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49th Day:	August 1, 2005
Hearing Opened:	July 14, 2005
Staff:	Tiffany S. Tauber
Staff Report:	May 23, 2008
Hearing Date:	June 12, 2008

STAFF REPORT: APPEAL *De Novo*

APPEAL NO.:	**A-1-MEN-05-029**
APPLICANTS:	**Charles and Dale Phelps**
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	On a blufftop parcel, approximately 5 miles southeast of Point Arena, on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road, at 30250 South Highway One (APN 142-031-11) (Mendocino County)
PROJECT DESCRIPTION: (As amended de novo)	Remodel and expand an existing 1,805-square-foot residence by (1) remodeling the interior of the residence, (2) constructing a 282-square-foot addition to expand the size of the residence to 2,087 square feet with a maximum average height of 17 feet above natural grade and 1,964 square feet of covered and uncovered decks and porches, (3)

	constructing a 986-square-foot detached garage with a maximum average height of 16 feet above natural grade, (4) constructing a 852-square-foot studio with a maximum average height of 16 feet above natural grade, (5) constructing a 593-square-foot workshop with a maximum average height of 17 feet above natural grade, including 425 square feet of roof-mounted solar PV panels, 100 square feet of roof-mounted solar water heater panels and 2 skylights for a total interior floor area of 4,518 square feet. Additional development includes installation of an LPG tank, generator, residential satellite dish, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank & leach field, approximately 30-foot-long, 5-foot-high solid cedar utility screen fence for LPG tank, and approximately 845-foot-long, 3-foot-high cedar split-rail fence. The proposed project also includes reconfiguration of the existing driveway, foot path, and the use of a temporary travel trailer for construction support.
APPELLANT:	1) Eric Beihl
SUBSTANTIVE FILE DOCUMENTS:	1) Mendocino County CDP No. 62-04; and 2) Mendocino County Local Coastal Program

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SUMMARY OF STAFF RECOMMENDATION *DE NOVO*: APPROVAL WITH CONDITIONS

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that as conditioned, the development as amended for purposes of the Commission's de novo hearing would be consistent with the Mendocino County LCP.

For the purposes of *de novo* review by the Commission, the applicants have amended the project description and submitted revised project plans that make changes to the originally proposed residential development as approved by the County. The project revisions were designed to address concerns raised in the appeal that the project did not include sufficient setback from the edge of the bluff. The project revisions also address issues regarding visual impacts and setbacks between proposed new development and the sensitive plant ESHA on the property.

As amended, the proposed project involves remodeling and expanding the existing residence rather than removing the existing residence and constructing a new residence in the same general location as originally approved by the County. The proposed project as revised also includes constructing a detached garage, studio, and workshop landward of the existing home away from the bluff edge and the rare plant ESHA in a manner that meets all geologic and ESHA setback requirements. The previously proposed guest cottage has been eliminated from the project.

The primary issues raised by the proposed project are the project's consistency with the environmentally sensitive habitat area buffer policies and the geologic hazard policies of the LCP. The subject 2.55-acre property contains rare plant habitat and is a bluff top parcel.

With regard to the ESHA buffers, the revisions to the project were designed to ensure that at least a 50-foot buffer would be established between all new proposed development and the coastal bluff morning glory habitat and the north coast bluff scrub vegetation located seaward of the existing residence. The existing pre-Coastal Act residence that would be expanded would continue to be located less than 50 feet from the rare plant ESHA located on the seaward side of the house. However, as revised for purposes of de novo review, the proposed addition to the existing residence and the detached accessory structures would be located a minimum of 50 feet from the ESHA and would be largely separated from the seaward ESHA by the existing house.

Staff believes the 50-foot buffer to be provided by the development as conditioned will be adequate to protect the rare plant habitat on the site and conforms to the minimum buffer requirements of the LCP policies. To ensure the protection of the ESHA on the site, staff recommends that the Commission impose Special Condition Nos. 7 and 8. Special Condition No. 8 requires that: (a) temporary construction exclusion fencing be installed and maintained during construction to protect the ESHA, (b) existing invasive plants be removed from the bluff edge consistent with the recommendations of the biological report, (c) no invasive plants be planted on the property, and (d) certain rodenticides not be used on the property. Special Condition No. 7 requires that any future additions to the residence that might be otherwise be exempt from permit requirements will require an amendment to the permit to enable the Commission to review such future development proposals to ensure that such development does not encroach into needed ESHA buffer areas.

With regard to the bluff setback, the applicants' geologist submitted quantitative slope stability analyses for purposes of de novo review by the Commission. The analyses resulted in increasing the southwest bluff edge setback from 30 to 35 feet to provide an additional factor of safety to guard against bluff retreat hazards. The recommended bluff setback from the northwest and southeast bluff edges remained unchanged as a result of the quantitative slope stability analyses. Although portions of the existing pre-Coastal Act house and deck encroach into the southeast and southwest setbacks, all new development as proposed in the revised project description would be located landward of

the existing residence and would conform to all bluff setbacks. Staff recommends that the Commission impose Special Condition Nos. 4, 5, and 6. These recommended conditions would require (a) conformance of the design and construction plans to the geotechnical report, (b) no future bluff or shoreline protective device to protect the new residential additions and structures, and (c) assumption of risk, waiver of liability and indemnity.

To ensure the protection of water quality, staff is recommending Special Condition No. 10, requiring implementation of standard Best Management Practices (BMPs) during construction to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction.

To ensure the development will be subordinate to the character of its setting and conform with provisions in the certified LCP regarding development in designated highly scenic areas and the protection of visual resources, staff recommends Special Condition Nos. 9 and 12. Special Condition No. 9 requires that (a) only the proposed building materials and colors are used in the construction of the development and that the current owner or any future owner shall not repaint or stain the house with products that would lighten the color of the house from the proposed and approved colors without a permit amendment, (b) all exterior materials be non-reflective to minimize glare, (c) all exterior lights to be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel, and (d) all utilities serving the project be placed underground. Special Condition No. 12 requires that all of the existing trees between the development and the northwestern boundary of the property, which serve to largely screen the development site from view of public vantage points at Iversen Point to the north, be maintained and replaced as they die.

To ensure conformance with other applicable provisions of the LCP, staff recommends Special Condition Nos. 1, 2, and 11 requiring (a) restrictions prohibiting use of the proposed detached studio and workshop as residences, (b) restrictions on the occupation and removal of the proposed travel trailer, and (c) submittal of evidence from the Department of Environmental Health (DEH) that the proposed septic system has been reviewed and approved by DEH, or evidence that no approval is required.

Lastly, staff recommends Special Condition No. 3 that requires the applicants to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property.

Therefore, as conditioned, staff recommends that the Commission find that the development as conditioned is consistent with the certified Mendocino County LCP and the public access policies of the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval is found on page 7.

STAFF NOTES:

1. Standard of Review

The Coastal Commission effectively certified the County of Mendocino's LCP in 1992. Pursuant to Section 30603(b) of the Coastal Act, after effective certification of an LCP, the standard of review for all coastal permits and permit amendments for development located between the first public road and the sea is the standards of the certified LCP and the public access and recreation policies of the Coastal Act.

2. Procedure

On July 14, 2005, the Coastal Commission found that the appeal of Mendocino County's conditional approval of a coastal development permit (CDP #62-04) for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Testimony may be taken from all interested persons at the *de novo* hearing.

3. Amended Project Description Submitted by Applicant for de novo Review

For the purposes of *de novo* review by the Commission, the applicants submitted a revised project description and revised plans dated April 4, 2008 that make changes to the proposed residential development as originally approved by the County. The project revisions were designed to address concerns raised in the appeal that the project did not include sufficient setback from the edge of the bluff. The project revisions also address issues regarding visual impacts and setbacks between proposed new development and the sensitive plant ESHA on the property.

The proposed project as revised involves remodeling and expanding the existing residence rather than removing the existing residence and constructing a new residence in the same general location as originally proposed and approved by the County. The proposed project as revised also includes constructing a detached garage, studio, and workshop landward of the existing home away from the bluff edge and the rare plant ESHA in a manner that meets all geologic and ESHA setback requirements. The previously proposed guest cottage has been eliminated from the project.

With regard to the bluff setback, the applicants' geologist submitted a slope stability analysis for purposes of de novo review by the Commission. The slope stability analysis resulted in increasing the southwest bluff edge setback from 30 to 35 feet to provide an

additional factor of safety to guard against bluff retreat hazards. The recommended bluff setback from the northwest and southeast bluff edges remained unchanged as a result of the slope stability analysis. Although portions of the existing house and deck encroach into the southeast and southwest setbacks, all new development as proposed in the revised project description would be located landward of the existing residence and would conform to all bluff setbacks.

With regard to the ESHA buffers, the revisions to the project were designed to ensure that at least a 50-foot buffer would be established between all new proposed development and the coastal bluff morning glory habitat and the north coast bluff scrub vegetation located seaward of the existing residence. The existing pre-Coastal Act residence that would be expanded would continue to be located less than 50 feet from the rare plant ESHA located on the seaward side of the house. However, as revised for purposes of de novo review, the proposed addition to the existing pre-Coastal Act residence and the detached accessory structures would be located a minimum of 50 feet from the ESHA and would be largely separated from the seaward ESHA by the existing house.

With regard to visual issues, the revised project plans involve a change of exterior building materials and colors, including eliminating the originally proposed copper roof and siding to minimize the potential for glare and visual impacts. The project as revised for purposes of de novo review includes a slate shingle roof and fiber cement and stone siding in dark, natural earthtone colors.

More specifically, as amended for purposes of the Commission's de novo review of the project, the proposed project description involves remodeling and expanding an existing 1,805-square-foot residence by (1) remodeling the interior of the residence, (2) constructing a 282-square-foot addition to expand the size of the residence to 2,087 square feet with a maximum average height of 17 feet above natural grade and 1,964 square feet of covered and uncovered decks and porches, (3) constructing a 986-square-foot detached garage with a maximum average height of 16 feet above natural grade, (4) constructing a 852-square-foot studio with a maximum average height of 16 feet above natural grade, (5) constructing a 593-square-foot workshop with a maximum average height of 17 feet above natural grade, including 425 square feet of roof-mounted solar PV panels, 100 square feet of roof-mounted solar water heater panels and 2 skylights for a total interior floor area of 4,518 square feet. Additional development includes installation of an LPG tank, generator, residential satellite dish, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank & leach field, approximately 30-foot-long, 5-foot-high solid cedar utility screen fence for LPG tank, and approximately 845-foot-long, 3-foot-high cedar split-rail fence. The proposed project also includes reconfiguration of the existing driveway, foot path, and the use of a temporary travel trailer for construction support.

The amended project description and supporting information address issues raised by the appeal where applicable, and provide additional information concerning the amended

project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

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 approve Coastal Development Permit No. A-1-MEN-05-029 subject to conditions.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Second Structure

A. The following restrictions shall apply with respect to the detached studio and workshop:

1. Any rental or lease of the detached studio and workshop separate from rental of the main residential structure is prohibited; and

2. Use of the detached studio and workshop as a residence with cooking or kitchen facilities is prohibited. The detached studio and workshop shall not be converted into a residence or second unit.

2. Temporary Occupancy of Travel Trailer

The travel trailer may be occupied only while constructing the addition to the single family residence and subject to the following limitations:

(a) The travel trailer may only be occupied for the period required to complete construction of the addition to the primary dwelling, but shall not be occupied for more than two years unless an amendment is obtained from the Commission to allow a longer period of occupancy.

(b) A valid building permit for a permanent dwelling on the premises must be in effect.

(c) Building and Health permits must be obtained prior to the set up and occupancy of the travel trailer.

(d) All utility connections to the travel trailer shall be disconnected and the trailer shall be removed from the property or placed in storage per Section 20.456.015(J) of the Code prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first.

3. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

4. Conformance of the Design and Construction Plans to the Geotechnical Investigation Report

A. All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated June 15, 2004 as modified and supplemented by the Geotechnical Investigation report dated August 7, 2006 prepared by BACE Geotechnical. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-05-029**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. No Future Bluff or Shoreline Protective Device

A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the addition to the existing single-family residence, new decking, garage, studio, or workshop authorized pursuant to Coastal Development Permit No. A-1-MEN-05-029, in the event that the addition to the existing single-family residence, new decking, garage, studio, or workshop are threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the addition to the existing single-family residence, decking, garage, studio, or workshop that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).

B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the addition to the existing single-family residence, new decking, garage, studio, or workshop authorized by this permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the addition to the existing single-family residence, decking,

garage, studio, or workshop fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

C. In the event the edge of the bluff recedes to within 10 feet of the addition to the existing single-family residence, new decking, garage, studio, or workshop but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structures are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the addition to the existing single-family residence, decking, garage, studio, or workshop without shore or bluff protection, including but not limited to, removal or relocation of portions of the addition to the existing single-family residence, decking, garage, studio, or workshop. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the addition to the existing single-family residence, new decking, garage, studio, or workshop is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the addition to the existing single-family residence, decking, garage, studio, or workshop.

6. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. Future Development Restrictions

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-05-029. Any future improvements to the single-family residence or other approved structures will require a permit amendment or a new coastal development permit.

8. Protection of Sensitive Plant Habitat

The permittee shall comply with the following requirements to protect sensitive plant habitat:

A. Prior to the commencement of any construction activities, the wire mesh protective shelters and temporary construction fencing depicted on the revised site plan dated April 4, 2008 shall be installed to protect coastal bluff morning glory (*Calystegia purpurata ssp. saxicola*) habitat. The wire mesh protective shelters and temporary construction fencing shall be maintained in place until the authorized development is completed. No construction related activities shall be allowed to encroach into the areas protected by the wire mesh protective shelters and temporary construction fencing.

B. Invasive plants, including iceplant (*Carpobrotus* spp.), shall be removed from the bluff edge in a manner consistent with Mitigation Measure 7(b) of the "*Floristic Survey and ESHA Study*" dated May 16, 2007 and prepared by Ridge to River Environmental Services included as Exhibit No. 9.

C. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

D. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

9. Design Restrictions

A. All exterior siding and roofing of the proposed structure shall be composed of the colors proposed in the application or darker earth tone colors only. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs, windows, and solar panels shall be non-reflective to minimize glare;

B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

C. All utilities serving the proposed project shall be placed underground.

10. Best Management Practices and Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

A. Any and all excess excavated material resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;

B. Straw bales, coir rolls, or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants toward the coastal morning glory and northern coastal bluff scrub habitat areas as shown on Exhibit No. 3;

C. On-site vegetation shall be maintained to the maximum extent possible during construction activities;

D. Any disturbed areas shall be replanted or seeded as soon as feasible following completion of construction of the addition to the existing residential structure, decking, garage, studio, workshop, and connection to utilities, but in any event no later than May 1st of the next spring season consistent with the planting limitations required by Special Condition No. 8(C);

E. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff.

F. The canopy and root zones of existing living trees on site shall be protected through temporary fencing or screening during construction; and

G. All grading activity shall be limited to the dry season between April 15th and October 31st.

11. Septic System Approval

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director evidence of review and approval of the proposed septic system the Mendocino County Division of Environmental Health (DEH), or evidence from the DEH that no further review and approval is required. The applicant shall inform the Executive Director of any changes to the project required by the DEH. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

12. Maintenance of Existing Screening Trees.

All existing trees between the existing house and the approved studio, workshop, and garage and the northwest boundary of the parcel shall be maintained in good condition throughout the life of the project. If any of these existing trees die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used.

13. Conditions Imposed By Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares the following:

1. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated June 30, 2005.

2. Site Description

The project site is a 2.55-acre bluff top lot located approximately five miles southeast of Point Arena on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road at 30250 South Highway One (Exhibit Nos 1 & 2).

The subject parcel has a long, narrow, rectangular shape that extends from the ocean at its south end to Highway One at its northeast end (Exhibit No. 3). Due to the shape of the bluff, the parcel has ocean frontage on its northwestern, southern, and southeastern sides. The parcel is primarily flat with a gentle slope to the southwest. The bluff is approximately 70 feet high with slope gradients that vary from about one half horizontal to one vertical (1/2H:1V) to almost vertical. The northwestern-facing view overlooks a crescent-shaped beach and Iversen Point, including the Iversen Point Subdivision to the northwest. The property is surrounded by residential development on its northwest and east sides. The property is characterized by a long, open, maintained meadow-like lawn in the center of the parcel, surrounded by evergreen trees on all sides, and punctuated by

a cluster of evergreen trees adjacent to the existing house on the southwest end of the parcel, and a row of mature and recently planted evergreen trees bordering the highway on the northeast end of the parcel. A drainage swale runs along the eastern border of the parcel, collecting runoff from the highway and depositing it over the southeastern bluff.

The site is presently developed with a 1,805-square-foot single-family residence with an attached carport, driveway, well, pump house, water tank, septic tank, and leach field. The existing residence was developed in 1966, prior to the Coastal Initiative of 1972. The southwest side of the existing house and attached deck are located 25 and 15 feet, respectively, from the near-vertical bluff edge. The northwest corner of the existing house is about 23 feet from a change in slope where the bluff slope steepens from near-level to about 3H:1V. The southeast corner of the existing house is approximately 32 feet from the head of the steeply sloping drainage swale.

A botanical survey was performed at the site over the course of the 2005 and 2006 blooming season. According to the "*Floristic Survey and ESHA Study*" prepared by Ridge to River Environmental Services dated May 16, 2007, six groupings of the rare subspecies of coastal bluff morning glory (*Calystegia purpurata ssp. saxicola)* were identified seaward of the existing residence. The existing house is located as close as 15 feet from the rare plants and a portion of the existing deck is located directly adjacent to a grouping of the coastal bluff morning glory. The botanical survey also identified an area of northern coastal bluff scrub habitat along the western portion of the bluff face located as close as 30 feet from the existing residence. As discussed in the Environmentally Sensitive Habitat Area (ESHA) finding below, the coastal bluff morning glory and bluff scrub habitat are considered to be ESHA.

The subject property is located in a designated "highly scenic area," and is zoned Rural Residential, 2-acre minimum (RR-2). The existing residence is visible from Iversen Point Road and informal access trails located across the cove to the northwest. Because of existing vegetation at the site, the subject parcel affords very little view of the ocean from Highway One.

3. Project Description

The development as originally proposed and approved by the County involved removing the existing residence and constructing a new 2,259-square-foot residence and 672-square-foot garage approximately five feet landward of the general location of the existing residence. The remains of the existing residence were proposed to be used to build accessory buildings, including a 707-square-foot guest cottage and art studio and a 621-square-foot workshop, landward of the new residence. The structures were proposed to be constructed with crimped seam copper siding, copper shingle roofing, forest green wood trim, and dark colored window frames and doors.

For the purposes of *de novo* review by the Commission, the applicants submitted a revised project description and revised plans dated April 4, 2008 that make changes to the

residential development originally approved by the County. The project revisions were designed to address concerns raised in the appeal that the project did not include sufficient setback from the edge of the bluff. The project revisions also address issues regarding visual impacts and setbacks between proposed new development and the sensitive plant ESHA on the property.

The proposed project as revised involves remodeling and expanding the existing residence rather than removing the existing residence and constructing a new residence in the same general location as originally proposed and approved by the County. The proposed project as revised also includes constructing a detached garage, studio, and workshop landward of the existing home away from the bluff edge and the rare plant ESHA in a manner that meets all geologic and ESHA setback requirements. The previously proposed guest cottage has been eliminated from the project.

With regard to the bluff setback, the applicants' geologist submitted a slope stability analysis for purposes of de novo review by the Commission. The slope stability analysis resulted in increasing the southwest bluff edge setback from 30 to 35 feet to provide an additional factor of safety to guard against bluff retreat hazards. The recommended bluff setback from the northwest and southeast bluff edges remained unchanged as a result of the slope stability analysis. All new development as proposed in the revised project description would be located landward of the existing residence and conforms to all bluff setbacks.

With regard to the ESHA buffers, the revisions to the project were designed to ensure that at least a 50-foot buffer would be established between all new proposed development and the coastal bluff morning glory habitat and the north coast bluff scrub vegetation located seaward of the existing residence. The existing pre-Coastal Act residence that would be expanded would still be located less than 50 feet from the rare plant ESHA located on the seaward side of the house. However, as revised for purposes of de novo review, the proposed addition to the existing residence and the detached accessory structures would be located a minimum of 50 feet from the ESHA and would be largely separated from the seaward ESHA by the existing house.

With regard to visual issues, the revised project plans involve a change of exterior building materials and colors, including eliminating the originally proposed copper roof and siding to minimize the potential for glare and visual impacts. The project as revised for purposes of de novo review includes a slate shingle roof and fiber cement and stone siding in dark, natural earthtone colors.

More specifically, as amended for purposes of the Commission's de novo review of the project, the proposed project description involves remodeling and expanding an existing 1,805-square-foot residence by (1) remodeling the interior of the residence, (2) constructing a 282-square-foot addition to expand the size of the residence to 2,087 square feet with a maximum average height of 17 feet above natural grade and 1,964 square feet of covered and uncovered decks and porches, (3) constructing a 986-square-

foot detached garage with a maximum average height of 16 feet above natural grade, (4) constructing a 852-square-foot studio with a maximum average height of 16 feet above natural grade, and (5) constructing a 593-square-foot workshop with a maximum average height of 17 feet above natural grade, including 425 square feet of roof-mounted solar PV panels, 100 square feet of roof-mounted solar water heater panels and 2 skylights for a total interior floor area of 4,518 square feet. Additional development includes installation of an LPG tank, generator, residential satellite dish, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank & leach field, approximately 30-foot-long, 5-foot-high solid cedar utility screen fence for LPG tank, and approximately 845-foot-long, 3-foot-high cedar split-rail fence. The proposed project also includes reconfiguration of the existing driveway, foot path, and the use of a temporary travel trailer for construction support.

The existing residence would continue to be used as the kitchen, dining, and living room area. The existing carport would be walled in to create a hallway that would connect to the proposed new addition which would extend landward and would contain the bedroom and 1 ½ bathrooms. The proposed new detached garage and studio would be connected to the house addition via a T-shaped covered deck. The detached workshop would be located approximately 40 feet further east of the studio and garage. The primary and secondary leachfield would be located in the central portion of the meadow area of the parcel.

The exterior of the existing residence is currently painted light gray and white, which would be modified to match the materials and colors proposed for the new development. The proposed project involves utilizing fiber cement siding painted brown (Redwood or Woodperfect mix) with dark greenish brown trim (Copper Verde), cultured stone water table (Suede), and slate shingle roofing (Aberdeen blend)on the existing residence and the proposed new development. A portion of the existing gravel driveway located adjacent to the existing residence and proposed studio location would be converted to a cart and foot path and the driveway would be expanded between the garage and workshop to provide access to serve the new garage. (See Exhibit Nos. 3.)

