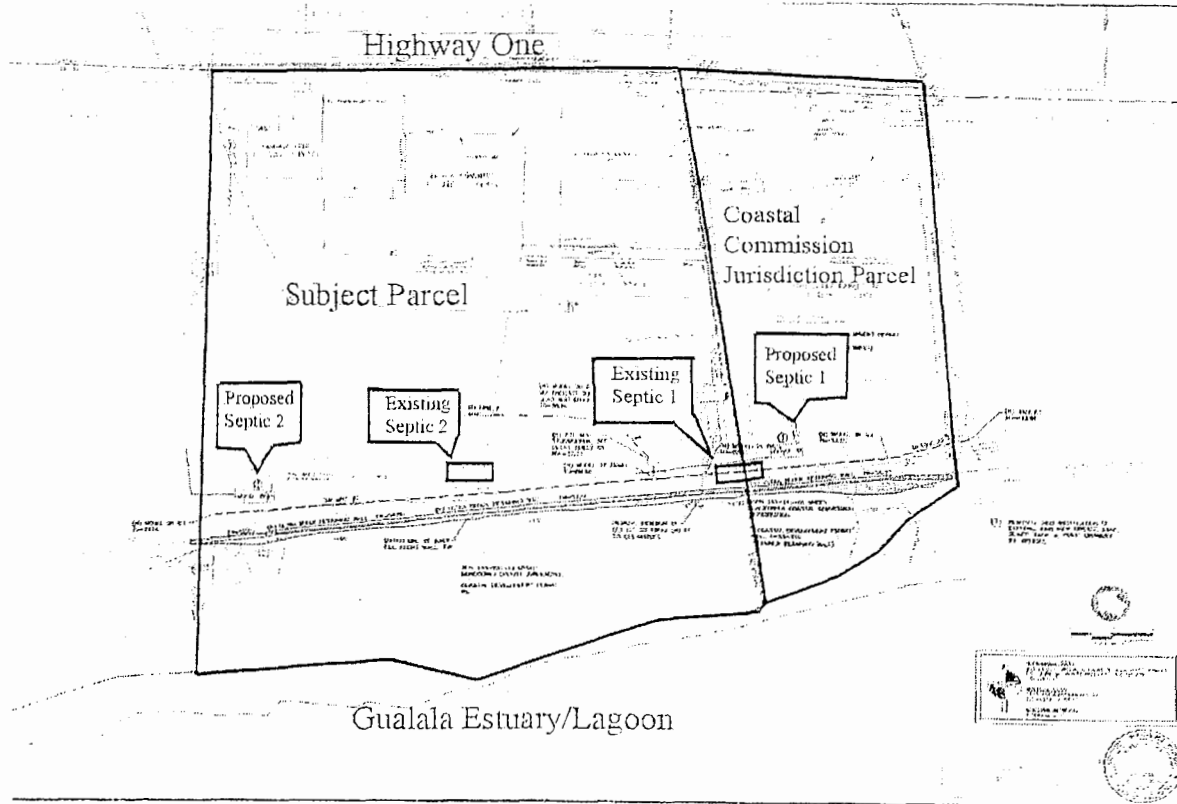


Figure 1. RAU site plan as modified by staff to show existing and proposed septic locations.



Section 20.500.020(E)(4) of the Mendocino County Coastal Zoning Code requires the recordation of a deed restriction in association with all Coastal Permits for blufftop residential or commercial development. Section 20.500.020(E)(4)(c) of that requirement stipulates that "The landowner shall not construct any bluff or shoreline protective devices to protect the subject permitted residence, guest cottage, garage, septic system, or other improvements in the event that these structures are subject to damage, or other natural hazards in the future". Such a deed restriction has not been recorded on the subject parcel to date, as most development upon the lot predates this requirement. The deed restriction was not included in CDP 23-2003 for the Gualala Bluff Trail for the following reasons, as outlined in the staff report:

First, the access easements are fixed on the ground. As the natural bluff erosion occurs through time the width of the easement will continue to be reduced. If RCLC or its successors were made to agree to move the rail back from the bluff, it would probably cease to exist, as the trail would literally run out of room. The engineering performed by BACE and Moffat & Nichol Engineers should assure that the original trail construction is designed in the most responsible geotechnically feasible manner possible. Also, phase one of the trail was approved without the benefit of the deed restriction so as a matter of course the existing portion of the trail is not subject to the deed restriction. Second, it can be anticipated that if bluff erosion should begin to undermine the existing commercial development east the trail, such as Building C at the Breaker's Inn for example, an application would be made to arrest erosion with a seawall or retaining structure to protect existing development. The County LCP provides the possibility to protect existing development when it is undermined by shoreline erosion per Section 20.500.020 of the MCCZC. The County has a responsibility to try and maintain the public access provided by the Gualala Bluff Trail due to the high priority the Coastal Act gives to public access and the policies of the LCP. Finally, any proposed seawall would require an amendment to this permit or a separate permit at which time the proposal could be thoroughly analyzed and discussed (Miller, 2004).

The deed restriction requirement was also not included in CDP 24-2007, because the project consisted of demolition and removal,<sup>2</sup> not new development<sup>2</sup>, therefore the deed restriction would not be applicable to any structures.

For the subject permit, the deed restriction is not applicable, because all structures are existing, the exception being the proposed retaining wall. As pointed out by Julie Price, Environmental Planner for RAU and Associates, and agent for the project, the proposed relocation and upgrade of the septic equipment meets the definition of "Repair and Maintenance of Public Utilities," which is normally considered as exempt from the Coastal Permit process according to the Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements, adopted by the California Coastal Commission on September 5, 1978. The septic relocation is included in the subject CDP because it is possible that due to the proximity of the estuary, the repair may not be exempt. In any case, the proposed repair and maintenance is not new development, therefore the deed restriction requirement does not apply to the septic repair aspect of the project. To apply the "no retaining wall" deed restriction to the proposed retaining wall, the only new development applicable, would not be appropriate. Therefore, the deed restriction requirement is not included in the subject CDP.

---

<sup>2</sup> Section 20.500.020(E)(4)(e), a portion of the deed restriction requirement, states that "The requirements of subsection (d) [for removal of existing infrastructure should bluff retreat threaten] shall not apply to residences or associated improvements on the property that pre-date the subject coastal permit."

Human Health (Item 16):

- A. Creation of any health hazard or potential health hazard? The project is not expected to result in the creation of health hazards or potential health hazards to humans.
- B. Exposure of people to any existing health hazards? The project would not result in the exposure of people to any existing health hazards.
- C. A risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions? The project includes the use of machinery requiring gasoline and oil. Best Management Practices (BMPs) are to be adopted in conjunction with the implementation of the Storm Water Pollution Prevention Plan. As mitigated, the project would not indicate significant risks of explosion or the release of hazardous substances.
- D. Possible interference with an emergency response plan or evacuation plan: The project would not interfere with any emergency response plan or evacuation plan.

Aesthetics (Item 17):

- A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view? The parcels upon which the retaining wall is proposed (APN 145-261-13, subject parcel; APN 145-261-05, Coastal Commission jurisdiction parcel) are not located in a designated highly scenic area according to the Coastal Plan Map. However, analysis of aesthetic issues relating to appearance and views to and along the ocean are required for all development in the coastal zone. The importance of aesthetics is evidenced by policies in the County's Coastal Element which apply to all areas in the coastal zone regardless of location in a designated highly scenic area:

Coastal Plan Policy 3.5-1 of the Mendocino County Coastal Element states in pertinent part:

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

The project would result in 285 length feet of retaining wall with a visible height varying from approximately three to twelve feet. The wall will extend a maximum of approximately one and one half feet above finished grade of the bluff trail, with the remaining height extending below the bluff trail. The wall has an average height of approximately six feet below finished grade of the bluff trail on the subject parcel (see Exhibit B, wall profile). Cumulatively, the wall would span 390 length feet when connected to the proposed wall on the parcel to the immediate south. Visual impacts would be greatest on the south parcel (the portion of the project under Coastal Commission Jurisdiction) as the wall would be roughly 25 feet high at its most visible point. The top of the retaining wall would be at bluff trail grade, to as much as one and one half feet above grade, as viewed from the subject parcels, so it would not impact views to or along the ocean from that perspective, however the retaining wall would be visible from the Gualala Point Regional Park, located across the estuary/lagoon in Sonoma County. From this perspective, the retaining wall would be backdropped by existing commercial structures, which appear as a continuous line of light blue buildings, spanning both parcels. Sonoma

County Regional Parks was notified regarding the project, and Mark Cleveland, Supervising Park Planner, responded in a letter dated November 20, 2006 as follows (pertinent part):

Per the plans and project description submitted with this application, the proposed concrete block retaining wall will vary between 15 and 30 feet in height. The exposed and visible portions of the wall as shown in the sections provided with the plans indicate that at Section CC approximately 25 feet of this retaining wall will be visible from the river and our park. This poses a significant impact to the visual aesthetics and should be mitigated. No landscaping or other screening elements are included with the project, primarily due to the steep terrain and the desire to stay as far away as possible for the Gualala River.

