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**IMPORTANT NOTE:** The Commission will not take public testimony during this phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

# F8a

Goto additional correspondence

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Hearing Date: 6/14/13

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

**Appeal No.:** A-2-MAR-13-0204

**Applicant:** Peter Rumsey

**Appellant:** Environmental Action Committee of West Marin

**Local Government:** County of Marin by Deputy Zoning Administrator

**Location:** 120 Camino del Mar in the community of Inverness, Marin County (APN 112-032-03)

**Project Description:** After-the-fact authorization of a private trail, including wooden and stone steps and a staircase with two landing decks extending down the bluff to the beach, behind an existing single-family residence on the shoreline of Tomales Bay.

**Staff Recommendation:** Substantial Issue Exists

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## **SUMMARY OF STAFF RECOMMENDATION**

The Deputy Zoning Administrator for the County of Marin approved a coastal development permit (CDP) for after-the-fact authorization of a private trail, wooden and stone steps, and stairs with two landing decks extending down the bluff to the beach, behind an existing single-family residence on the shoreline of Tomales Bay. The Appellant contends that the approved development is inconsistent with the County's LCP, including policies related to allowable uses, sensitive resources, hazards, and public access. Staff recommends that the Commission find that the appeal raises a substantial issue of conformance with the County's LCP and that the Commission take jurisdiction over the CDP for the project.

The County approved project is located in the C-R-1 zoning district. The County defined the project as an "accessory structure" to an existing residential use, which is an allowable use in the C-R-1 zoning district. However, the project does not meet the LCP's definition of "accessory building" or "building." In addition, the LCP does not identify private bluff top and shoreline staircases as a permitted use. Thus, the appeal raises a substantial LCP conformance issue regarding allowable uses.

In addition, Tomales Bay is defined as a wetland in the LCP and is also defined as a Special Resource Area. The LCP requires a 100-foot development buffer from Tomales Bay. The approved project is located within this 100-foot buffer. The County's approval does not acknowledge that the project is located with a wetland setback and did not make the required findings regarding stream and wetland conservation protection. Thus, the appeal raises a substantial LCP conformance issue regarding sensitive wetland resources.

Further, the approved project allows new development on the bluff and beach of Tomales Bay. The LCP requires new development to avoid and minimize hazards, including geologic hazards and hazards from flooding, and prohibits new development that causes or contributes to geologic hazards. A geological assessment was not conducted for the portion of the trail that was required to be realigned. No long-term bluff erosion rate analysis was provided nor is there an analysis of impacts from storms or sea level rise to demonstrate that the project complies with the above-stated LCP requirements. Thus, the appeal raises a substantial LCP conformance issue regarding geologic hazards.

Finally, the County's LCP includes strong protections for public access to the coast, especially new development that is located between the first public road and the sea. The County-approved project does not include an evaluation of the project with regards to the LCP's public access provisions. Thus, the appeal raises a substantial LCP conformance issue regarding public access.

Thus, staff recommends that the appeal raises substantial LCP conformance issues regarding allowable uses, sensitive resources, hazards, and public access. If the Commission finds that the approved project raises a substantial issue in terms of conformance with the LCP, then the de novo portion of the hearing on the merits of the CDP application would be scheduled for a future Commission meeting. However, in this case, there are substantial questions about the approvability of the project. As detailed in the report, although the local decision lacked certain information necessary to fully evaluate the project for consistency with the LCP, based on the

information that is available, it appears that the project may not be approvable. If the Applicant nonetheless wishes to pursue Commission approval of their proposed project, the de novo portion of the hearing would be continued until such time as the Applicant provides the Commission with the information necessary to fully evaluate the project for consistency with the County’s certified LCP, and the public access and recreation policies of the Coastal Act. The motion and resolution to effect this recommendation are found on page 4 below.

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## APPENDICES

Appendix A – Substantive File Documents

## EXHIBITS

- Exhibit 1. Project Location Map
- Exhibit 2. Project Site Photos
- Exhibit 3. Project Plans
- Exhibit 4. Notice of Final Local Action
- Exhibit 5. Environmental Action Committee of West Marin Appeal
- Exhibit 6. Correspondence

## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

### Motion

*I move that the Commission determine that Appeal Number A-2-MAR-13-0204 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a no vote.*

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

### Resolution to Find Substantial Issue

*The Commission hereby finds that Appeal Number A-2-MAR-13-0204 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION

The proposed project is located in the community of Inverness in the County of Marin at 120 Camino del Mar (APN 112-032-03) in the C-R-1-B4, Coastal One-Family Residence District, B4 Building District (one acre minimum lot size). The project site is bounded by Tomales Bay to the east; Camino del Mar to the west; and single family residences to the south and to the north (see **Exhibit 1**). Currently, the site is developed with a single family residence.

### B. PROJECT DESCRIPTION

The development being appealed was approved by the Deputy Zoning Administrator. The approved project authorizes after-the-fact construction of a private trail, including wooden and stone steps and stairs with two landing decks down a bluff behind an existing single-family residence on the shoreline of Tomales Bay. The trail is 261 feet in length with a vertical change of approximately 85 feet and includes a staircase that extends down the bluff face, ending with steps on the beach of Tomales Bay (see **Exhibit 2** for photos of the trail). The entire trail is located within the 100-foot buffer from the wetlands of Tomales Bay.

The trail starts near the top of the bluff approximately 66 feet from the western property line. A portion of the already-built trail crosses onto the property of the parcel located to the west. The approved project requires relocation and realignment of this portion of the trail so that it is located entirely within the Applicant's parcel with a minimum trail setback of 10 feet from the



western property line. The County's approval also includes four new stone retaining walls (not yet built) and a planting plan.

The approved project also includes after-the-fact vegetation removal and associated erosion control measures, including the placement of straw wattles. The project adds approximately 200 square feet of new hardscape and impacts an area approximately 600 square feet in size. The stairway and trail extend from the rear of the single-family dwelling to the shoreline of Tomales Bay.

The approved project also includes requirements for erosion control and construction best management practices (BMPs), a prohibition on tree removal, and a number of mitigation measures related to biological resources and geological assessments (e.g., a requirement for site surveys and reports).

### **C. COUNTY OF MARIN APPROVAL**

On September 25, 2012, William Kirsch submitted an application on behalf of the property owner, Peter Rumsey, to the County of Marin for a coastal development permit (CDP) at 120 Camino del Mar, Inverness, Marin County. On April 11, 2013, the Deputy Zoning Administrator of Marin County approved the CDP (by resolution 13-105, see **Exhibit 4**). Notice of the Final Local Action on the Coastal Permit was received in the Coastal Commission's North Central Coast District Office on April 23, 2013. The Coastal Commission's ten-working day appeal period for this action began on April 24, 2013 and concluded at 5 p.m. on May 7, 2013. One valid appeal of the Deputy Zoning Administrator approval (see **Exhibit 5**) was received during the appeal period. The Appellant is an aggrieved person as is required by section 13111 of the Commission's regulations because the appellant indicates that she testified at the public hearing held by the Deputy Zoning Administrator. Pursuant to section 13573 of the Commission's regulations, it was not necessary for the Appellant to have exhausted local appeals for purposes of section 13111 because the local government charges an appeal fee for the filing and processing of local appeals.

### **D. APPEAL PROCEDURES**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development on a coastal bluff, is located between the sea and the first public road, and is within 100 feet of a wetland (Tomales Bay).

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP.

If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding needs to be made if the Commission were to approve a project following a de novo hearing.

## **E. SUMMARY OF APPEAL CONTENTIONS**

The Appellant makes contentions in four main areas: allowed uses, sensitive habitat protection, avoidance of geologic hazards, and public access provisions. With regards to allowed uses, the Appellant contends that the private stairs and trail are not a principally permitted use in the C-R-1 zoning district. With regards to habitat, the Appellant contends that the approved development is inconsistent with the LCP’s sensitive habitat protection policies because the approved development is located within the LCP’s 100-foot Tomales Bay wetland buffer.

The Appellant further contends that the County’s approval is inconsistent with Marin County LCP Unit II hazards policies because: 1) the approved project is located within a geologically unstable area, and the approved mitigation measures are insufficient to address geologic risks; 2) no additional geologic studies were required to evaluate the portion of the trail that will be realigned (see project description above), and 3) no studies were conducted to demonstrate the following a) that the area of construction is stable for development, b) that the development will not create a hazard or diminish the stability of the area, c) that the new structures are set back a sufficient distance from the bluff edge to ensure with reasonable certainty that they are not threatened by bluff retreat within their expected economic lifespan (50 years), and d) that the new development is sited and designed so that no protective shoreline structures are or will be necessary to protect the development from erosion or storm damage during its expected economic lifespan (50 years). In addition, the Appellant contends that the roots of mature trees were exposed at the top of the bluff as a result of the already constructed portions of the approved development, causing potential permanent impacts to the trees themselves and to bluff stability.

Finally, the Appellant contends that the approved trail and staircase is inconsistent with the public access and recreation policies of the Marin County LCP because the LCP requires an applicant to offer a dedication of public access where the development is located between the nearest public road and the sea, and the County did not require such a dedication.

See **Exhibit 5** for the full appeal text.

## F. SUBSTANTIAL ISSUE ANALYSIS

### Substantial Issue

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations:

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

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

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a **substantial issue**.

### Sensitive Resources

The County's LCP includes strong protections for sensitive resources, including sensitive habitats such as wetlands and wetland buffers. LCP policies and standards that provide protection for sensitive resources include the following:

#### 4. Wetlands

*Wetlands in the Unit II coastal zone shall be preserved and maintained consistent with the policies this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in and adjacent to wetlands shall be evaluated as follows:*

- a) *Diking, filling, and dredging of wetlands shall be permitted only in conformance with the policies contained in the LCP on this subject, presented on page 136. In conformance with these policies, filling of wetlands for the purposes of single-family residential development shall not be permitted.*

- b) *Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, bird-watching and boating.*  
...
- d) *A buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Where appropriate, the required buffer strip may be wider based upon the findings of the supplemental report required in (e). Development activities and uses in the wetland buffer shall be limited to those specified in (a) and (b) above.*
- e) *As part of the application for a coastal development permit on any parcel adjacent to Tomales Bay, except where there is no evidence of wetlands pursuant to the Coastal Commission's guidelines, the applicant shall be required to submit supplemental biological information prepared by a qualified ecologist at a scale sufficient to identify the extent of the existing wetlands, based on Section 30121 of the Coastal Act and the area of the proposed buffer areas.*

Marin County Interim Code Section 22.56.130I protects stream and wetland resources and states in relevant part:

*Stream and Wetland Resource Protection ...*

*4. Development applications on lands surrounding Bolinas Lagoon and other wetlands as identified on the appeals area map(s) shall include the designation of a wetland buffer area. The buffer area shall include those identified or apparent wetland related resources but in no case shall be less than a minimum of one hundred feet in width from the subject wetland. To the maximum extent feasible, the buffer area shall be retained in a natural condition and development located outside the buffer area. Only those uses dependent upon the resources of the wetland shall be permitted within the wetland buffer area.*

*5. The diking, filling, dredging and other alterations of wetlands shall occur only for minor, public works projects and shall be in conformance with the Coastal Act Section 30233. No physical improvements along the county parklands surrounding Bolinas Lagoon shall occur. Land uses in and adjacent to wetlands shall be evaluated as follows:*

- a. Filling of wetlands for the purposes of single-family residential development shall not be permitted.*
- b. Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, bird watching and boating.*
- c. No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities.*
- d. A buffer strip one hundred feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands.*

*Development activities and uses in the wetland buffer shall be limited to those allowed pursuant to Section 30233 of the Coastal Act of 1976.*

*e. As part of the development on any parcel adjacent to Tomales Bay, except where there is no evidence of wetlands pursuant to the Coastal Commission's adopted guidelines, the applicant shall be required to submit supplemental biological information prepared by a qualified ecologist at a scale sufficient to identify the extent of existing wetlands based on Section 30121 of the Coastal Act and the area of the proposed buffer areas.*

*f. All conditions and standards of the LCP, relating to diking, filling and dredging shall be met.*

Regarding sensitive resources, the Appellant contends the following: that the project is entirely within an Environmentally Sensitive Habitat Area (ESHA) buffer, that wetland buffer impacts were not discussed as part of the local process, and that relevant mitigation was not included as part of the project. The Appellant further contends that the approved development does not meet the LCP's allowable use categories for development within a wetland buffer because it does not constitute "diking, filling, or dredging," and is not a "resource-dependent" activity.

The approved project is located on a northeast-facing, steep coastal bluff of Tomales Bay. The project site occurs within the LCP's 100-foot wetland buffer from Tomales Bay. The stairs and trail start at the bluff edge approximately 80 feet inland from the shore of Tomales Bay. The trail and wooden steps descend the bluff face to the shoreline. As part of the approved realignment of a portion of the trail, approximately 20 stone steps would be placed at the base of the wooden staircase on the shoreline, and three of these steps would extend to the mean high tide line of Tomales Bay. See **Exhibit 3** for the project plans and **Exhibit 2** for site photos.

Tomales Bay is designated as a wetland and a "Special Resource Area" by the Marin County certified LCP Unit II. The wetlands provide habitat and food sources for marine flora and fauna, which make use of both the aquatic and terrestrial environments provided in this area of the Bay. LCP policy 4(d) requires a minimum 100-foot buffer strip between development and the edge of wetlands. This policy limits development activities and uses in the wetland buffer to those described in LCP Policies 4(a) and 4(b) (i.e. diking, filling, and dredging; resource-dependent activities, such as hiking, fishing, bird watching, etc.). The LCP strictly limits the purposes for which the potentially damaging activities of diking, filling and dredging can occur in the coastal zone in accordance with Section 30233 of the Coastal Act. Fill for the purposes of a private trail and staircase is not specified as an allowable use in estuarine systems or their required buffer, as outlined in LCP general policies on diking, filling, and dredging, cited above. In addition, the approved project does not constitute a resource-dependent use, and the County's findings regarding "Stream and Wetland Conservation Protection" did not acknowledge that the project is located within the Tomales Bay wetland buffer (see page 5 of **Exhibit 4**).

In conclusion, the County's approval does not acknowledge that the project is located with a wetland setback and did not make the required findings regarding stream and wetland conservation protection. As such, there is insufficient factual and legal support for the local decision. Tomales Bay is a significant coastal resource that is affected by the decision and the

approved project would create an adverse precedent for future interpretation of the LCP with respect to required development setbacks from wetlands. Thus, Tomales Bay habitat has not been adequately protected as required by the LCP, and the County's approval raises a substantial LCP conformance issue with respect to protecting sensitive resources. Therefore, the Commission finds that the appeal of the approved project raises a substantial issue of conformity with respect to the LCP's wetland protection policies and standards.