4. Planning and Locating New Development

LCP Provisions

LUP Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal, and other known planning factors shall be considered when considering applications for development.

The subject property is zoned Rural Residential, 2-acre minimum (RR-2). Coastal Zoning Code Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single-family residences are the principally permitted use in the RR zoning district. CZC Section 20.458.010 prohibits the creation and/or construction of second units in the coastal zone except in limited circumstances. Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. CZC Section 20.376.045 sets a maximum building height limit of 18 feet above natural grade for highly scenic areas unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. CZC Section 20.376.065 sets a maximum of 15% structural coverage on RR lots of two to five acres in size.

Discussion

The site is currently developed with an approximately 1,800-square-foot single-family residence that was constructed in 1966 before the Coastal Act established coastal development permit requirements affecting this site. The existing single-family residence proposed to be expanded is located within an existing developed neighborhood of similarly sized lots and is consistent with the rural residential zoning for the site. As described in detail above, the development as proposed would consist of constructing an addition to the existing residence, a detached garage, studio, workshop, and other accessory development. The development has been sited and designed to meet setback, lot coverage, and height limits for the RR zoning district.

The proposed detached studio and workshop are permissible as accessory uses pursuant to Section 20.456.015, which allows for accessory structures associated with a principal permitted use. In this case, a studio and workshop are recognized as accessory uses associated with the existing residential use of the property, and are therefore permissible, provided they are not utilized as a secondary residence, as CZC Section 20.458.010 expressly prohibits the creation of second residential units. The certified LCP does not allow more than one residential unit on most residential parcels in Mendocino County because of a concern that the increase in density could potentially result in cumulative adverse impacts on highway capacity, groundwater resources, and scenic values, inconsistent with LUP Policies 3.9-1 and 3.8-1. To prevent such significant cumulative adverse impacts, Special Condition No. 1 prohibits use of the detached studio and workshop as residences with cooking and/or kitchen facilities and requires that the studio and workshop not be rented or leased separate from the main residential structure. Additionally, the Commission imposes Special Condition No. 2 requiring the applicants to remove the proposed temporary trailer prior to occupancy of the main residence.

Special Condition No. 3 requires that a deed restriction be recorded informing future buyers of the property of the special conditions of the permit, including the limitation on use of the studio and workshop. Such notice to future buyers will better ensure that in the future, the development is not used as a second unit inconsistent with the requirements of the certified LCP.

The proposed development would be served by an existing on-site well. A new septic system would be installed to replace the existing septic system. The septic system was designed, and a Site Evaluation Report was prepared by, Carl Rittiman, certified professional soil scientist, dated March 14, 2003. The proposed design incorporates a new septic tank, an aerobic treatment unit, and a drip irrigation leachfield. A curtain drain would be installed upslope of the leachfield areas and would outlet into the existing drainage swale located along the south property line.

The Mendocino County Division of Environmental Health (DEH) previously approved the proposed septic system as designed by Carl Rittiman. However, because the Site Evaluation Report has surpassed the five-year DEH expiration timeframe, DEH requires a letter from the septic system designer indicating that the design is still valid for the site conditions and proposed development before DEH will re-approve the proposed septic system. The applicants' agent has indicated that DEH anticipates re-approving the proposed septic system. Therefore, the proposed septic system is likely to be adequate to serve the proposed development. However, to ensure that the proposed septic system has been reviewed and approved by Mendocino County DEH, the Commission attaches Special Condition No. 11 requiring the applicant to submit evidence of approval of the proposed septic system from DEH prior to issuance of the coastal development permit, or evidence that no further review and approval is required by DEH for installation of the proposed septic system.

Development of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots meeting minimum parcel size standards established for the property under the certified LCP were addressed at the time the LCP was certified. The proposed project involves constructing an addition to an existing one-bedroom residence to result in a slightly larger and reconfigured one-bedroom residence. Thus, there would be no net increase in residential density on the property from the proposed development that would result in significant adverse individual or cumulative impacts on the traffic capacity of Highway One. Therefore, as conditioned, the proposed development is located in an area able to accommodate the development, consistent with the applicable provisions of LUP Policy 3.9-1.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all adverse environmental impacts. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.8-1, 3.9-1, and with Zoning Code Section 20.376, as the development is consistent with the requirements of the RR zoning district, will be located in a developed

area with adequate services, and the project will not result in significant adverse individual or cumulative impacts on highway capacity, environmentally sensitive habitat, geologic hazards, scenic values, or other coastal resources.

5. Geologic Hazards

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 3.4-3 states:

> *The County shall review development proposals for compliance with the Alquist-Priolo Special Studies Zone Act (as amended May 4, 1975).*

LUP Policy 3.4-4 states:

> *The County shall require that water, sewer, electrical, and other transmission and distribution lines which cross fault lines be subject to additional safety standards beyond those required for normal installations, including emergency shutoff where applicable.*

LUP Policy 3.4-5 states:

> *The County shall require that residential, commercial and industrial structures be sited a minimum of 50 feet from a potentially, currently, or historically active fault. Greater setbacks may be required if warranted by local geologic conditions.*

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:*
>
> *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.*

Section 20.500.015 of the Coastal Zoning Code 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.***
>
> *(1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.*
>
> *(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.*
>
> ***(B) Bluffs.***
>
> *(1) New structures shall be 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:*
>
> *Setback (meters) = structure life (75 years) x retreat rate (meters/year)*
>
> *Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.*

(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.

(D) Landslides.

(1) New development shall avoid, where feasible, existing and prehistoric landslides. Development in areas where landslides cannot be avoided shall also provide for stabilization measures such as retaining walls, drainage improvements and the like. These measures shall only be allowed following a full environmental, geologic and engineering review pursuant to Chapter 20.532 and upon a finding that no feasible, less environmentally damaging alternative is available.

Section. 20.532.070, "Geologic Hazards -- Evaluation and Supplemental Application Information" states:

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

(1) Land Use and Building Type.

(a) Type 1: Public, High Occupancy and Critical Use, including: Hospitals, Fire and Police Station, Communication Facilities, Schools, Auditoriums, Theaters, Penal Institutions, High-rise Hotels, Office and Apartment, Buildings (over 3 stories), and Major Utility Facilities.

(b) Type 2: Low Occupancy, including: Low-rise Commercial and Office Buildings (one (1) to three (3) stories), Restaurants (except in high-rise category), and Residential (less than eight (8) attached units and less than 3 stories).

(c) Type 3: Residential (less than eight (8) attached units), and Manufacturing and Storage/Warehouse except where highly toxic substances are involved which should be evaluated on an individual basis with mandatory geotechnical review.).

(d) Type 4: Open Space, Agricultural, Golf Courses, etc.

(2) Required Studies.

(a) Fault Rupture. *Prior to proceedings with any Type 1 development, published geologic information shall be reviewed by*

an engineering geologist or civil engineer, the site shall be mapped geologically and aerial photographs of the site and vicinity shall be examined for lineaments. Where these methods indicate the possibility of faulting, a thorough investigation is required to determine if the area contains a potential for fault rupture. All applications for development proposals shall be reviewed for compliance with the Alquist-Priolo Special Studies Zone Act pursuant to Subsection (D) below and shall be deemed incomplete until such time as the reviewing geologist report is accepted by the County.

(b) Seismic-Related Ground Failure. *Site investigation requirements for seismic-related ground failure are described as follows:*

(i) Land Use/Building Type 2 and 3 within Zone 1 (Low): Current building code requirements must be met, as well as other existing state and local ordinances and regulations. A preliminary geotechnical investigation should be made to determine whether or not the hazards zone indicated by the Land Capabilities/Natural Hazards maps is reflected by site conditions.

(ii) Land Use/Building Type 1 within Zone 1 (Low) and Land Use/Building Type 3 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsection (i), above, geotechnical investigation and structural analysis sufficient to determine structural stability of the site for the proposed use is necessary. It may be necessary to extend the investigation beyond site boundaries in order to evaluate the shaking hazard. All critical use structure sites require detailed subsurface investigation.

(iii) Land Use/Building Type 1 within Zone 2 (Moderate) and Land Use/Building Type 2 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsections (i) and (ii), above, surface and/or subsurface investigation and analyses sufficient to evaluate the site's potential for liquefaction and related ground failure shall be required.

(iv) Land Use/Building Type 1 within Zone 3 (High): In addition to Subsections (i), (ii) and (iii), detailed dynamic ground response analyses must be undertaken.

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

(a) Tsunami. *Land Use Types 1, 2 and 3 shall not be permitted in tsunami-prone areas. Development of harbors and Type 4 uses should be permitted, provided a tsunami warning plan is established.*

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

(B) Review of Geologic Fault Evaluation Report by County Geologist. *An application for development which requires a report or waiver prepared pursuant to the Alquist Priolo Act shall not be accepted as complete unless and until there are:*

(1) A fully executed agreement between a geologist registered in the State of California and the County to either review the report required hereinabove or to prepare a request for waiver; and

(2) A fully executed agreement between the County and the applicant to reimburse the County for the costs incurred pursuant to the agreement specified in subparagraph (1) above.

Within thirty (30) days of an application for development located within an Alquist-Priolo special study area, the County shall cause a geologist registered in the State of California (hereinafter called County reviewing geologist) to review the geologic report. The review shall assess the adequacy of the documentation contained in the report, and the appropriateness of the depth of study conducted in consideration of the use proposed for the project site. The County reviewing geologist shall prepare a written review which either concurs or does not concur with the scope, methodology, interpretations, conclusions, and recommendations of the geologic report. Said review shall be subject to comment and revision as may be deemed necessary by the County.

Within thirty (30) days after acceptance of the geologic report, the County shall forward it to the State Geologist to be placed on open file. (Ord. No. 3785 (part), adopted 1991)

Discussion:

CZC Section 20.500.015(A) requires all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff top lots be

reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and Coastal Zoning Code Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed "in any way" over a full 75-year economic lifespan of the development. A sole exception to this prohibition on the construction of shoreline protective devices is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal dependent uses.

As described above, the proposed project involves constructing a new addition to an existing single-family residence, decking, and a detached garage, studio, and workshop on a bluff top parcel. LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) require new development to be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during the economic life span of 75 years. Additionally, these provisions require that the setback be a sufficient distance so as to eliminate the need for shoreline protection devices. Due to the shape of the bluff, the parcel has ocean frontage on its northwestern, southern, and southeastern sides. The southwest side of the existing house and attached deck are located 25 and 15 feet, respectively, from the near-vertical bluff edge. The northwest corner of the existing house is approximately 23 feet from a change in slope where the bluff slope steepens from near-level to about 3H:1V. The southeast corner of the existing house is approximately 32 feet from the head of the steeply sloping drainage swale.

The proposed new addition to the existing residential structure and the detached accessory structures are all sited landward of the existing residence and thus, are separated from the southwest bluff edge by the existing structure. The proposed project would site new development in an area near the northwestern bluff edge where no development currently exists. The subject property and the proposed development is subject to geologic hazards because (a) the site is located near the tip of a point, which will focus wave energy; (b) there is a dormant landslide to the west which can be expected to reactivate as marine erosion erodes its toe; and (c) there are active landslides on the south side demonstrating that the bluff is unstable. Thus, the Commission must consider the conformance of the proposed new development with the LCP policies and standards regarding geologic hazards, including the new addition to the existing residential structure and the new detached structures.

A geotechnical investigation of the site was performed by BACE Geotechnical, Inc. which prepared a geotechnical report for the subject site dated June 15, 2004. The geotechnical report states that the site is geotechnically suitable for the proposed development. The report states that the main geotechnical constraints that should be considered in the design and construction of the project include bluff stability, strong seismic shaking from future earthquakes, fault rupture hazard, settlement, and erosion

control. The geotechnical investigation did not observe any sea caves at the toe of the bluffs.

According to the geotechnical investigation report, the rock beds in the offshore islands are steeply dipping, from near vertical to about 85 degrees from horizontal, toward the southwest, which is most likely due to a fault. The report indicates that no evidence was observed that would indicate that this fault is active. The report further notes that the main trace of the San Andreas Fault is located within the Garcia River Canyon, approximately 3-3/4 miles northeast of the site.

The geotechnical report also notes that three landslides are present on the upper bluffs near the existing residence. Two of these landslides, one located south and the other located southwest of the house, are active. The southernmost landslide consists of a relatively small, approximately 12-foot-wide by 8-foot-high near vertical scarp where periodic rockfalls have been occurring. The upper portion of the southwest landslide area consists of a slump with an approximately six-foot-high scarp. The report indicates that the slump does not appear to have moved in the past few years based upon the absence of ground cracks or other evidence of displacements. However, the lower portion of this slide is an active erosion area that is enlarging headward into a portion of the slump block toe.

The June 15, 2004 BACE geotechnical investigation estimates a long term average historic bluff retreat rate of 3.2 inches/yr for the southwest bluff, 2.6 inches/yr for the northwest bluff, and 2 inches/year for the southeast bluff. Based on these estimated bluff retreat rates, in its June 15, 2004 geotechnical report, BACE recommended a bluff setback from the southwest bluff of 30 feet, 25 feet from the northwest bluff, and 19 feet from the southeast bluff. However, the original geotechnical analysis prepared by BACE in June 2004 did not include quantitative slope stability analyses, which as described below are necessary to determine conformance with the geologic hazard policies of the LCP.

In previous actions on coastal development permits and appeals, the Commission has interpreted Section 30253 of the Coastal Act, LUP Policy 3.4-7, and CZC Section 20.500.010(A) to require that coastal development be sited a sufficient distance landward of coastal bluffs that it will neither be endangered by erosion nor lead to the construction of protective coastal armoring during the assumed economic life of the development. As cited above, LUP Policy 3.4-7 indicates the economic life of a structure to be 75 years. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. Long-term bluff retreat is measured by examining historic data including vertical aerial photographs and any surveys conducted that identified the bluff edge and estimating changes in this rate that may be associated with continuing or accelerating sea level rise. Slope stability is a measure of the resistance of a slope to landsliding, and can be assessed by a quantitative slope stability analysis. In such an analysis, the forces resisting a potential landslide are first determined. These are essentially the strength of

the rocks or soils making up the bluff. Next, the forces driving a potential landslide are determined. These forces are the weight of the rocks as projected along a potential slide surface. The resisting forces are divided by the driving forces to determine the "factor of safety." The process involves determining a setback from the bluff edge where a factor of safety of 1.5 is achieved. The Commission generally defines "stable" with respect to slope stability as a minimum factor of safety of 1.5 against landsliding.

For purposes of de novo review by the Commission and to address information deficiencies raised by the appeal, BACE submitted supplemental analyses of the project site, including a slope stability analysis, dated August 7, 2006. This report included quantitative slope stability analyses that indicate that, notwithstanding the surficial slumps on the site, the overall slopes are stable (factor of safety greater than 1.5) with respect to deep-seated landslides. The supplemental reportalso indicates that the estimated bluff retreat rates referenced above were based on a study of aerial photographs, test boring data, and field reconnaissances conducted in 2000, 2003, 2005 and 2006 and that the supplemental analyses confirmed the initial findings, but resulted in increasing the recommended setback from the southwest bluff edge from 30 to 35 feet.

The supplemental report dated August 7, 2006 concludes:

> The stability analysis shows that the bluff is not threatened by imminent failure, although continuing erosion will occur. Our aerial photograph study demonstrates that our estimated bluff retreat rate is reasonable. However, the recent (2006) wave erosion at the toe of the southwesterly landslide is of concern. The erosion at the toe will work headward and eventually reach the upper bluff. Therefore, instead of a safety factor of 1.5, we recommend a safety factor of 1.75 for the southwest bluff. This increases the bluff setback by 5 feet (from 30 feet to 35 feet) to provide a reasonable distance for increased erosion due to potential landsliding. The recommended setbacks for the other bluffs surrounding the planned residence remain unchanged...

Staff notes that the term "factor of safety" as used above is not the same as used in the quantitative slope stability analyses. Rather, it is a multiplier applied to the predicted bluff retreat over the life of the development. This multiplier provides a buffer to account for uncertainty in the analyses, potential accelerating in the bluff retreat rate due to sea level rise, and space for remedial measures, should they become necessary.

Although a portion of the existing residence and deck currently encroach into the southwest and northwest setback, all of the proposed new development has been sited to conform to the recommended geologic setbacks. The geotechnical report also sets forth certain construction-related recommendations regarding site grading, foundation support, seismic design, concrete slabs-on-grade, utility trenches, erosion control, and site drainage. The recommendations are found in Section 6 of the geotechnical report dated June 15, 2004, which is reproduced and included as part of Exhibit No. 8 of the

Commission staff report. Dr. Mark Johnsson, the Commission's staff geologist, has reviewed the geotechnical reports prepared for the proposed project and concurs with the analyses and recommendations.

Therefore, the Commission finds that the minimum setbacks between the bluff edges and the new development proposed by the applicants are sufficient to protect the new development from bluff retreat for a 75-year design life consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

To ensure that the proposed residential addition and detached structures are developed consistent with the proposed bluff setbacks, the Commission attaches Special Condition No. 4, which requires that the final construction plans for the development adhere to the design recommendations specified in the geotechnical reports. The condition requires that development be constructed consistent with the final construction plans.

Notwithstanding the relative degree of insulation of the proposed project improvements in their proposed locations from geologic hazards, the applicants are proposing to construct development that would be located on a high uplifted marine terrace bluff top that is actively eroding. Consequently, the development would be located in an area of high geologic hazard. However, new development can only be found consistent with LUP Policy 3.4-7, and CZC Section 20.500.010(A) if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicants have submitted information from a registered engineering geologist which states that if new development is set back at least 35, 25, and 19 feet from the southwest, northwest, and southeast bluff edges, respectively, the development will be safe from erosion and will not require any devices to protect the development during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff top parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of

coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.

- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff top lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.

- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a bluff top project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

The Commission emphasizes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore, cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The BACE geotechnical report states that the geotechnical investigation and review of the proposed development was performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities. The report further states, "*…No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in this report…*" This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7, and CZC Section 20.500.010(A). The Commission finds that the proposed development could not be approved as being consistent

with LUP Policy 3.4-7, and CZC Section 20.500.010(A) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicants' geologist, the Commission finds that the risks of geologic hazard are minimized if development is sited and designed according to the setback and construction recommendations. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed development is consistent with the Mendocino County LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 5 to ensure that no future shoreline protective device will be constructed to protect the proposed new development.

Special Condition No. 5 prohibits the construction of shoreline protective devices on the parcel to protect the addition to the existing single-family residence, decking, garage, studio, or workshop approved by Permit No. A-1-MEN-05-029 and requires that the landowner provide a geotechnical investigation and remove the proposed improvements associated with the development approved by Permit No. A-1-MEN-05-029 if bluff retreat reaches the point where this development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. Special Condition No. 5 also requires that the applicant acknowledge that by acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the addition to the existing single-family residence, decking, garage, studio, or workshop that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).

These requirements are necessary for compliance with CZC Section 20.500.010(A), which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and 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. The Commission finds that the proposed development could not be approved as being consistent with CZC Section 20.500.010(A) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial

destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 5 also requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the residential improvements should the bluff retreat reach the point where a government agency has ordered that these facilities not be used.

Special Condition No. 6 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, Special Condition No. 3 requires the applicants to record a deed restriction to impose the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the Coastal Act and to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development and will ensure that future owners of the property will be informed of the Commission's immunity from liability, and the indemnity afforded the Commission.

The Commission further notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, in this case because the existing residence is located within 50 feet of the edge of a coastal bluff, future improvements to the approved project will not be exempt from permit requirements pursuant to Section 30610(a) of the Coastal Act and Section 13250 of the Commission's regulations. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to

require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect.

In addition, Section 13250(b)(1) indicates that improvements to a single-family structure in an area within 50 feet of the edge of a coastal bluff involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the existing residence on the subject property is within 50 feet of a coastal bluff. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, Special Condition No. 7 expressly requires all future improvements to the approved development to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in an adverse environmental impact. As discussed above, Special Condition No. 3 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 3 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the LCP regarding geologic hazards, including LUP Policy 3.4-7, and CZC Section 20.500.010(A), since the development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, (2) will not have adverse impacts on the stability of the coastal bluff or on erosion, (3) will not require the construction of shoreline protective works and (4) will allow the Commission to review any future additions to ensure that development would not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP.

6. Environmentally Sensitive Habitat Areas

LCP Policies

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.

LUP Policy 3.1-1 states:

> *Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.*
>
> *If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.*

LUP Policy 3.1-7 states (emphasis added):

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed 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 and must comply at a minimum with each of the following standards:

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

Coastal Zoning Code Section 20.496.020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states (emphasis added):

(A) Buffer Areas. *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.*

(1) Width. *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.*

Standards for determining the appropriate width of the buffer area are as follows:

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

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

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

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

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

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

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

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

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

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

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

an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

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

(2) Configuration. *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).*

(3) Land Division. *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) Permitted Development. *Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting

riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms. [emphasis added]

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.1-29 states: (emphasis added)

The California Department of Fish and Game, the California Native Plant Society, and the U.S. Fish and Wildlife Service shall be requested to maintain and augment mapped inventory of all rare, endangered, threatened and protected plant and wildlife habitats on the Mendocino Coast based on up-to-date survey information. Symbols indicating rare or endangered plants and wildlife are

> *placed on the Land Use Maps to generally locate listed species and will be pinpointed as necessary to prevent degradation prior to issuing any development permit. Furthermore, the Department of Fish and Game is requested to work with the county during the planning and permit process to evaluate the significance of mapped sites as they apply to individual development applications.*

A botanical survey was performed at the site over the course of the 2005 and 2006 blooming season. According to the "*Floristic Survey and ESHA Study*" prepared by Ridge to River Environmental Services dated May 16, 2007, six groupings displaying the morphological features indicative of the rare and endangered subspecies of coastal bluff morning glory (*Calystegia purpurata ssp. saxicola)* were identified between the existing residence and the bluff edge. This plant is listed by CNPS as 1B.2, G4T2, S2.2 indicating that (1) there is some threat and somewhat narrow habitat for this species identified globally, (2) there are about 1,000-3,000 individuals identified globally for the subspecies, and (3) the plant is threatened statewide. The botanical survey also identified an area of Northern Coastal Bluff Scrub habitat along the northwestern portion of the bluff face. This habitat is listed by CNPS with a global rank of G2 and a state listing of S2.2 indicating that between 2,000-10,000 acres of this habitat are currently reported and that the habitat type is considered threatened statewide.