Sonoma County Regional Parks would like to recommend the use of a concrete crib wall instead of a closed masonry wall. This would allow vegetation to be established in the open interstices between the concrete wall units to soften and minimize, to the extent possible, the visual and aesthetic impacts of this significant structure to park and river users.

As stated above, Mr. Cleveland considers Section CC, the section of wall to be located in Coastal Commission jurisdiction, to pose a significant impact, necessitating mitigation to soften visual effects. The portions of wall located on the subject lot would not be as visually apparent as the Coastal Commission portion, but would increase the cumulative impact, and would nonetheless be visible in and of itself. Therefore mitigations are warranted for the section of wall proposed on the subject lot, to reduce visual impacts to a level of less than significant. In speaking with JR Ashcraft of RAU and Associates, staff learned that different wall and finish types were considered that would best blend with the area visually. The crib type wall that Mr. Cleveland suggests was ruled out because it would require a wider base, and therefore a greater amount of excavation into the bedrock. Geotextile grid installation was also considered, heading horizontally through the fill toward the existing commercial buildings, to a distance of approximately 50+ feet, and there simply is not enough room due to the presence of existing structures. Visual mitigations proposed include a "California Random Stone" face, to be stained with Sherman Williams "Foothills" stain (SW 7514). Staff recommends the stain to be applied in a manner that allows for some natural contrast between the faux stone facing and the contoured faux grout areas. In addition, native plants are to be planted on the finished grade downslope of the wall, including community appropriate native vines that will climb the wall and provide for a softening effect. Special Condition Number 2 is recommended to require the proposed and requested mitigation measures as outlined here, as mandatory conditions of approval. As conditioned, the project would not result in significant impacts to visual resources.

**Public Access & Recreation (Item 18):**

A. Impact upon the quality or quantity of existing recreational opportunities? The project is located within the easement of the Gualala Bluff Trail, an existing coastal access trail that is approximately ½ to ¾ of the way finished on the subject lot. The project would result in temporary direct impacts to the Gualala Bluff Trail, in that the portion of the trail within the project area would have to be temporarily closed or re-routed during construction activities. No permanent detrimental impacts would occur to the quality or quantity of existing recreational opportunities as a result of the proposed project, therefore impacts would be less than significant.

**Cultural Resources (Item 19):**

A. Alteration or destruction of a prehistoric or historic archaeological site? As indicated on page CPA-10 of the Staff Report for CDP 23-2003, the site was surveyed for archaeological/cultural resources during the analysis for phase two of the Gualala Bluff trail. The survey was conducted by Tom Origer

& Associates, who summarized in their survey report dated September 13, 2001, that no evidence existed of any archeological or other historical resources on the site. The survey was accepted at the County Archaeological Commission hearing held May 14, 2003 (Miller 2004). Nonetheless, the applicant is advised by Standard Condition Number 8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction. The project would not impact prehistoric or historic archaeological sites.

- B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure? As indicated on page CPA-10 of the Staff Report for CDP 23-2003, the site was surveyed for archaeological/cultural resources during the analysis for phase two of the Gualala Bluff trail. The survey was conducted by Tom Origer & Associates, who summarized in their survey report dated September 13, 2001, that no evidence existed of any archeological or other historical resources on the site. The survey was accepted at the County Archaeological Commission hearing held May 14, 2003 (Miller 2004). Nonetheless, the applicant is advised by Standard Condition Number 8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction. The project would not impact prehistoric or historic buildings or structures.
- C. Cause a physical change that would affect the unique ethnic cultural values? The project would not cause a physical change that would affect any unique cultural values.
- D. Restrict existing religious or sacred uses within the potential impact area? There are no known existing religious or sacred uses within the potential impact area. The project would not impact religious or sacred uses.

#### ENVIRONMENTAL RECOMMENDATION:

No significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Negative Declaration is recommended.

**GENERAL PLAN CONSISTENCY RECOMMENDATION:** The proposed project is consistent with applicable goals and policies of the General Plan.

#### RECOMMENDED MOTION:

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

**Environmental Findings:** The Coastal Permit Administrator finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

**Coastal Development Permit Findings:** Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator approves the proposed project, and adopts the following findings and conditions.

**FINDINGS:**

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

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall 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 or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within 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.
9. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game fining fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,850.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 24, 2007 (within 5 days of the end of any appeal period). Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

SPECIAL CONDITIONS:

1. Prior to the issuance of the grading permit, the applicant shall submit for approval by the Coastal Permit Administrator, an erosion control and Storm Water Pollution Prevention Plan, in compliance with Sections 20.492.010(E-G) and 20.492.015 of the Mendocino County Coastal Zoning Code, and in conformance with mitigation measures outlined by BioConsultant in the botanical survey report for the subject parcel, dated August, 2007, as follows:
  - ❖ Implementation of a Storm Water Pollution Prevention Plan (SWPPP) consisting of site-specific measures to reduce impacts to water quality and protect the adjacent estuarine habitats during construction.
  - ❖ Adoption of 20-25 construction site best management practices (BMPs) in the SWPPP.
  - ❖ Use of the reinforced "Super Silt Fence" at the limits of construction to prevent sediment, rock, debris and/or other materials from entering the ESHAs during construction.
  - ❖ All excavation and vegetation removal activities shall occur after May 15<sup>th</sup>, with peak noise generating activities ceasing prior to August 15, and all ground disturbing activities ceasing October 15.
2. The Gualala River estuary/lagoon and associated estuarine/intertidal wetland shall be protected in perpetuity on-site with a minimum 50 foot buffer. No development or placement of materials shall occur within the Environmentally Sensitive Habitat Areas or 50 foot buffer area with the exception of the proposed weed control and habitat restoration activities. All mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, are hereby required as a mandatory condition of approval of the subject Coastal Development Permit:

Prior to issuance of the Coastal Development Permit, the applicant shall submit for approval to the Coastal Permit Administrator, a comprehensive, long-term plan to restore the original habitat values and slope stabilizing function of coastal scrub vegetation at the Project Site. The plan shall utilize native plantings based on the results of the plant inventory (Appendix C of the botanical survey report by BioConsultant, dated August 2007) and habitat conditions, and shall be designed to revegetate disturbed areas and bare soil, restore stable northern coastal scrub all along the length of the bluff, visually buffer the retaining wall from the Gualala Point Regional Park (including native vine type plants that can grow up the wall), and eliminate invasive weeds. The plan shall be implemented by a professional restoration company and shall incorporate a restoration monitoring component. Cooperative efforts between the landowner and RCLC, the Dorothy King Young chapter of the California Native Plant Society, and the Mendocino Coast Cooperative Weed Management Area is encouraged. The following guidelines as outlined in the botanical survey report shall guide the final restoration plan:

- ❖ Schedule a site visit by a restoration professional prior to the onset of construction activities to examine pre-construction conditions and to locate occurrences of invasive weeds, noting in particular those areas where invasive weeds are rooted in the middle slope and lower bluff toe areas.
- ❖ Retain as many of the existing large blue blossom and silk tassel bush as possible.

- ❖ Utilize existing native shrub species in the plantings: silk tassel bush, blue blossom, coyote brush, thimbleberry, California blackberry, and oso berry.
- ❖ Use large-size (5 gal. or greater) container shrubs and provide irrigation as needed. Install erosion control fabric on filled areas and other bare soil, densely seeding these areas with fast-growing native perennial California brome to help hold the soil in the first year after construction and to outcompete non-native velvet grass and other weeds.
- ❖ Remove jubata grass and pride of Madeira (Echium) from the toe of the bluff, replacing these species with native shrubs.
- ❖ Focus weed eradication strategies on eliminating the most noxious of the invasive weeds (Himalayan blackberry, capeweed, greater periwinkle, jubata grass, ice plant, and pride of Madeira), and devise follow-up strategies to eliminate and/or control poison hemlock, wild radish, velvet grass, Harding grass, wild teasel, bull thistle, and Italian thistle.
- ❖ Design and implement a long-term monitoring effort and make modifications to the restoration plan as needed.