### **Hazards**

The County's LCP requires development to avoid and minimize risks due to hazards, including storm and erosion hazards. Relevant policies include:

#### *5. Hazards*

- a) An applicant for development in an area potentially subject to geologic or other hazards as mapped by the County, including Alquist Priolo earthquake hazards zones, areas subject to tsunami run up, landslides, liquefaction, beach or bluff erosion, steep slopes averaging greater than 35%, or flood hazard areas, shall be required to demonstrate that the area of construction is stable for development, the development will not create a hazard or diminish the stability of the area, and the development will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The applicant may be required to file a report by a qualified professional evaluating the geologic conditions of the site and the effect of the development. In addition, as a condition of coastal permit approval, the applicant shall be required to sign a waiver of liability exempting the County from liability for any personal or property damage caused by natural hazards on such properties.*
- b) In coastal bluff areas, new structures shall be set back a sufficient distance from the bluff edge to ensure, with reasonable certainty that they are not threatened by bluff retreat within their expected economic lifespans (50 years). The County shall determine the required setback based on information submitted by the applicant, staff investigation, and a geologic report which may be required. The setbacks will be of sufficient distance to eliminate the need for shoreline protective works.*
- ...*
- d) New development shall be sited and designed so that no protective shoreline structures (e.g. seawalls, groins, breakwaters) are or will be necessary to protect the building from erosion or storm damage during its expected economic lifespan (50 years). The applicant may be required to submit a professional geologic report demonstrating that the project conforms to this policy.*

The Appellant contends that the project fails to adequately assess geologic hazards for the following reasons:

- 1) The geotechnical report is inadequate because it focuses on the strength of the underlying geologic formation and fails to address the remnants of recent slides that have occurred on the bluff.

- 2) The geotechnical report submitted for the project evaluates the originally proposed trail alignment, not the currently proposed trail alignment.
- 3) The erosion control and mitigation measures proposed will not minimize soil disturbance or maximize protection of natural vegetation.
- 4) The project fails to demonstrate that the area of construction is stable for development and that the development will not create a hazard or diminish the stability of the area, as required by the LCP.
- 5) The project fails to comply with LCP requirements that new structures shall be set back a sufficient distance from the bluff edge to ensure with reasonable certainty that they are not threatened by bluff retreat within their expected economic lifespans (50 years).
- 6) The project fails to comply with LCP requirements that new development shall be sited and designed so that no protective shoreline structures are or will be necessary to protect the development from erosion or storm damage during its expected economic lifespan (50 years).
- 7) The project resulted in the exposure of mature tree roots at the top of the bluff, potentially compromising bluff stability and the trees themselves, but no report from a certified arborist was required as part of the application to the County.

The approved project is located on a northeast-facing, steep coastal bluff adjacent to Tomales Bay. The site is designated “Zone 2” on the stability map of Marin County which classifies relative stability zones from 1 to 4, with 1 being the most stable zone. The approved project site drops down approximately 85 feet from the bluff to the beach, with extremely steep slopes. The stairs are constructed in two general directions (see **Exhibit 3**). The first direction is basically parallel to the contours of the bluff. The stairs in this direction are sloping at approximately 50% - 60%. The second direction is nearly perpendicular to the bluff contours and is steeper, inclined at approximately 80% - 90%.

The LCP requires that hazards be identified and avoided, including due to threats from erosion, tsunami run up, and flooding. According to the LCP, applicants must demonstrate that the area of construction is stable for development, the development will not create a hazard or diminish the stability of the area, and the development will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. As it is located on the bluff face and the shoreline of Tomales Bay, the approved project is neither set back from the bluff nor the shoreline of the Bay. No long-term bluff erosion rate analysis is provided nor is there an analysis of impacts from storms or sea level rise to demonstrate that the project complies with the above-stated LCP requirements.

The LCP prohibits new development that causes a hazard and it is not clear that the proposed project, including development on a bluff face and exposure of mature tree roots, is consistent with this requirement. In fact, the Biological Report for the project states “Trees show the signs of a long history of bluff hillside dynamics. This coastal bluff forest succession is a unique equilibrium in which the maturing tree roots serve critical structural support to stabilize the hillside until they don't! At which point, the trees break the balance, causing a slide and opening the canopy.” Additionally, with respect to erosion, the Biological Report also states: “the geological nature of the hillside and historically rapid erosion also keeps the area from developing a complex and diverse plant community.” Furthermore, the project plans show the

installation of four stone retaining walls along portions of the stairway, which are intended to act as an erosion control measure but also could be interpreted as acting as a form of shoreline armoring to protect the trail, inconsistent with the LCP's requirement that new development be sited and designed so that no protective structures are needed within the development's expected economic lifespan of 50 years.

The LCP requires applicants to demonstrate, among other things, that the area of construction is stable for development and that the development will not create a hazard or diminish the stability of the area. The geotechnical report was prepared prior to the County's approval of realignment of a portion of the trail and only addresses the as-built trail alignment, not the portion of the trail that will be realigned pursuant to the approval. Therefore, the approved project does not meet the LCP's requirement in this regard.

In summary, an analysis of hazards shows that there is insufficient factual and legal support for the local decision. The approved project does not include comprehensive studies of the project location to identify potential impacts or to recommend mitigation measures to adequately prevent the impacts related to the potential development, which is located within potential storm and geological hazard zones. Nor does the project demonstrate that it is adequately setback and will not require future shoreline protection. In fact, the approved project includes stone retaining walls which will act as a type of shoreline protective device. Significant coastal resources are affected by the decision and it would create an adverse precedent for future interpretation of the LCP to allow development in a hazardous area, such as a steep bluff face. Thus, for all the reasons stated above, the Commission finds that the appeal of the approved project raises a substantial issue with respect to the LCP hazards policies.

### **Allowed Uses**

The County-approved project is located in the C-R-1 zoning district. The following Marin County Interim Code sections describe the purpose and the allowable uses in the C-R-1 zone:

*22.57.050I – C-R-1 Coastal one-family residence district.*

*22.57.051I --Purpose.*

*The purpose of this district is to allow development of single-family detached units subject to specific development requirements.*

*22.57.052I – Principal Permitted Uses.*

*The following uses are permitted in all C-R-1 districts:*

- 1. One-family dwelling;*
- 2. Crops, tree and truck farming, nurseries and greenhouses;*
- 3. Home occupations;*
- 4. Accessory buildings;*
- 5. Bed and breakfast operations as defined in Section 22.02.103I, for such operations which offer or provide not more than three guest rooms.*



*22.57.023I Conditional Uses. The following uses are permitted in all C-R-1 districts, subject to securing a use permit in each case:*

- 1. Public parks and public playgrounds;*
- 2. Salesrooms or other buildings for the sale of nursery or agricultural products;*
- 3. Schools, libraries, museums, churches, retreats, noncommercial tennis courts and day child-care centers for seven or more children;*
- 4. Bed and breakfast operations as defined in Section 22.02.103I, which provide four but not more than five guest rooms.*

LCP Section 22.57.052I(4) states that “accessory buildings” are a principally permitted use in the C-R-1 zone. Accessory buildings are defined in the Marin County Interim Code Section as follows:

*22.02.130I - Building, accessory.*

*"Accessory building" means a subordinate building, the use of which is incidental to that of a main building on the same lot. On any lot upon which is located a dwelling, any building which is incidental to the conducting of any agricultural use permitted in the district shall be deemed to be an accessory building.*

Buildings are defined in the Marin County Interim Code Section as follows:

*22.02.120I - Building.*

*"Building" means any structure, having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of any person, animal or chattel. When any portion thereof is completely separated from every other portion thereof by a masonry division of fire wall without any window, door or other opening therein, which wall extends from the ground to the upper surface of the roof at every point, then each such portion shall be deemed to be a separate building. "Building" as described herein does not include mobile homes, house trailers, campers and similar devices and appurtenances.*

The Appellant contends that the private stairs and trail are not a principally permitted use in the C-R-1 zoning district under Marin County Interim Code Section 22.57.052I, and also contends that the approved development was incorrectly categorized as an "accessory structure" in order to be deemed a principally permitted use under the LCP. Finally, the Appellant contends that private bluff stairways are not described as an allowable use in the Marin County Unit II LCP.

The allowable principally permitted uses in the C-R-1 zoning district include single-family dwellings; crops, tree and truck farming; nurseries and greenhouses; home occupations; accessory buildings; and bed and breakfast operations. The allowable conditional uses in the C-R-1 zoning district include parks, buildings for sale of agricultural products, schools, churches, private tennis courts, small daycare centers, and bed and breakfast lodging. Private stairways down bluffs are not identified in the LCP as an allowable use in the C-R-1 zoning district. As

cited above, accessory buildings are defined by the LCP in Section 22.02.130I as “a subordinate building, the use of which is incidental to that of a main building on the same lot.” Per the LCP, a “building” is defined as a structure having a roof supported by columns or walls and intended for shelter. The approved stairway does not have a roof and is not intended for shelter. Thus, there is a question about the permissibility of the approved staircase and trail. In summary, the approved project is neither a building, nor an accessory building, as those terms are defined in the Marin County LCP. Also, the LCP does not describe private bluff trails as an allowable use in the C-R-1 zoning district. Thus, the approved project is neither a principally permitted use nor a conditional use in the C-R-1 Zoning district. Therefore there is insufficient factual and legal support for the local decision, and the County’s approval would create an adverse precedent for future interpretation of the LCP regarding allowable uses and principally permitted uses in this zoning district. Therefore, the Commission finds that the appeal of the approved project raises a substantial issue of conformity regarding allowable and principally permitted uses in the C-R-1 zoning district, as defined by the LCP.

### **Public Access**

The Marin LCP supports and encourages the enhancement of public access opportunities, and states in relevant part:

#### *General policy and elements of Public Access Component*

*The County of Marin supports and encourages the enhancement of public access opportunities to the coast, in conformance with Sections 30210 through 30214 of the Coastal Act. There are three methods by which the policies of these sections will be implemented in the County’s Public Access Component:*

*c. New access ways. The County views public access easements, gained through offers of dedication as a condition of coastal permit approval, as the primary means available to increase public access opportunities in Unit II. Potential areas where such easements could be required have been evaluated based on their desirability and physical suitability, evidence of prescriptive rights, and proximity to other access points and existing uses. Based on these criteria, specific recommendations for new access ways have been developed (Policy #3). In addition to the easements recommended, the County may require additional access easements in the future as the need arises.*

*Policy #3. Specific recommendations for new access ways in Unit II.* *The recommendations for new access ways have been divided into three geographic areas: west shore of Tomales Bay, east shore of Tomales Bay and the area north of Walker Creek. If and when undeveloped parcels on the shoreline of Tomales Bay are purchased by the federal government, access easements by the County on those parcels will no longer be necessary.*

*a. West shore of Tomales Bay. Recommendations for the west shore are listed from north to south, in five segments.*

*(i) Location: Tomales Bay State Park to Chicken Ranch Beach.*

*Description:* *Most of the lots between these two public parks have been developed with*

*single family dwellings as part of the Teacher's Beach Subdivision. The terrain in this area is generally steep and heavily vegetated. Access is by a narrow winding side road off of Sir Francis Drake Boulevard used by the public to reach the southern end of Tomales Bay State Park. There appears to be little if any public use of the shoreline in this area except for Chicken Ranch State Beach and the area adjacent to it. An offer of dedication of an easement was required as a condition of permit approval by the Regional Coastal Commission for AP #112-042-03, which abuts Chicken Ranch Beach.*

*LCP recommendations:* *Agricultural use of the public trust portion of AP# 112-042-03, included in the offered easement, should be permitted to continue until such time as the public access offer is accepted and opened for public use.*

The Marin LCP Unit II notes the following on recreation in the area:

*Along Tomales Bay, the most popular activities are clamming, swimming and sunbathing, fishing, recreational boating, and to a lesser extent, hunting and nature study... Bicycling has become common on Highway 1 and other coastal access roads...*

The Marin LCP Unit II outlines criteria used to evaluate potential new public access areas:

*The following criteria, based on the policies of the Coastal Act, have been used to evaluate potential new public access areas in Unit II. These criteria have been balanced with one another and evaluated in light of the particular characteristics of the shoreline in Unit II.*

*Desirability of a site for public access.* *The desirability of a site for public access includes a consideration of its recreational opportunities, scenic quality, available space, uniqueness and variety, and the ability to walk from the site to adjacent shoreline points of interest. It should be noted that according to the Coastal Act and the state constitution, public access is desirable and necessary because it is established as a basic right.*

*Based on these factors, it seems clear that in much of Unit II, public access to the shoreline is very desirable. The shoreline is unspoiled, highly scenic, and suitable for a wide variety of low-intensity recreational uses such as picnicking, clamming, fishing, viewing, and walking. Although space is limited along Tomales Bay, the shoreline there is easily accessible from nearby public roads and regularly used by the public on an informal basis.*

The Marin County Interim Code describes the requirements for public access as follows:

*Section 22.56.130I.E: Coastal Access:*

*1. All coastal project permits shall be evaluated to determine the project's relationship to the maintenance and provision of public access and use of coastal beaches, waters and tidelands.*

*a. Except as provided in paragraph b below, for projects located between the sea and first public road (as established by the mapped appeal area), a coastal project permit shall include provisions to assure public access to coastal beaches and tidelands. Such access shall include, either singularly or in combination:*

- i. The offer of dedication of public pedestrian access easements from the public road to the ocean;*
- ii. The offer of dedication of public access easements along the dry sand beach areas adjacent public tidelands; and*
- iii. Bluff top trail easements where necessary to provide and maintain public views and access to coastal areas.*

*Such offers of easement shall be for a minimum period of twenty years and shall provide for the easement acceptance by an appropriate public agency and/or private organization.*

*Liability issues pertaining to the access easement shall be resolved prior to acceptance of any offer of dedication.*

*b. Upon specific findings that public access would be inconsistent with the protection of: (1) public safety; (2) fragile coastal resources; or (3) agricultural production or, upon specific findings that public use of an access way would seriously interfere with the privacy of existing homes, provision for coastal access need not be required. In determining whether access is inconsistent with the above, the findings shall specifically consider whether mitigation measures such as setbacks from sensitive habitats, trail or stairway development, or regulation of time, seasons, or types of use could be developed which would adequately mitigate any potential adverse impacts of public access. A finding that an access way can be located ten feet or more from an existing single-family residence or be separated by a landscape buffer or fencing if necessary should be considered to provide adequately for the privacy of existing homes.*

LCP Section 22.56.130I.E(1.a.i) requires an applicant to offer a dedication of public access where the development is located between the nearest public road and the ocean, unless public access would be inconsistent with the protection of public safety, fragile coastal resources, or would seriously interfere with residential privacy. The Appellant contends that the approved project does not include the required public access.

The approved project is located between the first public road and the sea. The County's approval included a brief finding that the project would not impede coastal access (see page 5 of Exhibit 4), but made no other findings regarding public access. Therefore, there is a lack of legal and factual support for the local decision. Significant coastal resources are affected by the decision and it would create an adverse precedent for future interpretation of the LCP to allow new development that is located between the first public road and the sea without an evaluation of the LCP's provisions and requirements for public access. Therefore, the Commission finds that the approved project raises a substantial issue of conformity of the project approved by the County with respect to allowable uses.

## **G. CONCLUSION: SUBSTANTIAL ISSUE**

The County approved project raises substantial issues regarding allowable uses, sensitive resources, hazards, and public access. The Commission finds that the appeal raises a **substantial issue** concerning the consistency of the approved development with the policies of the Marin County LCP, and takes jurisdiction over the CDP application for the project.