Additionally, approximately 7-15 plants of *Lotus formosissimus* were identified on the site, which is listed as a CNPS List 4 species. *Lotus formosissimus* is recognized because it is habitat for the rare butterfly Lotis Blue Butterfly. The lotus plants are found within the southeastern portion of the grassy lawn, northeast of the existing residence. No *Viola adunca* plants were located on the site, and therefore it is unlikely that the site supports habitat for the Behren's silverspot butterfly. According to the botanical report, Richard A. Arnold, PhD, Professional Entomologist of Entomological Consulting, conducted a butterfly habitat assessment in November 2005 in order to assess the site for presence of habitat for the Lotis Blue Butterfly, and found that "*the vegetation types that occur at the Phelps property are not suitable habitat to support either the Lotis Blue or Behren's Silverspot butterflies.*" (See Exhibit No. 10.)

Therefore, the habitat areas of concern at the subject site are limited to the coastal bluff morning glory and northern bluff scrub habitat located between the existing residential development and the bluff face. The location of the coastal bluff morning glory and north coast bluff scrub habitat is mapped on the site plan attached as Exhibit No. 3. As cited above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include habitats of rare and endangered plants and animals. As ESHA, the rare and endangered plant habitat on the subject property is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state

that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

The existing residential structure to be remodeled and expanded was constructed in 1966 prior to voter passage of the Proposition 20 Coastal Initiative in 1972 and the Legislature's adoption of the Coastal Act in 1976. The house as it was built and currently exists is located as close as 15 feet from the rare plant ESHA, and a portion of the existing deck is located directly adjacent to a grouping of coastal bluff morning glory. The existing setback between the pre-Coastal Act development and the rare plant ESHA, which is significantly less than the minimum 50 feet required by the LCP, would not change as a result of the proposed project. However, as revised for purposes of de novo review, all of the proposed new additions, including the addition to the existing residence and the new detached garage, studio, and workshop has been sited at least 50 feet from all of the ESHA.

As noted above, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 indicate that a buffer area of 100 feet shall be established adjacent to all ESHAs, although the buffer width can be reduced to a minimum of 50 feet under certain circumstances. In this case, the existing pre-Coastal Act house adjoins or is located within a few feet of a portion of the ESHA and intervenes between the proposed addition and this portion of the ESHA, precluding the establishment of a buffer in these portions of the site between the remodeling work within the confines of the existing house and the ESHA. In the northwest area of the site, where the substantial existing pre-Coastal Act residence does not intervene between the new development and ESHA, a minimum 50-foot buffer would be established by the approved project between the new development and the nearest ESHA.

The applicants' biologist prepared an analysis that substantiates that where the existing pre-Coastal Act residence does not intervene between the new development and the ESHA and a buffer can be established (between the new development and the two areas of coastal morning glory and northern coastal bluff scrub ESHA located northwest of the residential development, see Exhibit No. 3), a 50-foot buffer is adequate to protect the ESHA from the impacts of the proposed development based on the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) of the MCCZC as discussed below. The buffer width analysis was prepared based on the project as originally proposed which involved dismantling the existing residence and deck and constructing a new residence in the same general location, which would have sited new development as close as 10 feet from rare plant ESHA. However, the buffer width analysis is still applicable to the project as revised for purposes of de novo review

which would provide a minimum 50-foot ESHA buffer from all new development (see Exhibit No. 9).

Regarding criteria (a), the biological significance of adjacent lands, the applicants' biologist indicates that the land adjacent to the coastal bluff morning glory and northern coastal bluff scrub habitat is dominated by introduced perennial grasslands that are mowed on a regular basis. These introduced perennial grasslands provide no functional relationship to either ESHA type, nor do they provide significant habitat for wildlife species that may be dependent on the ESHA habitats.

Regarding criteria (b), the sensitivity of the species to disturbance, the applicants' biologist indicates that the coastal bluff morning glory is a particularly hardy species known to withstand severe mowing and herbicides, likely due to its rhizomatic root system. The biologist notes that some of the rare plants on the property are growing directly adjacent to existing structures. Unlike for sensitive animal species, noise, bright lights, and motion do not significantly affect the rare plant species. The biologist indicates the principal factors that could disturb the rare plant habitat include direct trampling or disturbance within the habitat, erosion and sedimentation from runoff, and invasion by exotic plants. Thus, measures that are more important and more effective for protecting the rare plant habitat than wide spatial buffers are measures such as the use of exclusionary fencing during construction, best management practices for erosion control, preserving the habitat from future development, and restricting landscaping. The biologist thus recommends that a 50-foot buffer would be adequate provided these mitigation measures are incorporated into the project.

Regarding criteria (c), the susceptibility of the parcel to erosion, the applicants' biologist notes that the project site is nearly level, and that the proposed development would not involve significant grading or landform alteration in a manner that would increase erosion and sedimentation. The proposed development is not expected to significantly change the potential for erosion, particularly if best management erosion control practices are used during construction, including directing runoff away from the ESHA toward established drainage features and limiting construction grading to the dry season. Therefore, the biologist suggests a 50-foot wide buffer would be adequate to address erosion concerns.

Regarding criteria (d) and (e), the use of natural or cultural features to locate the buffer area, the biologist indicates that the nearly level site offers no hills or other pronounced topographic features, or other cultural features (e.g., roads, dikes, etc.) at the site that would affect the consideration of an appropriate buffer area.

Regarding criteria (f), lot configuration and the location of existing development, the applicants' biologist indicates that the proposed development is within an existing subdivision on a parcel currently developed with residential structures, and the project has proposed mitigation measures.

Regarding criteria (g), the type and scale of development proposed, the applicants' biologist indicates the proposed residential development is typical for the neighboring parcels and is in scale with surrounding development. The siting of the proposed development would concentrate the majority of the daily outdoor activities on the northeast (landward) side of the existing house away from the ESHA. The biologist notes that out of the fifteen developed parcels in the neighboring area, the subject parcel is the largest at 2.55 acres. Of these parcels, the average structural lot coverage (buildings only) is 4.7%. The proposed development (buildings only) would bring the structural lot coverage of the subject parcel from its current 1.6% to approximately 3%, well below the average lot coverage. Thus, the type and scale of the development is not so large as to require a full 100-foot buffer.

Of the several factors raised by the applicants' biologist as reasons why a reduced 50-foot buffer would be adequate, the Commission finds that the most significant are those regarding (1) the low biological significance of the lands adjacent to the ESHA, (2) the low significance of a greater than 50-foot buffer to avoid species disturbance provided other mitigation measures are provided, and (3) the low susceptibility of the parcel to erosion.

The biological report demonstrates that the ESHA supports rare plant species that, unlike certain wildlife species, do not depend on the functional relationships of adjacent lands that a larger buffer area is usually intended to protect such as breeding, nesting, feeding, or resting activities. Therefore, in this case, there is less need for a wide buffer to help sustain the species that inhabit the ESHA. In addition, the fact that the development site is relatively flat indicates that erosion and sedimentation from construction, and from the completed development, are less likely to affect the ESHA than erosion and sedimentation would if the building site had a steeper slope with greater potential for erosion, particularly with implementation of the additional erosion and sedimentation controls required by Special Condition No. 10 described below. Additionally, the biological report establishes that there are measures that are more important and more effective for protecting the rare plant habitat from disturbance than wide spatial buffers including the use of exclusionary fencing during construction, best management practices for erosion control, preserving the habitat from future development, and restricting landscaping. The biological report demonstrates that with these mitigation measures, a 50-foot buffer would be adequate to protect the coastal morning glory and northern coastal bluff scrub habitat areas.

Therefore, the Commission finds that primarily based on the buffer width criteria of subsections (a), (b), and (c) of Coastal Zoning Code Section 20.496.020 regarding the biological significance of adjacent lands, sensitivity of species to disturbance, and the susceptibility of the parcel to erosion, the proposed 50-foot buffer width in conjunction with implementation of Special Condition Nos. 8 and 10 requiring certain erosion and sedimentation controls and implementation of the protective measures recommended by the applicants' biologist is adequate to protect the environmentally sensitive habitat at the project site from possible significant disruption caused by the proposed development.

As noted above, the biological report was prepared for the originally proposed project that involved dismantling the existing residence and deck and constructing a new residence in the same general location. Thus, many of the recommended mitigation measures outlined in the biological report pertain to dismantling existing and constructing new development adjacent to the ESHA. As the proposed project has been revised to retain the existing residential development, many of the recommended mitigation measures are no longer applicable to the project as revised for purposes of de novo review. However, several of the mitigation measures remain applicable to the proposed project as revised and are necessary to ensure that the proposed project will not significantly degrade adjacent ESHA and will be compatible with the continuance of the habitat areas.

Therefore, to ensure that erosion control measures and other protective measures recommended by the applicants' biologist are implemented, the Commission attaches Special Condition Nos. 8 and 10. Special Condition No. 8 requires implementation of ESHA protection measures recommended by the applicants' biologist including the installation of wire mesh protective shelters around the coastal bluff morning glory groupings and temporary construction fencing as depicted on the revised site plan dated April 4, 2008 prior to the commencement of any construction activities. The wire mesh protective shelters and temporary construction fencing shall be maintained in place until the authorized development is completed. No construction related activities shall be allowed to encroach into the areas protected by the wire mesh protective shelters and temporary construction fencing. Special Condition No. 8 also requires removal of invasive exotic vegetation, including ice plant, from the bluff edge and planting the resulting bare soil with non-invasive, native species in a manner recommended by the biological report to prevent displacement of the coastal bluff morning glory and northern coastal bluff scrub habitat areas.

Special Condition No. 10 requires the implementation of Best Management Practices (BMPs) to control erosion and sedimentation during and following construction. These required BMPs include (a) disposing of any excess excavated material resulting from construction activities at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; (b) installing straw bales, coir rolls, or silt fencing structures to prevent runoff from construction areas from draining toward the ESHA, (c) maintaining on-site vegetation to the maximum extent possible during construction activities; (d) replanting any disturbed areas as soon as feasible following completion of construction, but in any event no later than May 1st of the next spring season consistent with the planting limitations of Special Condition No. 8(C); (e) covering and containing all on-site stockpiles of construction debris at all times to prevent polluted water runoff; (f) protecting the canopy and root zones of existing living trees on site through temporary fencing or screening during construction, and (g) limiting grading activity to the dry season between April 15th and October 31st.

Furthermore, the ESHA could be adversely affected by the development if non-native, invasive plant species were introduced from landscaping at the site. Introduced invasive exotic plant species could spread into the ESHA and displace the native rare plants, thereby disrupting the value and function of the adjacent ESHA. The applicant has not proposed a specific landscaping plan as part of the proposed project. However, to ensure that the ESHA is not adversely impacted by any future landscaping of the site, Special Condition No. 8(C) also requires that only native and/or non-invasive plant species of native stock be planted at the site.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species, Special Condition No. 8(D) prohibits the use of specified rodenticides on the property governed by CDP No. A-1-MEN-05-029.

The Commission further notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, in this case because the existing residence is located within 50 feet of the edge of a coastal bluff, future improvements to the approved project will not be exempt from permit requirements pursuant to Section 30610(a) of the Coastal Act and Section 13250 of the Commission's regulations. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect.

In addition, Section 13250(b)(1) indicates that improvements to a single-family structure in an area within 50 feet of the edge of a coastal bluff involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the existing residence on the subject property is within 50 feet of a coastal bluff. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, Special Condition No. 7

expressly requires all future improvements to the approved development to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in adverse impacts to environmentally sensitive habitat. Special Condition No. 3 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 3 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the coastal morning glory habitat areas.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between development and existing ESHA because (1) an ESHA buffer would be established between all new development and the ESHA on the site where the substantial existing pre-Coastal Act development does not intervene between the new development and ESHA and preclude the establishment of such a buffer, (2) where buffers can be established, the proposed project would establish an ESHA buffer width based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020(A)(1)(a) through (g) for reducing the minimum buffer below 100 feet to no less than 50 feet, and (3) all impacts of the development on the adjacent ESHA would be mitigated to levels of less than significant.

7. Visual Resources

LCP Policies and Standards

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

LUP Policy 3.5-3 states:

> *The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
>
> **…**
>
> - *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*
>
> *In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.*

LUP Policy 3.5-4 states:

> *Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*
>
> *Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number*

of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

LUP Policy 3.5-5 states in applicable part:

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

Section 20.504.015, "Highly Scenic Areas", of the Coastal Zoning Code states in applicable part:

(C) Development Criteria.

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

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

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

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

(a) Near the toe of a slope;

(b) Below rather than on a ridge; and

(c) In or near a wooded area.

...

(7) Minimize visual impacts of development on terraces by the following criteria:

(a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;

(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;

(c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;

(d) Design development to be in scale with rural character of the area.

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991)

Section 20.504.020 of the Coastal Zoning Code states in applicable part:

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

Discussion

Policy 3.5-1 of the County's LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated "highly scenic areas" should be subordinate to the natural setting. The County's Zoning Ordinance reiterates these policies. Specifically, Coastal Zoning Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code requires an 18-foot height limit for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings. LUP Policy 3.5-15 and CZC Section 20.504.035 set forth standards for exterior lighting. Lastly, Zoning Code Section 20.504.015 (C)(12) requires power distribution lines to be placed underground in designated "highly scenic areas" west of Highway 1.

The subject property is located in an area designated as "highly scenic" on the LUP maps. The existing residence on the property that was constructed prior to enactment of the Coastal Act extends out onto the bluff on the southwesterly tip of the parcel, and is visible from Iversen Point Road across the intervening cove to the northwest. There appear to be several informal trails along the bluff at Iversen Point from which the proposed development would also be somewhat visible. The proposed project involves constructing a 282-square-foot addition landward of the existing residence. The proposed project also includes constructing a detached garage, studio, and workshop, which would all be sited further landward of the existing residence and proposed addition.

A large portion of the proposed addition would be sited behind a cluster of evergreen trees on the southwestern side of the bluff. Additionally, upon viewing the approved

project site from Iversen Point Road, Commission staff concluded that the proposed new development would be largely obscured by evergreen trees, which surround the parcel boundaries. While the structures would be somewhat visible, neighboring residences are also visible from this same vantage point, and the proposed addition and detached accessory structures would be subordinate to the character of its setting. To ensure the protection of the existing trees that help screen the approved development from public vantage points at Iversen Point and contribute to the development being subordinate to the character of its setting, the Commission attaches Special Condition No. 12. Special Condition No. 12 requires all existing trees between the existing house and the approved studio, workshop, and garage and the northwest boundary of the parcel be maintained in good condition throughout the life of the project and that if any of the existing trees between the existing house and the approved studio, workshop, and garage and the northwest boundary of the parcel die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height. All trees to be planted must be obtained from local genetic stocks and be native, non-invasive species.

Additionally, the maximum height of the proposed new development range from 16 to 17 feet above natural grade and thus, would be consistent with the LCP 18-foot height standard for highly scenic areas (see Exhibit No. 6). While the proposed development does include three detached structures, the total lot coverage would total approximately 7%, below the maximum coverage of 15% required for parcels zoned Rural Residential-2 acre minimum. The primary residence, with the proposed addition, would be 2,087 square feet, which is not particularly large, and not out of character with the surrounding residences. Moreover, because of the existing evergreen trees along the parcel boundary bordering the highway, and a newly planted second layer of trees along this boundary, no views of the ocean are afforded through the property from Highway One and approved development would be only minimally visible from Highway One and would not block views to and along the ocean. While the existing residence can be seen through the trees from the highway as one passes in front of the parcel, it is only negligibly noticeable. Furthermore, as viewed from Highway One, the proposed development would appear as one structure that looks smaller than the development actually is because the detached structures are laid out in a vertical line from the seaward side of the parcel towards the highway side of the parcel rather than scattered throughout (see Exhibit No. 3).

The applicant proposes to utilize dark, earth tone colors and natural materials in the construction of the proposed residence including (1) fiber cement and cultured stone water table siding, (2) cedar solid and split-rail fencing, and (3) slate shingle roofing. The exterior of the existing residence is currently painted light gray and white and the light colors stand out in contrast to the dark evergreen vegetation surrounding the site. The proposed project involves painting the existing and proposed siding brown (Redwood or Woodperfect mix) with dark, greenish brown trim (Copper Verde), which would be subordinate to the natural setting, and would blend in hue and brightness with the surroundings consistent with Coastal Zoning Code Section 20.504.015(C)(3). (See

Exhibit No. 7). The Commission finds that if the applicant or future owner(s) choose to change the materials or colors of the residence to brighter, non-earth tone colors or materials, the development may no longer be subordinate to the natural setting and may become increasingly visible from public vantage points. To ensure that the exterior building materials and colors used in the construction of the development as proposed are compatible with natural-appearing earth tone colors that blend in hue and brightness with their surroundings as proposed, the Commission attaches Special Condition No. 9(A), which requires that the current owner or any future owner shall not repaint or stain the house with products that would lighten the color of the house from the proposed and approved colors without a permit amendment.

The proposed project also includes the installation of 400 square feet of solar panels on the west and south-facing elevations of the existing residence. Solar panels can be a source of glare if not sited and designed appropriately to minimize their reflectivity. The applicants propose to utilize flat, roof-mounted, dark-celled photovoltaic panels with anodized aluminum framing. The dark panel color would minimize the potential for glare and would not result in a significant adverse visual impact from public vantage points. Special Condition No. 9(A) also requires that non-reflective building materials be used in the construction of the proposed residence to minimize glare. Additionally, Special Condition No. 9(B) requires that exterior lights be shielded and positioned in a manner that will not allow glare beyond the limits of the parcel as required by LUP Policy 3.5-15. As conditioned, the project is consistent with LUP Policy 3.5-4 and 20.504.015(C)(3) requiring building materials to be of non-reflective surfaces and the proposed project would not result in a significant adverse impact to public views as required by LUP Policy 3.5-3 and Zoning Code Section 20.504.015(C)(1). Furthermore, to ensure that the proposed utility extensions would not result in an adverse impact to visual resources and the scenic qualities of the designated "highly scenic" area, Special Condition No. 9(C) requires that utility extensions be placed underground as proposed consistent with Zoning Code Section 20.504.015(C)(12).

Construction of the proposed addition and detached accessory structures would not involve significant grading or alteration of topographic features consistent with the provisions of LUP 3.5-1 that require that permitted development minimize the alteration of natural landforms, as the subject site is flat and void of topographic features.

As discussed above, Special Condition No. 3 requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including restrictions on colors, materials, and lighting. The condition will ensure that any future buyers of the property are made aware of the development restrictions on the site because the deed restriction will run with the land in perpetuity.

Therefore, the Commission finds that as conditioned, the proposed amendment is consistent with Policies 3.5-1 and 3.5-3 of the LUP and with Section 20.504.015(C) of

the Zoning Code, as the proposed development would (1) be within applicable height limits for the designated highly scenic area, (2) be sited and designed to protect coastal views from public areas, (3) be visually compatible with the character of surrounding areas, (4) be subordinate to the character of its setting, and (5) minimize alteration of natural landforms.

8. Water Quality

Summary of LCP Provisions

LUP Policy 3.1-25 states:

> *"The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained."*

Coastal Zoning Code Section 20.492.020(B) incorporates sedimentation standards and states in part:

> *"(B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
>
> *(C) Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator."*

Discussion

LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. CZC Section 20.492.020 sets forth sedimentation standards to minimize sedimentation of off-site areas. Specifically, CZC Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation. CZC Section 20.492.020(C) suggests the use of temporary mechanical methods as a means of controlling sedimentation.

The proposed project involves the construction of an addition to an existing single-family residence, an attached garage, studio, workshop, septic system, and related accessory development. As discussed previously, the subject parcel is located on a coastal terrace atop a steep coastal bluff. Runoff originating from the development site that is allowed to

drain over the bluff edge or drain indirectly to the ocean could contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of marine waters.

As discussed previously, the subject parcel is located on a bluff top property. Runoff originating from the development site that is allowed to drain down the bluff toward the ocean could contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of coastal waters. The increase in impervious surface area associated with the proposed development will decrease the infiltrative function and capacity of the existing permeable land on site. The reduction of permeable surface area will lead to a small increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Sediment and other pollutants entrained in stormwater runoff from the development that is carried down the bluff to the ocean contribute to degradation of the quality of coastal waters and any intervening sensitive habitat. Other than removing vegetation from within the building site, the applicants propose to retain the majority of the site in a vegetated condition which would continue to allow for infiltration of stormwater, thereby greatly reducing the potential that runoff from the completed development would affect coastal waters.

Therefore, sedimentation impacts from runoff would be of greatest concern during construction. Construction of the proposed development would expose soil to erosion and entrainment in runoff, particularly during the rainy season. To ensure that best management practices (BMPs) are implemented to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction, the Commission attaches Special Condition No. 10. This condition requires the implementation of Best Management Practices (BMPs) to control erosion and sedimentation during and following construction. These required BMPs include (a) disposing of any excess excavated material resulting from construction activities at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; (b) installing straw bales, coir rolls, or silt fencing structures to prevent runoff from construction areas from draining toward the bluff and rare plant ESHA, (c) maintaining on-site vegetation to the maximum extent possible during construction activities; (d) replanting any disturbed areas as soon as feasible following completion of construction, but in any event no later than May 1st of the next spring season consistent with the planting limitations of Special Condition No. 8(C); (e) covering and containing all on-site stockpiles of construction debris at all times to prevent polluted water runoff; (f) protecting the canopy and root zones of existing living trees on site through temporary fencing or screening during construction, and (g) limiting grading to the dry season between April 15th and October 31st.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the

biological productivity of coastal waters be sustained because stormwater runoff from the proposed development would be directed away from the bluff that drains to the ocean.

9. Public Access

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The parcel is part of the Island Cove Estates subdivision, which stretches both east and west of State Highway One in the vicinity of the project. All property owners within this subdivision hold in their deed the legal right of use of "beach property" and "road easement to and from said property." This right of use is shared by land owners within the Iversen Point and Iversen Landing subdivision as well, some 113 lots in total. The private "road easement" held by the 113 parcel owners extends from Highway One a short distance to the north of the subject property down along the face of the bluff to the beach at Iversen Landing bordering the subject property.

Although some other permittees for other coastal development permits within the subdivision in the past recorded offers to dedicate public access over the interests in the road and beach held by the property owners, not all lot owners are subject to permit conditions requiring dedication of their interest or otherwise have offered to dedicate rights for public access over the road and beach property. Therefore, the road and beach have not been opened to the public.