To mitigate for potential impacts to wildlife, the following measure, as outlined in the botanical survey report by BioConsultant, dated August 2007, shall be required:

- ❖ All excavation and vegetation removal activities shall occur after May 15<sup>th</sup>, with peak noise generating activities ceasing prior to August 15, and all ground disturbing activities ceasing October 15.

The retaining wall shall be faced with the proposed quarry rock facing. Sherwin Williams stain number SW 7514 (Foothills) or equivalent as approved by the Coastal Permit Administrator, shall be applied to the retaining wall face by hand, prior to installation. The stain shall be applied in a manner that will create a natural looking contrast between the quarry rock portion of the face and the grout portion of the face. Maintenance shall occur as needed to assure that the face of the wall remains visually appealing over time.

3. Noise generating construction activities shall be limited in duration to between the hours of 8:00 am and 5:00 pm, Monday thru Friday only. The intent of this condition is to limit noise impacts to nearby visitor serving facilities.
4. Prior to issuance of the grading permit, and prior to construction activities, the applicant shall provide written documentation to the Coastal Permit Administrator that all necessary permits from the North Coast Regional Water Quality Control Board, including the permit associated with the construction stormwater pollution prevention plan, have been secured. Any dewatering of the trench for construction purposes must be contained and sampled. This and any other ground water encountered during the project shall not be discharged to surface waters without prior permission from the North Coast Regional Water Quality Control Board. The applicant shall be responsible for maintenance of the stormwater treatment system for the life of the project.
5. A copy of the staff report and coastal permit for CDP 55-2006 shall be provided to the contractor and all sub-contractors conducting the work, and must be in their possession at the work site. This requirement is intended to ensure that the project construction is done



STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

CDP# 55-2006 (Bower)  
November 19, 2007  
CPA-24

in a manner consistent with the submitted application and all other supplemental information contained in the staff report.

Staff Report Prepared By:

October 23, 2007  
Date

Teresa Beddoe  
Teresa Beddoe  
Planner I

Attachments: Exhibit A Location Map  
Exhibit B Zoning Map  
Exhibit C Site Plan  
Exhibit D Retaining Wall/ Storm Drain Profiles  
Exhibit E Retaining Wall Sections  
Exhibit F Details

Appendix A Reduced Buffer Analysis

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

Appeal Fee: \$795 (For an appeal to the Mendocino County Board of Supervisors.)

**SUMMARY OF REFERRAL AGENCY COMMENTS:**

Planning – Ukiah	No comment.
Department of Transportation	No comment.
Environmental Health – Fort Bragg	DEH can clear this CDP with the revised new tank locations as indicated in RAU & Associates letter dated May 2, 2007.
Building Inspection – Fort Bragg Assessor	No comment. No response.
Department of Fish & Game	Botanical survey (following DFG guidelines) is needed. Other comments as indicated in the staff report and project file.
Native Plant Society	Project may constitute "piecemealing" under CEQA; the project may have significant/cumulative environmental and visual impacts; the project encompasses an environmentally sensitive location; removal of native plants should be kept to a minimum to reduce erosion impacts; new botanical survey needed; invasive weed control issues.
Coastal Commission	The information in the geotechnical report seems to indicate that the bluff is relatively stable and that existing development does not appear to necessitate a current need for protection from erosion.
GMAC	Voted to recommend approval. Hopes that issues between RCLC and Bower can be resolved regarding visual impact and vegetation removal.

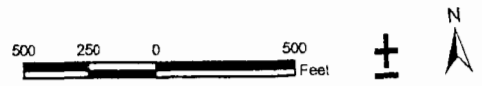
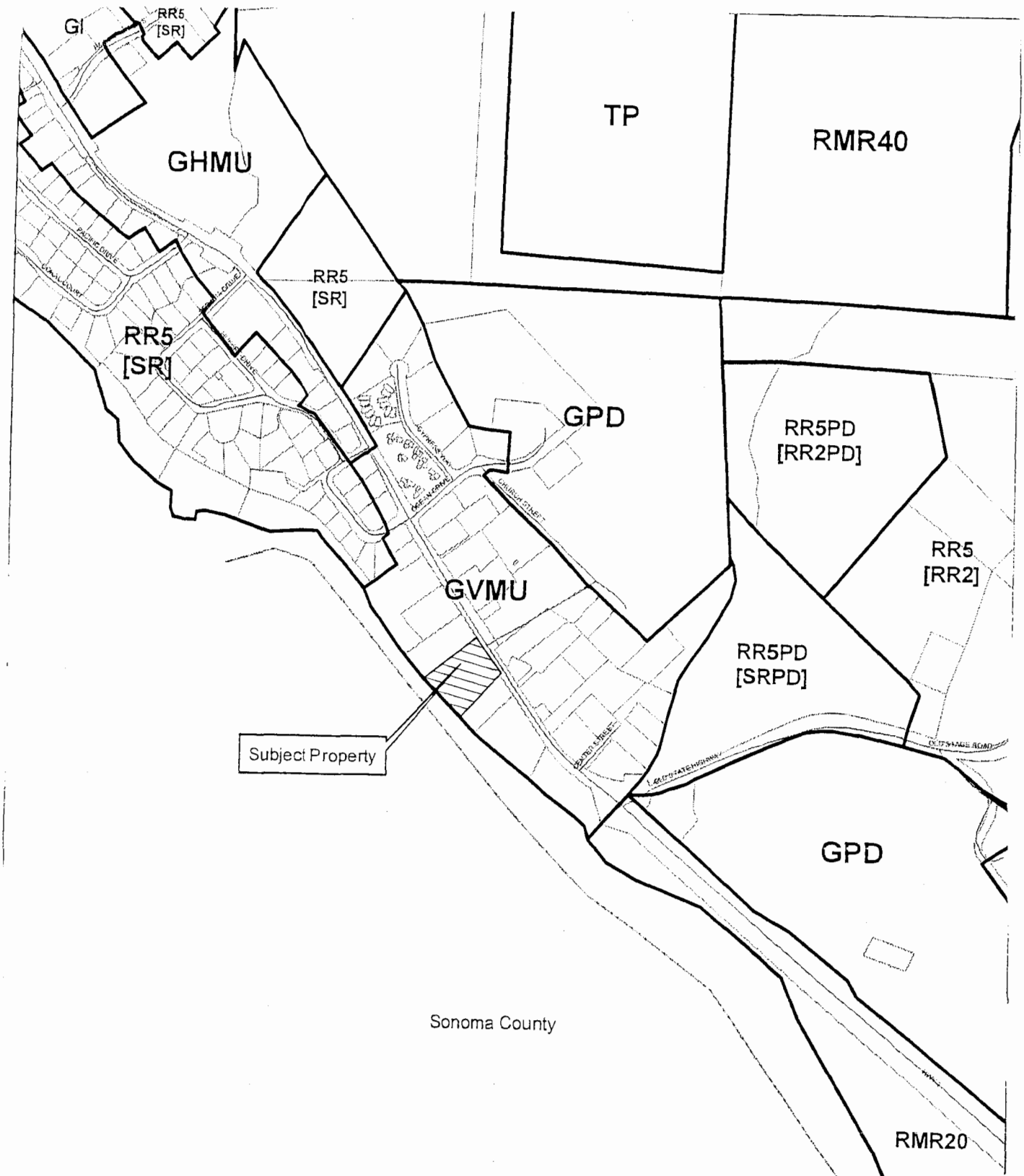
STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

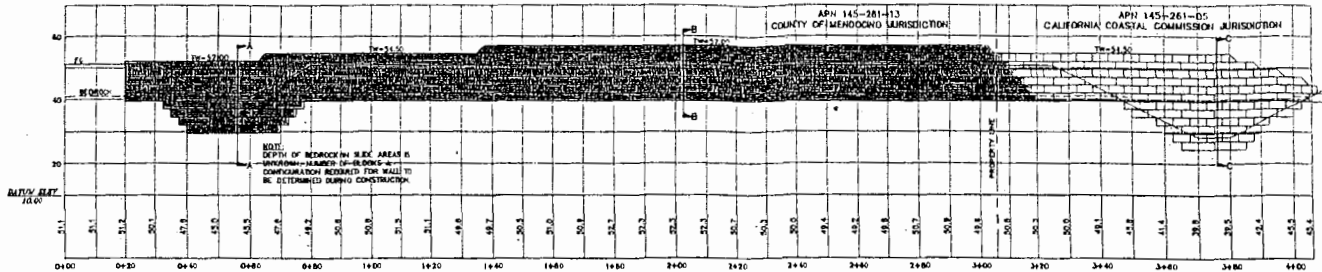
CDP# 55-2006 (Bower)  
November 19, 2007  
CPA-25

NCRWQCB Redwood Coast Land Conservancy	No comment. Concerns include whether the wall is actually needed, or if there are more localized solutions to failures; visual impacts of the wall, disturbance to native vegetation, drainage, and potential disruptions to the trail.
North Gualala Water Company	No impact of North Gualala Water Co.'s facilities proposed in this project. NGWC whole heartedly supports this project. Community, coastal & private benefits of the retaining wall & drainage facilities greatly improves downtown Gualala.
South Coast Fire District GCSD	No comment. A 3,000 gallon grease trap will be added to the District's system on APN 145-261-05 as well. The addition of the tank as well as the relocation of all four District tanks and associated equipment will be at the expense of the property owner and shall be done in accordance with the District's specifications. Four new PVC risers will need to be installed as well on the District's tanks. No applications needed for this project.
Sonoma Regional Parks	Concerned with visual impacts of the proposed wall – would recommend a concrete crib wall rather than a closed masonry wall, in order to soften and minimize visual impacts by allowing the growth of vegetation in the interstices.

