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Filed: January 14, 2000
49th Day: Opened and Continued
Staff: T. S. Tauber
Staff Report: February 25, 2000
Hearing Date: March 15, 2000
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Humboldt

DECISION: Approval with Conditions

APPEAL NO.: A-1-HUM-00-01

APPLICANT: **Kate Bell & Orm Aniline**

PROJECT LOCATION: On the west side of Letz Road, approximately 200 feet north from the intersection of Letz Road with Airport Road (nearly opposite the underpass), on the property known as 3524 Letz Road, in the McKinleyville area of Humboldt County, APN 511-061-08.

PROJECT DESCRIPTION: Development of an approximately 4,000-square-foot, two-story (35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes a 768-square-foot attached garage, a 36-square-foot detached greenhouse and a 180-square-foot lap swimming pool.

APPELLANTS: Commissioners Sara Wan & Christina Desser

AGENT: Wes Marshall, Ray Wolfe Construction, Inc.

SUBSTANTIVE FILE: 1) Humboldt County CDP file No. 99-22; and
DOCUMENTS 2) Humboldt County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

1. **SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE**

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a de novo hearing at a subsequent meeting, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

Humboldt County approved a coastal development permit for the construction of an approximately 4,000-square-foot, two-story (35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes a 768-square-foot attached garage, a 36-square-foot detached greenhouse and a 180-square-foot lap swimming pool. As approved, the development would be setback 185 feet from the bluff edge.

The appellants contend that the approved project raises a substantial issue of conformance with the County's LCP policies pertaining to geologic hazards and new development. Although the approved building site is located relatively far from the bluff edge in comparison with many other projects the Commission has reviewed, the site is located near the mouth of the Mad River in an area where extraordinary bluff retreat has occurred in recent years. The County required as a condition of approval of the permit that the applicants have a geotechnical report prepared for the project prior to issuance of a building permit and that the recommendations of the report be followed. However, no site specific geotechnical report for the project was available to the County when it made findings of consistency with LCP policies on geologic hazards and acted to approve the project. Therefore, Commission staff recommends that the Commission find that the development, as approved by the County, raises a substantial issue of whether the proposed residence, located 185 feet from the bluff edge, would create a bluff retreat hazard or ultimately require the construction of a protective device, inconsistent with the policies of the certified LCP regarding new development.

Staff also recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the project can be found consistent with the geologic hazard policies of the certified LCP. The Commission's staff geologist has reviewed the geologic report the applicants hired a consultant to prepare following the County's approval of the project. The staff

geologist has determined that additional geologic information is needed including a justification for the bluff retreat rate estimated by the applicants' geologist, an evaluation of the rate of groundwater in slope failures at the site, and a slope failure analysis.

The motion to adopt the Staff Recommendation of Substantial Issue is found on page 4.

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

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

The subject development is appealable to the Commission because it is located between the sea and the first public road paralleling the sea as well as within 300 feet of the mean high tide line and top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to

consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

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

2. Filing of Appeal

The appellants filed an appeal to the Commission in a timely manner on January 14, 2000 within 10 working days after receiving notice of final local action on January 3, 2000. (Exhibit No. 6)

3. Hearing Opened and Continued

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally approved coastal development permit is filed. In accordance with the California Code of Regulations, on January 19, 2000 staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. However, the County permit file information had not yet been received as of the day of the mailing of staff reports to the Commission and interested parties on January 27, 2000 for the February Commission meeting. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question for the Commission's February meeting agenda. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, the Commission opened and continued the hearing during the February Commission meeting.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

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

MOTION

I move that the Commission determine that Appeal No. A-1-HUM-00-01 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-HUM-00-01 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. Findings and Declarations

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Humboldt's decision to approve the development from Coastal Commissioners Sara Wan and Christina Desser. The project as approved by the County consists of the construction of an approximately 4,000-square foot, two-story (35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes a 768-square-foot attached garage, a 36-square-foot detached greenhouse and a 180-square-foot lap swimming pool. As approved, the development would be setback 185 feet from the bluff edge and would be located outside of the "Area of Demonstration of Stability" as defined in the McKinleyville Area Plan and Coastal Zoning Ordinance. The appellants' contentions are summarized below, and the full texts of the contentions are included as Exhibit No. 6. The appellant's contentions involve inconsistency with the County's LCP policies regarding geologic hazards and new development as described below.