The proposed development would not affect public rights of access to the roadway and beach. As noted, the roadway to the beach is located near, but not on the applicants' property and the proposed development would not block or otherwise affect ingress or egress to the roadway or beach. In addition, the development would not affect any other

trails or roads providing access to the ocean. As described above, the subject parcel is located west of Highway One and sits atop a coastal bluff approximately 70 feet above the ocean. There is no physical access from the subject parcel to the shoreline due to the very steep bluff. There are no other trails or public roads that provide shoreline access within the vicinity of the project and therefore, the proposed development would not interfere with existing public access. Furthermore, the proposed project involves changes to an existing single-family residence that would not increase residential density, would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the proposed development does not have any significant adverse impact on existing or potential public access, and that the project as proposed, which does not include provision of public access, is consistent with the requirements of the Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the County's certified LCP.

10. California Environmental Quality Act (CEQA)

Mendocino County is the lead agency for purposes of CEQA review. The County determined that the proposed project is categorically exempt (Class 3) from CEQA requirements.

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on LCP and Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development has been conditioned to be found consistent with the policies of the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures which will minimize or avoid all significant adverse environmental impacts have been required as special conditions of the permit. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed development as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS:

1. Regional Location
2. Vicinity Map
3. Site Plan
4. Floor Plan
5. Roof Plan
6. Elevations
7. Proposed Building Materials
8. Excerpts from Geotechnical Report
9. ESHA Buffer Width Analysis
10. Entomological Report
11. Appeal
12. Notice of Final Local Action

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

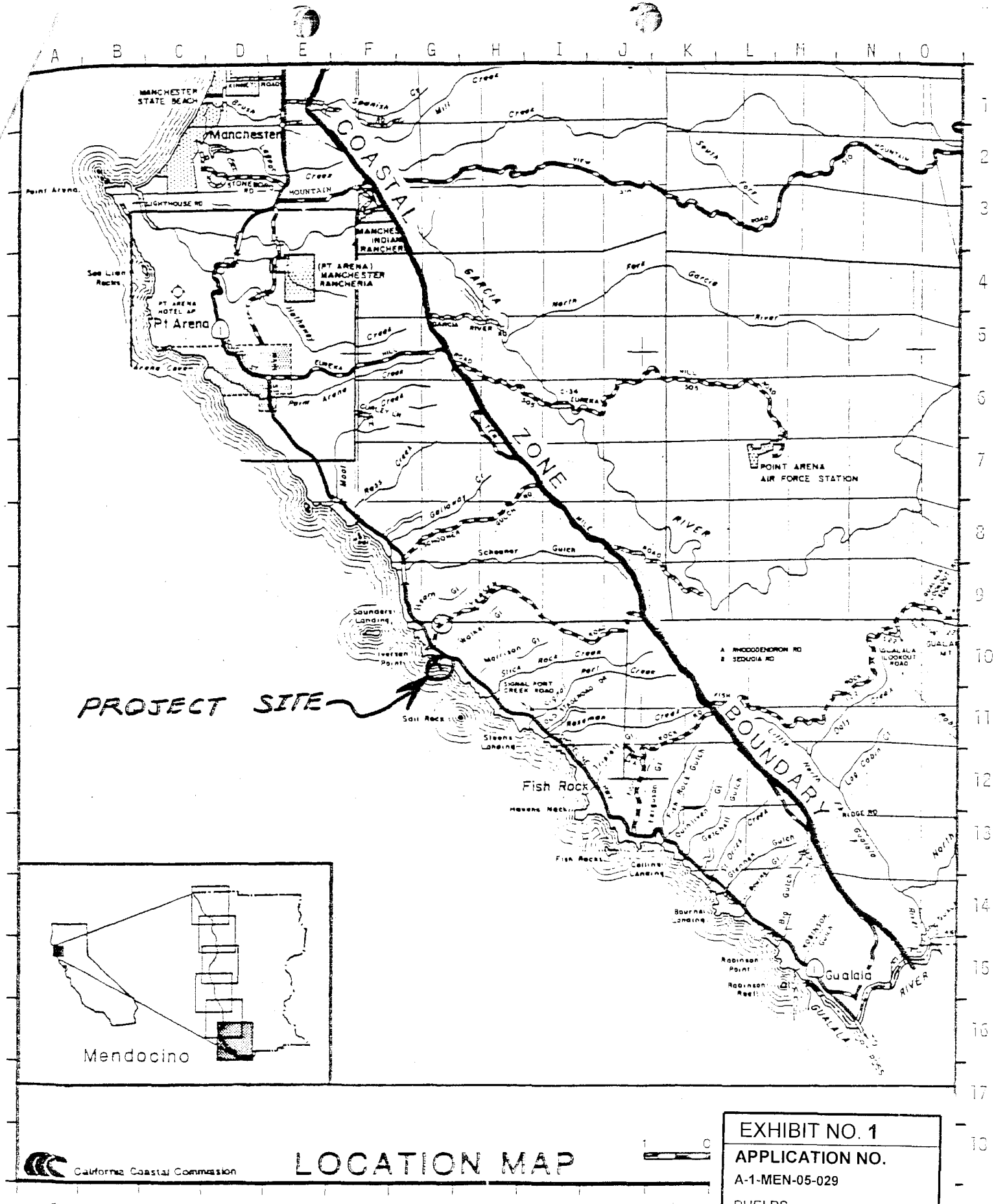


EXHIBIT NO. 1

APPLICATION NO.

A-1-MEN-05-029

PHELPS

REGIONAL LOCATION

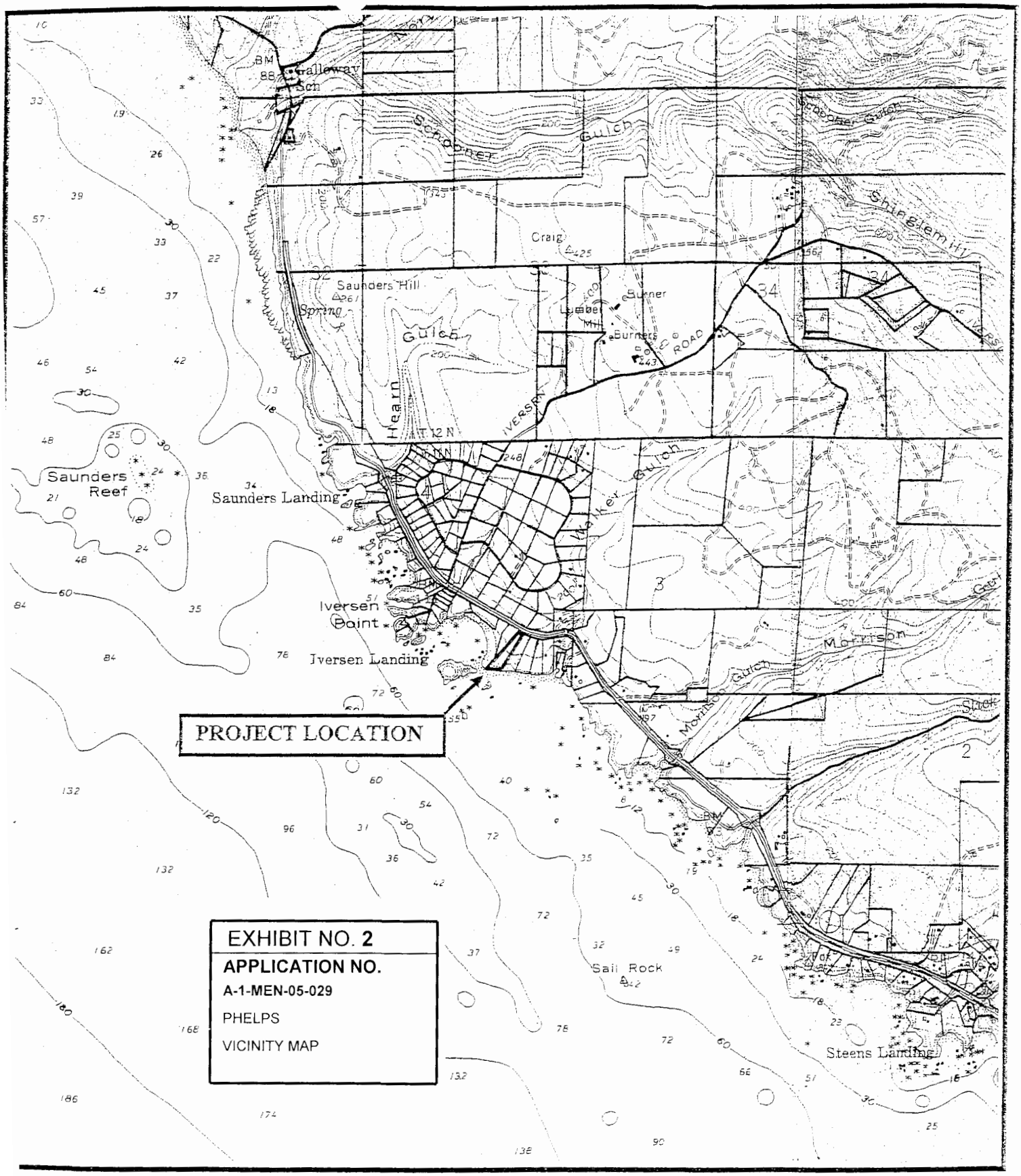


EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-05-029

PHELPS

VICINITY MAP

CASE NO: CDP 62-04	CHARLES & DALE PHELPS	
EXHIBIT A	LOCATION MAP SCALE: 1 INCH = 2000 FEET	NORTH

EXPEDITOR	STRUCTURAL AND CIVIL ENGINEERING	SOILS ENGINEER	GEOLOGICAL SPECIALIST	BOTANICAL SURVEYOR
AMY WYNN COASTAL DEVELOPMENT PERMITS PO BOX 488 703 NORTH MAIN STREET FORT BRAGG, CA 95437	I.L. WELTY & ASSOCIATES 703 A. N. MAIN STREET FORT BRAGG, CA 95437 707.964.8865	CARL RITTIMAN AND ASSOCIATES P.O. BOX 1700 MENDOCINO, CA 95460 707.937.0804	BACE ANALYTICAL AND FIELD SERVICES INC. 5803 SKYLANE BOULEVARD WINDSOR, CA 95492 707.838.0780	PLAYALINA NELSON RIDGE TO RIVER, P.O. BOX 2782 FORT BRAGG, CA 707.357.1134

ADDITIONS & RENOVATIONS TO:
PHELPS RESIDENCE
COASTAL HIGHWAY 1 | GUALALA, CALIFORNIA

KEYED NOTES

1	APPROXIMATE LOCATION OF EXISTING U/G UTILITY TRENCH	14	4"Ø STORM WATER LEADERS FROM BUILDINGS TO INFILTRATION PIT. 8"Ø LEADERS FROM PIT TO DAYLIGHT U/G	27	EXISTING GRAVEL DRIVE TO CONVERT TO GRAVEL CART AND TOC PATH
2	CURTAIN DRAIN	15	4'-0" SQUARE STORM WATER INFILTRATION PIT	28	PROPOSED NEW GRAVEL DRIVEWAY
3	EDGE OF TOPSOIL COVER	16	1000 GALLON CONCRETE PUMP CHAMBER	37	CEDAR SPLIT RAIL FENCE
4	AEROBIC DRIP LEACHFIELD AS DESCRIBED PER 3143 PACKAGE FROM CARL RITTIMAN	17	4" ABS	38	1 OF 8 LEADER LOCATIONS DRAINS U/ BUILDING GRADE AND NEW CONSTRUCTION TO DAYLIGHT AWAY FROM ESHA BUFFER ZONE
5	EXISTING HIGHWAY DRAINAGE DITCH	18	AEROBIC TREATMENT TANK	39	LP GAS TANK
6	NEW TRENCHED ELECTRIC SERVICE TO TRANSFORMER ADJACENT TO WORKSHOP	19	1000 GALLON CONCRETE SEPTIC TANK	40	EXISTING DRIVE TO BE REMOVED
7	NEW TRENCHED WATER SUPPLY TO MAIN HOUSE	20	6 S.F. PROPOSED ROOF MOUNTED SOLAR THERMAL WATER HEATER PANELS	41	ROOF EDGE OF EXISTING CARPORT
8	1.5" PVC FLUSH RETURN LINE INTO SEPTIC TANK	20.1	PROPOSED 7 K.W. PV PANELS		
9	1.25" PVC FORCE LINE	22	FOOTPRINT OF EXISTING HOUSE		
10	PROPOSED SOLID CEDAR FENCE, 5' MIN. HT.	23	EXTENT OF NEW PROPOSED FOUNDATION		
11	PROPOSED TRANSFORMER ON 6" CONCRETE PAD	24	LINE OF BLUFF EDGE PER GEOTECHNICAL REPORT DATED AUGUST 07, 2006 REVISED MARCH 02, 2007		
12	SECONDARY POWER LINE TO MAIN SURVICE PANEL AND SUB-PANELS	25	EXISTING TREES TO BE REMOVED AND OR RELOCATED		
13	PROPOSED GENERATOR	26	EDGE OF NEW GRAVEL DRIVEWAY LINE		

BOTANICAL KEY

29	CALYSTEGIA PURPURATA SSP. SAXICOLA (CNPS LIST 1B)
30	CALYSTEGIA PURPURATA (NOT LISTED)
31	NORTH COAST BLUFF SCRUB
32	WIRE MESH RPOTECTIVE SHELTERS
33	TEMPORARY CONSTRUCTION FENCE
34	GEOTECH SETBACK
35	ESHA BUFFER
36	SIDE YARD SETBACK

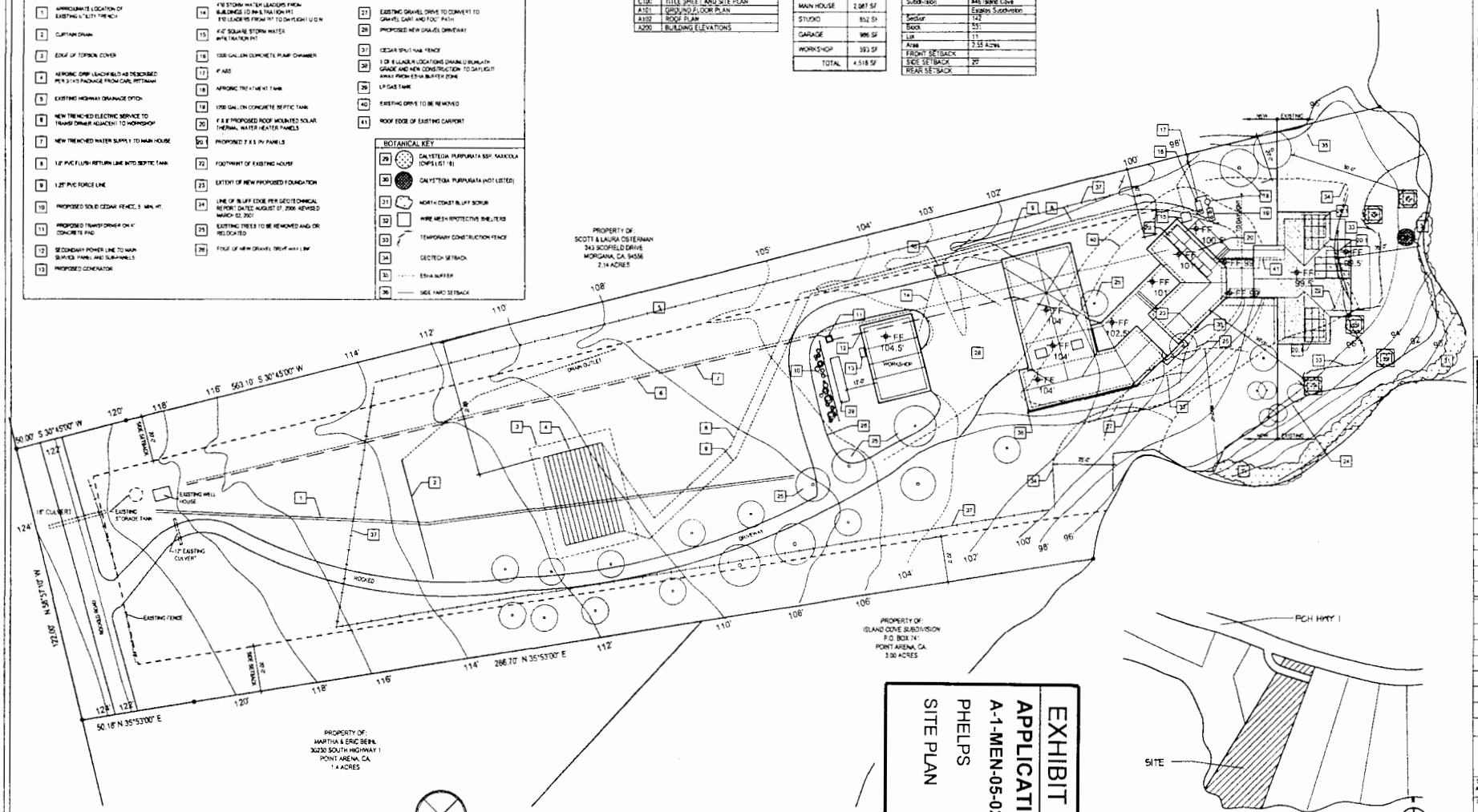
TABLE OF CONTENTS

AREA CALCULATIONS

MAIN HOUSE	2,987 SF
STUDIO	852 SF
GARAGE	986 SF
WORKSHOP	593 SF
TOTAL	4,518 SF

DATA TABLE

Subdivision	846 Island Cove
	Estates Subdivision
Section	142
Block	551
Lot	11
Area	2.55 Acres
FRONT SETBACK	
SIDE SETBACK	20'
REAR SETBACK	



1 SITE PLAN

1" = 20'-0"

2 VICINITY MAP

NTS

EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-05-029
PHELPS
SITE PLAN

ISSUE:

ADDENDA:

SITE PLAN

SCALE: AS NOTED | SHEET #: C100

DRAWN BY: JF

DATE: 4.04.08

DRAWING NAME:

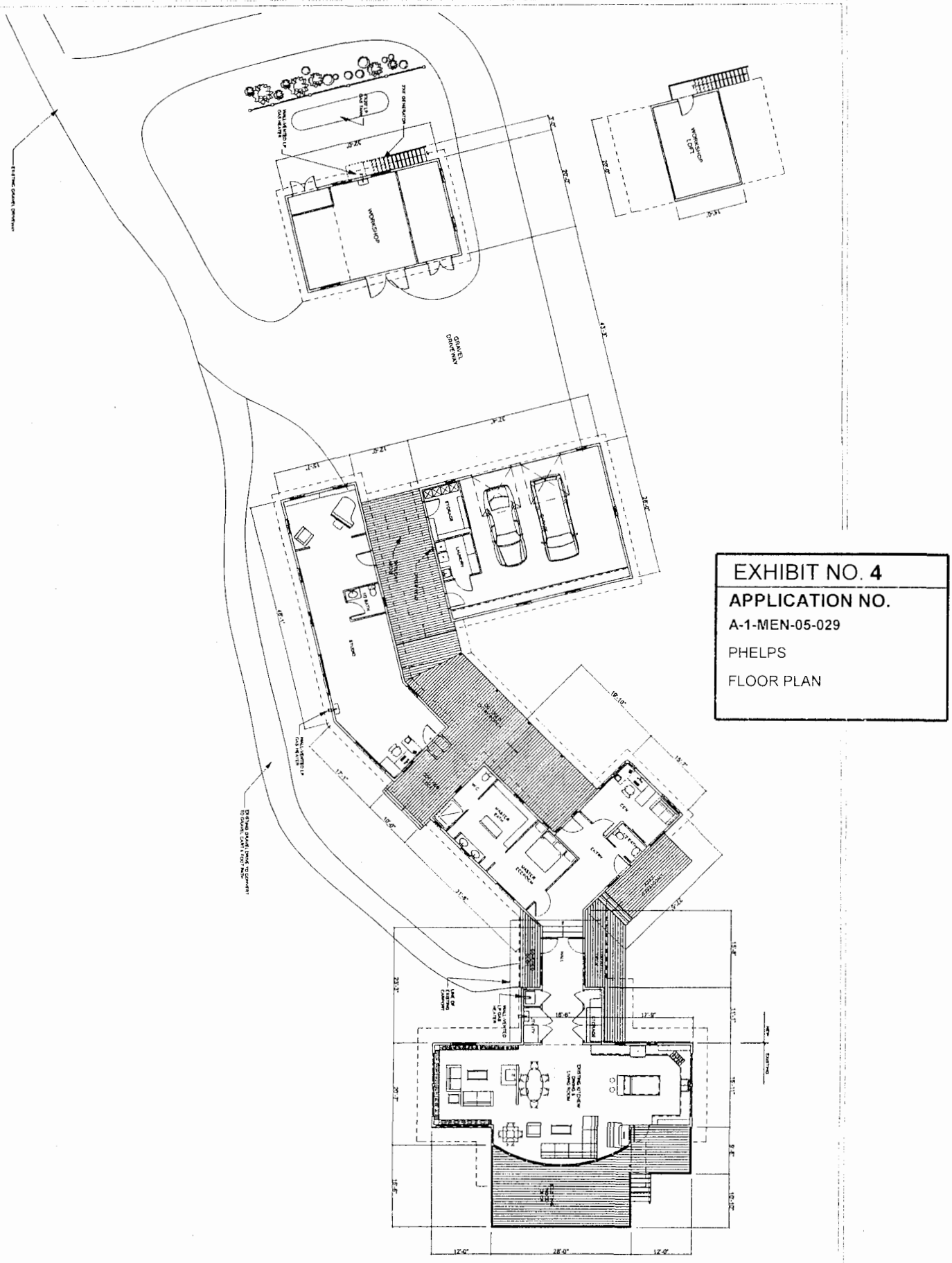


EXHIBIT NO. **4**

APPLICATION NO.