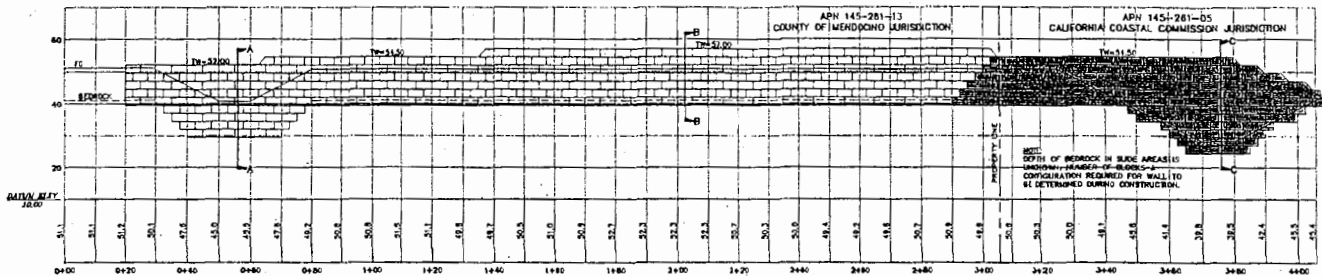
**REFERENCES:**

- Ashcraft, J.R. 2007. *Memorandum to CDP 55-2006 Bower file; Subject: Telephone conversation with JR of RAU and Associates*. September 7, 2007.
- BioConsultant, February 2007. *Wildlife Survey, Bower LLP Project – Gualala (APN 145-261-013 & 005)*. BioConsultant LLC, Santa Rosa, CA.
- BioConsultant, August 2007. *Botanical Survey, Bower LLP Project – Gualala (APN 145-261-013 & 005)*. BioConsultant LLC, Santa Rosa, CA.
- Bower Limited Partnership vs. Redwood Coast Land Conservancy and California Coastal Commission. Case Number SCUK CVG 0594172, Superior Court of California, County of Mendocino, Ukiah Branch. Endorsed-Filed February 16, 2007.
- Fodge, Bruce. 1983. *Staff Report for Coastal Development Permit 1-83-270, John Bower*. California Coastal Commission, North Coast District. December 14, 1983.
- Miller, Rick. 2004. *Staff Report for Coastal Development Permit 23-2003, Redwood Coast Land Conservancy*. Mendocino County Planning Division, April 29, 2004.
- RAU and Associates, Inc., 2006. *Site Reconnaissance and Preliminary Geotechnical Investigation, For Design of Retaining Wall along Gualala River Bluff on Property Identified by Assessor's Parcel Numbers 145-261-05 and 145-261-13, Gualala, Mendocino County, California*. RAU and Associates, Ukiah, CA. July 2006.

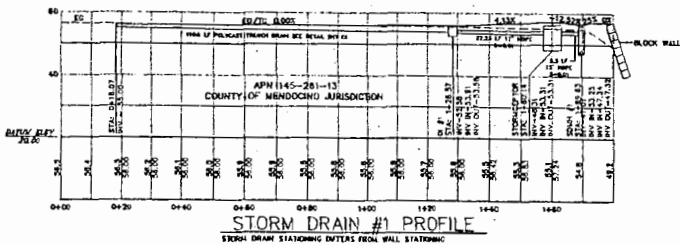




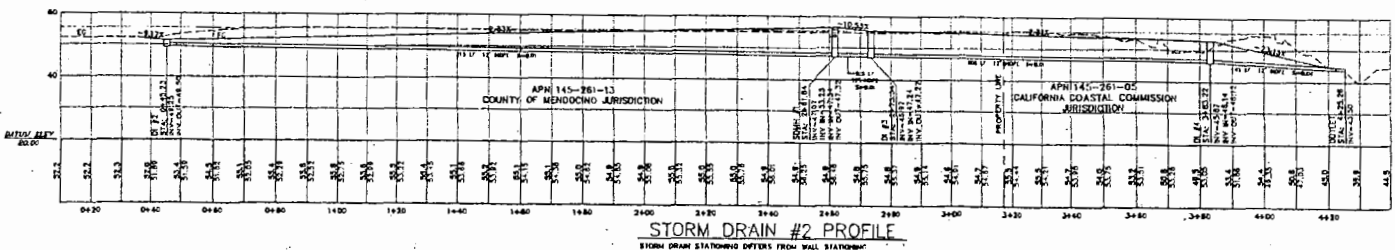
WALL PROFILE



WALL PROFILE



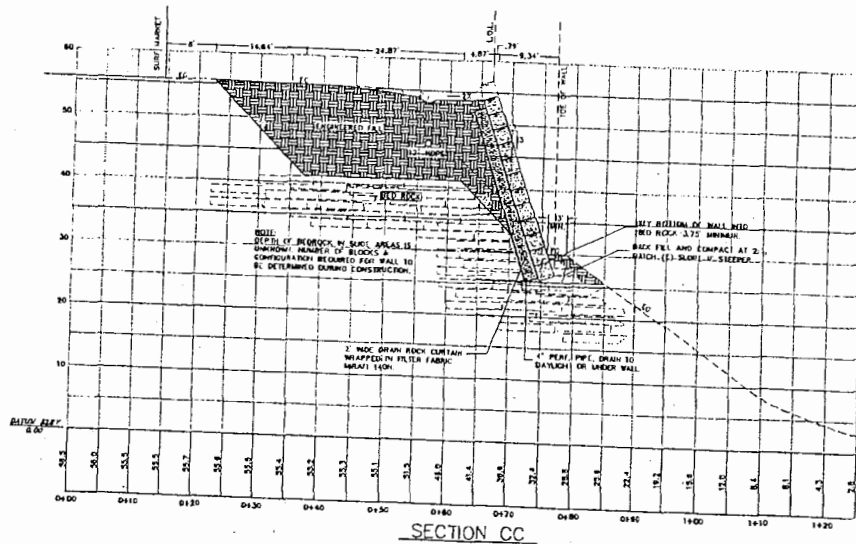
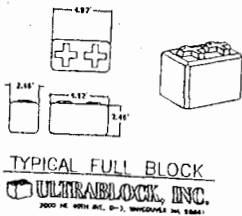
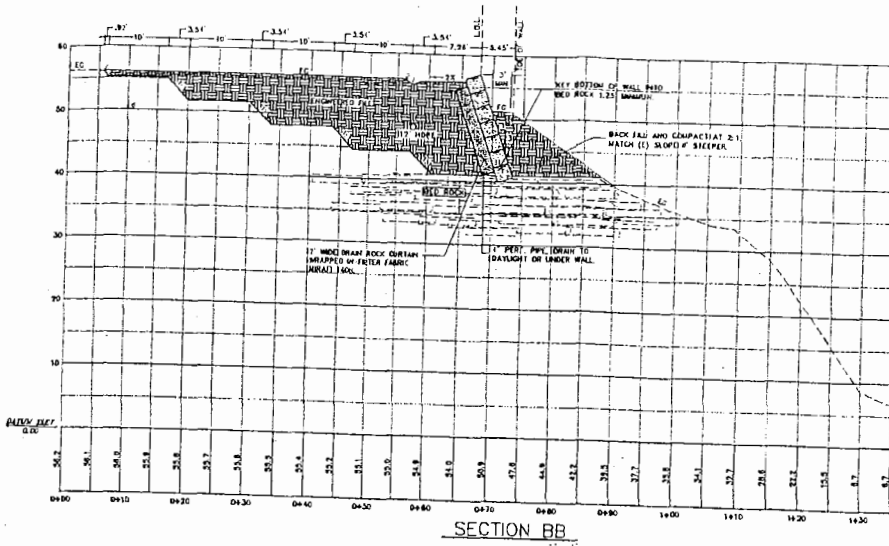
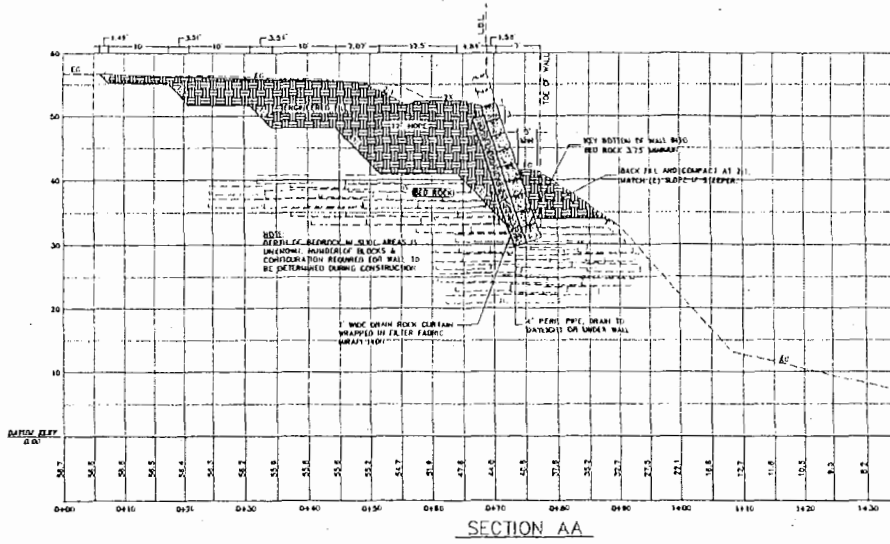
STORM DRAIN #1 PROFILE  
STORM DRAIN STATIONING DIFFERS FROM WALL STATIONING