1. Geologic Hazards and New Development

The appellants contend that the project, as approved by the County, raises a substantial issue of whether the approved residence, located 185 feet from the bluff edge, would create a bluff retreat hazard and ultimately require the construction of a seawall, contrary to LCP policies. The appellants contend that pursuant to the certified LCP, new development shall be sited so as to assure that the development will be protected from bluff retreat during the economic life of the project. Furthermore, the appellants contend that new development shall not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The appellants contend that there was not sufficient evidence before the County

at the time of project approval to assure that the project would not create a bluff retreat hazard. The appellants also assert that as approved by the County, there is no mechanism in place to prevent the future construction of a seawall should the proposed setback prove insufficient in protecting the development from geologic hazards. Thus, they assert that the project as approved, raises a substantial issue of conformance with McKinleyville Area Plan (MAP) Section 3.28 of the certified LCP.

B. LOCAL GOVERNMENT ACTION

On December 16th, 1999 the Humboldt County Planning Division of the Planning and Building Department issued a Notice of Final Action (Exhibit No. 5) approving Coastal Development Permit No. CDP-99-22 (Bell & Aniline). The approved development includes construction of a 4,000-square-foot, two-story (<35' high), 5-bedroom single family residence, a 768-square-foot attached garage, a 36-square-foot detached greenhouse and a 180-square-foot lap swimming pool on a 5-acre blufftop parcel served by community sewer and water.

The proposed project was first before the Humboldt County Planning Commission on December 2, 1999 and approved on December 16, 1999 with seven special conditions. Conditions Nos. 6 and 7 relate to the geologic hazards associated with the blufftop site. Condition No. 6 requires the applicant, prior to issuance of a building permit, to submit to the County Building Inspection Division for review and approval, an R-2 geologic investigation and/or soils engineering report for the subject parcel. The report is to contain a geologic evaluation of the proposed building setback from the bluff using 75 years as the economic life of the residence and all recommendations set forth in the report(s) are to be implemented as a condition to the issuance of the permit. Pursuant to testimony before the Planning Commission on December 2, 1999, County staff was directed to add an additional special condition of approval. Due to the unpredictable nature of the geologic hazards associated with the blufftop site, County staff was directed to include special condition No. 7 which requires the applicants to enter into an Assumption of Risk, Indemnification and Hold Harmless Agreement with the County. County staff prepared revised recommended conditions to include condition No. 7 and revised findings, which were approved at the Planning Commission meeting on December 16, 1999. The Planning Commission's approval was not appealed to the Board of Supervisors.

Conditions No. 1-5 relate to parking, the noise and airport combining zones, and community services. Specifically, these conditions require that: 1) four (4) non-tandem, independently accessible parking spaces be constructed on-site outside the 20' front yard setback prior to occupancy, 2) the turnaround area be constructed on-site prior to occupancy, 3) the applicant provide certification by an engineer that the residence reduces interior noise levels to 45 dB CNEL-Ldn in all habitable rooms, 4) the applicant grant the County of Humboldt an "overflight" easement in accordance with provisions of the Arcata-Eureka Airport Land Use Plan, and 5) the applicant submit written verification of connection to community water and sewer from McKinleyville Community Services District prior to occupancy.

C. PROJECT AND SITE DESCRIPTION

The proposed single family home site is located in Humboldt County, in the McKinleyville area, on the west side of Letz Road, approximately 200' north from the intersection of Letz Road with Airport Road (nearly opposite the underpass) on the property known as 3524 Letz Road. The project is located on Lot 2 of the Seffner/Wolf Subdivision in an area of large lot residential development overlooking the Mad River and the Pacific Ocean. The project is located just to the south of the coastal area in which Caltrans installed rock slope protection to halt the northerly migration of the Mad River which posed a threat to Highway 101 near Clam Beach. The Seffner/Wolf subdivision was created in 1978 prior to the Mad River's migration north to this part of McKinleyville. (Exhibit Nos. 1-4)

Factors affecting site development include its proximity to the runway protection zone for the Arcata-Eureka Airport, potential noise impacts from Highway 101 to the east, and retreat of the coastal bluff along the western edge of the property. The site is located at an elevation of approximately 130 feet above mean sea level with an abrupt break in slope at the western edge of the bluff. The overall slope gradient from the edge of bluff to the back beach is 110% and the upper approximately 12 feet of the bluff is near vertical. The bluff face is absent of vegetation due to recent sloughing and a large debris fan composed of loose material that has fallen off the face of the bluff is present at the base of the slope.