A-1-MEN-05-029

PHELPS

FLOOR PLAN

ADDITIONS & RENOVATIONS TO:

PHELPS RESIDENCE

COASTAL HIGHWAY 1 GUALALA, CALIFORNIA

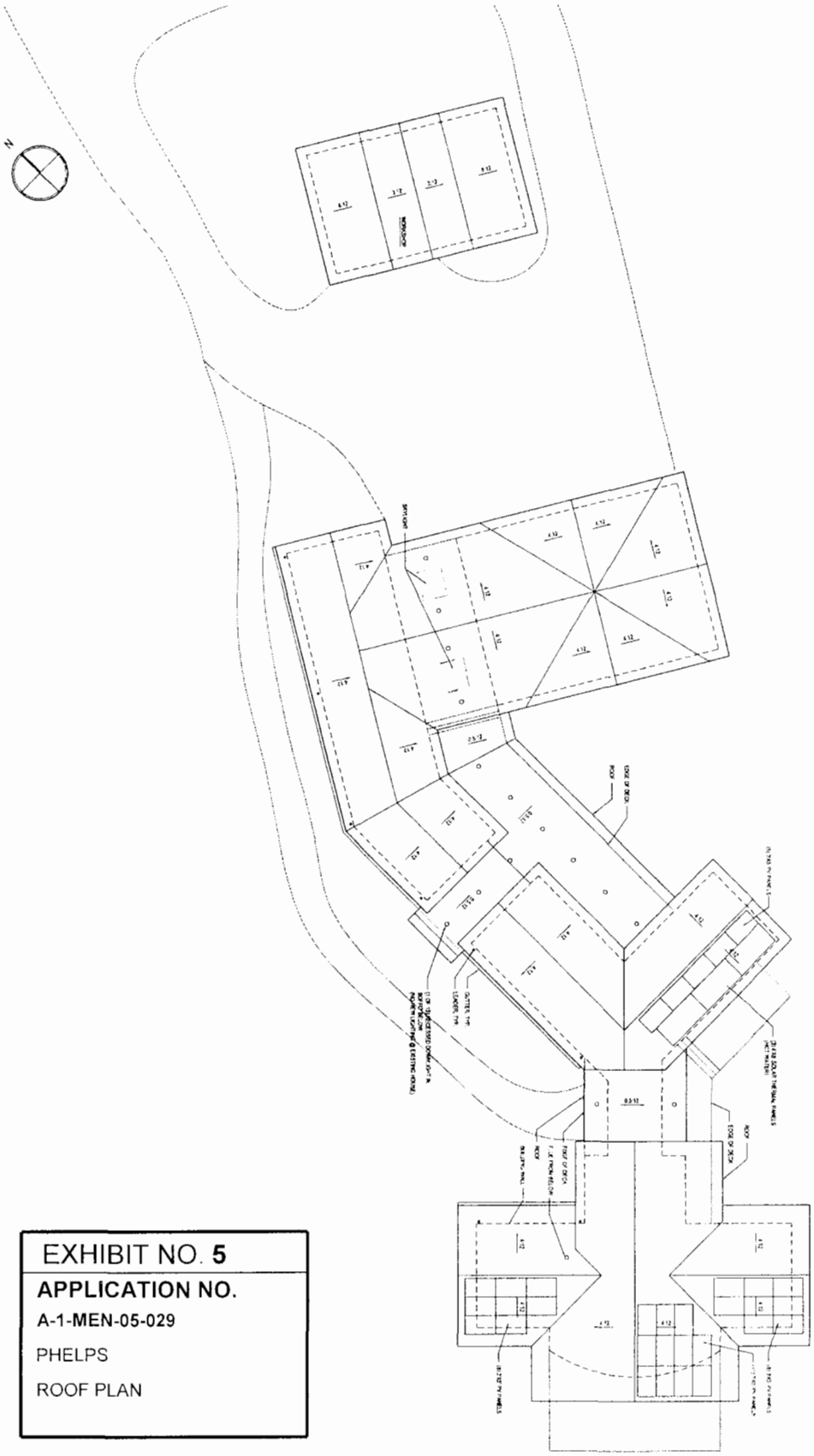


EXHIBIT NO. **5**

APPLICATION NO.

A-1-MEN-05-029

PHELPS

ROOF PLAN

ADDITIONS & RENOVATIONS TO:

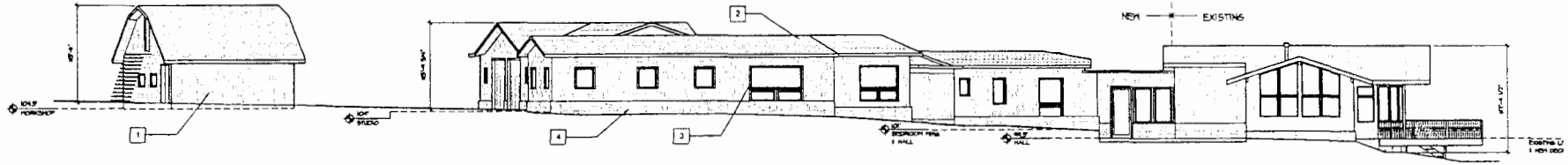
PHELPS RESIDENCE

COASTAL HIGHWAY 1 | GUALALA, CALIFORNIA

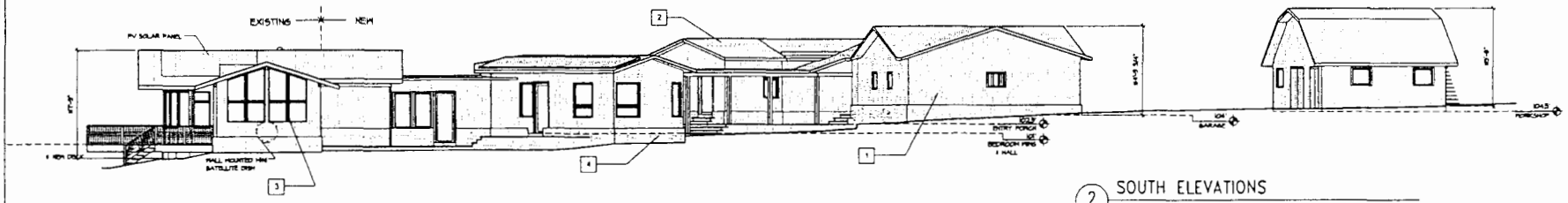
ASHOKAN Architecture & Planning, LLC

ROOF PLAN

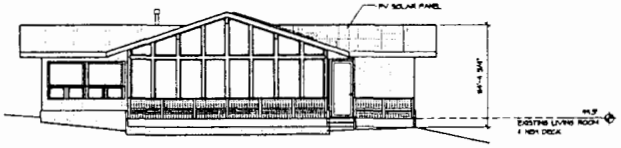
A102



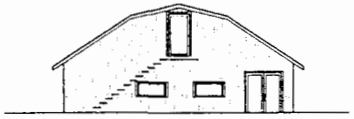
1 NORTH ELEVATIONS



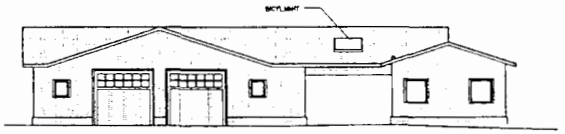
2 SOUTH ELEVATIONS



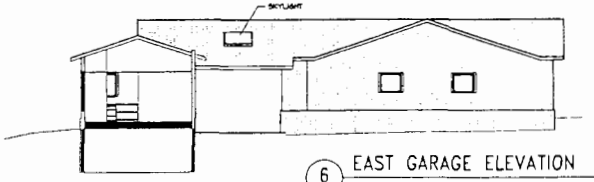
3 WEST ELEVATION



4 EAST WORKSHOP ELEVATION



5 WEST GARAGE ELEVATION



6 EAST GARAGE ELEVATION

EXTERIOR MATERIAL KEY				
KEY	COMPONENT	MATERIAL	STYLE	COLOR
1	SIDING	NICHIHA FIBER CEMENT SIDING	SIERRA PREMIUM	CEDAR
2	ROOFING	DAVINCI SYNTHETIC SHINGLES	SLATE	ABERDEEN BLEND
3	TRIM	PAINT	BENJAMIN MOORE	NEWPORT GREEN 2050-30
4	WATER TABLE	CULTURED STONE	DRYSTACK LEDGESTONE	SUEDE CSV-2010

NOTE:
EXTERIOR LIGHTING IS RECESSED DOWNLIGHTING IN SOFFITS.

EXHIBIT NO. 6
APPLICATION NO.
A-1-MEN-05-029
PHELPS
ELEVATIONS

ADDITIONS & RENOVATIONS TO:
PHELPS RESIDENCE
COASTAL HIGHWAY 1 GUALALA, CALIFORNIA

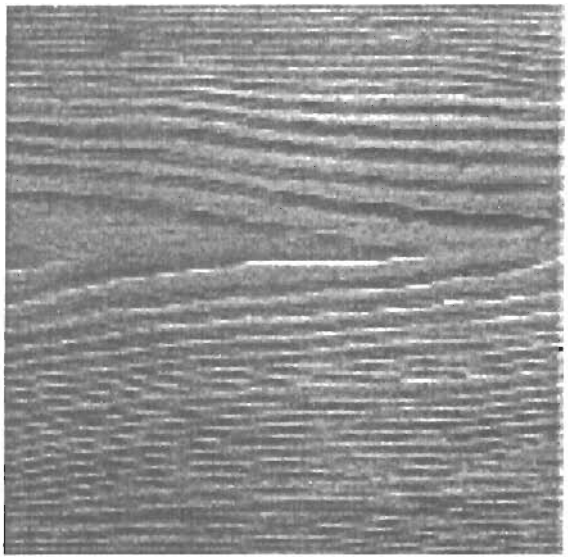
ASHOKAN Architecture Planning

ISSUE

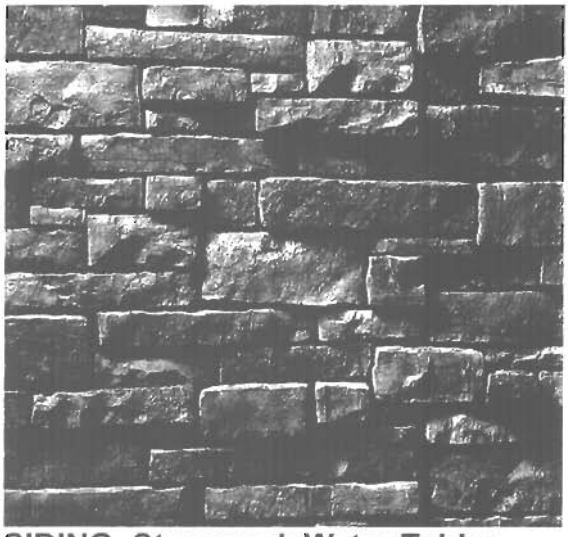
ADDENDA

BUILDING ELEVATIONS

SCALE 1/8" = 1'-0"
SHEET #
DRAWN BY:
DATE 4.04.06
A200
DRAWING NAME:



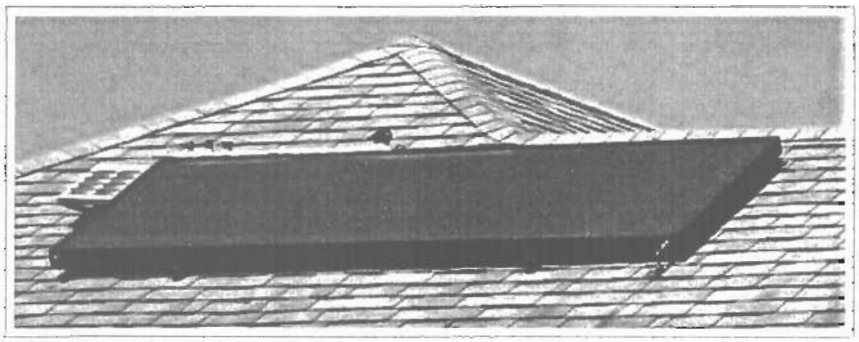
SIDING, Fiber-Cement:
Fiber-cement shake siding (Nichiha Sierra Premium Shake, Cedar): Superdeck Woodperfect stain, Cedar.



SIDING, Stonework Water Table:
Owens Corning Cultured Stone: Drystack Ledgestone; Suede CSV-2010.

EXHIBIT NO. **7**
APPLICATION NO.
A-1-MEN-05-029
PHELPS
PROPOSED BUILDING MATERIALS (1 of 3)

SOLAR PHOTOVOLTAIC PANELS
BP Solar 4175i: dark cells with bronze anodized aluminum frame.



SOLAR WATER PANELS
Go Solar, flat, roof-mounted solar water panels, or equivalent.

SKYLIGHTS
Velux flat manual venting skylights, or equivalent.

RESIDENTIAL SATELLITE DISH:
DirectTV typical dish.

FENCE, screen fence:
5' high solid cedar utility screen fence.

FENCE:
3' high, cedar split-rail.

GEOTECHNICAL INVESTIGATION

PLANNED PHELPS RESIDENCE
30250 SOUTH HIGHWAY ONE
MENDOCINO COUNTY, CALIFORNIA

11804.1

prepared for

Charles and Dale Phelps
3326 Clover Street
Pittsford, NY 14534

Prepared by

BACE GEOTECHNICAL
A Division of Brunsing Associates, Inc.
P. O. Box 749
Windsor, CA 95492

June 15, 2004

EXHIBIT NO. 8
APPLICATION NO.
A-1-MEN-05-029
PHELPS
EXCERPTS FROM GEOTECHNICAL REPORT
(1 of 5)

4/P 3/28/05

Erik E. Olsborg
Engineering Geologist – 1072

Roy A. Bell
Geotechnical Engineer – 136

construction differential settlement will be less than 1/4 inch between adjacent foundations.

5.6 Erosion Control

The planned residence will be intercepting the natural sheet flow drainage across the site. Concentrated runoff (including water from roof gutter downspouts) should be dispersed onto the ground surface on the inland side of the residence. Drain water should be outletted to the south end of the property away from the bluff and the leach field area as described in the Site Drainage Section of this report.

6.0 RECOMMENDATIONS

6.1 Site Grading

Areas to be graded should be cleared of existing foundations, vegetation, rubbish, and debris. After clearing, surface soils that contain organic matter should be stripped. In general, the depth of required stripping will be about 2 to 3 inches; deeper stripping and grubbing may be required to remove isolated concentrations of organic matter or roots. The cleared materials should be removed from the site; however, strippings can be stockpiled for later use in landscaped areas.

BACE should be notified in advance if fill material placement is planned for the project. Fill material, either imported or on-site, should be free of perishable matter and rocks greater than six inches in largest dimension, and have an Expansion Index of less than 40, and should be approved by BACE before being used on site as structural fill below footings or slab-on-grade floors. Furthermore, specific recommendations for fill area preparation and for material placement should be made by BACE before structural fill placement.

6.2 Foundation Support

6.2.1 Spread Footings

The proposed structures can be supported on reinforced concrete footings founded in dense, natural soils, rock, or compacted fill placed in accordance with our previous recommendations. Footings can be assigned a soil bearing pressure of 2500 pounds per square foot (psf) for dead plus live loads. A one-half increase

in bearing pressure is allowable when considering wind or seismic loads. Footing elements should be founded at least 12 inches below lowest adjacent SSG for the planned one-story construction and 18 inches if there will be two-story construction. Regardless of load, wall footings should be no less than 12 to 15 inches wide for one and two-story construction, respectively, and isolated footings should be at least 18 inches wide.

Footing excavations may be as deep as 3 to 4 feet to obtain uniform bearing within supporting soil/rock, as observed by BACE. Footings deepened below the minimum depths can be backfilled with lean concrete to within 18 inches of SSG. A "standard" footing with reinforcing can then be constructed on top of the lean concrete. Where footing depths cannot be excavated due to the presence of hard rock, footings may be dowelled into the rock per the structural engineer's requirements.

6.2.2 Lateral Loads

Resistance to lateral loads can be obtained using a combination of passive earth pressure against the face of foundations and frictional resistance along the base of foundations. An allowable passive pressure of 250 psf plus 150 psf per foot of depth psf below soil subgrade (trapezoidal distribution), and frictional resistance of 0.30 times the net vertical dead load, are appropriate for footing elements poured neat against supporting natural and approved engineered fill soils. If required, addition lateral load resistance can be obtained using sidewall friction of 100 psf along footing sides. Passive pressure and sidewall friction should be neglected within the upper six inches of SSG, unless slabs or pavement confines the surface.

6.3 Seismic Design Criteria

The proposed structures should be designed and constructed to resist the effects of strong ground shaking (on the order of Modified Mercali Intensity IX) in accordance with current building codes. The Uniform Building Code (UBC), 1997 edition, indicates that the following seismic design criteria, based upon the proximity of the Type A, San Andreas Fault are appropriate for the site:

Seismic Zone Factor,	Z = 0.40
Soil Profile Type =	Sc
Seismic Coefficients,	Ca = 0.40 Na
	Cv = 0.56 Nv

Near Source Factors,	Na = 1.2
	Nv = 1.5
Seismic Source Type =	A (San Andreas Fault)
Distance to Fault =	Approximately 6 km (3-¾ mi)

6.4 Concrete Slabs-On-Grade

During existing house-foundation removal and subsequent foundation and utility trench construction, planned subgrade surfaces may be disturbed. Where this is the case, the subgrade should be moisture conditioned as necessary, and re-rolled to provide a firm, smooth, unyielding surface compacted to at least 90 percent RC.

Slab-on-grade floors should be underlain by at least 4 inches of clean, free-draining gravel or crushed rock, graded in size from 1-1/2 or 3/4 maximum to 1/4 inches minimum, to act as a capillary moisture break. In areas where movement of moisture vapor through the slab would be detrimental to its intended use, installation of a vapor barrier (e.g., visqueen) should be considered.

Exterior concrete flatwork (non-traffic areas) can be placed directly on a minimum of 12 inches of suitably prepared low expansive, select fill compacted as described in the previous sections of this report. Where the compacted subgrade soils have been disturbed by traffic or foundation excavations, the subgrade should be scarified, moisture conditioned, and recompacted to at least 90 percent RC.

6.5 Utility Trenches

Utility trenches four feet in depth, or less, can be excavated with "standard" excavating equipment. However, isolated boulders may be encountered that will require using a hoe-ram attachment. Utility trenches greater than five feet in depth, or less than five feet in depth in areas of weak soils, should be sloped or shored in accordance with State of California Safety Regulations.

Within structural areas, trench backfill material should meet the previously recommended requirements for select fill. Below about two feet from soil subgrade, the contractor may elect to use imported granular materials; if so, the granular soils should have an expansion index less than 40 and have 100 percent passing the 4-inch screen, 30 to 100 percent passing the 3/8-inch sieve, 0 to 40 percent passing the No. 40 sieve, and 0 to 10 percent passing the No. 200 sieve.

Utility trench soil backfill should be placed in layers 6 to 8 inches or less in loose-thickness, moisture conditioned as required, and compacted as previously recommended for compacted fill. Jetting or flooding is not a suitable method of compaction. Granular backfill, if used, should be placed in layers 8 inches or less in loose-thickness, and compacted with vibrating, or other, approved equipment to the specified degrees of relative compaction or to equivalent relative density, as recommended by BACE. For purposes of this report, 90 percent RC is the equivalent of 50 percent relative density.

6.6 Site Drainage

Because surface and/or subsurface water is often the cause of foundation or slope stability problems, care should be taken to intercept and divert concentrated surface flows and subsurface seepage away from the building foundations and the top and toe of the cut and fill slopes. Drain outlets into the nearby swales should be located within densely vegetated areas, or should be protected from erosion by riprap (large cobbles or small boulders). BACE should monitor the site during construction to determine if additional subdrains are necessary.

6.7 Additional Services

Before construction, BACE should review the final grading, drainage, and foundation plans and geotechnical-related specifications for conformance with our recommendations.

During construction, BACE should be retained to provide periodic observations, together with the appropriate field and laboratory testing, during site preparation, placement and compaction of fills and backfills, subdrain installation and foundation construction. Foundation excavations should be reviewed by BACE while the excavation operations are being performed. Our reviews and tests would allow us to check that the work is being performed in accordance with project guidelines, confirm that the soil conditions are as anticipated, and to modify our recommendations, if necessary.

Furthermore, BACE can provide material testing and observation during construction, including observations and test during concrete placement, compressive strength determination, reinforcing steel placement, and masonry inspection and testing, where required.

Appendix A

Table 1. Buffer Zone Analysis
Definitions of Special Status Plant Species Included in the Scoping List
Table 2. Special Status Plant Scoping List
Table 3. Results of Floristic Survey
Table 4. Subspecies Identification of *Calystegia* Groupings

Initials

Mendocino County Code section 20.496.020 is addressed in table format below.