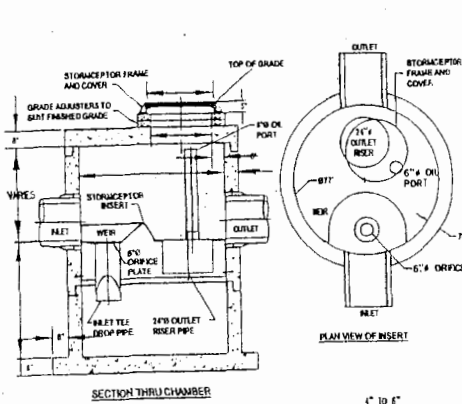


STORM DRAIN #2 PROFILE  
STORM DRAIN STATIONING DIFFERS FROM WALL STATIONING

EXHIBIT D

RETAINING WALL/STORM DRAIN PROFILES





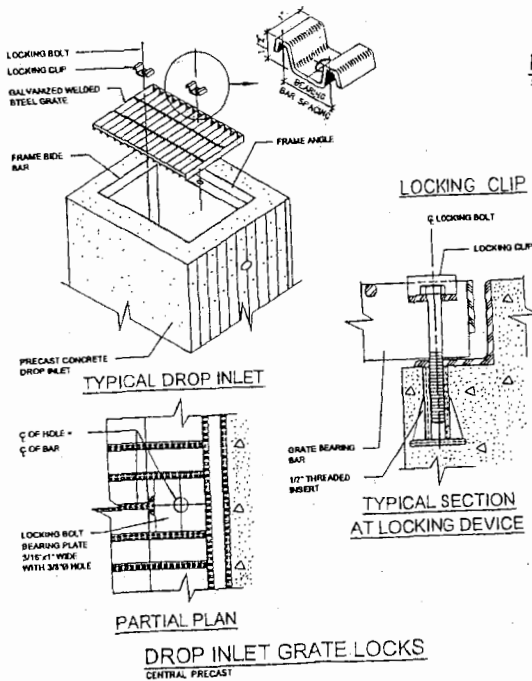
- NOTE:
1. THE USE OF FLEXIBLE CONNECTIONS IS RECOMMENDED AT THE INLET AND OUTLET WHERE APPLICABLE.
  2. THE COVER SHOULD BE POSITIONED OVER THE 3/4" OUTLET RISER PIPE AND THE 7/8" OR. PORT.
  3. THE STORMCEPTOR SYSTEM IS PROTECTED BY ONE OR MORE OF THE FOLLOWING U.S. PATENTS: #4083148, #5444311, #5725161, #5511115, #5649141, #6087165, #6511893.

STC 900 PRECAST CONCRETE STORMCEPTOR

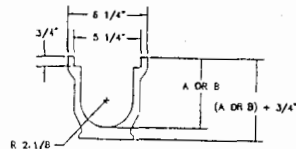
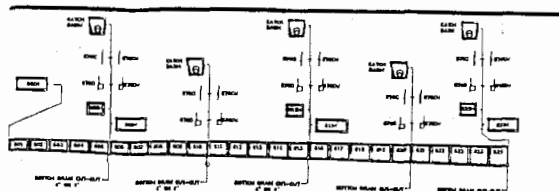
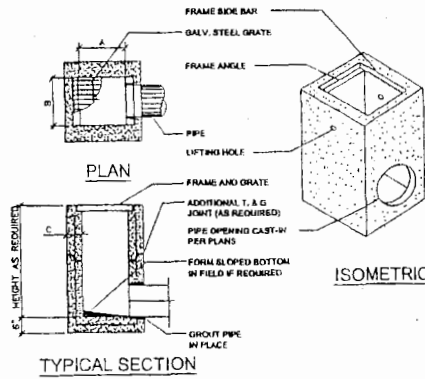
DROP INLET TABLE

MODEL No.	OP. HOLES	A	B	C			
	IN	MM	IN	MM			
CP1212	EX	12	300	12	300	4	100
CP1818	EX	18	450	18	450	5	125
CP1824	1K*	18	450	24	600	5	125
CP2424	2K	24	600	24	600	5	125
CP2430	3K	24	600	30	750	5	125
CP3030	5K	30	750	30	750	6	150
CP2436	1L	24	600	36	900	6	150
CP3636	1W	36	900	36	900	6	150
CP2448	3L	24	600	48	1200	6	150
CP3648	3W	36	900	48	1200	6	150
CP4848	1R	48	1200	48	1200	6	150

TYPICAL DROP INLET SCHEDULE

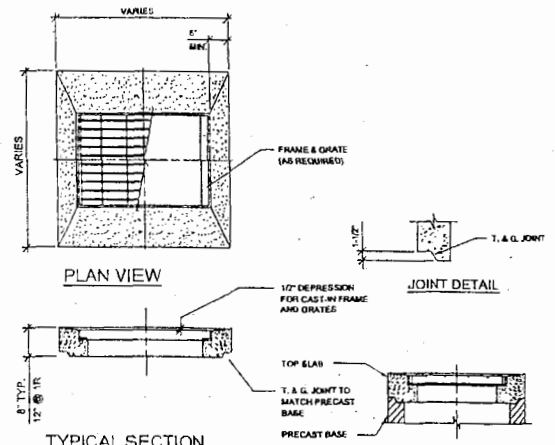
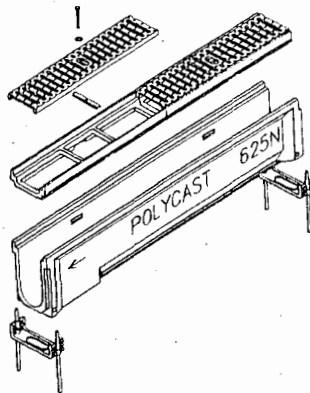


DROP INLET GRATE LOCKS



CHANNEL NUMBER	INLET DIM "A"	OUTLET DIM "B"	WEIGHT LBS
800	5 1/4"	5 1/4"	9
801	5 3/16"	5 3/16"	9
802	5 7/16"	5 7/16"	10
803	5 1/2"	5 1/2"	10
804	5 5/16"	5 5/16"	10
805	5 9/16"	5 9/16"	10
806	5 13/16"	5 13/16"	10
807	5 7/8"	5 7/8"	11
808	5 11/16"	5 11/16"	11
809	5 3/4"	5 3/4"	11
810	5 15/16"	5 15/16"	11
811	5 1/2"	5 11/16"	11
812	5 1/2"	5 7/16"	11
813	5 1/2"	5 3/16"	11
814	5 1/2"	5 1/4"	11
815	5 1/2"	5 1/8"	11
816	5 1/2"	5 1/16"	11
817	5 1/2"	5 1/32"	11
818	5 1/2"	5 1/64"	11
819	5 1/2"	5 1/128"	11
820	5 1/2"	5 1/256"	11
821	5 1/2"	5 1/512"	11
822	5 1/2"	5 1/1024"	11
823	5 1/2"	5 1/2048"	11
824	5 1/2"	5 1/4096"	11
825	5 1/2"	5 1/8192"	11

POLYCAST 800 SERIES TRENCH DRAIN



MODEL 2K STORM DRAIN MANHOLE

- NOTES:
1. PRECAST UNIT DESIGNED TO BEAR FULL TRAFFIC LOADINGS.
  2. CONCRETE SHALL CONTAIN 8 BAGS OF PORTLAND CEMENT PER CUM. YARD AND SHALL HAVE COMPRESSIVE STRENGTH OF 3000 PSI @ 28 DAYS.