As described above, the approved development consists of a 4,000-square-foot, two-story (35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The property extends a total of approximately 700 feet from the bluff edge to Letz Avenue. The project includes a 768-square-foot attached garage, a 36-square-foot detached greenhouse and a 180-square-foot lap swimming pool. The approved development would be setback 185 feet from the bluff edge and would be located outside of the "Area of Demonstration of Stability" defined in the McKinleyville Area Plan and the Coastal Zoning Ordinance. The area is planned Residential Estates (RE) in the McKinleyville Area Plan with a density of 0-2 units per acre. The site is zoned Residential Single Family with Airport Safety Review, Alquist-Priolo Fault Hazard Regulations and Noise Impact combining zones (RS-X/AP,G,N).

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Appellants' Contentions That Raise a Substantial Issue

The contentions raised in the appeal present valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP and the Commission finds that a substantial issue is raised.

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents a substantial issue with regard to the appellant's contentions regarding geologic hazards and new development.

a. Geologic Hazards and New Development

The appellants contend that the proposed project raises a substantial issue of conformance with LUP policies including McKinleyville Area Plan (MAP) Policy 3.28 regarding geologic hazards

and new development. Specifically, the appellants contend that there was not sufficient evidence before the County prior to project approval to assure that the proposed development would not cause or contribute to geologic hazards. In addition, the appellants contend that without such sufficient geologic evidence, it cannot be determined that the proposed project setback is sufficient to prevent the need for a seawall during the life of the project. The specific LCP policy cited by the appellants in the Reasons for Appeal (Exhibit No. 6) is MAP policy 3.28 which adopts Coastal Act Section 30253 as stated below. Other related LCP policies not cited by the appellants pertaining to geologic hazards and new development are also listed below for background.

LCP Policies:

LUP Policy 3.28 of the McKinleyville Area Plan states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Other Related Policies:

Zoning Section A 315-16. states in applicable part:

Supplemental Findings. *In addition to the required findings of Sections 315-14 through A315-15, as applicable, the Hearing Officer may approve or conditionally approve an application for a use permit, coastal development permit, or planned unit development permit only if the following findings (are made). Those findings that are only applicable within the County's coastal zone are indicated by "(CZ)"; those findings that apply throughout the County, within and outside of the coastal zone, are indicated by "(county-wide)".*

H. Public Safety Impact Findings.

(1)...

(2) Coastal Geologic Hazard (CZ).

- (a) The development will be sited and designed to assure stability and structural integrity for the expected economic lifespan while minimizing alteration of natural landforms;*

- (b) *Development on bluffs and cliffs (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, wastewater disposal and other activities and facilities accompanying such development) will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding areas; and*
- (c) *Alteration of natural cliffs and bluff tops, faces, or bases by excavation or other means will be minimized. Cliff retaining walls shall be allowed only to stabilize slopes.*

This language is reiterated in Zoning Section A314-16(G)(3)

Section A314-32. Shoreline Protection Structure states:

- C. *Limitations. Shoreline protection structures, including revetments, breakwater bulkheads, graving yards, groin, seawalls, and other such construction, that alter natural shoreline processes may only be permitted as follows:*
 - (1) *To protect existing principle structures or public facilities in areas subject to damage from wave action where relocation of the structures is not feasible;*
 - (2) *When required to serve coastal dependent uses;*
 - (3) *To reconstruct existing bulkheads;*
 - (4) *In areas planned exclusive agriculture, to protect existing dikes, consistent with the regulations on modification and repair of dikes in transitional agricultural lands.*

Attached as Exhibit Nos. 8-11 are the Geologic/Land Use matrices, the criteria for determining whether or nor a report is required when a site is designated in the matrices as "discretionary," and the definition and illustration of the "Area of Demonstration of Stability," as discussed below.

Discussion

The coastal bluffs adjacent to the Mad River in this area are highly dynamic and the rate of erosion is dependent upon a number of complex variables. The project is located just to the south of the area in which Caltrans installed rock slope protection in 1992 and 1995 to halt the northerly migration of the Mad River which posed a threat to Highway 101 near Clam Beach. Subsequent changes in river conditions and the effect of recent storm events on bluff stability has

led to increased concerns over the rate of likely bluff retreat in this area. According to County staff findings, "The rate of bluff retreat in this vicinity is difficult to predict and at times has been both sudden and severe as documented in materials on file with the County and California Coastal Commission."