Table 1. Buffer Zone Analysis

Section 20.496.020 Coastal Zoning Ordinance	
(A) Buffer Areas. *A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such areas.*	To determine that the proposed development is not an environmentally damaging project alternative, buffer widths were analyzed based on current habitat conditions, relevant ecological features present on the subject parcel and the surrounding conditions relating to the project and the existing ESHAs. Consideration was also given to the extant of the ESHAs and the degree to which development could impact this area. Mitigation measures are recommended to reduce potential adverse impacts to a less-than-significant level.
(1) Width. *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 shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be 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 use permitted in adjacent Environmentally Sensitive Habitat Area.*	Based on this buffer analysis, review of the existing conditions of the ESHAs, the surrounding area and proposed site plan, a buffer width of 100' is not necessary to protect the resources of the *Calystegia purpurata* ssp. *saxicola* and the Northern Coastal Bluff Scrub habitat (NCBS). The applicant is proposing development that is one to twenty-three feet away from several groupings of ssp. *saxicola* and the NCBS. *Calystegia purpurata* ssp. *saxicola* is a particularly hardy species, known to withstand close mowing and regular foot traffic for a number of years on this property. It is also known to have withstood close mowing on a separate parcel near Mendocino. Its rhizomatic root system may help it endure such attacks. Because of its expressed hardiness, it is believed this species can withstand the close proximity of dismantling and construction activity proposed for this project. The proposed development activity will be approximately ten (10) feet from the edge of the NCBS, the completed house will be approximately twenty-five (25) feet from the edge of the NCBS; neither of these will increase shading nor drainage onto the habitat of this ESHA. The most sensitive environmental factor for NCBS is its susceptibility to erosion. There is currently no evidence of any active erosion on the bluff face where the NCBS is established. As drainage will not be increased onto this habitat area, there should be no increase in erosion potential. Therefore, the NCBS is not expected to be impacted by this development activity. The existing development (house) is immediately adjacent to the closest edge of the ESHAs - ssp. *saxicola* groupings #1, 4 and 5 - and is ten (10) feet from the closest edge of the NCBS habitat. The proposed house will be a greater distance from closest ESHA -

	ssp. *saxicola* groupings #1, 4 and 5 - than the existing house: the distance to the proposed house will increase from one (1) to ten (10) feet from the closest edge of grouping #5 (+/- 2 plants); the distance to the proposed house will increase from one (1) approximately twenty (20) feet from the closest edge of groupings #1 (+/- 5 plants) and #5 (+/- 10 plants). The proposed house will also be a greater distance from the NCBS habitat: the distance to the proposed house will increase from ten (10) to approximately twenty (20) feet from the closest edge of the NCBS.
(a) Biological Significance of Adjacent Lands. *Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).* *Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*	The lands adjacent to the ssp. *saxicola* and the NCBS are dominated by introduced perennial grasslands that are mowed on a regular basis. These introduced perennial grasslands provide no functional relationship to either ESHA, nor do they provide significant habitat for wildlife species that may be dependent upon the ESHA habitats. Development on this parcel allows for the opportunity, through mitigation measures, to actually improve the biological significance of the existing ESHAs as well as their adjacent lands.
(b) Sensitivity of Species to Disturbance. *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a*	*Calystegia purpurata* ssp. *saxicola* is a particularly hardy species known to withstand severe mowing and herbicides. Its rhizomatic root system may help it endure such attacks. It is because of its expressed hardiness that it is believed this species can withstand the close proximity of dismantling and construction activity. The development activity will be approximately ten (10) feet from the edge of the NCBS, and will not increase shading nor drainage onto

determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:	the habitat of this ESHA. The completed house will be the structure closest to the NCBS, at a distance of approximately thirty (30) feet; however, this new house will not increase shading or drainage onto this habitat. Moreover, the habitat will experience less shading and drainage as the result of its increased distance to the structures. The most sensitive environmental factor for NCBS is susceptibility to erosion. As drainage will not be increased onto this habitat area, there should be no increase in erosion potential. Therefore, the NCBS is not expected to be impacted by this development activity. Common species of wildlife are expected to continue using the habitat area and are highly adapted to low levels of human disturbance. The continued use of the habitat by common species is expected to continue with the proposed development. There is not known to be any known threatened or endangered wildlife making use of this parcel.
(b)(i) *Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species;*	The proposed location of development on the subject lot will not have any known influence on migratory fish or wildlife, specifically because the existing ESHAs should not be impacted by the development activity as proposed.
(b)(ii) *An assessment of the short-term and long-term adaptability of various species to human disturbance;*	The proposed project is not expected to have any long-term adverse impact on the ESHAs with the implementation of the recommended mitigation measures during and after proposed construction. *Calystegia purpurata* ssp. *saxicola* is a particularly hardy species known to withstand close mowing and regular foot traffic for a number of years on this property. It is also known to have withstood close mowing on a separate parcel near Mendocino. Its rhizomatic root system may help it endure such attacks. Because of its expressed hardiness, it is believed this species can withstand the close proximity of dismantling and construction activity proposed for this project. It is not known how adaptable NCBS habitat is to human disturbance. However, close proximity of human activity over a prolonged period of time has the potential of damaging the habitat with foot-traffic. The dismantling of the existing house and construction of the new one farther landward from the bluff edge may prove to be beneficial to this habitat by reducing intensity of daily human activity, thereby reducing the potential for foot-traffic on the habitat. Moreover, moving the structures away from the bluff edge may allow for the potential expansion of the NCBS habitat. Any wildlife species using or inhabiting the habitat area would be adapted to low levels of disturbance from the neighboring houses scattered along the coastline. The use of the existing habitat by common species is expected to continue with completion of the

	proposed development.
(b)(iii) *An assessment of the impact and activity levels of the proposed development on the resource.*	Once the dismantling and construction activity is completed, there is expected to be no increase in traffic or activity on the land. The level of use from the proposed development will not cause an increased impact on the ESHAs. In addition, once the construction is completed the development will be a greater distance from the ESHAs, potentially enhancing their habitat quality. The potential impacts to the ESHAs caused by the dismantling and construction activity itself will be mitigated through implementation of temporary shelters and construction fencing for the ssp. *saxicola*, and temporary fiber rolls for the NCBS habitat. *Calystegia purpurata* ssp. *saxicola* is a species that fares well in shade; therefore, the placement of wire-mesh shelters over the groupings that are closest to the development activity is not expected to adversely impact these plants.
(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*	It is expected that the proposed development will not cause a significant increase in erosion potential. The property is relatively level; minimal vegetation and land alteration will take place as the result of the proposed development activity. Additionally, there are three existing drainage courses - on this parcel and the adjacent parcel to the north - that intercept stormwater runoff from Highway One and neighboring parcels.
(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHAs shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHAs. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*	As the site is relatively level and unobstructed leading to the bluff edge, there are no specific topographical features available to assist in protecting the ESHAs from development activity. The bluff edges and faces will not be developed, and are within the ESHA buffer.
(e) *Use of Existing Cultural Features to Locate Buffer Zones.* *Cultural features (e.g., roads and*	All construction activity is proposed for areas that currently contain residential development and related yard maintenance.

dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side roads, dikes, irrigation canals, flood control channels, etc. away from the ESHA.	There is an existing driveway on the parcel – to the northeast (landward) of the existing house - that will be substantially retained. Development is proposed to be adjacent to and along this road, keeping the majority of the anticipated outdoor human activity (i.e., daily driving into and out of the property, walking between the house and associated outbuildings) on this northeastern (landward) portion of the property. It is anticipated that most daily human activity occurring on the southwestern (ocean) side of the property will take place on the southwest-facing deck of the proposed new house. This deck is generously sized and is expected to be the preferred location for most activity rather than on the ground in front.
(f) Lot Configuration and Location of Existing Development. *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to provide additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*	The proposed parcel is part of an existing subdivision. Development observed on adjacent parcels appears to be comparable in type (single-family residences with associated outbuildings), configuration (long and narrow lots) and location (structures tend to be on the bluff edge); however, distances from potential ESHAs were not specifically observed. NCBS is common in Mendocino County, so it may be assumed that the neighboring developments, which are close to the bluff, are also close to other populations of NCBS habitat. Similarly, as this region of the Mendocino Coast is near the presumed origin of the ssp. *saxicola* (Brummitt), it is quite possible that the development on neighboring lots are likewise in close proximity to this species. Summary of Mitigation Measures (please see Mitigation Measures 1-7 in the body of this report for more detail): • All ssp. *saxicola* groupings within twenty (20) feet of any dismantling or construction activity should be covered with a wire-mesh shelter for the entire dismantling and construction process. A qualified botanist or restoration ecologist should oversee the construction and implementation of these shelters. These shelters should be removed as soon as the botanist or ecologist deems possible. • A temporary construction fence shall be erected between the dismantling and construction activity and the ssp. *saxicola* groupings, extending northwest and southeast to ensure that all of the groupings are protected. This fence shall be sturdy enough to withstand coastal winds and accidental impacts by construction activity. This proposed placement of this fence is illustrated on the ESHA site plan. This fence shall remain in place for the duration of all construction activity. A qualified botanist or restoration botanist should oversee the installation of the temporary construction fence. There shall be no heavy equipment

	activity or construction material placed on the southwestern (ocean) side of the fence. • Fiber rolls should be placed in such a way as to protect the NCBS habitat. The existing ice plant should be removed in order to enhance the quality of this habitat, and the area replanted with non-invasive, native species consistent with the NCBS habitat. The fiber rolls may be removed after revegetation in the area of construction has been established, or they remain in place to biodegrade. • All construction activity and equipment use should be maneuvered northeast and southeast of the temporary construction fence, on its landward side, away from the ssp. *saxicola* and NCBS habitat. • During construction activity, a botanist or restoration ecologist should conduct onsite visits approximately every three months to ensure that development activity, the retention of the wire-mesh shelters or any other aspect of onsite conditions do not adversely impacting the ssp. *saxicola* groupings and NCBS habitat. • The approximate 23-foot area between the deck foundation stemwall and the proposed new house location should be revegetated with native coastal grassland plant species. This should be thoroughly planned by a qualified restoration ecologist/botanist with full consideration of enhancing the habitat for the ssp. saxicola groupings. • Upon completion of construction, a restoration botanist and/or ecologist should be consulted to determine whether further monitoring should be performed in order to ensure the long-term survival of the ssp. *saxicola* groupings and the restoration enhancement area.
(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree,* ***determine the size of the buffer zone necessary to protect the ESHA.*** *Such evaluations will be made on a case-by-case basis depending upon the resources involved, the degree to which*	The type of development proposed for this lot is residential with associated outbuildings, as is typical for the neighboring parcels. The proposed development of the single-family residence, garage, guest cottage and workshop, focuses the majority of the daily outdoor activities on the northeast (landward) side of the house. The majority of foot-traffic will be triangulated between the house, the garage and the workshop, with additional foot-traffic to the guest cottage (also northeast [landward] of the house) when it is occupied. The new house will have several sliding glass doors on its ocean side, opening to a wide and deep (40' long by 11' deep,

adjacent lands are already developed, and the type of development already existing in the area.	approximately 440 sq ft), partially covered deck. Because the deck is generous, offering most of the outside amenities that the coastal bluff offers, it is anticipated that the majority of the ocean-side activities will occur on this deck. Any additional foot-traffic on the bluff edge is expected to be occasional. Therefore, the potential impacts to the ssp. *saxicola* are expected to be greatly reduced from its current situation, as the result of the house moving away from the two closest ESHAs, ssp. *saxicola* groupings #1, 4 and 5, - from its current one (1) foot to twenty-five (25), twenty (20) and ten (10) feet, respectively - as well as by creating a ocean-facing deck that is more accommodating for human activity than the existing deck on the existing house. The proposed development is in scale with parcels in the neighboring area. The surrounding parcels are zoned for residential uses, and are mostly built-out with single-family residences and associated accessory buildings. Out of the fifteen (15) developed parcels in the neighboring area, this one is the largest at 2.55 acres. Of these parcels, the average structural lot coverage (buildings only) is 4.7%. The proposed development (buildings only) would bring this parcel's structural lot coverage from its current 1.6% to 3.8%, well below the average lot coverage.
(2) *Configuration.* *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 the riparian vegetation or the top of the bluff.)*	In lieu of a fixed buffer width, installation of the temporary construction fence, as recommended by the mitigation measures, will create a protective area for the course of dismantling and construction activity. The configuration of this fence shall follow the landward edge of the ESHAs. This fence shall be placed between the temporary wire-mesh shelters protecting the ssp. *saxicola* groupings and the existing residence, and shall be landward of the remaining ESHAs, extending northwest and southeast. For further detail, please see mitigation measures 1b, 2b, 3b and 4b.
(3) *Land Division.* *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*	No land division is proposed on the subject lot.
(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:	
(a) Development shall be compatible with the continuance of the adjacent habitat area by	The *ssp. saxicola* groupings have been thriving in the existing location in which they have had direct exposure to disturbance such as continual mowing, foot traffic, and immediately adjacent

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maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.	development. The proposed development is not expected to increase these activities; rather, the completed development is expected to improve the condition of the ESHAs by moving human activity farther away. The bare soil that will be created in the habitat areas adjacent to the ESHAs as the result of the dismantling and construction activities will be mitigated by the measures below. • **Mitigation Measures 1d & 2d:** After the completion of construction activity, this ssp. *saxicola* grouping shall be evaluated by a qualified botanist or restoration ecologist to determine if it is necessary to erect a permanent garden wall, fence or living fence to replicate the original microhabitat conditions of this particular grouping. • **Mitigation Measure 5a:** A planting and restoration plan should be established to ensure that non-native, invasive plant species do not become established in the open and disturbed area. Any bare soil or ground that may be created as a result of removing the existing house and building the new house to the northeast should be revegetated with the appropriate native coastal grassland species. A qualified restoration ecologist, who is familiar with the ecology of local grasslands, and specifically the habitat requirements of the ssp. *saxicola,* should be consulted to determine the appropriate species mix. Preliminary considerations for restorations include: seed sources and plant starts should be purchased locally; plants should be selected to enhance the habitat for the ssp. *saxicola*; plants should be selected that are appropriate for the type and scale of restoration; a monitoring program should be developed in order to ensure long-term plant survival. Restoration plantings should be completed prior to a winter storm season to give plantings sufficient time to become established. • **Mitigation Measure 7c:** The NCBS habitat quality should be improved by the management of invasive exotic species, specifically by removing all of the existing ice plant from the bluff edge. The resulting bare soil shall be planted with non-invasive, native species appropriate for this habitat area, such as: coast buckwheat, sedum, sea thrift, salal, common checkerbloom, grindelia, bracken fern, and coastal larkspur. Restoration efforts should be completed prior to a winter storm season in order to give plantings sufficient time to become established. The area should be monitored, along with the other previously specified areas of the site, in order to ensure that invasive plant species do not become

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	reestablished.
(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel	Due to the location of the existing house and its proposed dismantling, the development activity cannot occur outside of the reduced buffer area. The geotechnical report illustrates that the optimal placement of the proposed house is farther back from the edge of the bluff than the existing house. The proposed development has been designed so as to accommodate this increased geotechnical setback while maintaining as much of the ocean views that the existing house, as well as houses on neighboring parcels, enjoys.
(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.	The proposed development is expected to not only prevent impacts which would degrade adjacent habitat areas, but also improve the condition of the ESHAs by moving the structures farther away, resulting in less foot-traffic within and near the ESHAs. This should increase the NCBS habitat's ability to resist erosion. As with most houses, foot-traffic appears to have been occurring around the existing house since it was built. This means that the ssp. *saxicola* groupings that are closest to the house have most likely been walked upon for years. The proposed new house will most likely also have foot-traffic around its perimeter. Because the new house will be 15- to 23-feet farther away from the ssp. *saxicola* groupings, those groupings will most likely see less concentrated foot-traffic and therefore have the opportunity to improve over time. Therefore, there will be little to no need for continued maintenance of these plants. In addition, once the proposed development is completed – with the existing house dismantled and the new one built - these plants will have the benefit of a buffer strip where they do not currently have one. For these reasons, the proposed location of the new house and its associated outbuildings will not only have less impact on the maintenance of the biological and physical integrity of the buffer strip as well as on the maintenance of the hydrologic capacity of the ESHAs than currently exists, it is also expected to improve these conditions. Please see (1) (f) for a summary of recommended mitigation measures for minimizing adverse impacts that may occur during the dismantling of the house and subsequent construction activity. Please see Mitigation Measures 1 – 7 in the body of this report, above, for more detail.
(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their	See (4) (a).

ability to be self-sustaining and to maintain natural species diversity.	
(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.	Due to the location of the existing house, the proposed dismantling cannot occur at a greater distance from the ESHAs. As no ESHA on site is greater than fifty (50) feet from the existing house, none of the ESHAs are currently benefiting from buffers, reduced or otherwise: • Three (3) of the seven (7) ESHAs - ssp. *saxicola* groupings #1, 4 and 5 - are immediately adjacent to the existing house: they are one (1) foot to the existing house and associated human activity. If the proposed development occurs, this distance will be increased from one (1) foot to twenty-five (25), twenty (20) and ten (10) feet, respectively. • The remaining four (4) ESHAs – ssp. *saxicola* groupings #3, 6 and 7, and the NCBS habitat – are eighteen (18), forty-six (46), twenty-seven (27) and fifteen (15) feet, respectively, to the existing house and less so to its associated human activity. If the proposed development occurs, these distances will be increased from a minimum of fifteen (15) feet to forty-five (45), fifty-five (55), thirty (30) and twenty-five (25) feet, respectively. The following mitigation measures, in addition to moving the existing house farther from the ESHAs, are recommended to improve the protective value of the buffer area. If this proposed development does not occur, then the protective value of the buffer area will not be improved. The dismantling of the existing house will create bare soil, which has the following recommended mitigation measure: • **Mitigation Measure 5a:** A planting and restoration plan should be established to ensure that non-native, invasive plant species do not become established in the open and disturbed area. Any bare soil or ground that may be created as a result of removing the existing house and building the new house to the northeast should be revegetated with the appropriate native coastal grassland species. A qualified restoration ecologist, who is familiar with the ecology of local grasslands, and specifically the habitat requirements of the ssp. *saxicola*, should be consulted to determine the appropriate species mix. Preliminary considerations for restorations include: seed sources and plant starts should be purchased locally; plants should be selected to enhance the habitat for the ssp.

	saxicola; plants should be selected that are appropriate for the type and scale of restoration; a monitoring program should be developed in order to ensure long-term plant survival. Restoration plantings should be completed prior to a winter storm season to give plantings sufficient time to become established. The proposed development activity on the parcel allows for the opportunity to improve the condition of the NCBS habitat by implementing the following mitigation measures: • **Mitigation Measure 5b:** The ice plant that is present along the bluff edge should be permanently removed to prevent it from expanding into the bare ground left by the construction activity. Please refer to Mitigation Measure 7c for proper management of this invasive species. • **Mitigation Measure *7b:*** The NCBS habitat quality should be improved by the management of invasive exotic species, specifically by removing all of the existing ice plant from the bluff edge. The resulting bare soil shall be planted with non-invasive, native species appropriate for this habitat area, such as: coast buckwheat, sedum, sea thrift, salal, common checkerbloom, grindelia, bracken fern, and coastal larkspur. Restoration efforts should be completed prior to a winter storm season in order to give plantings sufficient time to become established. The area should be monitored, along with the other previously specified areas of the site, in order to ensure that invasive plant species do not become reestablished.
(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.	Maximum lot coverage for a lot between 2 and 5 acres in size in an RR zone is 15%. The total proposed development (including buildings and impervious surfaces) will minimally increase the lot coverage by 1.5%, from the existing 9% to a proposed 10.5%. The only vegetation that may be removed within the buffer area is the ice plant on the bluff, which is recommended as mitigation of an invasive-species, in Mitigation Measures 5b and 7b, above. The proposed dismantling and construction activities will generate minimal noise, dust levels, artificial light, and air pollution. Typical levels of these items are low enough to not require mitigation. The proposed septic system leach field will be approximately two hundred and ninety (290) feet from the closest edge of the nearest

	ESHA. There will be no nutrient runoff from the leach field into any of the ESHAs. The potential for nutrient runoff as the result of altered drainage will be mitigated by the following recommended measure: • **Mitigation Measure 7b:** The NCBS habitat quality should be improved by the management of invasive exotic species, specifically by removing all of the existing ice plant from the bluff edge. The resulting bare soil shall be planted with non-invasive, native species appropriate for this habitat area, such as: coast buckwheat, sedum, sea thrift, salal, common checkerbloom, grindelia, bracken fern and coastal larkspur. Restoration efforts should be completed prior to a winter storm season in order to give plantings sufficient time to become established. The area should be monitored, along with the other previously specified areas of the site, in order to ensure that invasive plant species do not become reestablished. It is unlikely that the proposed construction activity would change any topographical or hydrological features. The site is primarily flat and will require little grading; therefore onsite drainage patterns should remain the same, keeping drainage to the ditch to the southeast relatively unchanged. For the minimal grading that may be required, the following mitigation measure is offered: • **Mitigation Measure 6a:** Grading and landform alteration should be kept to a minimum. Any increase in stormwater runoff as the result of the proposed development and construction activity should be diverted into the drainage ditch southeast of the ssp. *saxicola* groupings. Any stormwater runoff not being collected in infiltration pits should be down-spouted from gutters to sheet flow. Grading activity should only be performed between April 15th and October 31st.
(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.	No riparian vegetation is present within the drainage ditch or anywhere else on the subject lot; therefore there will be no loss of riparian vegetation due to development activities.
(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant	The subject lot is not within a flood plain. The design and siting of the structures will not impede on the flow of stormwater through the parcel; therefore, there should be no exacerbation of 100-year flood

impediment.	conditions as the result of the proposed development.
(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.	The proposed development will not alter the land in such a manner as to impact hydraulic capacity, subsurface flow patterns or hydrological processes. If recommended mitigation measures are implemented, such as planting bare soil with native species appropriate for that habitat and removing the ice plant on the bluff, the biological diversity and processes of the site are expected to remain the same; therefore, the natural processes would continue to be carried out.
(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case-by-case basis.	The drainage ditch that is southeast of the proposed development is not a natural stream environment: it is excavated from an upland area, channeling the flow of stormwater runoff from the private road and Highway One to the ocean, and does not support riparian vegetation. The existing house minimally interrupts the flow of groundwater within the buffer for the ESHAs. The area of soil available to absorb groundwater between the completed structures and the ESHAs will be increased after the existing house is dismantled and the new house and outbuildings are built farther away. In addition, the proposed house has been designed to echo the shapes of the bluff edges. This allows for greater areas of uninterrupted groundwater infiltration than exists in the location of the existing house. Mitigation Measure 7a, in pertinent part, addresses this issue: "Any increase in stormwater runoff as the result of the proposed development and construction activity should be diverted into the drainage ditch southeast of the ssp. *saxicola* groupings."
(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. *(Ord. No. 3785 (part), adopted 1991)*	The dismantling of the existing house will occur in very close proximity to two of the six ssp. *saxicola* groupings. The dismantling activity will also be within the buffer area of the other four ssp. *saxicola* groupings as well the NCBS habitat, although these ESHAs are farther away than the closest two ssp. *saxicola* groupings. The construction of the new house and the reassembly of the sections of the existing house into the new outbuildings will have less potential for impact to the ESHAs because these activities will occur farther away from the ESHAs than will the dismantling activities. The mitigation measures, summarized below, are recommended to reduce any impacts to the ESHAs by the proposed dismantling and construction activities to a level that is less-than-significant: • All ssp. *saxicola* groupings within twenty (20) feet of any dismantling or construction activity should be covered with a wire-mesh shelter for the entire

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	dismantling and construction process. A qualified botanist or restoration ecologist should oversee the construction and implementation of these shelters. These shelters should be removed as soon as the botanist or ecologist deems possible. • A temporary construction fence shall be erected between the dismantling and construction activity and the ssp. *saxicola* groupings, extending northwest and southeast to ensure that all of the groupings are protected. This fence shall be sturdy enough to withstand coastal winds and accidental impacts by construction activity. This proposed placement of this fence is illustrated on the ESHA site plan. This fence shall remain in place for the duration of all construction activity. A qualified botanist or restoration botanist should oversee the installation of the temporary construction fence. There shall be no heavy equipment activity or construction material placed on the southwestern (ocean) side of the fence. • Fiber rolls should be placed in such a way as to protect the NCBS habitat. The existing ice plant should be removed in order to enhance the quality of this habitat, and the area replanted with non-invasive, native species consistent with the NCBS habitat. The fiber rolls may be removed upon completion of construction. • All construction activity and equipment use should be maneuvered northeast and southeast of the temporary construction fence, on its landward side, away from the ssp. *saxicola* and NCBS habitat. • During construction activity, a botanist or restoration ecologist should conduct onsite visits approximately every three months to ensure that development activity, the retention of the wire-mesh shelters or any other aspect of onsite conditions do not adversely impacting the ssp. *saxicola* groupings and NCBS habitat. Please see Mitigation Measures 1 - 7, above, for more detail on how these measures should be applied to each ESHA for each step of dismantling and construction activity.