### **Information Needed for *De Novo* Review of Application**

There are substantial questions about the approvability of this project. As discussed above, the local decision lacked certain information required and necessary to make a CDP decision under the LCP in this case, and thus the CDP decision was not based on adequate evidence. Further, it appears that the proposed project may not be approvable based on the information that is currently available. However, if the Applicant wishes to pursue Commission approval of their proposed project, prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the applicant will need to provide the information necessary to evaluate the project for consistency with the LCP and the public access and recreation policies of the Coastal Act. Absent information regarding site constraints and project alternatives and the analytical studies the LCP expressly requires the Applicant to provide, the Commission will not be in a position to evaluate the proposed project against LCP requirements. The Commission may not schedule a de novo hearing on the proposed application until the Applicant has developed and provided this necessary information. Such information includes the following:

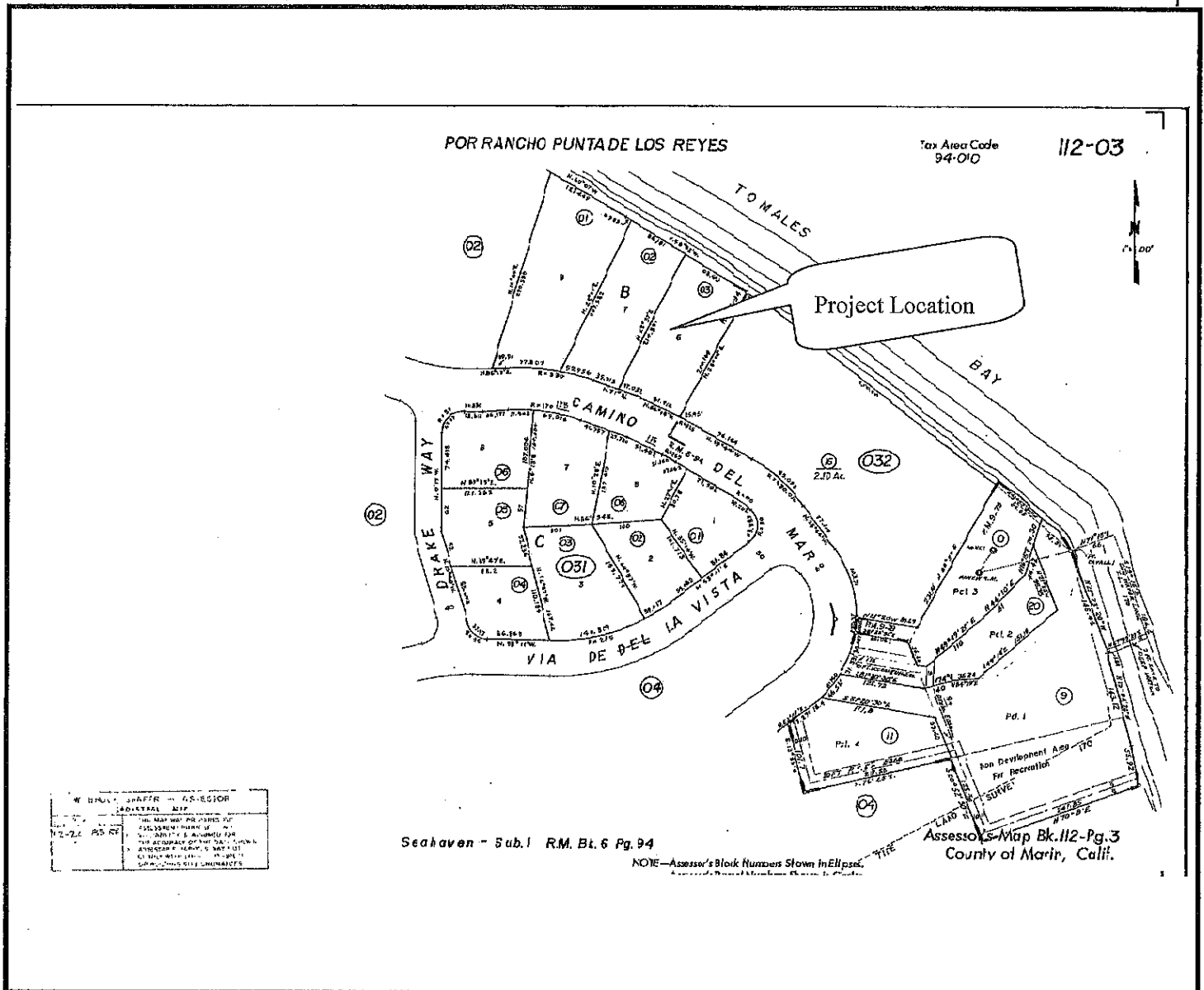
- An updated biological report that includes a wetland delineation conducted pursuant to Commission criteria, identifies existing habitat resources on and adjacent to the project area, including habitat for sensitive species, identifies appropriate habitat setbacks and mitigation measures necessary to avoid impacts of the development on biological resources.
- A geotechnical report prepared by a qualified professional that evaluates the geologic and coastal hazards of the site in relation to the proposed project. The report must evaluate bluff stability (including in relation to long-term average annual erosion rates, historical sloughing/bluff loss episodes, etc.), including with respect to potential changes to bluff stability in the future due to sea level rise. The report must include a wave run-up analysis, as well as an evaluation of tsunami hazards at the site. Finally, the report must evaluate the stability of the approved project, including the purpose and need for the retaining walls, and it must evaluate a range of project alternatives, including alternatives that avoid and minimize hazards as required by the LCP.
- A mean high tide line survey accompanied by an analysis of the extent of public trust and/or State tidelands that occur at the project site.

## **APPENDIX A: Substantive File Documents**

Marin County Permit Submittal (Biological Resource Assessment) prepared for County of Marin by Hyphae Design Laboratory, February 7, 2013.

Geotechnical Evaluation of Garden Stairs prepared for the Applicant by Torikian Associates, January 8, 2013.

# Marin County Community Development Agency Assessor's Parcel Map



**PETER RUMSEY COASTAL PERMIT**  
**120 Camino Del mar, Inverness**  
**Assessor's Parcel 112-032-03**  
**April 11, 2013**  
*(Not to Scale)*  
**DZA ATTACHMENT # 3**





Stairs before installation of waddles. Note the 4 x 4 support posts on both sides, embedded into concrete piers.







Stairs after installation of waddles.





View of the proposed location of landscape steps where they would divert form the ladder











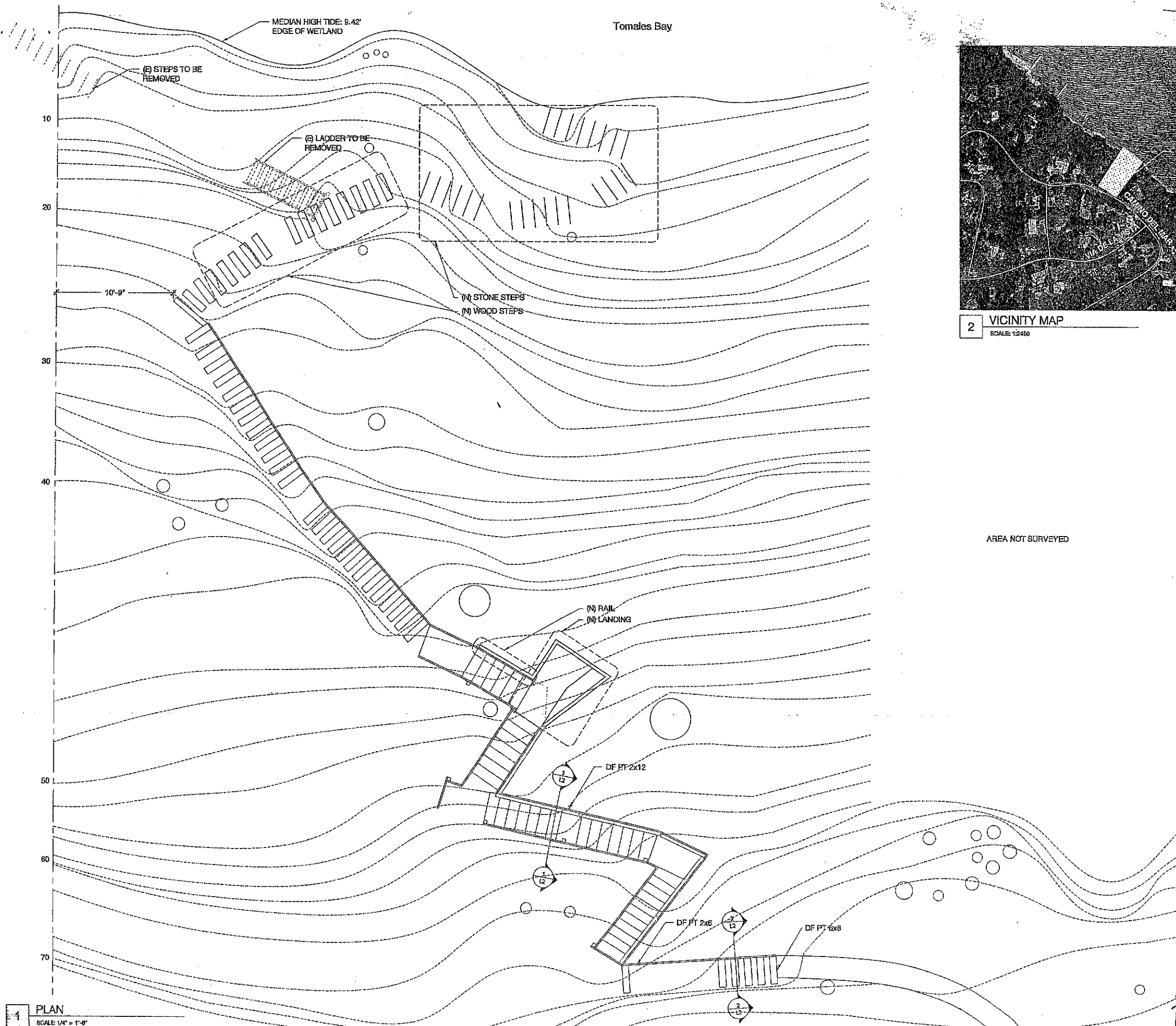




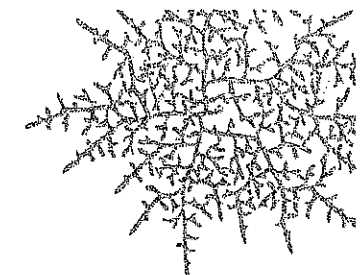




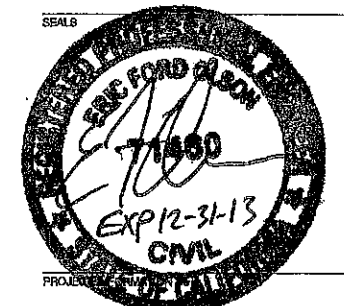




2 VICINITY MAP  
SCALE: 1:2400



hyphae design laboratory  
444 Clay Street  
Oakland, CA 94607  
tel: 415.551.1111  
info@hyphae.com



**Rumsey Residence**  
120 Camino Del Mar  
Inverness, CA 94937  
A.P.N. 112-082-03  
Coastal Permit (L.D.) 2012 -- 0291

AREA NOT SURVEYED

Drawn by: MF

SUBMITTAL

100% DD

01-31-13

**RECEIVED**

FEB 11 2013

**COUNTY OF MARIN**  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

plan

DZA ATTACHMENT # 4

**L1**

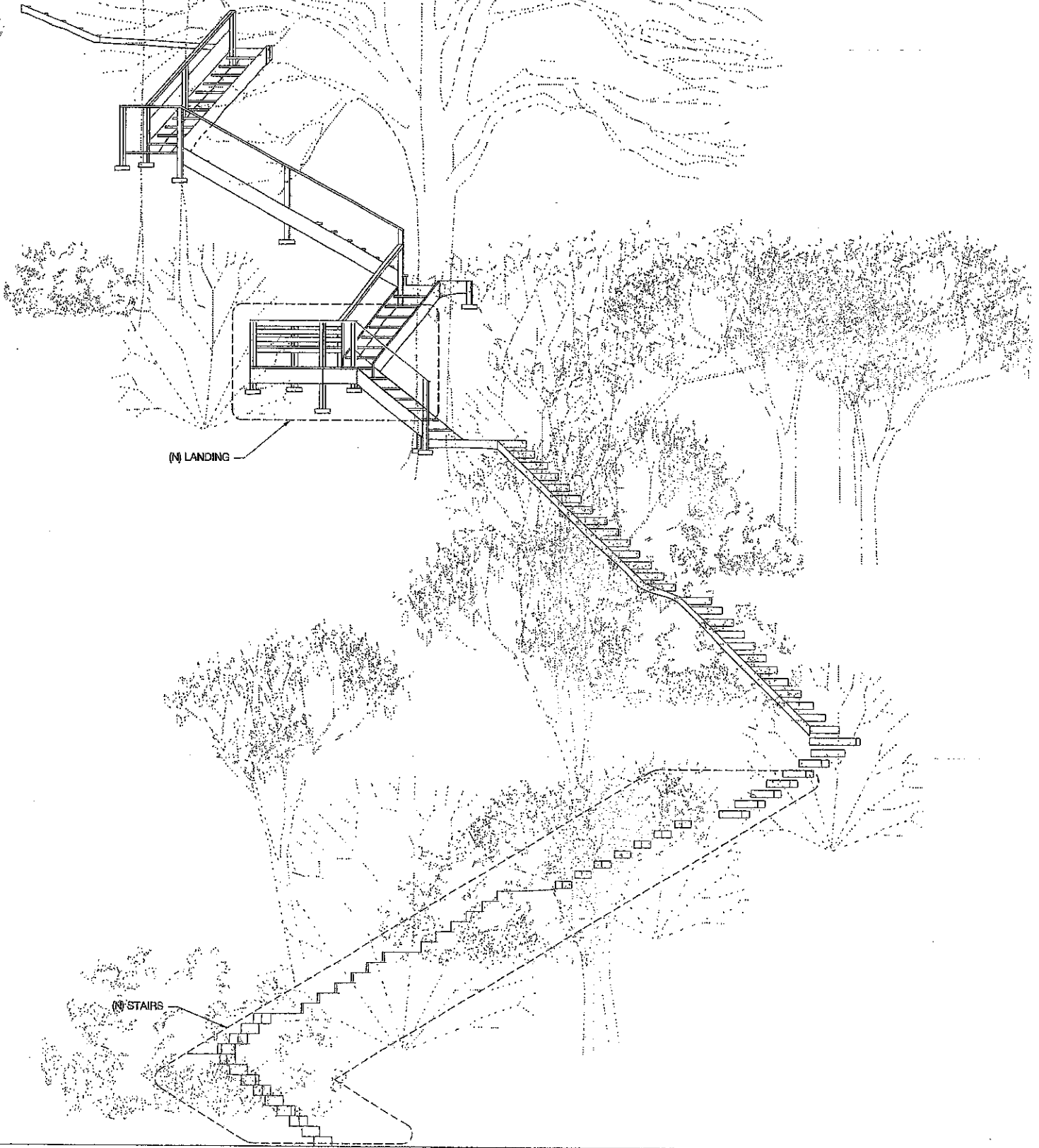
Exhibit 3

0020 MAR-13-0204

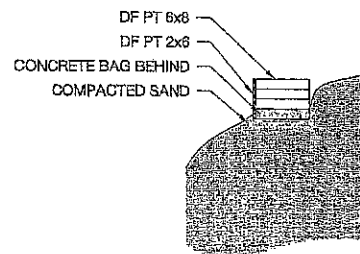
1 of 4

*\*Revised plans  
Reduced copy b/c com*

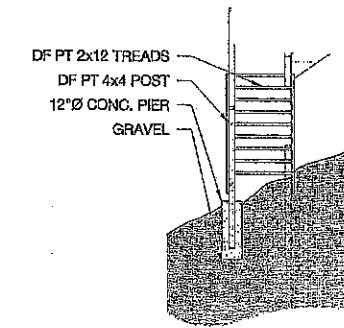
NOTE: TREES REPRESENTED ARE  
BASED ON ACTUAL LOCATION AND  
APPROXIMATE SIZE. SHRUBS WERE  
NOT SURVEYED. SEE SHEET L4 FOR  
ECOLOGICAL ZONES.