Although no geologic report was prepared for the proposed project prior to County action on the application, a geologic report regarding the Caltrans rock slope protection project located just north of the subject site was part of the local record before the County when it acted on the proposed project. (Exhibit No. 7) The report, prepared by Busch Geotechnical Consultants, dated September 14, 1998, makes statements about the condition of the bluff and potential impacts of bluff retreat on nearby blufftop parcels. The report states:

"The erosion of the coastal bluff occurred because marine waves and tidal currents removed the "toe support" of the erodible bluffs. This caused the upper part of the bluff to become unstable and begin to landslide. Because the river mouth is now fixed in place and the landslide debris is swept away almost as soon as it reaches the river, erosion is now "biting" (backwasting) ever deeper into the bluff. To date, some property owners have lost up to about 20 feet of blufftop land, and other land is at risk. If this rate of erosion continues, which it is likely to, within a few years three of the homes on the blufftop will be destroyed or will have to be moved to the east."

"Before 1992, when the RSP (rock slope protection) was installed, most of the bluff face between Widow White Creek and Vista Point sloped moderately and was covered by vegetation. Erosion rates were low. Now most of the bluff face is barren and is exposed to erosion by raindrop impact and sheet wash. In addition, the once uniform slopes have become steep slopes marred by landslide scarps."

As approved, the residence would be setback 185 feet from the bluff edge, and would be sited outside the "Area of Demonstration of Stability." The Area of Demonstration of Stability is defined in Humboldt County Coastal Zoning Ordinance as follows (Exhibit No. 8):

"Area of Demonstration of Stability" – As a general rule, the area of demonstration of stability includes the base, face and tops of all bluffs and cliffs. The extent of the bluff top considered should include the area between the face of the bluff and a line described on the bluff top by the intersection of a plane included at a 20 degree angle from horizontal passing through the toe of the bluff or cliff, or fifty feet inland from the edge of the cliff or bluff whichever is greater. However, the county may designate a lesser area of demonstration in specific areas of known geologic stability (as determined by adequate geologic evaluation and historic evidence) or where adequate protective works already exist. The county may designate a greater area of demonstration or exclude development entirely in areas of known high instability.

The Commission recognizes that according to the Land Use/Geologic Hazard matrices in the LUP and the Zoning Ordinance (Exhibit Nos. 9 & 10), development of a single family residence

outside of the area of demonstration may not require a preliminary geologic investigation. Rather, a geologic report is "discretionary" for development outside the area of demonstration that falls within a particular slope stability and landslide zone rating on the matrices, as designated on the Geological Map of the Humboldt County General Plan. In a "discretionary" case such as the subject site, the Chief Building Official shall determine if a preliminary geologic report and/or soils engineering report is required based on extensive criteria laid out in Section A314-16(3)(D) of the Zoning Ordinance (Exhibit No. 11). Following a site investigation, the Chief Building Official determined that a preliminary geologic report was not required prior to project approval despite many criteria that seem applicable to the subject site as well as evidence of accelerated bluff failure in the area. The Commission further notes that the definition of "area of demonstration of stability" cited above states, "The county may designate a greater area of demonstration or exclude development entirely in areas of known high instability."

Although the County did not designate a greater area of demonstration for the project despite evidence of high bluff instability, the County did recognize the geologic hazards associated with the site and required submittal of a geologic investigation prior to issuance of a building permit as a condition of project approval. However, the Commission further notes that without such geologic information prior to project approval, the required findings relating to geologic hazards cannot be made. The Commission notes Section A315-16 of the Zoning Ordinance requires supplemental findings be made relating to coastal geologic hazards in order to approve or conditionally approve a coastal development permit. Required findings include 1) the development will be sited and designed to assure stability and structural integrity for the expected economic lifespan while minimizing alteration of natural landforms; 2) development on bluffs and cliffs (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, wastewater disposal and other activities and facilities accompanying such development) will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding areas; and 3) alteration of natural cliffs and bluff tops, faces, or bases by excavation or other means will be minimized.

Therefore, the Commission finds that although the project is proposed to be sited outside the area of demonstration, there was not sufficient evidence before the County to make the findings required by either LUP Policy 3.28 or Zoning Section A315-16, which further implements LUP Policy 3.28. Based on the information in the record before the County, it cannot be determined that the project as approved would assure structural integrity and geologic stability. In addition, without geologic evidence prior to approval, it cannot be determined that the proposed setback is sufficient to absolutely ensure the safety of the structures from bluff retreat pursuant to MAP Policy 3.28. If the setback is not sufficient and the proposed development is threatened by bluff retreat, a shoreline protective device might become necessary to protect the structures. As approved by the County, there is no mechanism in place in the permit to prevent the future construction of seawalls.