MODEL 3K TOP SLAB AND GRATE

PERMIT APPLICATION





**MENDOCINO COUN. , BOARD OF SUPERVISORS**  
**AGENDA SUMMARY**

BOARD AGENDA # \_\_\_\_\_

Agenda Summaries must be submitted no later than noon Monday, 15 days prior to the meeting date

TO: Board of Supervisors DATE: January 30, 2008  
 FROM: Planning and Building Services AGENDA DATE: February 26, 2008  
 DEPARTMENT RESOURCE/CONTACT: Frank Lynch PHONE: 463-4281 Present  On Call   
 Consent  Regular Agenda  Est. Time for Item: 1 hour Urgent  Routine

■ **AGENDA TITLE:** Discussion and possible action regarding appeal of Coastal Permit Administrator decision on Coastal Development Permit #55-2006 (Bower)

■ **PREVIOUS BOARD OR BOARD COMMITTEE ACTIONS:** None

**SUMMARY:** On November 19, 2007, the Coastal Permit Administrator approved Coastal Development Permit 55-2006 to construct a 285±-foot long concrete block retaining wall to connect to a proposed 105±-foot long retaining wall on the adjacent lot to the south (APN 145-261-05 - Coastal Commission jurisdiction). At its most visible point (on the Coastal Commission jurisdiction lot) the retaining wall would have a visible height of 25 feet (as seen from Sonoma County, across the estuary) - the average visible height of the wall would otherwise be closer to five feet. Associated drainage improvements include the installation of 414± length feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure. Associated development includes relocation and upgrade of underground septic systems. The project is located at 39200 South Highway 1 (APN 145-261-13).

Individuals in opposition expressed concerns that focused primarily on impacts of the wall to natural and visual resources.

The project that was approved by the Coastal Permit Administrator was, according to the engineering firm RAU and Associates, the least impacting workable option available.

After the Coastal Permit Administrator approved the retaining wall, RAU and Associates found an alternative that would result in substantially reduced impacts to natural and visual resources. The proposed alternative, the Geoweb design, is described in the supplemental information included with this summary as Appendix A. To summarize, the applicants propose additional mitigations in the form of an alternative retaining material which would reduce the amount of grading needed, reduce the area of impact, reduce impacts to existing vegetation, locate impacts further from the sensitive estuary area, and substantially reduce long-term visual impacts. Planning staff has not identified any potential negative impacts that would result from the newly proposed mitigations. Planning staff has independently reviewed and agrees with the agent's modifications to our Negative Declaration as outlined in the attached supplemental application. The proposed project modifications do not appear to justify a new CEQA analysis.

As modified, Exhibits C through F of the Staff Report would be superseded by the newly submitted plans included in Appendix A.

**BOARD ACTION** **Date of Action** \_\_\_\_\_  
 1)  Approved \_\_\_\_\_ 2)  Referred to \_\_\_\_\_  
 3)  Other \_\_\_\_\_



Staff recommends the following modification to Special Condition Number 2 in the staff report, to accommodate the proposed modification (~~strikethrough~~ indicates text to be deleted; **bold** indicates text to be added):

- 2. The Gualala River estuary/lagoon and associated estuarine/intertidal wetland shall be protected in perpetuity on-site with a minimum 50 foot buffer. No development or placement of materials shall occur within the Environmentally Sensitive Habitat Areas or 50 foot buffer area with the exception of the proposed weed control and habitat restoration activities. All mitigation measures outlined by BioConsultant in the botanical survey report dated August, 2007, are hereby required as a mandatory condition of approval of the subject Coastal Development Permit:

Prior to issuance of the Coastal Development Permit, the applicant shall submit for approval to the Coastal Permit Administrator, a comprehensive, long-term plan to restore the original habitat values and slope stabilizing function of coastal scrub vegetation at the Project Site. The plan shall utilize native plantings based on the results of the plant inventory (Appendix C of the botanical survey report by BioConsultant, dated August 2007) and habitat conditions, and shall be designed to revegetate disturbed areas and bare soil, restore stable northern coastal scrub all along the length of the bluff, visually buffer the retaining wall from the Gualala Point Regional Park (including native vine type plants that can grow up the wall), and eliminate invasive weeds. The plan shall be implemented by a professional restoration company and shall incorporate a restoration monitoring component. Cooperative efforts between the landowner and RCLC, the Dorothy King Young chapter of the California Native Plant Society, and the Mendocino Coast Cooperative Weed Management Area is encouraged. The following guidelines as outlined in the botanical survey report shall guide the final restoration plan:

- ❖ Schedule a site visit by a restoration professional prior to the onset of construction activities to examine pre-construction conditions and to locate occurrences of invasive weeds, noting in particular those areas where invasive weeds are rooted in the middle slope and lower bluff toe areas.
- ❖ Retain as many of the existing large blue blossom and silk tassel bush as possible.
- ❖ Utilize existing native shrub species in the plantings: silk tassel bush, blue blossom, coyote brush, thimbleberry, California blackberry, and oso berry.
- ❖ Use large-size (5 gal. or greater) container shrubs and provide irrigation as needed. Install erosion control fabric on filled areas and other bare soil, densely seeding these areas with fast-growing native perennial California brome to help hold the soil in the first year after construction and to outcompete non-native velvet grass and other weeds.
- ❖ Remove jubata grass and pride of Madeira (Echium) from the toe of the bluff, replacing these species with native shrubs.
- ❖ Focus weed eradication strategies on eliminating the most noxious of the invasive weeds (Himalayan blackberry, capeweed, greater periwinkle, jubata grass, ice plant, and pride of Madeira), and devise follow-up strategies to eliminate and/or control poison hemlock, wild radish, velvet grass, Harding grass, wild teasel, bull thistle, and Italian thistle.
- ❖ Design and implement a long-term monitoring effort and make modifications to the restoration plan as needed.

To mitigate for potential impacts to wildlife, the following measure, as outlined in the botanical survey report by BioConsultant, dated August 2007, shall be required:

43 of 52

- ❖ All excavation and vegetation removal activities shall occur after May 15<sup>th</sup>, with peak noise generating activities ceasing prior to August 15, and all ground disturbing activities ceasing October 15.

**BOARD ACTION**

**Date of Action** \_\_\_\_\_

1)  Approved \_\_\_\_\_

2)  Referred to \_\_\_\_\_

3)  Other \_\_\_\_\_





The retaining wall shall be faced with the proposed quarry rock facing. Sherwin Williams stain number SW 7514 (Foothills) or equivalent as approved by the Coastal Permit Administrator, shall be applied to the retaining wall face by hand, prior to installation. The stain shall be applied in a manner that will create a natural looking contrast between the quarry rock portion of the face and the grout portion of the face. Prior to issuance of the grading permit, the applicant shall submit color samples of the proposed Geoweb material for approval by the Coastal Permit Administrator. Maintenance shall occur as needed to assure that the face of the wall remains visually appealing over time.

■ **ALTERNATIVES:** The Board may uphold the decision made by the Coastal Permit Administrator and approve the project as conditioned and modified, including modifications to Special Condition #2, deny the project, or approve the project with alternate and/or new conditions.

■ **WILL PROPOSAL REQUIRE ADDITIONAL PERSONNEL?** Yes\*  Number \_\_\_\_\_ No   
 \*If yes, has this been through the Personnel Process? Yes  No

**FISCAL IMPACT:**

Source of Funding	Current F/Y Cost	Annual Recurring Cost	Budgeted in Current F/Y	
N/A			Yes <input type="checkbox"/>	No <input type="checkbox"/>

■ **RECOMMENDED ACTION/MOTION:** That the Board of Supervisors deny the appeal and approve Coastal Development Permit 55-2006 as modified.