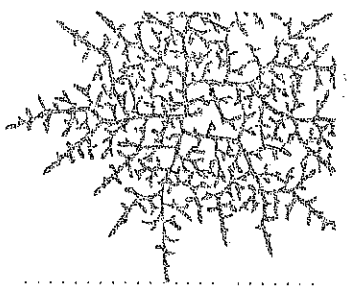
3 ELEVATION  
SCALE: 1/4" = 1'-0"



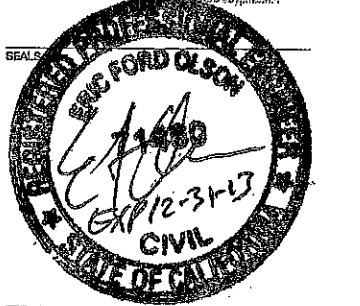
2 SECTION  
SCALE: 1/4" = 1'-0"



1 SECTION  
SCALE: 1/4" = 1'-0"



hyphae design laboratory  
1014 Clay Street  
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info@hyphae.net



PROJECT INFORMATION  
  
Rumsey Residence  
120 Camino Del Mar  
Inverness, CA 94937  
  
A.P.N. 112-032-03  
Coastal Permit (I.D.) 2012 - 0291

Drawn by: MF  
  
SUBMITTAL  
  
100% DD  
01-31-13  
  
KEY PLAN

DZA ATTACHMENT # 5

SHEET

elevation and  
sections

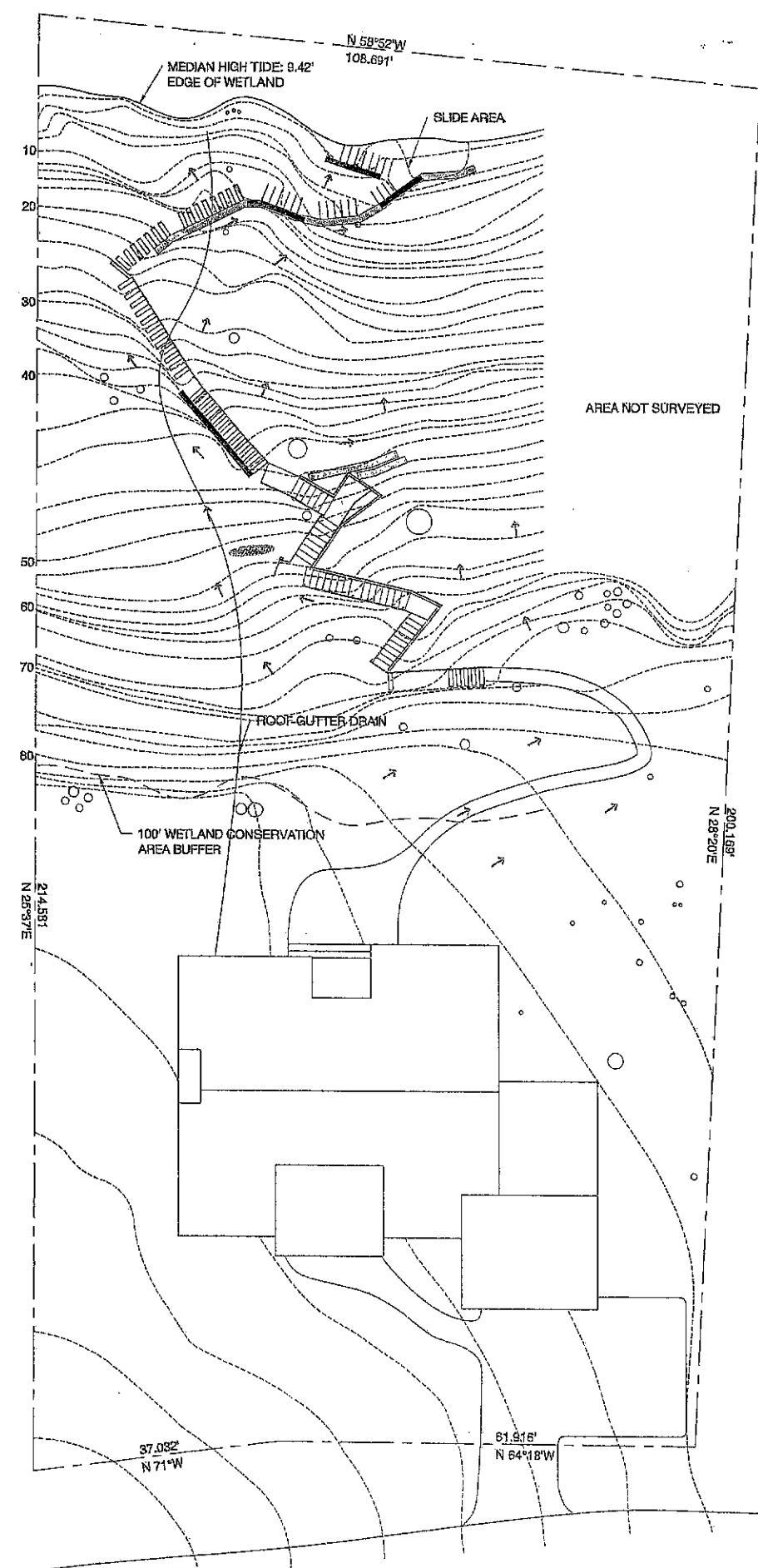
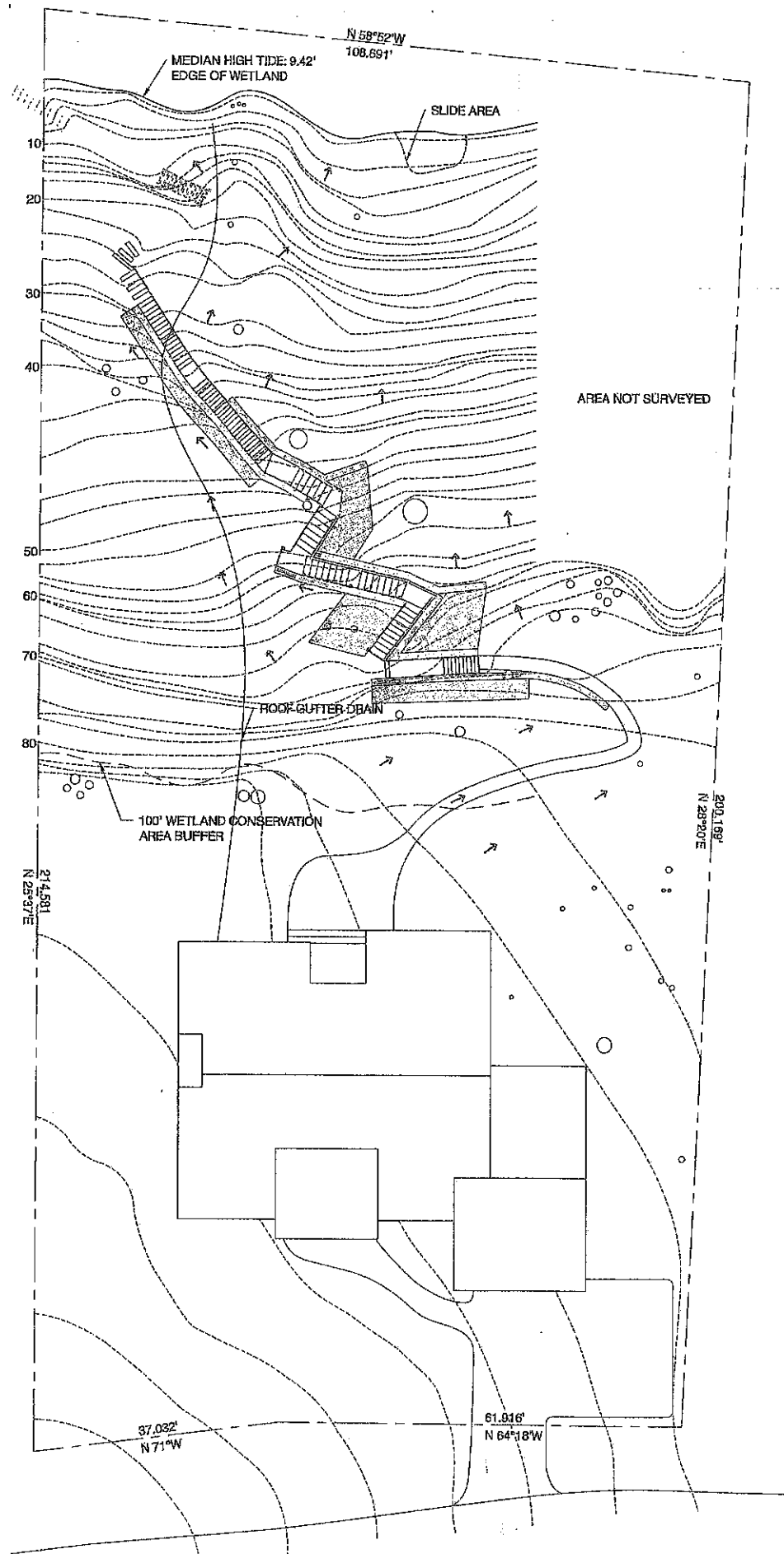
L2

Exhibit 3

A-2-MAR-13-0204

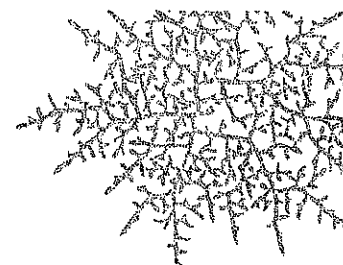
2 of 4



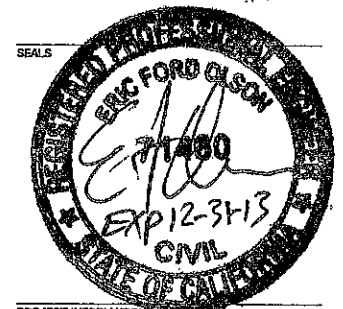


#### Erosion/Drainage Notes

1. Protect bare soil surfaces. Vegetation is the best protection because it both absorbs and uses water. Gravel, straw, wood chips and other mulches are also effective. If you use an impermeable substance, such as temporary plastic sheeting, be careful where you direct the runoff. You don't want to fix one erosion problem while creating another.
2. Don't concentrate water flow unless absolutely necessary. On undisturbed slopes, water percolates through soil slowly and relatively uniformly. When all the runoff from a single area is focused on one spot, such as by a culvert or a roof gutter, the natural protection of the ground surface is often not sufficient to prevent this extra flow from breaking through to bare soil. If you must focus runoff, protect the outflow area with an energy dissipator, such as rock or securely anchored brush, that will withstand stormflows.
3. Limit human use of vulnerable areas. Walking and footpaths can exacerbate mild erosion by disturbing vegetation and creating trails that channel the flow. Stream areas, steep or fill slopes, winter swales, unsurfaced roads, old landslides and any sites that show signs of recent soil loss are areas of special concern.
4. Disturb existing vegetation as little as possible. Plants hold topsoil and often subsoil in place with their roots, regulate the speed of water flowing through and over soil, and provide cover and food for wildlife. The native plant community is especially well adapted to specific soil and rainfall conditions. Once native plant cover is disturbed, the soil below becomes much more susceptible to erosion.
5. Encourage infiltration. The more water you can keep in the soil instead of on top of it, the less erosion you'll have. Percolation through vegetation and soil also cleans nutrients and other pollutants from water, and increases soil fertility and moisture content. Use permeable pavements instead of concrete or asphalt. Collect and spread runoff from roofs or paddocks. Plant native trees and shrubs not just along creeks, but in upland areas as well.
6. Reduce impervious surfaces. Hard surfaces including roofs, streets, parking lots and paved driveways do not allow any water to soak into the soil. Consider using gravel, strips of concrete with grass or gravel in the middle, pervious concrete, concrete unit pavers or other permeable pavements for driveways and paths. Incorporate vegetated islands and grass-lined swales into parking areas. The adventurous may want to investigate green roofs that are built to accommodate living grass and other plants on either part or all of the roof surface.
7. Capture and dissipate runoff. When hard surfaces are necessary, direct the resulting runoff into an area or structure where it can slow down and soak into the ground. Foundation plantings, for example, can break the force of rain falling off a roof. Roofs can also be used to collect water which can be directed into dry wells to recharge groundwater or stored in rain barrels or cisterns for irrigation or other uses. Bio-filtration swales, shallow ditches planted with dense grass, can transport water slowly from a downspout or driveway outlet while simultaneously allowing much of it to percolate into the soil. Rain gardens and bioretention basins pond water and use soil, organic mulch and both woody and herbaceous plants to trap sediment, increase infiltration and remove pollutants.
8. Disconnect surface runoff. Leave or install permeable areas between roofs, driveways, parking lots and streets to slow and disperse flow instead of creating a speedway for storm runoff.
9. Keep existing plants...and plant more. Vegetation is the best defense against erosion. Protect trees and shrubs during construction, and consider planting more. Remember that native plants support birds and other wildlife as well as protect soil.



hyphae design laboratory  
 444 City Street  
 Oakland, CA 94612  
 (415) 435-8855  
 info@hyphae.net