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7 November 2005

Ed McKinley
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237 Morrow Street
Fort Bragg, CA 95437

Re: Charles & Dale Phelps' Property at 30250 South Highway 1 in Point Arena, CA
APN 142-031-11
Habitat Assessment for the Endangered Lotis Blue and Behrens Silverspot Butterflies

Dear Ed:

This letter reports the findings of my habitat assessment survey for Charles & Dale Phelps' 2.55-acre residential lot located at 30250 South Highway 1 in Point Arena for two federally-listed endangered butterfly species, namely the Lotis Blue and Behrens Silverspot. I can summarize the findings of my survey by stating that neither of these endangered species is likely to occur at this property. The remainder of this report provides pertinent background information on both butterflies and describes my survey methods and findings in greater detail.

BACKGROUND INFORMATION

Lotis Blue Butterfly.

One of the rarest butterflies in North America, the Lotis Blue, *Lycaeides idas lotis*, was recognized in 1976 as endangered by the U.S. Fish & Wildlife Service (1976). It formerly occurred at several coastal localities in Mendocino, and possibly Sonoma and northern Marin counties (Tilden 1965). However, during the past several decades, the butterfly has been periodically observed at only one location. Specifically, it was found beneath the Elk-Fort Bragg 60-kV transmission line north of the town of Mendocino that is operated and maintained by Pacific Gas & Electric Company. The butterfly was last observed at this location in 1983 (Arnold 1993).

The Lotis Blue is a member of the butterfly (Lepidoptera) family Lycaenidae, which is commonly referred to as the blues, coppers, and hairstreaks. The species *L. idas* has a holarctic distribution, meaning that it occurs both in Europe and North America. In California, populations are known from the Cascade, central and northern Sierra Nevada, Siskiyou, Yolla Bolly, and Warner mountain ranges. *L. idas lotis* is an extremely rare subspecies whose documented known geographic range (i.e., based on specimens housed

in museum collections) is restricted to coastal areas of Mendocino County between Point Arena and Fort Bragg.

Males have brilliant violet-blue dorsal wings, with a crenulate black border and fringe of white scales along the outer margin. The upper surface of the female's wings are brown, occasionally a bluish-brown, with a wavy band of orange across the subterminal portions of the forewing and hindwing. The outer wing edges are as in the male. Ventral wing surfaces of both sexes have grey ground color with scattered black spots in the distal, subterminal, and terminal areas. Light blue-green scales may be present basally. A wavy band of orange spots border the termen of the hindwings in between two rows of sinuous black lines. Adults have a wingspan of approximately 1 inch.

Circumstantial evidence suggests that the larval food plant is *Lotus formossissimus*, a small legume (Fabaceae) that grows in wet, mucky areas, such as bogs, in wet meadows with soggy soils, and seeps. Several relatives of the Lotis Blue feed on legumes, while some relatives feed on other types of plants. Four other legumes grow along the PG&E right-of-way (ROW), three in wet areas and one in more upland habitats, including *Lotus aboriginum*, *Lotus corniculatus*, *Lotus oblongifolius*, and *Lathyrus vestitus* (Arnold 1991). Until further information becomes available to clarify the specific food plant(s) of the Lotis Blue, all of these legumes are considered potential food plants when they are growing in suitable habitats. Associated native plants of the wet meadow, seep, and boggy areas include: *Campanula californica*, *Carex californica*, *Cornus canadensis*, *Lilium maritimum*, *Sisyrinchium californicum*, and *Sphagnum* sp.

The adult flight season typically ranges from about mid-May through mid-July, although there is some variation in timing between years. Only about 65 preserved specimens are housed in various entomological collections. The vast majority of specimens were collected from the aforementioned transmission line site, a few from the Point Arena area, and several lack specific locality information.

U.S. Fish & Wildlife Service (1977) recognized the historical site north of Mendocino (due east of the Point Cabrillo Lighthouse and Highway 1) as critical habitat. The California Fish & Game Code specifically excludes insects as a type of organism that can be recognized by the state as endangered species. However, under the California Environmental Quality Act (CEQA), the Lotis Blue is treated as a rare species pursuant to section 15380. The California Coastal Act often recognizes places that support endangered species as Environmentally Sensitive Habitat Areas (ESHAs).

Behrens Silverspot.

Behrens Silverspot, *Speyeria zerene behrensii,* is a member of the brush-footed family of butterflies (Lepidoptera: Nymphalidae). It is named after the gentleman, James Behrens, who probably captured the original specimens used to describe this subspecies. Silverspots are also sometimes commonly referred to as fritillaries. On the undersides of the wings are several prominent silver spots, hence the common name.

Behrens Silverspot is one of 18 subspecies of *Speyeria zerene*, a species that ranges throughout most of the cordilleran region of the western U.S. and southwestern Canada. Behrens Silverspot is associated with coastal prairie communities that grow on the terraces and headlands along the immediate Sonoma and Mendocino coasts. Small stands of Beach pines (*Pinus contorta*) interspersed throughout the coastal prairie provide shelter from prevailing coastal winds, which would otherwise limit activity of this cold-blooded butterfly. The larval food plant is most likely *Viola adunca* (Violaceae), although other violets, if present, might also be utilized. Adults are fond of composites for nectar and have been observed feeding on *Senecio vulgaris*, *Cirsium vulgare*, *Silybum marianum*, *Aster chilensis*, and *Erigeron glaucus*. Ironically, the first three of the aforementioned nectar plants are invasives. Much of the former coastal terrace prairie habitat of Sonoma and Mendocino counties has been converted to other land uses, especially grazing, which depending upon its timing and intensity often favors invasive, annual plants rather than the bunch grasses and other herbaceous plants that are characteristic of the prairie.

Historically the silverspot was known from eight locations between the Russian River and Mendocino. Historical locations include:

a) Mendocino, presumably the headlands, which is the type locality;
b) Point Arena;
c) Manchester area, which includes records as far as 6 mi. inland (east) of Manchester, primarily along Mountain View Road;
d) ca. 1 mi. south of Anchor Bay;
e) Sea Ranch;
f) Stewart's Point;
g) Salt Point; and
h) Vicinity of Fort Ross.

Of these historical locations, today the silverspot is still known to occur at Point Arena, Manchester, Stewart's Point, and Salt Point. Silverspots from the Russian River area exhibit phenotypes that are somewhat intermediate in appearance with the endangered Myrtle's Silverspot.

The adult flight season is usually about mid-June through August. Adults have a wingspan of approximately 2.25 inches. The upper surfaces are golden brown with numerous black spots and lines. The undersides are brown, orange-brown, and tan with black lines and distinctive silver and black spots. Basal portions of the wings and body are densely pubescent.

Behrens Silverspot was recognized as endangered by the U.S. Fish & Wildlife Service in 1997. To-date, critical habitat has not been proposed. Like the Lotis Blue, Behrens Silverspot is recognized as a rare species under CEQA.

SURVEY METHODS AND RESULTS

Site Description.

I visited the Phelps' property on October 23, 2005. During my site visit I hiked throughout the property to observe the vegetation, soils, and land uses. I also drove throughout the surrounding neighborhoods to examine vegetation types and to determine current land uses. The Phelps' property is located between Highway 1 and the Pacific Ocean at Iversen Point. A single-family residence is situated at the western end of the site. Prominent vegetation consists of coastal bluff scrub, a wooded area (Bishop pine, Monterey cypress, Montery pine), and grassland. The property is nicely maintained with most of the understory of the wooded area being mowed.

I understand that Susan Morrison, an independent botanist, visited the property four times between April 3 and June 21, 2005. Although I have not seen her entire botanical report, the plant list from her report that you shared with me provides a more complete inventory of plants that occur at the property. On her list is one of the known nectar plants for the Behrens Silverspot, *Erigeron glaucus*. Also, seven individuals of *Lotus formosissimus*, a potential larval food plant of the Lotis Blue butterfly were observed on site during her surveys.

Habitat Assessment Findings.

The vegetation types that occur at the Phelps property are not suitable habitat to support either the endangered Lotis Blue or Behrens Silverspot butterflies. Although one potential food plant for the Lotis Blue occurs at the property, the absence of favored wetland habitats, such as seeps, bogs, or wet meadows greatly reduces the likelihood of the butterfly occurring there. Historically the Lotis Blue butterfly has been associated only with the aforementioned wetland habitats rather than the vegetation types that occur at the Phelps property.

Since the botanical surveys occurred during the spring months when *Viola adunca* would have been apparent, its absence at the Phelps property means that there is no suitable breeding habitat for the Behrens Silverspot. The occurrence of *Erigeron glaucus* suggests that adults, if they occur at other nearby properties, might visit the property to obtain nectar. However, many of the nearby properties at Iversen Point are characterized by dense brush or wood areas, conditions that are not favorable for a silverspot which lives in sunlit coastal prairie habitat. During my roadside examination of nearby properties on either side of Highway 1 did not find any obvious suitable habitat for the Behrens Silverspot near the Phelps property. For these reasons, I believe it is extremely unlikely that the Behrens Silverspot would make any use of the Phelps property.

CONCLUSIONS

Due to the absence of suitable habitat conditions on-site and nearby the Phelps property, I conclude that neither the endangered Lotis Blue butterfly nor the endangered Behrens Silverspot butterfly occur there. Further development of the property should not

impact these butterflies or their habitats. Thus, no mitigation for the two endangered butterflies should be required.

REFERENCES

Arnold, R.A. 1991. Biological studies of the endangered Lotis Blue butterfly for PG&E's Elk-Fort Bragg 60 kV transmission line. Report prepared for Pacific Gas & Electric Company. 45 pp. & appendices.

Arnold, R.A. 1993. The Lotis Blue, *Lycaeides idas lotis* (Lintner). IN, T.R. New (ed.), Conservation biology of Lycaenidae. Occasional Paper of the IUCN Species Survival Commission, No. 8. pp. 143-145.

Tilden, J.W. 1965. Butterflies of the San Francisco Bay Region. University of California Press. Berkeley, CA. 88 pp.

U.S. Fish & Wildlife Service. 1976. Endangered and threatened wildlife and plants: determination that six species of butterflies are endangered species. Federal Register. 41:22041-22044.

U.S. Fish & Wildlife Service. 1977. Endangered and threatened wildlife and plants: proposed determination of critical habitat for six butterflies and two plants. Federal Register 42:7972-7975.

U.S. Fish & Wildlife Service. 1997. Endangered and threatened wildlife and plants: determination of endangered status for the Callippe Silverspot butterfly and Behrens Silverspot butterfly and threatened status for the Alameda Whipsnake: final rule. Federal Register 62:64306-64320.

If you have any questions about my report, just contact me.

Sincerely,

Richard A. Arnold

Richard A. Arnold, Ph.D.
President

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: ERIC PHELPS

Mailing Address: 39250 S. HWY 1

City: POINT ARENA, CA. Zip Code: 95468 Phone: 707 - 882 - 3274

SECTION II. Decision Being Appealed

1. Name of local/port government:

MENDOCINO COUNTY CDP# 62-04 (PHELPS)

2. Brief description of development being appealed:

CONSTRUCT OF FOUR BUILDINGS OF 7000 SQ FT., PLUS SUPPORT OF 615 SQ FT., PLUS SEPTIC SYSTEM OF 1500 SQ FT, LEACH FIELD + BOTTOM DRAIN PLUS DRIVEWAYS, UTILS, TERRACES, DOCPEN, OTHER APPURTENANCES.

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

39250 S. HWY 1 POINT ARENA, CA. 95468
APN 142-261-11 ON WEST SIDE OF HWY 1
5 MILES SOUTH OF PT. ARENA

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

☐ Approval; no special conditions

☐ Approval with special conditions:

☑ Denial (PC DENIED)

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:

DATE FILED:

DISTRICT:

EXHIBIT NO. 11
APPLICATION NO.
A-1-MEN-05-029
PHELPS
APPEAL (1 of 6)

RECEIVED
JUN 08 2005
CALIFORNIA
COASTAL COMMISSION

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: [illegible]/[illegible]/05

7. Local government's file number (if any): CDP #[illegible]-04

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:

CHARLES AND [illegible] [illegible]
[illegible] CLOVER ST.
PITTSFORD, NEW YORK [illegible]

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) LAURA OSTERMAN
[illegible]
[illegible] CA, [illegible]

(2) PETER REINMULLER
P.O. BOX [illegible]
[illegible]

(3) [illegible] [illegible]
P.O. BOX [illegible]
[illegible], CA [illegible]

(4) JULIE VERRAN, [illegible]
P.O. BOX [illegible]
[illegible]

(5) ERIC [illegible]
[illegible]
ST, [illegible], CA 95468

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.

SEE ATTACHED REMARKS

CCC-P2
6/8/05

Brief remarks on proper grounds for an appeal.

1. Physical Access to shoreline. This was considered a manditory requisite following the passage of the Coastal Act Prop. 20 in 1972. For some time now it has no longer been required.

2. Public Views. The development will be highly visable from Iversen Pt. road. The photo inside the brochure was taken in 1985 from that road.

3. The development is not compatible with the established physical scale of the area. Development and its infrastructure of driveways, paths, terraces, and aerobic septic system will take up nearly 75% of the land. Total interior floor area is twice the neighborhood standard, a very good criterion by which to evaluate proposed development.

4. Alteration of landforms. Development will require extensive drainage from buildings on a crumbling blufftop. See back photo on brochure.

5. Geologic setbacks are not sufficient in my experience of 45 years here. Cliff has lost nearly a foot a year since the early 1960's. When the house was built in 1966 the westward bluff extended about 35 feet from its present face.

Some extended remarks.

The plans show much development on an aggressive scale. Indeed This development will set precedent for scale in the neighborhood. It is both too big and too spead out. At 4259 interior square feet it is twice the neighborhood standard of about 1600 sq. ft. for a house plus 576 sq. ft. for a double garage. This project is in fact a compound,

a sprawl of scattered buildings separated by wide intervals. There are four of these; a house of 2,259 sq. ft., a garage of 625 sq. ft., a shop of 621 sq. ft. and a guest house of 707 sq. ft. Altogether they consume the entire ocenfront side of this 2+ acre parcel, or about 50% of the land in developed area. In addition, there is to be an aerobic septic system of 1500 sq. ft. located in the center of the meadow east of the buildings themselves. Two of the accessory buildings, the shop and the guest house, are to be composed of the moved remnants of the old house with added portions.

The most serious objection to the sprawl of buildings is the destruction of natural habitat. I was caretaker for 25 years of this property. I trimmed the trees, burned the brush, mowed the grass, and took reservations for the Nature Conservancy for nature groups when they were given the land. The meadow is a natural and open area now full of wildlife. It must be preserved. The plan will develop at least 60% of this area directly or indirectly. Directly by the buildings themselves, indirectly by the infrastructure of drives, paths, and landscape that is not natural. Aerobic septic fields never do look natural. The leach area stays hummocky and the grass has an artificial green.

A second objection to the accessory buildings is their ideal location for rentals. They would be on prime ocean frontage and possess attractive privacy separation. While such rentals are not legal with our current zoning, nevertheless the law has proven unenforceable in our subdivision which currently has several such rentals. These buildings can be very easily retrofitted with the needed fixtures by any future owner. To permit them is to set up a future bed and breakfast industry.

and so while the size of the development is a problem, the much bigger problem is the sprawling nature of the buildings themselves. We are after all a subdivision whose average lot size is two acres. The compound being proposed has enough development for two separate parcels or one parcel of at least five acres.

So what would be appropriate for this development? If the overall interior floor area were say cut by 30%, this would still amount to 3000 sq. ft. This allows for a house of nearly 2500 Sq. Ft. and a garage of 576 sq. ft. - well a bove the neighborhood average. It could be done by either remodeling the current house with appropriate additions, or demolishing it for new construction. Under no circumstances should the old house be moved a couple of hundred feet to make extra buildings. No more than one detached building, a simple garage, should be permitted. Guest quarters, shop-studio, should both be incorporated into these structures. Economize space, cluster the development and save open space and habitat. Keep all the area east of the current driveway loop free of development including a new septic system if required. (See Map) The owners will still have the headland for waterfront development, the parcel's major attraction. In exchange the meadow must be preserved as an open space natural area. This is a balanced approach and makes good ecological sense.

Finally, I want to say that this appeal is all about saving our coast from bad development. The planning director, Mr. Hall, has essentially drawn the permit conditions too narrowly, allowing for too much bad development. Rejection of this plan will be a victory for all of us as coast residents.

Sincerely,

Craig Scott

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
790 SOUTH FRANKLIN · FORT BRAGG · CALIFORNIA · 95437

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

June 6, 2005

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 #62-04
OWNER: Charles & Dale Phelps
AGENT: Ed McKinley
REQUEST: Remove existing 1,805 sq. ft. residence using portions for new 621 sq. ft. workshop and 707 sq. ft. guest cottage and art studio. Construct new 2,259 sq. ft. residence and 672 sq. ft. detached garage with a 625 sq. ft. porte cochere in between. Total interior floor area equals 4,259 sq. ft. Maximum building height above average natural grade equals 21 feet-5 inches. Additional development includes LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank and leach field, additions to driveway, terrace, paths, utility screen fence, and dog pen.
LOCATION: In the coastal zone, on a bluff-top lot, 5+- miles southeast of Point Arena, on the southwest side of Hwy 1, ¼+- mile southeast of its intersection with Iverson Road; at 30250 S Hwy 1; Assessor's Parcel Number 142-031-11.
PROJECT COORDINATOR: Charles N. Hudson

HEARING DATE: May 26, 2005

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 12
APPLICATION NO.
A-1-MEN-05-029
PHELPS
NOTICE OF FINAL LOCAL ACTION (1 of 18)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 62-04 HEARING DATE: 5/26/05

OWNER: Phelps

ENVIRONMENTAL CONSIDERATIONS:

X Categorically Exempt

_____ Negative Declaration

_____ EIR

FINDINGS:

X Per staff report

_____ Modifications and/or additions

ACTION:

✓ Approved

_____ Denied

_____ Continued _____

CONDITIONS:

✓ Per staff report

_____ Modifications and/or additions

Signed: Coastal Permit Administrator

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
790 SOUTH FRANKLIN · FORT BRAGG · CALIFORNIA · 95437

notice phelps cdp 62-04

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

May 13, 2005

PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, May 26, 2005 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #	CDP #62-04
DATE FILED:	7/16/04
OWNER:	Charles and Dale Phelps
AGENT:	Ed McKinley
REQUEST:	Remove existing 1,805 sq. ft. residence using portions for new 621 sq. ft. workshop and 707 sq. ft. guest cottage and art studio. Construct new 2,259 sq. ft. residence and 672 sq. ft. detached garage with a 625 sq. ft. porte cochere in between. Total interior floor area equals 4,259 sq. ft. Maximum building height above average natural grade equals 21 feet-5 inches. Additional development includes LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank and leach field, additions to driveway, terrace, paths, utility screen fence, and dog pen.
LOCATION:	In the coastal zone, on a bluff-top lot, 5+- miles southeast of Point Arena, on the southwest side of Hwy 1, ¼+- mile southeast of its intersection with Iverson Road; at 30250 S Hwy 1; Assessor's Parcel Number 142-031-11.

PROJECT COORDINATOR: Charles N. Hudson

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Raymond Hall, Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 62-04
May 26, 2005
CPA-1

OWNER:	Charles and Dale Phelps 3326 Clover Street Pittsford, New York 14534
AGENT:	Ed McKinley 237 Morrow Street Fort Bragg, CA 95437
REQUEST:	Remove existing 1,805 sq. ft. residence using portions for new 621 sq. ft. workshop and 707 sq. ft. guest cottage and art studio. Construct new 2,259 sq. ft. residence and 672 sq. ft. detached garage with a 625 sq. ft. porte cochere in between. Total interior floor area equals 4,259 sq. ft. Maximum building height above average natural grade equals 21 feet-5 inches. Additional development includes LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, curtain drain, septic tank and leach field, additions to driveway, terrace, paths, utility screen fence, and dog pen.
LOCATION:	In the coastal zone, on a bluff-top lot, 5± miles southeast of Point Arena, on the southwest side of Hwy 1, ¼± mile southeast of its intersection with Iversen Road; at 30250 S Hwy 1; Assessor's Parcel Number 142-031-11.
APPEALABLE AREA:	Yes, highly scenic, west of first public road.
PERMIT TYPE:	Standard
TOTAL ACREAGE:	2.55± acres
GENERAL PLAN:	RR-5 [RR-2]
ZONING:	RR:L-2
EXISTING USES:	Residential
ADJACENT ZONING:	North, east & west: RR:L-2 South: Ocean
SURROUNDING LAND USES:	North, east & west: Residential South: Ocean
SUPERVISORY DISTRICT:	5
ENVIRONMENTAL DETERMINATION:	Categorically exempt – Class 3(a).

OTHER RELATED APPLICATIONS: Septic Permit ST 23396 is being held pending approval of this application.

PROJECT DESCRIPTION: The site is presently developed with a 1,805 square foot single family residence with an attached carport. Other existing improvements include a driveway, a well, a pump house, a water tank, and a septic tank and leach field sewage disposal system.

The existing residence is to be removed, with portions of it to be relocated on the site and converted to accessory buildings. A new 2,259 square foot one-bedroom, one-and-one-half-bath, single story, single family residence connected to a 672 square foot detached garage by a 625 square foot porte cochere is to be constructed on the approximate site of the existing residence. A 460 square foot deck and stair is proposed on the south side, facing the ocean. The new residence will have a maximum height above the average natural grade of 21 feet 5 inches.

The master bedroom and den from the existing house will be used to form portions of a new 707 square foot building containing a 406 square foot guest cottage and a 301 square foot art studio. The building will have a maximum height above average natural grade of 13 feet 10 inches.

The living/dining room from the existing house will be used to form a new 621 square foot workshop with a maximum height above average natural grade of 15 feet 7 inches.

The total interior floor area will equal 4,259 square feet. The three structures are to have crimped seam copper siding, copper shingle roofing, forest green wood trim, and dark colored window frames and doors. Additional proposed development includes an LPG tank, a generator, a pad-mount transformer, solar panels on the residence roof, new and relocated underground utility lines, two stormwater infiltration pits, a curtain drain, a septic tank, an aerobic treatment tank, an effluent pump tank, a new aerobic drip leach field, driveway alterations, paths, a utility screen fence, and a dog pen.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use: The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum with an alternate density of Two Acres Minimum (RR-5 [RR-2]). The Rural Residential Two Acres Minimum zone is applied to by virtue of the fact that the parcel is less than 4 acres and cannot be further divided. The proposed single family residence and associated development are permitted uses within the Rural Residential Zoning District, and are consistent with the Rural Residential land use classification.

The floor plan for the guest cottage shows a counter and sink within the living area. Section 20.308.050(G)(I) of the Code prohibits a kitchen within a guest cottage. In response to correspondence between staff and the applicant's agent, Ed McKinley, a letter dated October 7, 2004 was submitted stating that the counter and sink in the living area of the guest cottage are deleted from the application. To emphasize County Code requirements that a guest cottage may not contain a kitchen and cannot be used as an independent dwelling unit or be rented separately from the primary residence, Special Condition Number 1 is recommended.