■ **CEO REVIEW (NAME):** \_\_\_\_\_ **PHONE:** 463-4441

**RECOMMENDATION:** Agree  , Disagree  No Opinion  Alternate  Staff Report Attached

**BOARD ACTION**

- 1)  Approved \_\_\_\_\_  
 3)  Other \_\_\_\_\_

**Date of Action** \_\_\_\_\_

- 2)  Referred to \_\_\_\_\_

## APPENDIX A

Supplemental Information Provided in Conjunction with New Proposed Mitigations:  
Geoweb Alternative to Retaining Wall

January 25, 2008

Ms. Teresa Spade, Project Coordinator  
Mendocino County Department of  
Planning and Building Services  
790 South Franklin Street  
Fort Bragg, CA 95437

Job Number R05024

**RE: CDP #55-2006 (BOWER LIMITED PARTNERSHIP); NEW GEOWEB DESIGN**

Dear Ms. Spade:

We are pleased to inform you that we have been successful in finding an alternative system to the concrete block retaining wall which will both stabilize the bluff and be more visually appealing. The new design, Geoweb cellular confinement system (Geoweb), is a vegetated earth retention system, also known as a "green wall" or bioengineered wall, which provides slope stabilization without the use of concrete and allows for vegetation to grow on the face of the structure.

The Geoweb system has been constructed in many sensitive and challenging sites, including ocean bluffs in Carmel and Santa Barbara, and river banks of the Columbia River in Portland, OR and West Bouldin Creek in Austin, TX. The product has been used by Caltrans and local departments of transportation for road and slide repair projects. Information about this system is attached. Additional product information, case studies and photos can be viewed at the distributor's website:  
[http://www.sspco.com/geoweb/geoweb\\_earthret.html](http://www.sspco.com/geoweb/geoweb_earthret.html).

Preliminary plans for the new design are attached for your review. The rest of the project, including drainage improvements, stormwater treatment facilities and relocation of interceptor tanks, remains unchanged. The new design will have a smaller footprint in that the limits of disturbance will not be as close to the estuary and excavation will not have to extend as far east into the parking lot. As a result, the amount of existing vegetation that will be disturbed is considerably less. See Tables 1 and 2 below and Sheet 1.1 (attached) for changes in grading volumes, excavation area, and revegetation areas, all of which are significantly reduced with the new design<sup>1</sup>.

**Table 1. Changes in the Extent of Grading and Vegetation Removal<sup>2</sup>**

	Original Design (Concrete Block Wall)	New Design (Geoweb System)	$\Delta$	% $\Delta$
Excavation Volume (cubic yards)	6,024 cy	2,706 cy	-3,318 cy	-55%
Excavation Area (square feet)	23,485 sf	9,508 sf	-13,977 sf	-60%
Revegetation Area (square feet) <sup>3</sup>	8,343 sf	4,154 sf	-4,189 sf	-50%

<sup>1</sup> The figures in Table 1 represent the portion of wall on APN 145-261-13. A similar reduction in the extent of grading and vegetation impacts is also noted on APN 145-261-05.

<sup>2</sup> The values in Table 1 are approximate. Values are based on preliminary improvement plans and estimated depth to bedrock, which is variable and cannot be fully known until excavation occurs.

<sup>3</sup> In order to accurately compare revegetation areas for both designs, the estimate in Table 1 does not include planting on the face of the Geoweb structure. The face of the Geoweb structure will also be planted with native vegetation, unlike the concrete block wall design which depended on climbing and hanging vine-like species planted at the base and top of the wall.

**Table 2. Changes to Construction Activity Zone in Relation to Gualala River**

Distance to Mean High Tide (Feet)	Original Design (Concrete Block Wall)	New Design (Geoweb System)	$\Delta^4$
Maximum Slope Distance	70.4±	92.8±	+22.4 feet
Minimum Slope Distance	49.5±	70.1±	+20.6 feet
Average Slope Distance	59.9±	81.5±	+21.6 feet

Because the fabric of the Geoweb system is flexible, it can be installed along contours on the slope face and will look more natural. The top of the new structure will be flush with the bluff top, unlike the concrete wall which extended up to 1.5 feet above finished grade. It should also be noted that the structure will not be located any further west than where the concrete wall was sited. Product materials consist of polymer-based fabric and anchors, aggregate and soil, so there will be no concrete materials near the estuary.

One of the primary concerns raised by project opponents was the appearance of the concrete wall and the ability to successfully conceal it with native vegetation. The new design will allow the face of the structure to be mostly vegetated within 1-2 years. We are consulting with Circuit Riders and a botanist who works specifically with the Geoweb system in order to ensure the proper selection of plant materials for the green wall. We will ask CNPS for their input about plant materials before designing the revegetation plan.

Other project-related impacts will also be reduced with the new design. A brief summary of these changes is provided below.

**Table 3. Changes to Project-Related Impacts**

Initial Study Checklist Items	
Item 1. Earth	Impacts reduced due to a reduction in the volume and area of excavation. See Tables 1 and 2 above.
Item 2. Air	No change.
Item 3. Water	No change.
Item 4. Plant Life	Impacts reduced. The extent of vegetation to be removed has dropped from 9,685 ft <sup>2</sup> to 4,353 ft <sup>2</sup> . Two (2) trees requiring removal under the old design can be preserved. The new structure is designed so that vegetation can successfully grow on the face of the structure. Cells within the structure are filled with topsoil and planted; vegetation grows through holes in the structure facing. The overall chances for vegetative success at the site are improved with the new design.
Item 5. Animal Life	Impacts slightly reduced due to vegetation growing on the face of the structure and the ability to support a larger variety of plant materials on the structure. Increased vegetative cover and more diverse plant life provides improved habitat for small animals, birds and insects.
Item 6. Noise	No change.
Item 7. Light and Glare	No change.
Item 8. Land Use	No change.

<sup>4</sup> The numbers in this column represent how much farther the construction activity zone will be from the estuary's edge (mean high tide) due to the new project design. Sources: Botanical Survey Exhibit Construction Activity Zone, August 2007 (concrete wall design) and January 2008 (Geoweb design).

## Appendix A

### Reduced Buffer Analysis

## BUFFER ZONE ANALYSIS

Projects that propose construction with a buffer less than 100ft. from an ESHA must provide information that demonstrates that a reduced buffer width will not have a significant adverse impact on the habitat. The buffer zone analysis utilizing Mendocino LCP Ordinance 20.496.020 (A) through 3 is presented in Table 4: Reduced Buffer Analysis.

**Table 4.** Reduced Buffer Zone Analysis.

Section 20.496.020 Coastal Zoning Ordinance	
<p><b>(A) Buffer Areas.</b> A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.</p>	<p>Buffer widths were analyzed based on the current on-site habitat conditions, parcel size and configuration, site topography and soils, and the ESHA resources.</p>

<p><b>(1) Width.</b> The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.</p>	<p>The Project proposes buffer widths that range from 28ft. to 70ft., from the mean high tide to the limits of construction activities. The smallest buffer of 28ft. occurs on APN 145-261-05 (Coastal Commission) between the southern slide area and the estuarine wetland. A 50ft. minimum buffer will be maintained on APN 145-261-13 (County) with buffers that range from 50ft. to 70ft. with an average buffer of 60ft.</p> <p>The buffer widths were measured from the western limits of construction (the west edge of soil disturbance) to the mean high tide line, which encompasses the estuary/intertidal wetland ESHAs.</p> <p>The applicant is not proposing to sub-divide the parcel.</p>
<p><b>(a) Biological Significance of Adjacent Lands.</b> The degree of significance depends upon the habitat requirements of the species in the habitat area.</p>	<p>The existing intact coastal scrub vegetation, (between slide areas) provides the biologically significant function of erosion control and water quality protection for the ESHAs, but the slide areas that are devoid of scrub vegetation have potential for continued and increased sediment delivery during winter rains. Following completion of the Project, the bluff will be stabilized, non-engineered fill removed, and the coastal scrub vegetation re-vegetated and restored; thus enhancing the biological significance of the Project Site and adjacent land.</p>
<p><b>(b) Sensitivity of Species to Disturbance.</b> The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development.</p>	<p>Potentially sensitive harbor seals and brown pelicans are known to occur across the River estuary at heavily visited Gualala Regional Point Park (0.5 mi.). This distance, the physical barrier of the estuary, and the habituation capabilities of the harbor seal should be sufficient to avoid significant disturbance. The peak of noise generating activities will occur prior to the late summer arrival of the brown pelican.</p>
<p>b(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species.</p>	<p>No special-status species were observed at the Project Site, and although it is likely that special-status species do occur in the river ESHA, none would require the use of the Project Site. Common song birds and raccoon do utilize and reside in the coastal</p>