#### PROJECT INFORMATION

#### Rumsey Residence

120 Camino Del Mar  
 Inverness, CA 94937

A.P.N. 112-032-03

Coastal Permit (I.D.) 2012 - 0291

Drawn by: MF

SUBMITTAL

100% DD

01-31-13

KEY PLAN

SHEET

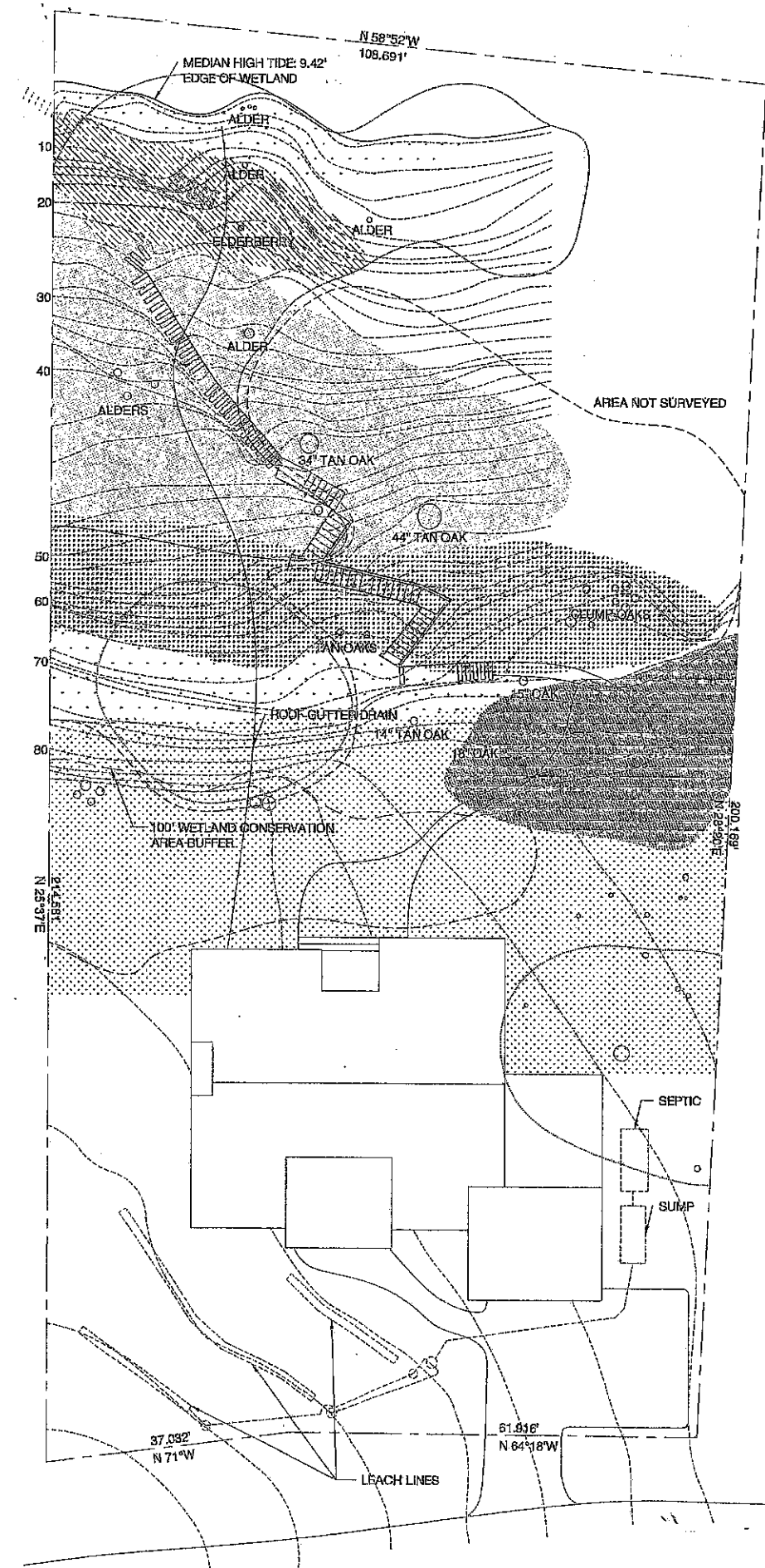
erosion plan  
 DZA ATTACHMENT # 6

L3

Exhibit 3

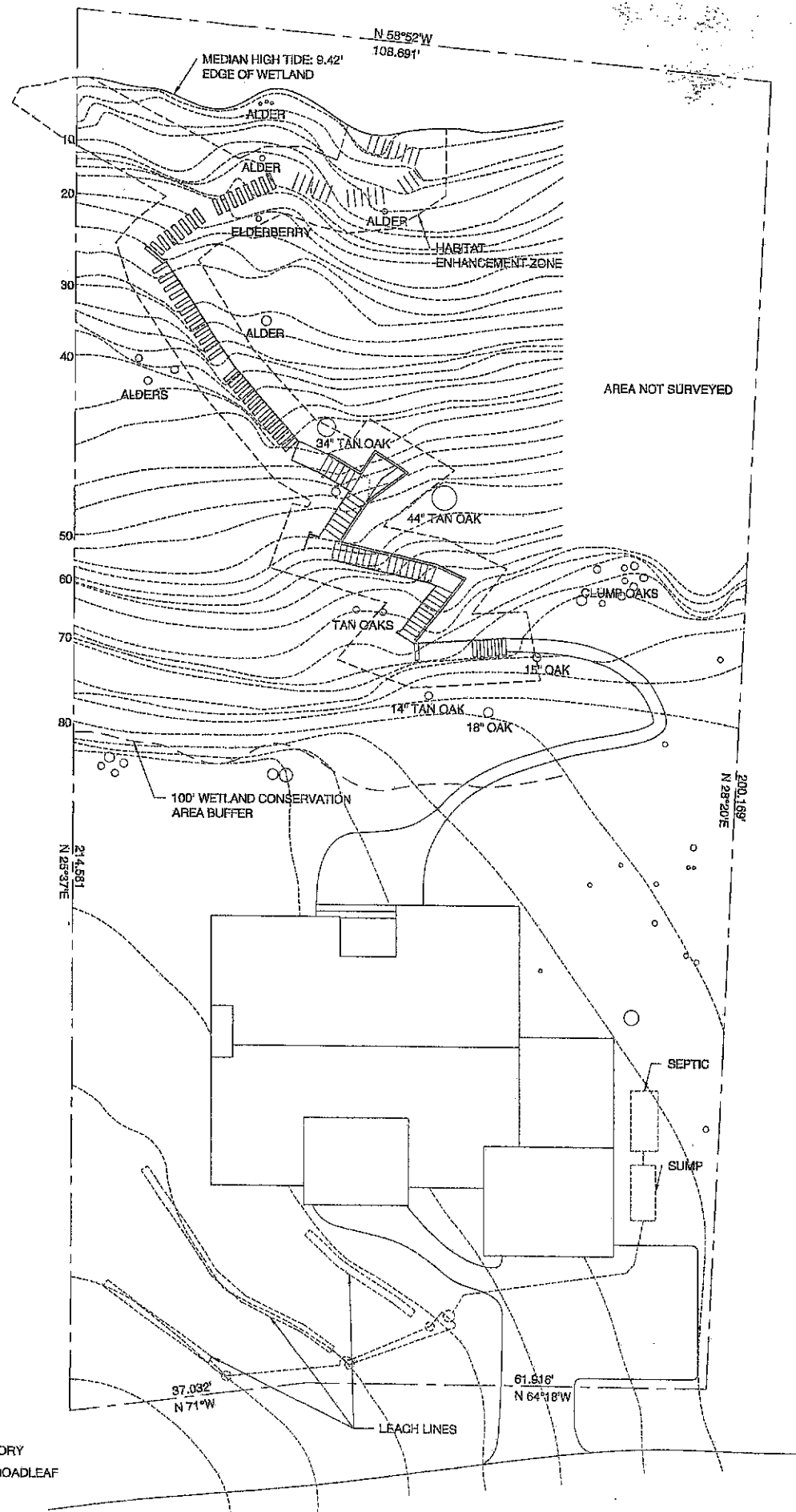
2-MAR-13-0204

3 of 4



- BISHOP PINE CANOPY
- OAK CANOPY
- ALDER CANOPY
- HUCKLEBERRY, BARE SOIL
- WILLOW AND LARGE SHRUBS
- FERN AND HERBACEOUS UNDERSTORY
- WEEDS: GRASS, BLACKBERRIES, BROADLEAF
- OAK REGENERATION
- NON-NATIVE GRASSES

1 PLAN - EXISTING ECOLOGICAL ZONES  
SCALE: 3/32" = 1'-0"



2 PLAN - PROPOSED PLANTING AREAS  
SCALE: 3/32" = 1'-0"

#### PLANT LIST

Native Plant Society of California

#### Understory Groundcover Revegetation

For the flatter areas adjacent to the path, in the middle elevations of the slope, under oaks and alders

<i>Polystichum munitum</i>	Swordfern
<i>Adiantum pedatum</i>	Five Fingered Fern
<i>Adiantum Jordanii</i>	Maiden hair
<i>Blechnum spicant</i>	Dear Fern

#### Shrub Replacement Revegetation

For replacement of huckleberry as larger shrub at upper elevations of hill. Water-loving species, planted on the steeper banks, at the lower part of the hillside, by water, to replace blackberry's, invasive and other overgrown understory.

<i>Cornus stolonifera</i>	Redtwig Dogwood
<i>Symphoricarpos alba</i>	Common Snowberry
<i>Ribes sanguineum</i>	Red-Flowering Currant
<i>Amelanchier alnifolia</i>	Serviceberry
<i>Physocarpus capitatus</i>	Pacific Ninebark

#### Living Stacked Stone Walls

To be planted into the stacked stone walls, indicated on the drawing, and or at each cut over 2' and also planted into the hillside and other less steep areas and cuts below 2'. Allow moss to grow naturally.

<i>Sedum spathulifolium</i>	Sedum
<i>Asarum caudatum</i>	Wild Ginger
<i>Thymus T. serpyllium</i>	"Elfin" Thyme
<i>Fragaria Vesca</i>	Woodland Strawberry
<i>Mentha requienii</i>	Mint

#### Additional Understory Nectar Enhancement

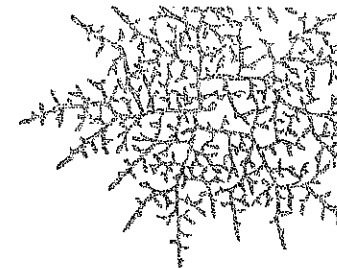
To be planted along boarder between house and natural hillside, as well as throughout other zones, where light and water are appropriate.

<i>Penstemon heterophyllus</i>	Penstemon
<i>Penstemon centranthifolius</i>	Penstemon Scarlet Bugler
<i>Aquilegia formosa</i>	Western Columbine
<i>Salvia spathacea</i>	Hummingbird Sage

#### Lawn & Border Enhancement

Eventually, over time, to reseed lawn with native shade tolerant species, and provide additional native landscape buffer, to diminish weeds from entering the natural hillside area.

<i>Festuca rubra</i>	red fescue
<i>Festuca idahoensis</i>	Festuca idahoensis
<i>Trifolium wildenowii</i>	Clover
<i>Ceanothus "Ray Hartman"</i>	Ceanothus "Ray Hartman"



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Oakland, CA 94607  
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PROJECT INFORMATION

#### Rumsey Residence

120 Camino Del Mar  
Inverness, CA 94937

A.P.N. 112-032-03

Coastal Permit (L.D.) 2012-0291

Drawn by: MF

SUBMITTAL

100% DD

01-31-13

KEY PLAN

SHEET

ecology plan

DZA ATTACHMENT # 7

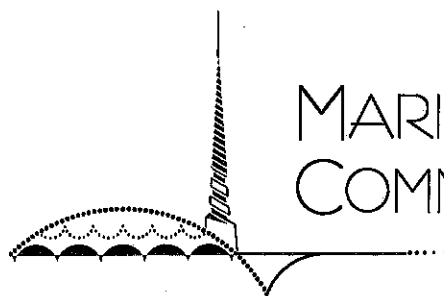
L4

Exhibit 3

2-MAR-13-0204

4 of 4

Laurel  
ref to MC  
DC



MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY  
BRIAN C. CRAWFORD, DIRECTOR

**NOTICE OF FINAL LOCAL (DEPUTY ZONING ADMINISTRATOR) DECISION**

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan.

SENT BY CERTIFIED MAIL

**RECEIVED**

April 18, 2013

APR 23 2013

California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Attention: Coastal Planner

Applicant's Name: Peter Rumsey  
Coastal Permit Number: CP I. D. 2012-0291  
Assessor's Parcel Number: 112-032-03  
Project Location: 120 Camino Del Mar, Inverness  
Determination: Approved With Conditions  
(Resolution of the April 11, 2013 Deputy Zoning Administrator hearing is attached specifying action.)  
Decision Date: April 11, 2013  
County Appeal Period: Five (5) Working Days

Local review is now complete.

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

Any correspondence concerning this matter should be directed to Neal Osborne, at (415) 473-7173.

Sincerely,

Neal Osborne  
Planner

Attachment

Exhibit 4  
A-2-MAR-13-0204

#### **22.56.080 APPEALS TO THE CALIFORNIA COASTAL COMMISSION**

For those coastal project permits which are approved for developments defined as "appealable" under California Public Resources Code, Section 30603 (a), an appeal may be filed with the California Coastal Commission by: (1) an aggrieved party; (2) the applicant; or (3) two members of the coastal commission. Such appeals must be filed in the office of California Coastal Commission not later than 5:00 p.m. of the tenth working day following the date of action from which the appeal is taken. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the county appellate body (or bodies) as established in Section 22.56.074 of the Marin County Code to be considered an aggrieved party.

**MARIN COUNTY DEPUTY ZONING ADMINISTRATOR**

**RESOLUTION 13-105**

**A RESOLUTION APPROVING  
THE RUMSEY COASTAL PERMIT**

**ASSESSOR'S PARCEL 112-032-03**

**120 CAMINO DEL MAR, INVERNESS**

\*\*\*\*\*

**SECTION 1: FINDINGS**

- I. WHEREAS, William Kirsch, on behalf of the property owner Peter Rumsey, submitted a Coastal Permit application for a proposal to legalize the as-built construction of a trail, wooden and stone steps, and stairs with two landing decks that cut into the slope and switchback down a bluff escarpment from the rear yard of the existing single-family residence to the shoreline of Tomales Bay. The entire trail has a length of approximately 261 lineal feet with a vertical change of approximately 85 feet. The steps would start near the top of the bluff approximately 66 feet from the western side property line and the minimum trail setback proposed would be 10 feet from the western side property line. The project includes the recommendations from Hyphae Design Laboratory to restore the land to improve habitat and the overall ecology of the site including a proactive adaptive management plan. The subject property is within the C-R1-B4 zoning district and is located at 120 Camino del Mar, Inverness, further identified as Assessor's Parcel 112-032-03.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on April 11, 2013, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3(e) of the CEQA Guidelines because the construction of the trail and small structures accessory to the existing single-family residence would not result in significant adverse impacts on the environment.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Local Coastal Program, Unit II and the Marin Countywide Plan because:
  - A. The proposed project would comply with Marin County standards for geotechnical engineering and seismic safety, and include improvements to protect lives and property from hazard;
  - B. The proposed project would result in the construction of detached accessory structures on a residential property, principally permitted uses under the governing C-AG3 general plan designation;

Exhibit 4

A-2-MAR-13-0204

3 of 9

- C. The proposed project would comply with governing development standards related to grading, flood control, drainage and utility improvements as verified by the Department of Public Works;
  - D. The proposed project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services; and
  - E. The proposed project would minimize soil disturbance and maximize protection of natural vegetation.
- V. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Inverness Community Plan because:
- A. The proposed project involves construction of a trail with steps accessory to an existing residence on a single-family residential property, which is a principally permitted use on the property.
  - B. The proposed project would not adversely impact the surrounding natural environment with regard to vegetation, wildlife habitats, or drainage.
  - C. The proposed project would match the design character of the existing residence and would not adversely impact the surrounding built environment with regard to views from adjacent properties, privacy for the subject and surrounding properties, and access from Camino del Mar.
- VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (§22.56.130I of the Marin County Code) as described below.
- A. Water Supply:

The Inverness Public Utility District currently provides water service to the residence and the project would not require additional water supply improvements.
  - B. Septic System Standards:

Marin County Environmental Health Services reviewed the project and determined that the project would not affect the existing septic system.
  - C. Grading and Excavation:

The subject property has 100% slope in the location of the trail and minor grading is proposed for approximately 5 cubic yards of excavation and fill. All cut and fill slopes will be stabilized with straw wattles and jute netting, and native landscaping is proposed.
  - D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is located in an area of high archaeological sensitivity. However, the minor grading on a steep slope would not likely disturb cultural resources because most of the level areas of the site has previously been disturbed. A condition of approval requires that in the event cultural resources are discovered during construction, all work shall immediately stop and the services of a qualified consulting archaeologist shall be engaged to assess the value of the resource and to develop appropriate mitigation measures.

E. Coastal Access:

The project is located more than on the shoreline of Tomales Bay at an elevation of approximately 0 feet to 74 feet and would not impede coastal access.

F. Housing:

The proposed project would not result in the removal of a residential building that provides housing opportunities for people of low or moderate income, and would not affect the availability of housing stock within the Inverness community.

G. Stream and Wetland Conservation Protection:

The project site is not located near a creek or in an area subject to the streamside conservation policies of the Local Coastal Program.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit II of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Wildlife, indicates that the subject property is located within ½-mile of a known Northern Spotted Owl (Strix occidentalis caurina) nest site. This species is on the federal lists of endangered species. The project will result in no impacts to the suitable habitat for Northern Spotted Owls because it involves construction of small accessory structures.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the subject property is not in an area containing rare plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is not located near sensitive plant species. The relatively small-scale project on previously disturbed property would not have an adverse impact on the habitat of native plant communities and would include enhancement with planting of native species within the disturbed area.