As stated previously, the County conditioned the permit to require submittal of an R-2 geologic report prior to issuance of a building permit to evaluate the proposed building setback from the bluff. However, it has been the experience of the Commission that in some instances, even when

a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. The County recognizes this point as well and states in the project findings, "Retreat rates different from those predicted in the geologic report may occur due to unforeseen changes in river or coastal landforms (i.e. sand spit) in the vicinity of the project site." In many such instances developers have later applied for coastal permits to build seawalls to protect the previously approved development from unanticipated bluff retreat that did in fact occur.

Therefore, the project as approved raises substantial issue with Policy 3.28 of the McKinleyville Area Plan which states that new development shall not "in any way require the construction of protective devices..." There is not sufficient evidence to determine that the proposed setback is adequate to prevent the need for constructing a protective device that would substantially alter natural landforms along the bluff. Furthermore, there is no mechanism in place under the approved permit to assure that shoreline protective devices will not be constructed in the future should bluff retreat pose a threat to the development. Possible mechanisms of assurance could include a deed restriction preventing the construction of seawalls on the property, an increased setback from the bluff edge, or an increased area of demonstration pursuant to the definition in the Coastal Zoning Ordinance.

As discussed above, at the time the County acted, there was not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP. The County attached a condition of project approval requiring submittal of a geologic investigation prior to issuance of a building permit. A geologic report was subsequently prepared and submitted on February 7, 2000, seven weeks after the County acted on the project, and three weeks after the appeal was filed. However, without site specific geotechnical information prior to project approval, there was insufficient factual support for the County's decision that the development is consistent with the MAP Policy 3.28. Furthermore, hazards associated with coastal bluff erosion are of increasing concern, not only at the local level, but also as a concern of statewide significance. Increasing development pressures along the state coastline have resulted in more development being proposed and constructed on marginally stable blufftop parcels. As a result, more of the coastline is being armored with shoreline protective devices to protect development from the threats posed by inherent geologic hazards in these areas. Many of these shoreline protective devices have adverse impacts to the physical and visual integrity of coastal resources.

Conclusion

Therefore, the Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with the MAP Policy 3.28 regarding geologic hazards and new development.

E. Information Needed for de Novo Review of Application

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

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

The County's approval of the single-family residence included findings that state:

"The Bell project is located on a coastal bluff which is subject to erosion and landslide activity. The McKinleyville Area Plan (Section 3.28) requires that new development minimize risks to life and property in areas of high geologic hazard. A condition of project approval requires a qualified geologist to demonstrate a 75-year useful economic life for the structure at the selected building site location. The rate of bluff retreat in this vicinity is difficult to predict and at times has been both sudden and severe as documented in materials on file with the County and California Coastal Commission. Retreat rates different from those predicted in the geologic report may occur due to unforeseen changes in river or coastal landforms (i.e. sand spit) in the vicinity of the project site."

Given the above findings, de novo analysis of the coastal development permit application by the Commission would involve consideration of the geologic hazard issues and associated policies of the certified LCP. As mentioned previously, on February 7, 2000, the applicant submitted a geologic report prepared by Walter B. Sweet, Inc. following the County's approval of the project. The Commission's staff geologist has reviewed the report and has determined that the report does not fully demonstrate the geologic stability of the site pursuant to MAP Section 3.28. The following additional information is needed:

- 1) A justification for the bluff retreat rate of 2.25 feet/year;
- 2) Evidence that renewed northward migration of the mouth of the Mad River will not increase this rate of bluff retreat;

- 3) An evaluation of the role of groundwater in slope failures, particularly in conjunction with the relatively impermeable "bluish-gray, soft-medium stiff, clayey silt with abundant shell hash"; and
- 4) A slope failure analysis based on geotechnical parameters measured from samples obtained at the site, for both static loads and loads imposed during seismic shaking corresponding to the maximum credible earthquake for the site.

Without this information, the Commission cannot reach a final determination concerning geologic hazards associated with new development on the site and consistency with the geologic hazard policies of the LCP.