	scrub vegetation at the Project Site.
b(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance.	Common species such as raccoon and the resident song bird population are highly adaptable to short-term human disturbances. The Project will displace a portion of the song bird population during the construction phase; however, with the implementation of the restoration plan the habitat will support greater native plant diversity which in the long-term will create higher quality wildlife habitat, especially for the resident song birds. It is expected that common species will continue to utilize the coastal scrub habitat outside of the construction envelope during construction and post-construction.
b(iii) An assessment of the impact and activity levels of the proposed development on the resource.	Implementation of the mitigation and erosion control measures are expected to avoid impacts to the ESHAs during and post-development.
<b>(c) Susceptibility of Parcel to Erosion.</b> The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.	Due to the steepness of the slope, amount of unstable fill, lack of vegetation cover in slide areas, and the amount of vegetation removal required for the wall construction, the potential for erosion is high. However, the project proposes robust and extensive erosion control measures; the most important is the use of the "Super Silt Fence" to be placed at the limits of construction activities to prevent any sediment and/or debris from entering the ESHA. At present the entire bluff is susceptible to eroding at an accelerated rate with the consequent risks of increased sediment delivery to the ESHAs, loss of coastal scrub due to slides, and loss of land for the Surf Center buildings and Gualala Bluff Trail.
<b>(d) Use of Natural Topographic Features to Locate Development</b>	The development and buffer locations are pre-determined by the location of the unstable bluff and location of the slide areas.
<b>(e) Use of Existing Cultural Features to Locate Buffer Zones.</b> Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals,	The development and buffer locations are pre-determined by the location of the unstable bluff and location of the slide areas, therefore the wall cannot be located any further away from the ESHA.



flood control channels, etc., away from the ESHA.	
<b>(f) Lot Configuration and Location of Existing Development.</b> Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection.	The project has been designed to reduce the amount of vegetation removal and the landowner has proposed appropriate mitigation measures.
<b>(g) Type and Scale of Development Proposed.</b> The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.	The development is proposed to prevent continued erosion and protect the water quality of adjacent ESHAs. Construction activities are expected to be completed within one (1) construction season.
<b>(2) Configuration.</b> The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).	The buffer widths were measured from the mean high tide to the limit of construction activities, which correspond to the west edge of soil disturbance. The mean high tide line encompasses the landward edge of the estuarine wetland and was therefore chosen to represent the "outside edge" of the ESHAs.
<b>(3) Land Division.</b> New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.	The applicant does not propose subdividing the property or adjusting the boundary lines.
<b>(k)</b> The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.	The proposed Project will not have a significant impact on the environment if the recommended mitigations are implemented.

## IMPACT ANALYSIS AND MITIGATION MEASURES

The project includes development within the standard 100ft. buffer to the off-site Gualala River Estuary and estuarine/intertidal wetland ESHAs. The Reduced Buffer Zone Analysis demonstrates that with the implementation of the proposed mitigation and protective measures, the buffer is sufficient to protect the ESHAs. No development or construction related activities are proposed within the buffer; only weed control and habitat restoration will occur in the buffer.

**From:** Michael J. Bower  
2125 Hearst Street  
West Sacramento, CA 95691  
530-902-8721  
mjbower@ucdavis.edu

RECEIVED

FEB 26 2008

CALIFORNIA  
COASTAL COMMISSION

**To:** Mendocino County Board of Supervisors  
Attn: Supervisors Delbar, Wattenburger, Pinches, Smith, and Colfax  
501 Low Gap Road, Room 1808  
Ukiah, CA 95482

**CC:** California Coastal Commission  
Commissioners Blank, Wan, Burke, Kram, Shallenberger, Kruer, Neely, Reilly,  
Potter, Achadjian, Clark, Hueso, Chrisman, Thayer, and Bonner  
c/o: Bob Merrill, North Coast District Manager  
710 E Street, Suite 200  
Eureka, CA 95501

**CC:** Teresa Beddoe  
Planning Division Coast Office  
790 South Franklin  
Fort Bragg, CA 95437

EXHIBIT NO. 9

APPEAL NO.

A-1-MEN-08-015

BOWER LIMITED PARTNERSHIP

CORRESPONDENCE (1 of 3)

**RE:** CDP#55-2006 appeal  
Gualala, Mendocino County

February 21, 2008

Dear Commissioners and County Supervisors,

I am writing in support of proposals to improve Gualala's Surf Center area (APN 145-261-13). Though I am John Bower's son (and therefore hold obvious bias) I encourage you to listen to what I have to say, as I write from the standpoint of a university-trained plant ecologist, a former resident and very frequent visitor to Gualala, and someone who cares deeply about the fate of our town (though incomparably less than my father).

Reading the staff report for this project (in its entirety), I cannot help but feel sad. The number of times potential impacts were not only mitigated, but also proposed to be improved far beyond current degraded conditions was staggering. From removing the very abundant exotic and invasive plants which currently threaten the remnant native plants on the bluff and replacing them with natives (with a commitment to maintain them!) to reducing not only runoff pollution from proposed excavation site, but surrounding development as well, this project goes above and beyond what is required for project approval. I felt sad while reading the staff report because I sympathize with project opponents that want to preserve the natural beauty of our waterfront. On the other

hand, I don't feel that they have truly or adequately looked at all dimensions of the project (such as the potentially catastrophic parking issues that will affect many downtown businesses or the alleviation of potential environmental disasters, like septic tanks spilling into our estuary because of uncorrected debris flow threats).

The benefits to the environment and the community are so numerous, I will not list them, rather I will focus on a subject I'm particularly familiar with and end with a few comments regarding the long-term role of this project would play in Gualala.

Every time I visit my hometown Gualala I walk the Gualala bluff trail and I, as I'm sure many others have, appreciate the work that RCLC has done to build and maintain the bluff trail. However, the quality of the habitat adjacent to the trail is very low, both from a human aesthetic perspective, and from a wildlife/vegetation perspective. Aside from the native plantings done by RCLC, most of what a bluff-walker experiences is exotic (and for a plant ecologist who does research on exotic and invasive plants, extremely ugly!). This vegetation does indeed cover much of the bluff that would be impacted by the project (as the Bioconsultant botanical survey report found). Those of us who study these human-impacted systems and that work with some of the aggressive invasive plants found in these habitats understand that without human intervention and management, native vegetation will eventually disappear. This process is accelerated by the debris flows from the uncompacted fill and by the elevated position of exotic and invasive plant propagules on the bluff (because seed/plant fragments move more readily down slope than up). The project as proposed would remedy this situation four-fold: 1) by reducing probability of debris flows, 2) by removing exotic vegetation, 3) by planting native plants, and 4) by maintaining the native plants for the benefit of people and wildlife alike.

This, however, is just one way that the project affects our community. I beseech you to consider not just the components of the project highlighted by project opponents, but all dimensions of this project, as I am confident you will find that the project meets not only all the mandates required for approval, but contributes significantly to the quality of life of residents and the quality of experience for visitors.

This project is indeed more than what was been described in the staff report; it represents the rejuvenation of a degraded waterfront, and the efforts of a man wholly invested in the town he grew up in, worked all his life in, and will retire in, and who, against all odds, is determined to do a project right. That means with long-term consideration (like comparing a "band-aid" wooden retaining wall, with an order of magnitude more durable wall), abiding by all rules and regulations (as opposed to other developers on the Mendocino Coast that might not bother with permit approval), and with a commitment to improve the town of Gualala (as evidenced by numerous other projects restoring old or aging structures without monetary profit). This is the right project at the right time by the right party.

Thank you for your consideration,

Signature on File

Michael J. Bower

2 of 3

TO FAX 107 445 7877

# Friends of Schooner Gulch

## A Watershed Organization

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

March 3, 2008

Commissioners and Executive Director  
California Coastal Commission  
Box 4908  
710 "E" Street  
Eureka, CA 95501

RECEIVED

MAR 04 2008

CALIFORNIA  
COASTAL COMMISSION

Re: Bower sea wall appeal

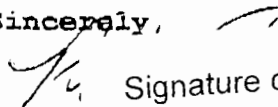

Dear Commissioners and Executive Director:

The applicant's proposed parking lot simply does not require a retaining wall. The only purpose for the wall is to artificially increase the parking area over and above what could be developed naturally. There is no vested right to reclaim more acreage along the ocean and river side of this commercial development. All the commercial remodeling proposed by the applicant can be accomplished without the wall, but on a more reasonable scale.

The proposed retaining wall would also create a serious precedent in the Gualala area for additional walls. Our coastal economy depends very heavily on tourism, and the tourism depends on preserving the natural beauty in all public view areas.

Friends of Schooner Gulch joins the local public organizations which have appealed the decision. Please deny the permit.

Sincerely,

 Signature on File 

Peter Reimuller  
Secretary

3 of 3