K. Shoreline Protection:

The subject property is adjacent to the shoreline, but the proposed project would not result in adverse effects to the shoreline. The project would not require additional shoreline protection, as evidenced by the project geotechnical report.

L. Geologic Hazards:

The project site is located 530 feet from the San Andreas Fault Zone and approximately 1,000 feet from a mapped fault and would be subjected to strong ground shaking during a proximate seismic event. The Marin County Community Development Agency - Building Inspection Division will determine structural compliance with the California Building Code.

M. Public Works Projects:

The proposed project does not entail expansion of public roads, flood control projects, or utility services.

N. Land Division Standards:

No land division is proposed as part of this project.

O. Visual Resources:

The project would result in the construction of a trail with steps and stairs with minor vegetation removal and would result in no adverse visual effects.

P. Recreation/Visitor Facilities:

The project site is governed by C-RA:B4 (Coastal, Single-family Residential, B4 Building District) zoning regulations that allows for a uses accessory to the primary residential uses. The project would have no effect on recreation or visitor serving facilities.

Q. Historic Resource Preservation:

The existing residence on the subject property is not historically significant.



## SECTION 2: ACTION

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Rumsey Coastal Permit application pursuant to Marin County Interim Zoning Code Section 22.56.130I. This Coastal Permit approval permits the as-built construction of a portion of the trail, and the construction of a new trail alignment near the shoreline for access from the existing residence to the shoreline of Tomales Bay, subject to the following conditions:

## SECTION 3: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Rumsey Coastal Permit application subject to the following conditions:

1. Plans submitted for Building Permits for the approved project shall substantially conform to plans on file in the Marin County Community Development Agency, Planning Division, identified as Exhibit A, "Rumsey Residence, 120 Camino del Mar, Inverness, California" consisting of four sheets prepared by Eric Ford Olsen, Hyphae Design Laboratory, date stamped received February 11, 2013.
2. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Coastal Permit conditions of approval as notes.
3. During construction, the applicant shall take all appropriate measures, including watering of disturbed areas and covering the beds of trucks hauling fill to or spoils from the site, to prevent dust from grading and fill activity from depositing on surrounding properties.
4. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
5. No trees shall be removed.
6. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

7. All construction activities shall comply with the following standards:
  - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
  - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
8. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul the approval of the 261 lineal foot trail for access from the existing single-family residence to the shoreline of Tomales Bay for which action is brought within the applicable statute of limitations.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
10. BEFORE FINAL INSPECTION, the applicant shall submit written verification from a landscape professional that the landscaping shown on Sheet L4 (Ecology Plan) of the approved plans has been properly installed.

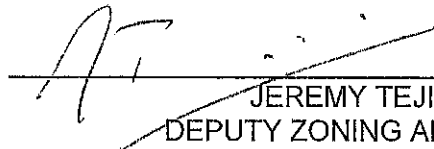
#### **SECTION 4: VESTING AND APPEAL RIGHTS**

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest the Rumsey Coastal Permit approval (Project ID: 2012-0291) by substantially completing all of the approved work, before July 11, 2013, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date and the Community Development Director approves it.

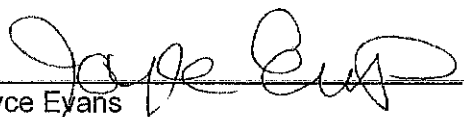
NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency, Planning Division, Room 308, Marin County Civic Center, San Rafael, no later than 4:00 p.m. on April 18, 2013.

## SECTION 5: DECISION

This decision was made at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 11th day of April, 2013.

  
JEREMY TEJIRIAN  
DEPUTY ZONING ADMINISTRATOR

Attest:

  
Joyce Eyns  
Deputy Zoning Administrator Secretary

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863 FAX (831) 427-4877

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

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

**SECTION I. Appellant(s)**

Name: Environmental Action Committee of West Marin, Amy Trainer, Executive Director

Mailing Address: PO Box 609

City: Point Reyes Station

Zip Code: 94956

Phone: 415-663-9312

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

Marin County

2. Brief description of development being appealed:

After-the-fact approval of illegally constructed private stairway and trail 261 feet long on 100% slope on a known unstable bluff down to the high tide line in a geologic hazard zone entirely within a wetland buffer area without proper review and mitigation and in violation of multiple Marin Certified LCP policies and corresponding development code sections. This private stairway would never have been permitted under a proper application of the Marin LCP if the property owner had followed the legal process and applied for a CDP prior to construction.

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

120 Camino del Mar, Inverness; Assessor's Parcel 112-032-03

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

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

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

**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: April 11, 2013

7. Local government's file number (if any): Resolution 13-105

**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:

Peter Rumsey & Anna Edmondson  
5201 Harbord Drive  
Oakland, CA 94618

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) Amy Trainer, Executive Director  
Environmental Action Committee of West Marin  
Po Box 609 Point Reyes Station, CA 94956

(2)

(3)

(4)

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

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

#### **PLEASE NOTE:**

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

The construction of a private stairway on an unstable bluff without a permit entirely within a wetland buffer area and geologic hazard zone never would have been permitted under a proper application of the Marin LCP Unit II policies if the property owner had followed the legal process and applied for a coastal development permit prior to construction. The Environmental Action Committee of West Marin is concerned that this unpermitted construction has not been adequately mitigated, that Marin County failed in a number of ways to appropriately apply the Unit II LCP policies to this after-the-fact permit application, and thus appeals Marin County's approval of this illegally constructed stairway for the following five reasons:

First, findings IV.B and V.A of the County's adopted resolution incorrectly state that construction of this 261-foot long stairway and trail is an "accessory structure" and is thus a principal permitted use. The development of the stairs through a wetland buffer on an unstable bluff is not a "principally permitted" use in the C-R-1 zone under Interim Code Section 22.57.052I. This section specifies that "Accessory Buildings" are principally permitted, where "Building" means any structure, having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of any person, animal or chattel. (22.02.130I and 22.02.120I). The Marin County Unit II LCP does not mention anywhere the allowance, or permitting, of private bluff stairways.

Second, the entire 261-foot illegally constructed stairway and trail is within a wetland buffer. The County staff report fails to mention this fact - thus finding VI.G. is incorrect under the heading "Stream and Wetland Conservation Protection." By failing to acknowledge that the stairway was entirely within an Environmentally Sensitive Habitat Area (ESHA) buffer, the County did not require any mitigation or discuss wetland buffer impacts. Marin County Unit II LCP only allows for development within a wetland buffer for 1) diking, filling or dredging a wetland, which this development is not; or 2) resource-dependent activities including "fishing, recreational clamming, hiking, hunting, nature study, bird-watching and boating," none of which comprises this development. This development is absolutely not a "resource-dependent" activity that would be allowed within a wetland buffer and a permit for its construction would have been denied if properly applied for prior to construction.

Third, for two reasons the county failed to adequately assess the geologic hazards. First, the geotechnical report is inadequate because it focuses on the strength of the underlying geologic formation and fails to address the obvious remnants of recent slides that have occurred in the past five years on this bluff. Second, the geotechnical analysis by Torikian Associates dated February 11, 2013 was performed prior to neighboring property owner Jim Pettigrew's submission to the CDA (Rumsey Staff Report, page 4). Pettigrew complained about the location of the steps at the shoreline, and pointed out in his submission

that the bluff was unstable and prone to slides. As a result of Pettigrew's comments, the trail was proposed to be realigned, but no new geotechnical report was required (Staff Report, page 2). Finding IV.E in the Resolution is incorrect because the project, even with jute netting and wadding, will not minimize soil disturbance or maximize protection of natural vegetation. Marin LCP Unit II policies for hazards state that an applicant for development in a geologic hazard area "shall be required to demonstrate that the area of construction is stable for development, the development will not create a hazard or diminish the stability of the area," that new structures "shall be set back a sufficient distance from the bluff edge to ensure with reasonable certainty that they are not threatened by bluff retreat within their expected economic lifespans (50 years)," and that "new development shall be sited and designed so that no protective shoreline structures are or will be necessary to protect the building from erosion or storm damage during its expected economic lifespan (50 years)." The County did not make these findings in its Resolution approving the after-the-fact permit, and the geologic information in the record is insufficient to allow for findings that meet the above-cited Marin Certified LCP Unit II policies regarding geologic hazards.

Fourth, the top of the bluff is anchored by the now-exposed roots of mature trees, but no report from a certified arborist was required as part of the application to the County. Two mature Tan Oaks and a mature Alder exist on the ledge where the steps carve into the bluff. These mature trees and their established root systems are likely holding together the upper portion of this bluff. The construction of the steps has exposed the tree roots, as well as realigned the slope of this area, and without a certified arborist report it is unclear the extent to which the tree roots have been compromised, and what the long-term impact will be - both to the tree roots and the stability of the bluff.

Finally, the approved Resolution incorrectly evaluated the coastal access requirements under the Marin Certified LCP Unit II policies. The County did not make the required finding under Interim Code section 22.56.130I.E on providing for public access: sub-section 1.a.i requires an applicant to offer a dedication of public access where the development is from between the nearest public road and the ocean; sub-section 1.b requires the County to make a specific finding that public access would be inconsistent with the development, and that mitigation measures could not be developed. The County's April 11th Resolution made neither of these required findings. In addition, the Resolution did not make a provision of public access a condition of development by any of 4 methods (grant of fee interest, deed restriction, grant of easement, or payment of in-lieu fee) that are required in Unit II public access policies.

For the above-state reasons, the Environmental Action Committee of West Marin respectfully submits this appeal of Marin County's approval of Resolution 13-105.

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

**SECTION V. Certification**

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

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

Date: Amy Trainer, Exec. Dir. May 7, 2013

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

**Section VI. Agent Authorization**

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

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_



## Kellner, Laurel@Coastal

---

**From:** Carl, Dan@Coastal  
**Sent:** Monday, May 13, 2013 5:39 PM  
**To:** Kellner, Laurel@Coastal  
**Subject:** FW: Stairs to the Beach - Rumsey property

**From:** Amy Trainer [mailto:[amy@eacmarin.org](mailto:amy@eacmarin.org)]  
**Sent:** Friday, May 03, 2013 6:38 PM  
**To:** Carl, Dan@Coastal; Cavalieri, Madeline@Coastal; Craig, Susan@Coastal  
**Subject:** Fwd: Stairs to the Beach - Rumsey property

Dear Coastal Staff,

I asked a respected Civil Engineer in Inverness, Ed Nute [owner of Nute Engineering in San Rafael] to look at the 120 Camino del Mar stairs. His observations are below.

I look forward to hearing from you Monday. Have a great weekend.  
Amy

Begin forwarded message:

**From:** Ed Nute <[e.nute@nute-engr.com](mailto:e.nute@nute-engr.com)>  
**Date:** May 3, 2013 3:49:44 PM PDT  
**To:** "Amy Trainer ([amy@eacmarin.org](mailto:amy@eacmarin.org))" <[amy@eacmarin.org](mailto:amy@eacmarin.org)>  
**Subject:** Stairs to the Beach - Rumsey property

Amy - I finally found the stairs to the beach from the Rumsey property. I did not go far enough north the first time. The stairs had little red flags by them. They are a rather sketchy especially the first ladder. Although I am not a geotechnical engineer I have the following observations;

1. It appears that the lower steps and steep ladder type stairs are located on the top of former slide debris.
2. The upper stairs appear to be built across the face of a former slide.
3. Some jute netting and wattles have been placed along the slope of the stairs. I have no idea how these will function to prevent erosion during a storm.

I noticed that on their fence above along Camino Del Mar there is a sign posted that there is a building permit pending. I think you should call the County Building Department and ask what this is. I know that the county is very particular about preventing slope erosion. You should talk with Dave Nicholson at Public Works. He reviews any grading plans for new developments. There is also a Division of Code Enforcement at the County Community Development Agency.

The other thing I could not tell from the beach is where the property line might be. The stairway seems to go quite far to the north. The steps may have strayed onto the neighbor's property. A property line survey would be needed to determine the location of the property line.

F8a

# Torikian Associates Soils, Geology and Foundation Engineering

Tel. (415) 488-0636  
Fax (415) 488-9129

P.O. Box 280  
Forest Knolls, CA 94933

3 June 2013

Mr. Peter Rumsey  
Ms. Anna Edmondson  
5201 Harbor Drive  
Oakland, CA 94618

Re: **Updated** Geotechnical and Geologic  
Report for Garden Stairs  
Rumsey/Edmondson Residence  
120 Camino del Mar  
Inverness, CA 94937

Our Job No: 1121-03-12

Dear Peter and Anna:  
And To Whom It May Concern:

This report presents our geologic and geotechnical evaluation for the steps and trail constructed at this property leading from the house backyard down to the shoreline of Tomales Bay. The undersigned professionals have inspected the site several times with the last inspection taking place on 10 December 2012.

## Geologic Setting

Tomales Bay was created by ongoing movement and subsequent erosion of the fractured rock within the fault zone over the past several million years. The main traces of the San Andreas Fault are located more or less in the center of the bay.

The town of Inverness is almost entirely underlain by granitic rock classified as decomposed granite (Kgr). At this site the rock type is not (Kgr). It is a metamorphosed sedimentary rock (Pms) classified as a sandstone schist, much harder and durable than (Kgr). Our observations agree with the Marin county geology map (Geology of the Tomales Bay Study Area by Wagner and Smith 1977). The part of the map that shows this site is attached.

The fact that the steep cliff has been so enduring and stable through the millennia attests to the hardness and durability of the sandstone schist bedrock. A thin layer of colluvial soils consisting of clayey and silty sands intermixed with angular rock fragments covers the rock, result of the normal erosion process.

## Slope Stability

The stability map of Marin County which classifies relative zones from 1 to 4, Zone 1 being the most stable zone. has assigned Zone 2 for this site even though it is a steep

Edmondson/Rumsey  
Page 1 of 4

bluff, meaning that the bluff is stable. (See attached map - Slope Stability of the Tomales Bay Study Area by Wagner and Smith, 1977.)

The backyard of the property drops down about 80 ft to the beach with a steep slope of approximately 1:5 (horizontal to vertical.) The stairs have been constructed in two general directions.

The first direction is basically parallel to the contours of the hill. The stairs in this direction are sloping approximately 50% (2:1) as recorded by a digital level. These stairs should be considered inclined benches. As a rule benches impart stability to steep hills by preventing sheet flow and minimizing erosion.

The second direction is basically perpendicular to the contours and they are steeper, inclined almost 1:1. These are not classified as benches; however they do help with erosion reduction and slowing down flow of rain water.

Straw waddles (9" in diameter) have been placed on both sides of the stairs everywhere by a Hyphae Design Laboratory crew to further slow down run-off and minimize erosion. At certain areas they also installed jute matting which covers the small cuts made during the construction of the stairs.

### **Tsunami Hazard Potential**

Tsunamis are water waves, coming from the open ocean generated by distant earthquakes where there is an opportunity for the waves to amplify. Strike-slip faults such as the nearby San Andreas do not generate significant tsunamis. The principal risk for tsunamis is a subduction zone earthquake generated in the northern or western Pacific Rim, as has impacted the northern-most California coast in the past.

Ritter and Dupre, geologists with the US Geological Survey (1972), have estimated that a tsunami having a wave height or run-up of 6 meters (20 feet) may occur once every 200 years. The run-up for a tsunami having a 100-year return period is about 3 meters (10 feet).