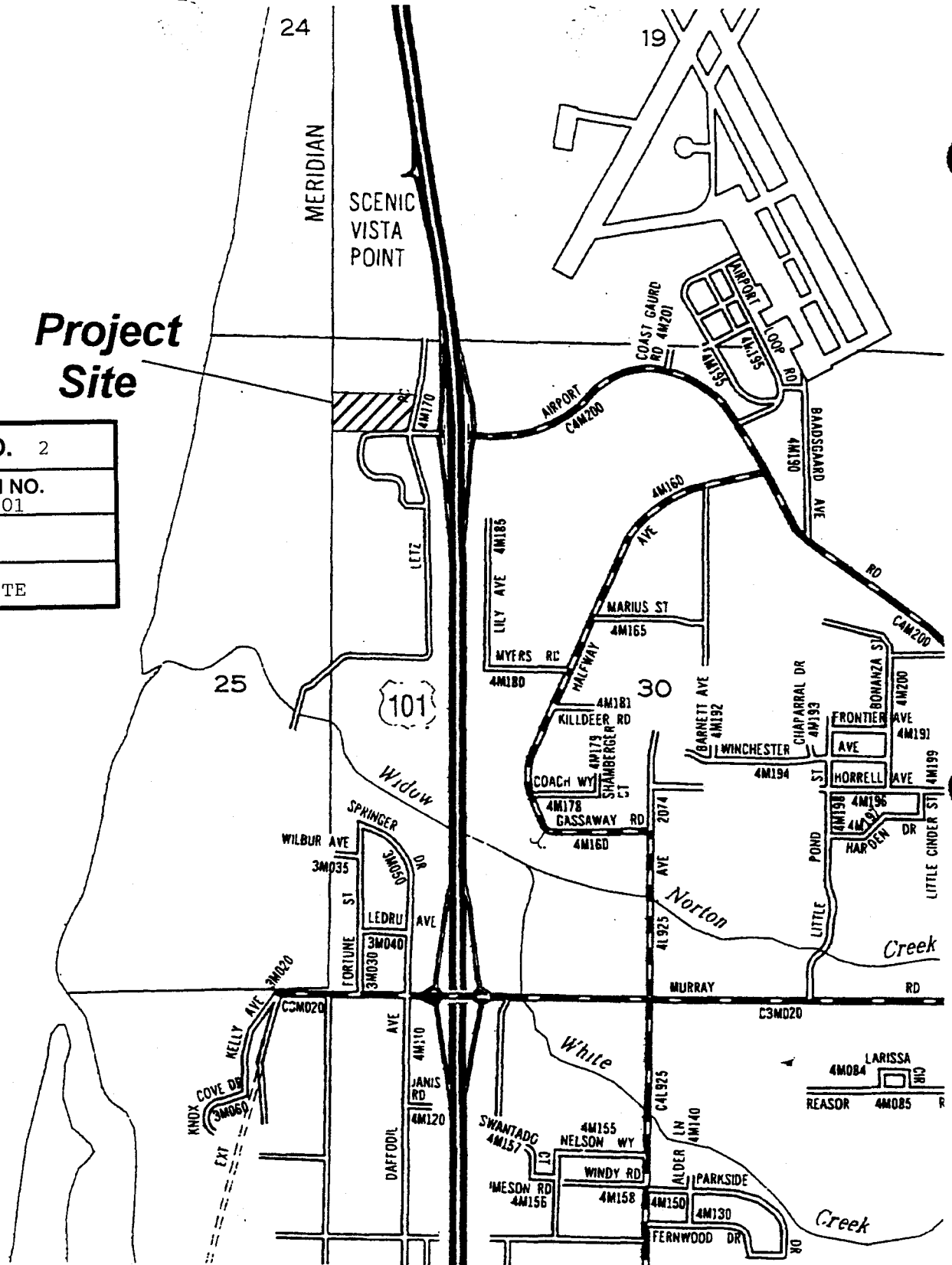
Exhibits:

1. Regional Location
2. Project Site
3. Subject Parcel
4. Site Plan
5. Notice of Final Action from Humboldt County
6. Appeal to Commission
7. Geotechnical Report related to subject site
8. Area of Demonstration Definition and Illustration
9. MAP Land Use/Natural Hazard Matrix
10. Coastal Zoning Geologic Hazard Land Use Matrix
11. "Discretionary" Criteria



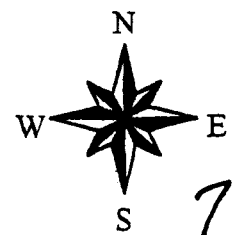
Project Site

EXHIBIT NO. 2
APPLICATION NO. A-1-HUM-00-01
PROJECT SITE



Proposed Bell Coastal Development Permit
 McKinleyville Area CDP-99-22
 APN: 511-061-08
 Section 30, T7N R1E, H.B.&M.

LOCATION MAP



POR. N.1/2, OF NW 1/4, SEC. 30, T. 7N., R. 1E.