The required setbacks for a parcel less than five acres in an RR:L-2 zone are 20 feet from front and rear property lines, and 6 feet from side property lines. A corridor preservation setback of 40 feet would apply along Highway 1, resulting in a front yard setback of either 60 feet from the highway corridor centerline

or 20 feet from the property line, whichever is greater. As shown on the Site Plan, the structures comply with setbacks required by the County Zoning Code.

The site is within a designated highly scenic area, therefore the height limit is 18 feet above average natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The existing residence does not obstruct any views of the ocean from Highway 1 due to its distance from the highway and the number of trees between the highway and the site. The proposed 21 foot-5 inch height of the residence complies with the height limit. The guest cottage/art studio and the workshop are less that 18 feet in height.

Maximum lot coverage for a lot between 2 and 5 acres in size in an RR zone is 15%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 2.55 acres, or 111,078 square feet. The Site Plan shows approximately 11,706 square feet of coverage, or 10.5%. The project complies with lot coverage limits.

Public Access: The parcel is a bluff-top lot west of the first public road, but does not present any opportunity for public shoreline access due to the steep bluff face. The site is not designated as an access location on the County's Coastal Plan Maps and there is no indication of possible prescriptive access. The proposed development will not interfere with any opportunity for access to the shoreline.

Hazards: The parcel is an ocean-front lot with the buildable portion about 70 feet above sea level. The parcel is in an area where the shoreline runs nearly east and west, with the ocean to the southwest.

Section 20.500.015 (A) (2) of the Mendocino County Coastal Zoning Code states:

> *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.*

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

> *New structures shall be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). New development shall be set back from the edge of bluffs a distance determined from information derived from the required geological investigation...*

Policy 3.4-8 of the Mendocino County Coastal Element 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.*

Policy 3.4-9 of the Mendocino County Coastal Element 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.*

A Geotechnical Investigation was conducted by BACE Geotechnical and a report prepared dated June 15, 2004, evaluating the soil and rock conditions at the parcel with respect to the feasibility and design of the planned residence. As stated in the report, BACE concludes that the site is geotechnically suitable for the planned residential construction. The report states that the main geotechnical constraints that should be considered in the design and construction of this project include bluff stability, strong seismic shaking from future earthquakes, fault rupture hazard, settlement, and erosion control. Based on an estimated average retreat rate of 3.2 inches per year, and a safety factor of 1.5, BASE recommends a bluff setback from the southwest bluff of 30 feet. Based on an estimated average retreat rate of 2.6 inches per year, and a safety factor of 1.5, BASE recommends a bluff setback of 25 feet from the northwest bluff. Similarly a 19 foot setback was recommended from the drainage swale bluff to the southeast of the house site. BASE found the planned house location , as drawn by Ashokan Architecture, to be in conformance the recommended setbacks. BASE found the risks due to fault rupture hazard, ground shaking, and settlement, would be low.

The BASE report contains recommendations for erosion control, grading, foundations, seismic design, soil preparation for on-grade slabs, utility trenches, and drainage. Of particular note, BASE recommends that concentrated surface flows and subsurface seepage should be intercepted and diverted away from the building foundations and the top and toe of cut and fill slopes. Concentrated runoff, including water from roof gutter downspouts, should be dispersed onto the ground surface on the inland side of the residence. Drain water should be discharged to the south end of the property away from the bluff and the leach field area. BASE also recommends that drain outlets into the nearby swales should be located within densely vegetated areas, or should be protected from erosion by riprap.

Special Condition Number 2 is recommended to require that the recommendations in the Geotechical Investigation be incorporated into the design and construction of the proposed structures and associated development.

On blufftop parcels on which new development is within 125 feet of the bluff, it is County policy to require recordation of a deed restriction prohibiting the construction of seawalls, and requiring that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development that might fall onto a beach. Because the proposed new residence is less than 125 feet from the bluff, the deed restriction is being recommended as Special Condition Number 3.

The property is in an area that has a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The Department of Forestry has submitted recommended conditions of approval (CDF# 502-04) for address standards, driveway standards, and defensible space standards. Special Condition Number 4 is recommended to achieve compliance with the fire safe standards recommended by the Department of Forestry.

The Mendocino County Air Quality Management District reviewed the application for possible air quality impacts, and commented that the applicant would need to complete an Asbestos Demolition/Renovation Notification and Release Form (ARDN 2791). Standard Condition Number 4 requires that all permits required by other agencies be obtained.

Grading, Erosion and Runoff: Increased stormwater runoff may be expected from the additional roof area and driveway surface. In the Geotechnical Investigation prepared for the project by BACE Geotechnical, it is recommended that runoff should managed to avoid foundation or slope stability

problems or erosion. Special Condition Number 2 requires that the recommendations in the Geotechnical Investigation be incorporated into the design and construction of the proposed structures and associated development.

Visual Resources: The parcel is located in an area designated as "highly scenic" on the County's Land Use Maps. The existing house was built in 1966, prior to any requirements for bluff setback, and was built well out onto the point at the southwesterly (seaward) tip of the parcel. Current bluff setback provisions require that the new house be about five feet farther back from the bluff edge than the existing house, although it is still well out onto the point.

Exterior building materials and colors are specified as follows:

Roofing:	8" square copper shingles, naturally weathered.
Siding:	36" wide crimped seam copper siding, naturally weathered.
Trim:	Wood, painted Forest Green.
Chimney:	Copper clad with stone top, naturally weathered.
Window frames:	Vinyl, wood, or fiberglass, dark color.
Exterior doors:	Dark color.
Garage door:	Hidden from view.
Exterior lights:	Shielded downcast fixtures.

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

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

Coastal Plan Policy 3.5-3 states, in part:

> *Any development permitted in [designated highly scenic] areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
>
> *In addition to other visual policy requirements, new development west of Highway One in designated 'highly scenic areas' is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to the natural setting and minimize reflective surfaces.*

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

> *In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an*

increase in height would not affect public views to the ocean or be out of character with surrounding structures.

Section 20.504.015 (C) (3) of the Coastal Zoning Code states:

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

Land in the vicinity of the applicant's parcel is forested with evergreen trees that nearly completely obscure any views to the ocean from the highway. In the vicinity of the applicant's parcel, some residences in the area, closer to the highway, can be seen through the trees, but are not clearly in view. The existing residence on the applicant's parcel can be seen from the highway, through a picket fence as one passes in front of the parcel, but it is not noticeably visible. In order to see it, one must be looking perpendicularly to the highway in an area where one's attention is directed straight ahead by the trees along the road, and upcoming turns when traveling in either direction. The new residence, with its copper exterior, once it weathers to brown and green tones, will be difficult to see even for someone looking for it. It will not be noticed by most motorists. The residence will be visible from the cul-de-sac at the end of Iversen Point Road, between the existing houses in Iversen Point Subdivision, but it will be partly screened by the existing trees on the parcel. Only about one quarter of the house will extend seaward of the trees, and it will be set back about five feet from the location of the existing house.

The roof ridges over the majority of the house have a height above average natural grade of about 16 feet-6 inches. The ridge over the porte cochere is about one foot higher. Only the conical roof over the 14 foot diameter cupola at the intersection of the three wings of the residence extends to the height of 21 feet-5 inches. Given the limited locations from which the house is visible, and the distance between these locations and the site, the small portion of the house that exceeds 18 feet in height will not affect public views of the ocean.

Special Condition Number 5 is recommended to require that building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

Section 20.504.035 (A) (2) of the Coastal Zoning Code states:

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

The application and drawings specify either ceiling or wall-mounted shielded downcast exterior lighting fixtures. Special Condition Number 6 is recommended to emphasize that all exterior lights must be shielded or located so that only non-glaring reflected light is visible from beyond the parcel boundaries.

Section 20.504.015(C) (12) of the Coastal Zoning Code states:

Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

The site plan indicates that the utilities serving the existing residence are underground, and that service to the proposed accessory structures will also be underground.

With the recommended conditions, the project will comply with visual resource policies of the Coastal Plan.

Natural Resources: The California Natural Diversity Database Map for the project area shows that the parcel may provide habitat for the supple daisy *(Erigeron supplex)*. Mary Rhyne, Botanical Surveyor, visited the site on June 12 and 26, 2002, and submitted a report dated June 28, 2002. Ms. Rhyne's report states that there is no riparian vegetation along the drainage ditch along the southeast side of the parcel, except for three young umbrella plants *(Cyperus alternafolius)* in the ditch next to Highway 1 and at the outlet of the culvert under the road paralleling Highway 1. [*Cyperus alternifolius* is a non-native sedge from the swamps of Madagascar, sometimes grown as an ornamental, and prefers to grow in wet soil.]

Ms. Rhyne's report relates information obtained from Eric Beihl that the natural drainage features on the site have been altered as a result of a Caltrans culvert discharging water onto the parcel, and efforts by previous owners to place fill and provide ditches to channel the runoff along the parcel boundaries. Mr. Beihl also stated that the parcel has been altered from its natural state by the planting of non-native trees, and later by removal of some trees in an attempt to recreate a meadow-like opening in the center of the parcel.

In a separate letter dated September 26, 2004, Ms. Rhyne states specifically that there are no *Erigeron supplex* on the property.

After the agenda had been made up and distributed for the May 26, 2005 Coastal Permit Administrator hearing, but before this staff report for CDP 62-04 had been completed, a copy of the minutes of the February 3, 2005 Gualala Municipal Advisory Council (GMAC) meeting was received. The minutes contain the following paragraph regarding botanical resources:

> Council Member Bailey walked the property Friday, 28 January with two botanists and immediately found three plants considered rare or habitat supporting the Silver Spot Butterfly, a much endangered coastal specie. She indicated on the map the areas where the plants were found. At the time the accompanying botanical report was written, June 2002, some of these plants were not on the rare or endangered list. One was the coast morning glory *(Calystegia purpurata,* ssp. *saxicola)*; there was checkerebloom *(sidalcia malachroides)*, and *lotus formisissumus*, the latter habitat to the butterfly. She felt the County would definitely want to know of the presence of this plant. She noticed the botanist doing the report only looked at the property once and not at the usual three bloom-times, early spring (March), mid summer (June), and early fall (September). She stated the *sidalcia malachroides* looks very much like the *sidalcia purpurata*, which is even rarer than the first, and needs to be identified if present. It would not have been blooming in June when the survey was taken. She would like to see a second survey done and marker flags placed so the County would know what plants were present on the property, where they were located, and any disturbance of these location-areas could be avoided during construction. The County may want a protection zone placed around some of these location areas. The owners seemed ecologically minded and she was sure they would abide by any requests the County made regarding these plants.

The GMAC minutes for the Phelps project concluded, stating that a motion was carried unanimously "...that the project be approved under the conditions that: 1) another botanical survey be done in the usual

way, three times over a nine month period, and; 2) any plants found to be of special interest be taken into account during construction."

After receiving the GMAC minutes, staff spoke with Mary Rhyne. She stated that she was on the site twice, on June 12 and 26, 2002, as stated in her report. She also said that the morning glory she found on the site and noted in her report was the unlisted western morning glory *(Calystegia occidentalis)*, and that it was located on the bluff.

Staff spoke with Jon Thompson, one of the botanists that had visited the site with Ms. Bailey. Mr. Thompson stated that he had seen maple-leaved checkerbloom *(Sidalcea malachroides)* in the area of mowed grass where the septic leach field is to be located, and coastal bluff morning glory *(Calystegia purpurata*, ssp. *saxicola)* in the ditch along the southeasterly side of the property. Both of these plants are CNPS List 1B plants, rare, threatened or endangered in California.

Staff spoke with Ed McKinley, the agent representing the Phelps. Mr. McKinley had been present at the GMAC meeting, and stated that he had engaged the services of Susan Morrison, botanist, with the firm of kpff Consulting Engineers, to perform additional botanical work on the site. On May 18, 2005, Ms. Morrison submitted the following comments:

> Kpff has been asked by the Phelps to respond to the Gualala Municipal Advisory Council's (GMAC) concerns voiced at the hearing of February 3rd, 2005. Several points were made at the meeting that warrant botanical clarification. On page 9 of the meeting notes, Council Member Bailey stated that on January 28th, she and two botanists(unnamed) found three plants that are "considered rare, or habitat supporting the Silver Spot butterfly, a much endangered coastal specie[sic]." Further in the meeting notes, the Council member Bailey stated that additional plant species were discovered that were not listed as rare or endangered at the time the 2002 botanical survey was conducted.
>
> The council named "coastal morning glory (*calystegia purpurata spp. saxicola*), chekerebloom [sic] ("sidalcia malachroides"), "lotus formisissumus" and "sidalcia purpurata". The council member noted that the survey conducted by Mary Rhyne had been completed in June of 2002, and not in the usual "three bloom-times, early spring (March), mid summer (June) and early fall (September). The council member also noted "sidalcia malachroides looks very much like the sidalcia purpurata" and was not in bloom during the June site visit.
>
> Upon review of Ms. Rhynes botanical survey the June site visit would have incorporated the blooming window of the coastal bluff morning glory (*Calystegia purpurata ssp. saxicola*) , a species that is known to bloom from May through August, (please see attached listing in Appendix A). According to the floristic species list in Ms. Rhynes report, the morning glory species present is *Calystegia occidentalis* or western morning glory, not a listed species warranting protection. The council also stated that "sidalcia malachroides" was not in bloom during the June site visit. According to the California Native Plant Society's Inventory of Rare and Endangered Plants (online edition, v6-05b) the blooming period for maple-leaved checkerbloom (*Sidalcea malachroides)* has a blooming window of April through August (also attached). Maple-leaved checkerbloom would have been in bloom during Ms. Rhynes site visit. "Sidalcia purpurata" is not a species of Sidalcea listed in the current Jepson manual. Kpff believes the council may have intended to cite the purple stemmed checkerbloom (Sidalcea malviflora ssp. purpurea) and not "sidalcia purpurata". The purple stemmed checkerbloom is a recently listed sub-species of Sidalcea malviflora and is not readily found. The species has been recorded in the

area located within the Point Arena and Gualala USGS quadrangles. The blooming window for this sub-species is May. Kpff surveyed for checkerbloom in April and the beginning of May. Common bluff checkerbloom *Sidalcea malvaeflora* is present at this location and as of the third of May, no subspecies of checkerbloom has been identified.

The council also refers to "*lotus formisissumus*" as habitat to the Silver Spot Butterfly and as a recent addition to the Rare and Endangered species list. Kpff believes the council may have inted to refer to the *Lotus formosissimus*, and not *lotus formisisumus*. According to the above mentioned CNPS Inventory of Rare and Endangered plants, *Lotus formosissimus* is now listed as a list 4 species. The *lotus* is present on the Phelps property and to date, seven plants have been located. The rare butterfly associated with *Lotus formosissimus* is the Lotus Blue Butterfly (*Lycaeides argyrognomon lotis*) and not the Silver Spot Butterfly (please see the attachment located in Appendix A). The bloom date for this plant is March through July and the plant was noted in Mary Rhynes report dated June of 2002.

[Ms. Morrison's letter was accompanied by copies of pages from the California Native Plant Society On-line Inventory of Rare and Endangered Plants – 6th edition for coastal bluff morning glory *(Calystegia purpurata* ssp. *saxicola)*, purple-stemmed checkerbloom *(Sidalcea malviflora* ssp. *purpurea)*, maple-leaved checkerbloom *(Sidalcea malachroides)*, and harlequin lotus *(Lotus formosissimus)*, and also a page from the U. S. Fish & Wildlife Service website for the Lotis blue butterfly *(Lycaeides argyrognomon lotis)*, which are on file in the Fort Bragg office of the Planning and Building Services Department.]

The botanical report prepared by Mary Rhyne, and the subsequent information submitted by Susan Morrison support a determination that the project will have no impact on natural resources. The statement in the GMAC minutes and the telephone conversation between staff and Jon Thompson, that List 1B plants were found on the site is not borne out by subsequent investigations by Ms. Morrison, who was requested to inspect the site in response to the information presented at the GMAC meeting. Based on the presence of written reports from two different botanists stating that sensitive plant species were not found on the site, and the fact that the site has been substantially modified from its natural state by the addition of fill, the modification of site drainaged, and the establishment of non-native vegetation on the site, staff recommends that the project be found to have no adverse impact on natural resources.

Archaeological/Cultural Resources: The project was reviewed by the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University. The Information Center responded that the project area has the possibility of containing unrecorded archaeological sites and recommended a study. The application was reviewed by the Mendocino County Archaeological Commission on December 8, 2004, which determined that no survey was required. Standard Condition Number 8 advises the applicant of the requirements of the County's Archaeological Ordinance, which establishes procedures to be followed in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources: The site is located within an area mapped as a Critical Water Resources area (CWR) as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Water is to be provided by an existing well drilled in 1983. Division of Environmental Health records indicate that a permit was obtained for the well but that it was never finalled. According to DEH staff, no remedial action is required because it is not possible to issue a final inspection for a well drilled so long ago.

The application proposes a new aerobic sewage disposal system consisting of a 1,200 gallon septic tank, an aerobic treatment tank, a 1,200 gallon pump tank, and a 35 by 50 foot aerobic drip leach field. Jim Ehlers of the Division of Environmental Health commented that the septic system can be approved by Environmental Health.

No adverse impacts to groundwater resources are anticipated.

Transportation/Circulation: The project will not increase traffic on local or regional roadways because the request is to replace an existing residence with a new residence. Caltrans had no comment on the project. There is an existing paved road approach that serves several parcels in the vicinity, and no work within the right-of-way is specified in the application. No adverse impacts are anticipated.

Zoning Requirements: The project complies with the zoning requirements for the Rural Residential Zoning District set forth in Chapter 20.376, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve 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; and

7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

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

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

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

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 is 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 feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. Use of the guest cottage shall remain consistent with the provisions of Section 20.308.050(G)(I) and 20.308.070(K)(B) of the Coastal Zoning Code, in that it shall not contain facilities, either permanent or temporary and portable, for the cooking or preparation of food, it shall not be used as an independent dwelling unit, and it shall only be used by the occupants of the primary dwelling on the property or their guests, without compensation.

2. The plans submitted with the application for the building permit shall incorporate, or specify compliance with, the recommendations for the design and construction of the proposed structures and associated development contained in the Geotechnical Investigation prepared by BACE Geotechnical, dated June 15, 2004.

3. Prior to the issuance of the Coastal Development Permit, the landowners, (Charles and Dale Phelps, or as otherwise shown on the Official Records found in Mendocino County Recorder's office), shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator providing that:

   a. The landowner understands that the site my be subject to extraordinary geologic and erosion hazard and the landowner assumes the risk from such hazards;

   b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of any suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project, including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;

   c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;

   d. The landowner shall not construct any bluff or shoreline protective devices to protect the improvements in the event that these structures are subject to damage, or other erosional hazards in the future;

   e. The landowner shall remove the development when bluff retreat or soil failure reaches the point at which the structure is threatened. In the event that the proposed structures become irreparably damaged before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated

with these structures and lawfully dispose of the material in an approved disposal site. The landowner shall bear all costs associated with such removal:

f. The document shall run with the land, bind all successors and assignees, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

4. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 502-04) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.

5. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.

6. All exterior lighting fixtures shall be designed, located and/or shielded so that only reflected, non-glaring light is visible from beyond the parcel boundaries.

Staff Report Prepared By:

May 18, 2005
Date

Charles N. Hudson
Senior Planner

Attachments:

Exhibit A	Location Map
Exhibit B	Existing Site Plan
Exhibit C	Proposed Site Plan
Exhibit D	Residence Floor Plan
Exhibit E	Garage Floor Plan
Exhibit F	Residence Elevations
Exhibit G	Guest Cottage and Workshop Floor Plans
Exhibit H	Guest Cottage Elevations
Exhibit I	Workshop Elevations

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: $715.00 (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	The septic system shown in the CDP application may not be far enough upslope towards Hwy 1 as required, but the location can be resolved during the building permit process. DEH can issue septic permit upon approval of the CDP.
Building Inspection – Fort Bragg	No comment.
Assessor	No response.
SSU	Study recommended.
Caltrans	No comment.
Coastal Commission	No response.
Air Quality Management District	Needs to complete asbestos demolition notice form.
South Coast Fire District	No response.
GMAC	Recommended approval with the conditions that additional botanical surveys be done, and any sensitive species found be taken into consideration during construction.
Archaeological Commission	No survey required.
Friends of Schooner Gulch	Development is too large. Visible from public road at Iversen Point and from Highway 1. Copper exterior is unacceptable.

SUMMARY OF CORRESPONDENCE RECEIVED AS OF 5/16/05:

Letter dated 8/24/04 from Eric Beihl, adjacent property owner: The parcel was formerly owned by Mr. Beihl's mother. In 1966, a subsequent owner built the existing house. From 1980 to 2000 Mr. Beihl managed the property for the owner as a vacation home rental. Mr. Beihl lists the following objections to the proposed development:

1. Additional structures beyond the main house and garage which could be used as separate rental units.
2. Sprawling nature of the development, which destroys the open meadow on the site.
3. New house too close to bluff edge. The cliff has lost about 25 feet in the last 40 years. The proposed location is also visually imposing on the beach.
4. New septic system and utility lines. The proposed septic system will disrupt the existing meadow, which has standing water after rainstorms. The existing system should be retained and the house moved east. Other utilities have been upgraded within the last 15 years and should be left undisturbed.
5. Time frame for the development. As proposed, the project will take years to complete and will cause much disturbance to the neighbors.

Note dated 10/11/04 from Eric Beihl, adjacent property owner: AP# 142-031-11 was grant deeded to the Nature Conservancy in 1974. It should be determined if deed restrictions are still applicable.

Letter dated 12/6/04 from Martha Beihl, adjacent property owner: No objection to the size of the house, even though it is larger than other houses in the vicinity, but strongly objects to turning the existing house into accessory buildings. Too much development.

Letter dated 12/28/04 from Eric Beihl, adjacent property owner: The Island Cove Board decision regarding Phelps' project should be considered deficient due to failure to notify adjacent property owners.

Petition received May 17, 2005, from Eric Beihl, with 29 signatures: "We the undersigned would prefer that the oceanfront development planned for 30250 S. Hwy. 1 (Phelps – 2 acres) be restricted to 1 house and 1 garage, and that no additional buildings be permitted."

Letter received May 18, 2005, from Susan Morrison, botanist: In response to the concerns expressed an the GMAC meeting when the project was considered, she has visited the site to look for sensitive plants reported to be present on the site, but did not find them.