The site is relatively well protected from the open ocean by the narrow entrance to Tomales Bay, with the only history of previous tsunami being "strong currents observed" in 1960 Alaska earthquake. The risk of damage from tsunami-generated wave run-up is considered low. The base of the stairs is above any potential tsunami wave.

## **Bluff Retreat**

Coastal bluff retreat is a type of slope failure caused in part by erosion and undercutting of the base of the bluff by wave action. Bluff retreat rates are site specific and controlled by type and hardness of the underlying rock orientation of the slope relative to incoming storm waves and size of waves impacting the slope.

As discussed above the rock underlying the site is a hard schist with widely spaced jointing. No evidence of slope failure was observed during reconnaissance. The site is located on the western shores of Tomales Bay and is sheltered from the impact of ocean storm waves. Therefore bluff retreat is not considered to be a concern at the site within the estimated project life of the stairs.

## **Surface Faulting**

The site is not located within an Earthquake Fault Zone (previously called a Special Studies Zone) as defined and mapped by the California Geological Survey (formerly the California Division of Mines and Geology).

The closest mapped trace of the San Andreas Fault is located approximately 1500 feet to the east of the site. There are no active fault traces mapped through or near the site. The potential for surface rupture impacting the site is considered very low.

## **Seismic Ground Shaking**

The San Andreas Fault is a major active fault zone capable of producing a moment magnitude earthquake of 7.9. Displacement on the fault is right lateral strike-slip. In the event of a large magnitude earthquake similar to the 1906 event in the site area, very strong ground shaking would occur at the site. Based on empirical relationships developed by Idriss (1991), the peak horizontal ground acceleration from a magnitude 7.9 event of the San Andreas Fault would be approximately 0.7g.

## **Wave Run-up**

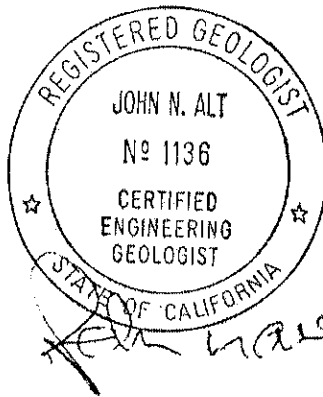
The shores of Tomales Bay are protected from the high waves that impact the exposed sections of the coastline during major Pacific storms. Although major storms would produce higher than normal tides, no waved induced flooding or erosion is expected at the site. The bottom of the stairs is above the higher high water line.

### **Potential Sea Level Rise**

The State of California Sea-Level Rise Interim Guidance Document was reviewed. The rise of 7 inches which is the estimated average of the several models used in the guidance document for the year 2030 and 14 inches estimated for 2050 will not impact the stairs.

### **Bluff Drainage**

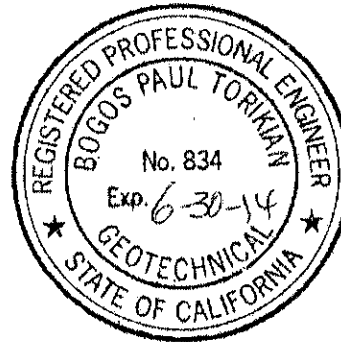
The 25 ft wide backyard of this house (distance between the house and the top of slope of the bluff) is not sloping towards the cliff which is to the northeast. Surface run-off of the land is actually inclined towards the southeast away from the bluff. The only surface run-off is from rain water falling on the bluff itself. The bluff is not receiving water from the backyard.



Sincerely,

Signature on file

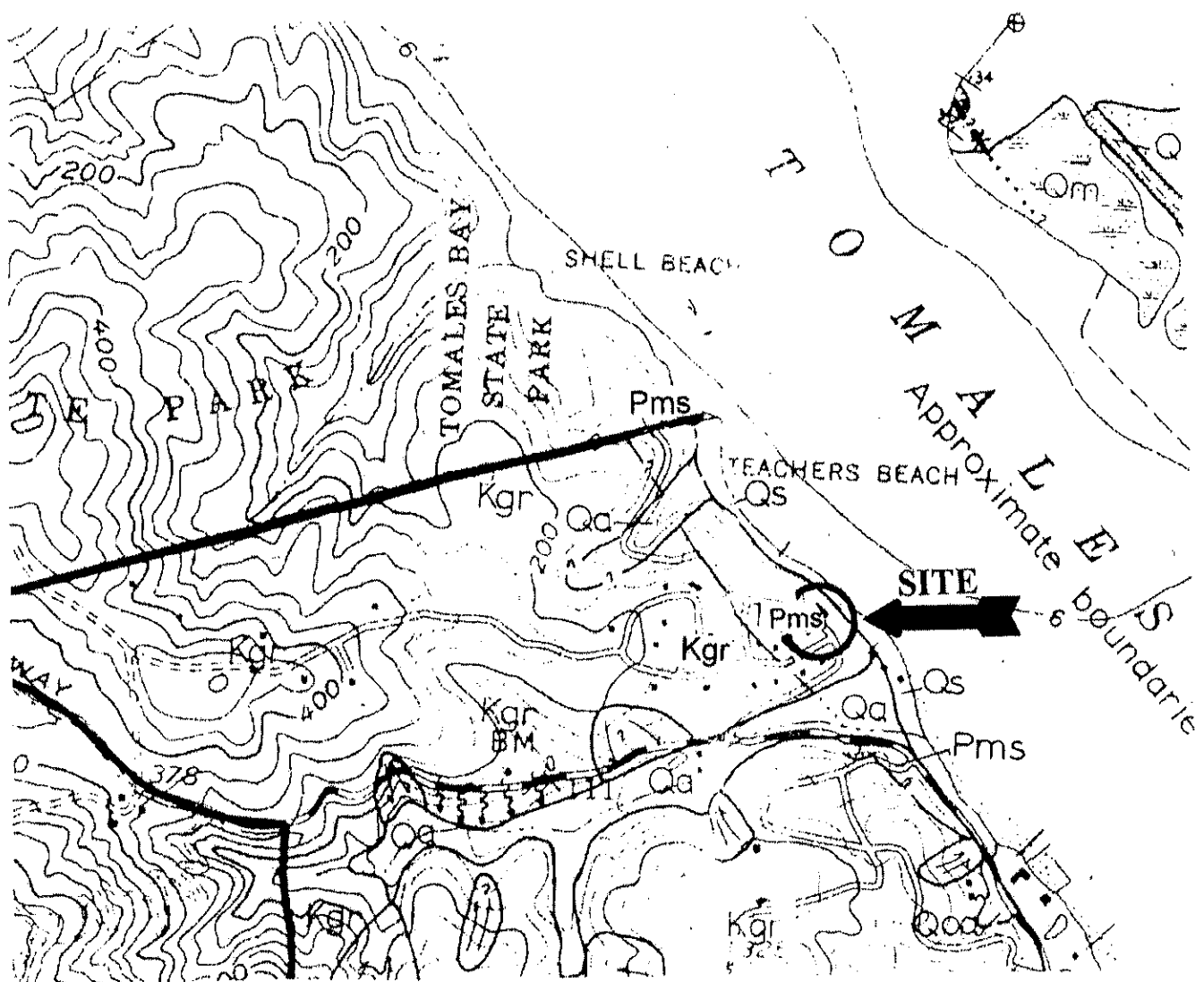
Bogos Paul Torikian, P.E.  
Registered Geotechnical Engineer



cc: Jack Alt  
Bill Kirsch  
Hyphae Design Laboratory

Torikian Associates

Edmondson/Rumsey  
Page 4 of 4



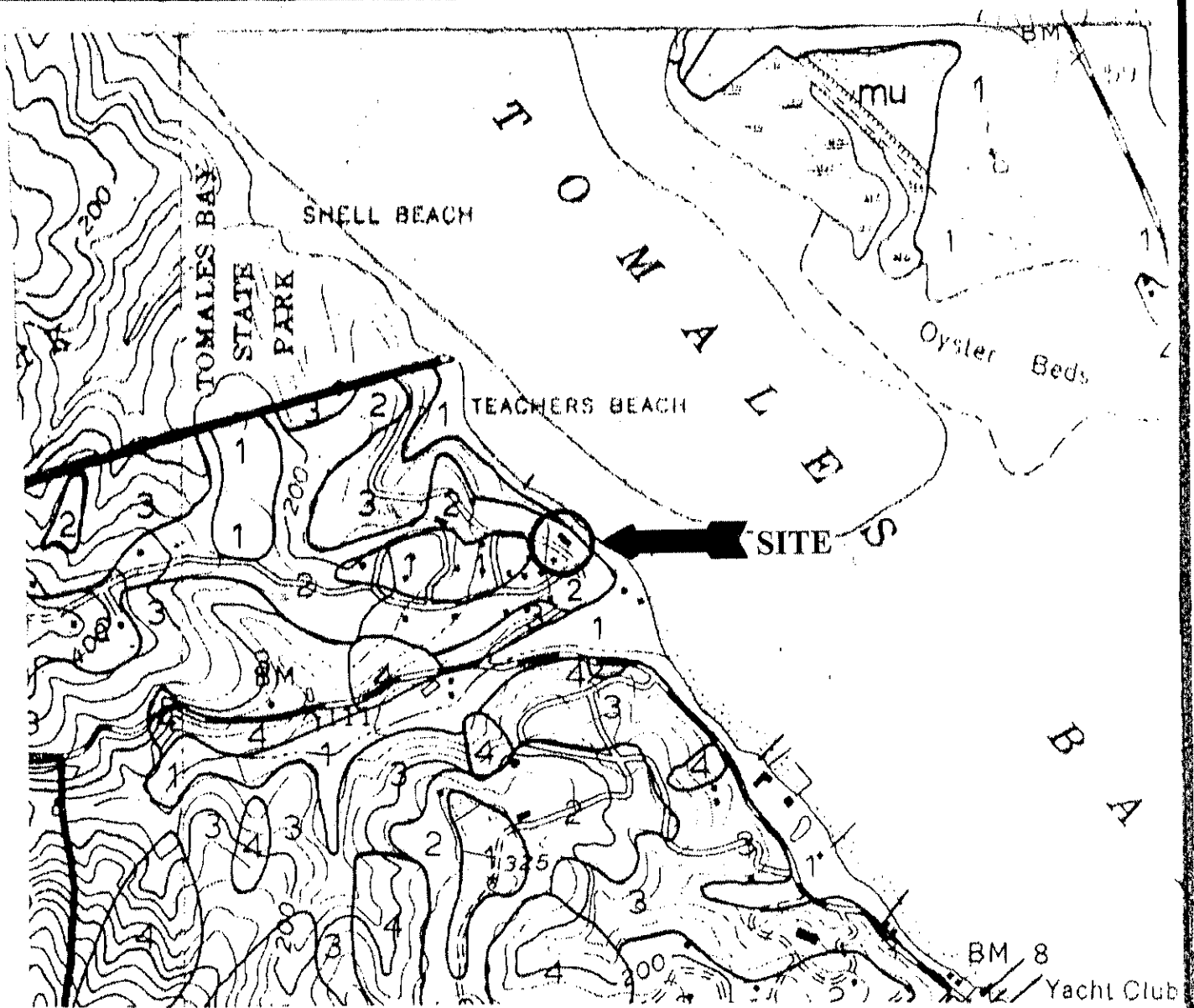
# **Geology of the Tomales Bay Study Area** **by** **Wagner and Smith, 1977**

Scale  
 1" = 1000'



**Legend**  
 Kgr = Decomposed Granite  
 Qa = Alluvium  
 Qs = Beach Deposits  
 Pms = Metamorphosed Sedimentary rock

Rumsey Residence  
 120 Camino del Mar  
 Inverness, CA 94937



# **Slope Stability of the Tomales Bay Study Area**

by  
**Wagner and Smith, 1977**

Scale  
 1" = 1000'



Legend  
 1 = Most stable  
 4 = Least stable

Rumsey Residence  
 120 Camino del Mar  
 Inverness, CA 94937

F8a

Peter Rumsey & Anna Edmondson  
5201 Harbord Drive  
Oakland, CA 94618

June 6, 2013

California Coastal Commission  
Central Coast and North Central Coast District Office  
750 Front Street, Suite 300  
Santa Cruz, CA 95060

**Re: Permit Number A-2-MAR-13-0204**  
**120 Camino Del Mar, Inverness**

Dear Coastal Commissioners,

I am writing regarding the appeal for the permit that was granted by the County of Marin for our path and stairs from our house to the edge of Tomalas Bay on our property in Inverness, California.

The path and stairway were constructed to allow us to appreciate the coastal resources along with giving us the ability to access the bluff that we would like to maintain in order to stop the existing erosion. With this path we now have the potential to plant and strengthen the bluff.

We mistakenly thought that this sort of thing would not require a permit. We were wrong. Since being contacted by the county, we have fully cooperated with all of their requests. We have gone further by hosting several of the members of the Inverness Association and neighbors to visit our house and talk with our team of environmental consultants and geotechnical engineers.

Amy Trainer of the West Marin Environmental Action Committee and an engineer working under her direction, Ed Nute, made comments in her appeal regarding the condition of soil and trees on our property in her report. Ms. Trainer and Mr. Nute could not have made those observations without entering our property without our permission. We are eager to grant permission to private individuals and individuals representing governmental agencies to inspect the conditions of our property, but we would like those individuals to request access and approval in advance.



Concerned individuals may contact William Kirsch or agents of Hyphae Design Laboratory to request access to the property.

My wife and I fully support the Coastal Commission and its staff in its mission of protecting the sensitive environment and resources of California's coastal zone. I am the founder of a progressive green engineering firm and my wife sits on the board of a nonprofit environmental education group. We are in full support of principles of the Coastal Commission, being protection of sensitive habitat and providing appropriate access to the coast and Tomales Bay. We believe our project upholds these goals.

My wife and I will be out of the country from June 16<sup>th</sup>, 2013 to August 18<sup>th</sup>, 2013 and we will have only limited ability to be in communication on these issues during that period of time. I authorize William Kirsch as well as Brent Bucknum and Eric F. Olson, P.E. from Hyphae Design Laboratory to communicate and act on my behalf during this period of time.

Sincerely,

Signature on file

Peter H. Rumsey, PE



F8a

June 7, 2013

California Coastal Commission  
Central Coast and North Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

**Transmittal letter Re: Appeal No. A-2-MAR-13-0204**

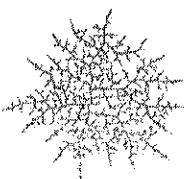
Dear Coastal Commissioners,

On behalf of the Applicant Peter Rumsey, we have prepared a response to the Appeal Staff Report issued by Laurel Kellner of the California Coastal Commission on May 24, 2013. Below is a letter from our Principal, Brent Bucknum, followed by a technical document from our Civil Engineer Eric Olson in response to the Staff Report. A letter from the owner, Peter Rumsey is also included.

We encourage the commission to seriously reconsider the "Substantial Issue Determination" and a lengthy investigation into this project. This is a small, minimal impact project, the stairs are within allowable uses, and actually provide more stability to the hillside than the previous condition did. The project has been approved through lengthy dialogue with the county and local community groups. It has been designed and installed with minimal impact to the environment, and has holistic long term restoration and habitat enhancement goals. We urge you to let us complete the project.

We believe that our site restoration plan is in perfect alignment with the Coastal Commission's goals of protecting the coastline habitat. At this time, the stairs are built, and we are in a holding pattern to do any of the planting and restoration work. The Coastal Commission investigation process has, and will only continue to inhibit us from planting the project into or beyond the next rainy season, which is the least helpful thing we can do to further stabilize the bluff.