Tax Area Code

511-06

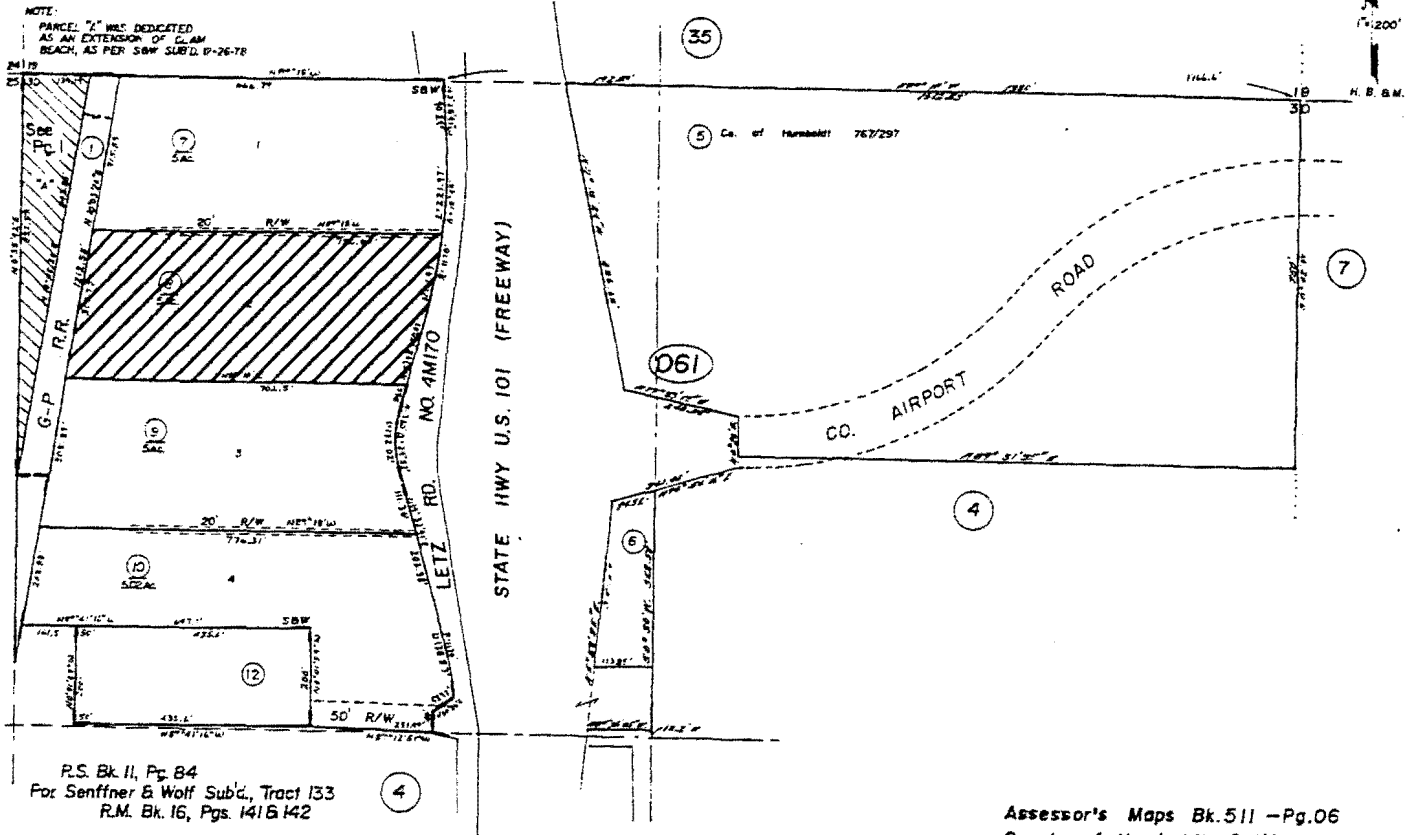


EXHIBIT NO. 3
APPLICATION NO. A-1-HUM-00-01
SUBJECT PARCEL

Proposed Bell Coastal Development Permit
 McKinleyville Area CDP-99-22
 APN: 511-061-08
 Section 30, T7N R1E, H.B.&M.