Our Staff Report Response addresses the following points:



**hyphae design laboratory**

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-The path and stairway are not clearly prohibited at the site and Marin County codes are not clear or consistent on what constitutes 'accessory structure' or 'accessory use'.

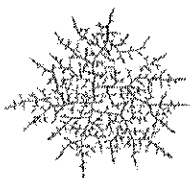
-The path and stairway are located in a wetland buffer, however the path actually stabilizes the hillside and allows for greater access for planting of native vegetation. The full implementation of our restoration plan will leave the site more stable and with more native vegetation.

-Paul Torikian and John Alt's revised report (attached) explains in further detail that the bluff at the Rumsey site is stable and also that bluff retreat is not considered to be a concern at the site within the estimated project life of the stairs.

-Opening the path and stairway to public access is not necessary or desirable for several reasons. There are two public beaches within 1,500 feet of the property and a public trail would also infringe on the privacy of the Rumsey family.

We encourage you to read our original full report and we also encourage you to come to the site (with owner's permission of course) and see for yourselves. We presume the staff report was written without actually seeing the site, and we don't think it provides an accurate assessment. The client has been transparent with any community members who have wanted to visit the site, or sit down with ourselves, the restoration ecologists and civil engineer, or other team members, and discuss the design. We have done so with most of the local Inverness community who initially raised concern, but all approved of the project after discussions and seeing the work.

The one community group who has appealed this project to the Coastal Commission was invited to meet with the client and ourselves, but they declined. Our firm does environmental work, for both developers and non-profits, we actually started our own environmental justice non-profit. This type of activity and lack of cooperation would not be seen as reasonable or productive by any of the groups we work with. It also doesn't appear like there is any attempt to actually improve the environment, but rather set abstract political precedents. We believe that if proactive environmentally minded landowners can work with the County, this will be the most proactive approach to restoring the site and Tomales Bay.



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We welcome and encourage full and detailed scrutiny by the Coastal Commission, but we believe the success of this project should be judged upon the quality of the habitat and hillside stability before and after the project. The quality of restoration work should be evaluated upon completion, not midway through, or based upon politicized hearsay. This de novo regulatory process will only delay restoration and the goals of the Coastal Commission. Let's spend our money on restoring the coast, not more reports. Come see what is actually happening on site. Let us begin the restoration planting immediately. We will monitor and provide you with reports that will allow you to decide it's success. Habitat restoration and 2 years of reporting are ALREADY "conditions of approval" from the County. This gives the Coastal Commission a window to appeal the project, based on real site conditions and the quality of restoration over time.

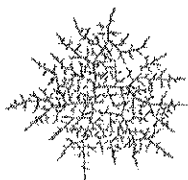
Sincerely,

Signature on file

Brent Bucknum  
*Founder*

**Attachments:**

1. *Analysis of Coastal Commission Appeal Staff Report*, by Eric F. Olson, P.E. from Hyphae Design Laboratory
2. *Updated Geotechnical and Geologic Report for Garden Stairs* from Paul Torikian, P.E., G.E. and John N. Alt, C.E.G, who performed the geological study of the property. This letter further elaborates their research, observations and conclusions which they presented in their January 8, 2013 Geotechnical Evaluation.
3. A personal letter from Peter Rumsey explaining his intentions and personal circumstances over the next few months.



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June 7, 2013

California Coastal Commission  
Central Coast and North Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

**Response Letter re: Appeal No. A-2-MAR-13-0204**

Dear Coastal Commissioners,

The Staff Report lists several reasons to support an argument that a 'substantial issue' exists in the matter. I have outlined several points where I think that the Staff Report is in error. The California Coastal Act, the Marin Local Coastal Program Unit II, and the Marin County Interim Zoning Code Title 22I were studied for references.

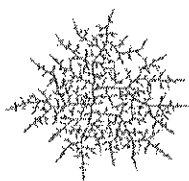
I feel that the following four issues were not accurately represented in the Staff Report:

1. Accessory Structure as Permitted Use

The Staff Report states: "The County approved project is located in the C-R-1 zoning district. The County defined the project as an "accessory structure" to an existing residential use, which is an allowable use in the C-R-1 zoning district. However, the project does not meet the LCP's definition of "accessory building" or "building."

The Marin Interim Code Section 22.57.050I allows 'accessory buildings' as a permitted use, however the C-APZ zone lists 'accessory structures' as a permitted use and 'accessory buildings and accessory uses' is a permitted use in the C-RMP zone. The language in the code is inconsistent with reference to what is an accessory structure or use. The path/stairway meets the general conditions of 'accessory use' and 'accessory structure' and should therefore be considered an acceptable permitted use. The presence or use of the path/stairway has an insignificant impact within the wetland buffer zone. I argue that a substantial issue does not exist.

2. Wetland Buffer Zone Protection

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The Staff Report states that "Tomaes Bay is defined as a wetland in the LCP and is also defined as a Special Resource Area. The LCP requires a 100-foot development buffer from Tomaes Bay. The approved project is located within this 100-foot buffer.

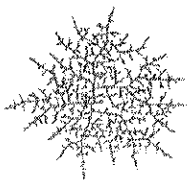
The County's approval does not acknowledge that the project is located with a wetland setback and did not make the required findings regarding stream and wetland conservation protection. Thus, the appeal raises a substantial LCP conformance issue regarding sensitive wetland resources."

The path and stairway are within 100 feet of a narrow wetland at the edge of Tomaes Bay. The slope of the land is approximately 1:1 and the land does not exhibit wetland features. Wetland plants are only found in the immediate vicinity of the shoreline, and this area will remain undisturbed. There is also no marked blue line stream or running stream on the property.

The path and stairway were constructed with minimal disturbance to the soil. The County approved native plant revegetation program we have proposed will actually reduce erosion of the hillside and increase the number of native plants. The path and stairway will also allow for easier access for weeding and maintenance of the native landscape. These plans are now on hold as we allow the appeal process to run its course. I argue that a substantial issue does not exist.

### 3. Bluff Development

The Staff Report makes comments regarding development on the bluff, in particular a concern about erosion and bluff retreat. The *Updated Geotechnical and Geologic Report for Garden Stairs* from Bogos Paul Torikian, P.E., G.E. and John N. Alt, C.E.G, (attached) further elaborates on his earlier report, dated January 8, 2013. Torikian and Alt differentiate between the stable sandstone schist bluff at the site and the less stable decomposed granite to the south. He also includes a slope stability map of the area, generated by Wagner and Smith in 1977, which shows that the Rumsey property is characterized as a 1 or 2 on a scale of 1 to 4, with 1 being most stable and 4 being least stable. He mentions that the land at the top of the bluff is sloped away from the bay, so overland stormwater flow is actually flowing away from the Bay and is not contributing to bluffside erosion. He makes additional comments about risk associated with seismic activity, wave action, tsunamis and sea level rise. He concludes that "bluff



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retreat is not considered to be a concern at the site within the estimated project life of the stairs". I argue that a substantial issue does not exist.

#### 4. Public Access

The Staff Report states that "The County-approved project does not include an evaluation of the project with regards to the LCP's public access provisions. Thus, the appeal raises a substantial LCP conformance issue regarding public access."

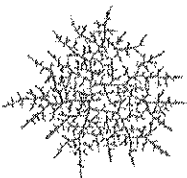
Public access is discussed in the Marin County Code. Section 22.56.130I states that "All coastal project permits shall be evaluated to determine the project's relationship to the maintenance and provision of public access and use of coastal beaches, waters and tidelands. However, it also states that if "public use of an accessway would seriously interfere with the privacy of existing homes, provision for coastal access need not be required."

The Rumsey residence is a private home and the pathway does not extend either to the public road, nor to the mean high tide line. If the public were to utilize the trail, they would have to walk across the Rumsey property and past the house, where there is no trail. We contend that this would invade the privacy of the Rumsey family.

Additionally, Section 30212 of the Coastal Act 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...adequate access exists nearby". There are two public access sites near the Rumsey property. Approximately 850 feet to the South is Chicken Ranch Beach and there is also a public access to Heart's Desire Beach at the end of Camino del Mar, approximately 1,500 feet to the North.

Section 30212 of the Coastal Act also states that a "Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway." This has not occurred.

In addition to these reasons, public access along the path/stairway corridor would only increase the number of people passing through and it would increase the impact on the sensitive resources at the site. I argue against public access and that a substantial issue does not exist.



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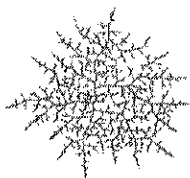
Even with these additional issues, if the Coastal Commission requires a public access as a condition to keep the path/stairway in place, Mr. Rumsey is willing to consider working out a solution to make the path and stairway accessible to the public.

**Conclusion:**

The Rumsey family is concerned with the protection of the coastal resources at their property. The plan for full restoration has been studied and approved by Marin County officials and after completion, the hillside will be more stable and contain more native plants than before. This site has been studied enough and we are ready to complete the restoration. We ask you to consider the facts in this case and make the determination that no substantial issue exists.

Sincerely,

Eric F. Olson, P.E.  
Civil Engineer  
Hyphae Design Laboratory



**hyphae design laboratory**

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F8a

**From:** [ericfordolson@gmail.com](mailto:ericfordolson@gmail.com) [ericfordolson@gmail.com] on behalf of Eric Olson [eric@hyphae.net]  
**Sent:** Friday, June 07, 2013 3:47 PM  
**To:** Kellner, Laurel@Coastal; Cavalieri, Madeline@Coastal  
**Cc:** Peter Rumsey; [wwkirsch@comcast.net](mailto:wwkirsch@comcast.net); Anna Edmondson; Brent Bucknum  
**Subject:** Response letters to Appeal No. A-2-MAR-13-0204,

Please accept our response letters to the Appeal No. A-2-MAR-13-0204 for the Rumsey property at 120 Camino del Mar, Inverness, CA. I was originally told to send our letters to the Santa Cruz office by today. I called the office yesterday and they said they would be closed today for remodeling and that I should e-mail the documents to the San Francisco office. I am emailing the documents now, and I will be hand delivering hard copies to the San Francisco office before closing time this afternoon.

Thanks,

--

Eric F. Olson P.E.  
510-922-9355 (office)  
510-459-0077 (cell)  
[eric@hyphae.net](mailto:eric@hyphae.net)



F8a

June 11, 2013

Ms. Laurel Kellner, planner  
California Coastal Commission  
Via email: [laurel.kellner@coastal.ca.gov](mailto:laurel.kellner@coastal.ca.gov)

Re: Appeal No. A-2-MAR-13-0204

Dear Ms. Kellner,

The Environmental Action Committee of West Marin (EAC) appreciates the opportunity to respond to the documents submitted by Peter Rumsey and Anna Edmondson, owners of the property at 120 Camino del Mar in Inverness (property owners), last Friday, June 7<sup>th</sup>. The property owners' June 7<sup>th</sup> documents do not change the staff's analysis or conclusion that a substantial issue exists with regard to EAC's appeal. The June 7<sup>th</sup> documents do not alter the core issue that Marin County wrongly applied the Marin certified LCP Unit II in multiple ways to grant an after-the-fact coastal development permit to an illegally constructed bluff staircase in a wetland buffer area.

EAC firmly believes that the analysis contained in the staff report is correct and remains unchanged by the property owners' June 7<sup>th</sup> submittal. The County decision lacked the required and necessary information to make a decision to issue a coastal permit. Moreover, if the property owners had appropriately sought permit approval prior to constructing this development EAC believes that the permit would have been denied.

The June 7<sup>th</sup> documents contain material misstatements of fact that EAC would like to correct for the record.

Hyphae Design Response Letter Errors:

The Hyphae Design response letter wrongly assumes that the C-APZ and C-RMP zoning categories and policies apply to the 120 Camino del Mar property. The subject property is in neither the C-APZ nor C-RMP zoning districts, thus the comments regarding permitted uses in those districts are not germane. In any event, the language of Interim Code Sections 22.57.052I and 22.57.053I unambiguously does not include private bluff staircases as either a principal permitted use or conditional use in the C-R-1 zoning district.

The response letter acknowledges that the entire development is located within a protected wetland buffer, in violation of the Marin certified LCP Unit II. The response letter also states that the wetland in the immediate area of shoreline, "will remain undisturbed." Common sense dictates that this cannot be the case because the stone steps will extend to the mean high tide line.

The June 7<sup>th</sup> documents claim that the public access “pathway does not extend . . . to the mean high tide line.” This statement is incorrect. The stairway goes all the way down to the shoreline, both as currently developed and as proposed to be rerouted.

This development would normally require a setback from the edge of the bluff “of sufficient distance to eliminate the need for shoreline protective devices.” Instead, the property owners constructed the stairway entirely on the bluff that has a recent history of multiple slides, of which some have been significant. The “estimated life of the stairs” is not the standard for determining a bluff erosion buffer for bluff-top development.

Marin’s Interim Code requires that public access be “offered for dedication” and distinguishes the requirement to *offer* an easement from *acceptance* of the easement by an appropriate agency or private organization. The exception to the public access provision may occur if the access way would seriously interfere with the privacy of existing homes. However, the privacy issue arises *only* if the path for pedestrian access cannot be separated by 10 feet or more from the existing single-family residence or be separated by landscaping or fencing; however, there appears to be a greater than 10-foot setback from the residence to the adjacent property owner’s fence. The LCP envisions a privacy fence for such trails, which would appear to be feasible in the setback.

Finally, it should be noted that the property owners readily admit that there is ample nearby public access to public beaches – Chicken Ranch Beach is approximately 850 feet to the south, and public access is available 1500 feet to the north at end of Camino del Mar at *Shell* Beach [not Hearts Desire] which is part of Tomales Bay State Park. It seems contrary to the intent, spirit, and letter of the Coastal Act that any property owner that is practically next door to such exceptional public beaches would be allowed to retain illegally constructed and wrongly permitted private beach access when some of the best public access in West Marin exists so nearby.

#### Hyphae Design Transmittal Letter Errors:

The letter refers to a “restoration plan.” It is important to note that any restoration on the site would be for mitigating some of the damage resulting from the construction of the illegal stairway development that was constructed before Hyphae Design was engaged on behalf of the property owners. It is not restoring the status quo ante.

The transmittal letter claims that the property owners have sat down “with most of the local Inverness community who initially raised concern, but all approved of the project...” This statement is incorrect. We are aware of no member of the Inverness Association approached by the property owners who have approved or supported this illegal development. EAC does not support the illegal development. In response to a question that Ms. Edmondson asked Bridger Mitchell, who serves both as the vice-chair of the Inverness Association and president of the EAC, during a site visit he specifically told the property owner that one question in his mind was whether a coastal permit could be issued for the project, given the LCP’s requirements. Upon closer examination of the LCP requirements, Mr. Mitchell concluded that a coastal permit could not be issued for the illegal development.

#### Geologist Torikian Letter Errors:

Environmental Action Committee of West Marin  
PO Box 609 Point Reyes, California 94956  
[www.eacmarin.org](http://www.eacmarin.org) 415.663.9312

The Torikian letter wrongly claims that the “bottom of the stairs” is not the low point of the steps for the trail. The fact is that the steps continue down to the high tide line and would be subject to run-up from abnormal waves or a tsunamsi, as well as from sea-level rise. The Torikian letter does not address the multiple bluff slides that have occurred in recent years. Additionally, the follow-up Torikian letter does not address the not-yet-constructed rerouting of the lower portion of the trail.

Thank you very much for your consideration of our comments.

Respectfully yours,

Signature on file

Amy Trainer, Executive Director