ASSESSOR PARCEL MAP



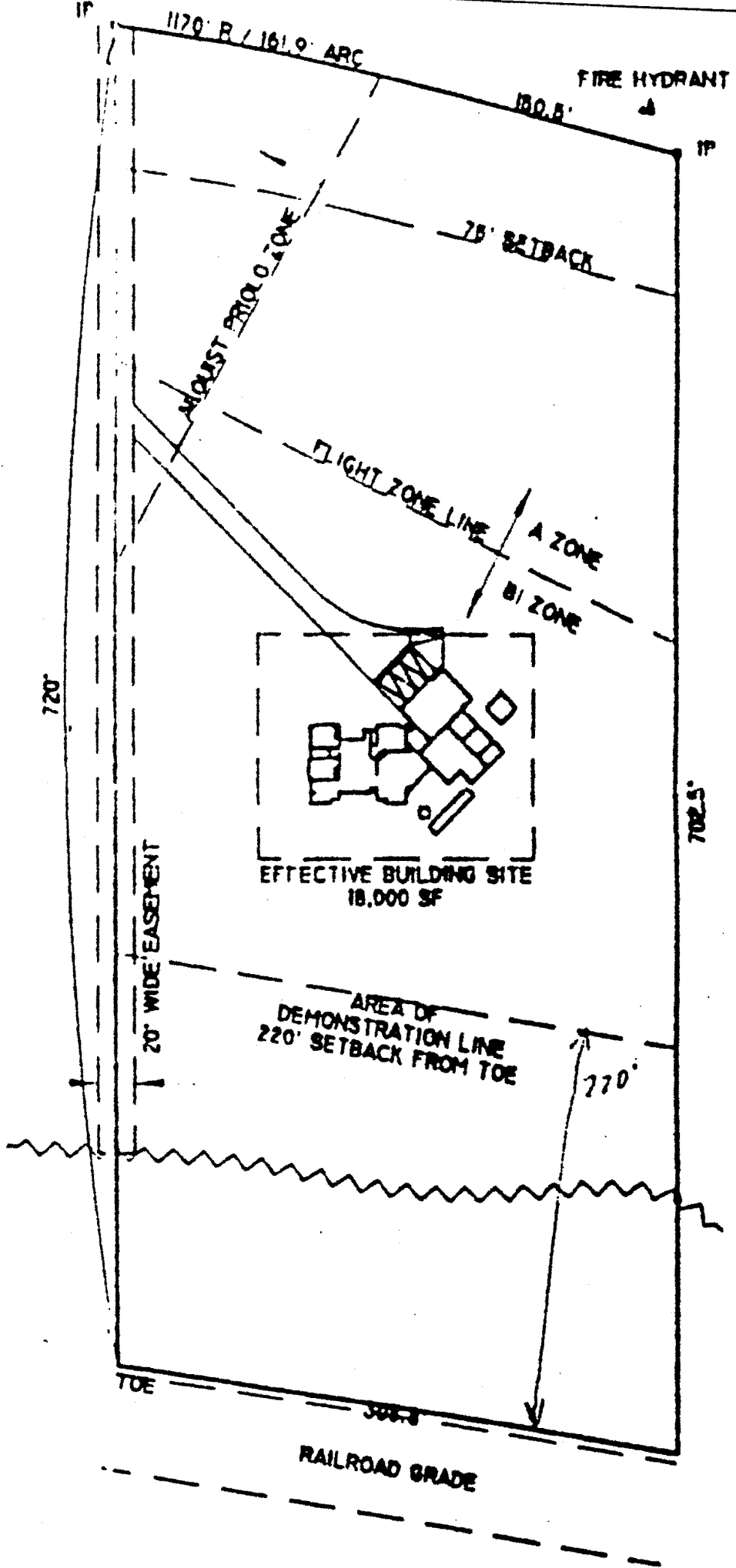


EXHIBIT NO. 4
APPLICATION NO. A-1-HUM-00-01
SITE PLAN



PLANNING DIVISION
OF THE PLANNING AND BUILDING DEPARTMENT
COUNTY OF HUMBOLDT
3015 H STREET
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

Appealable Status: APPEALABLE

Date: December 3, 1999

CALIFORNIA COASTAL COMMISSION
North Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Coastal Development Permit
Notice of Action Taken

Contact: Joe Mateer, Planner I

Applicant: Kate Bell & Orm Aniline
Address: 1125 Searles Street, #14
Eureka, CA 95501

Case No.: CDP-99-22
File No.: APN 511-061-08

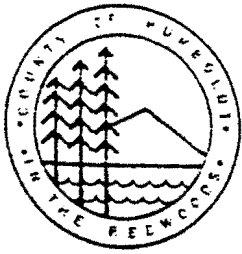
Following a noticed public hearing, the Humboldt County Planning Commission approved the referenced application on December 2, 1999.

Sincerely,

Joe Mateer, Planner I
Humboldt County Planning Division
Humboldt County Planning and Building Division

Attachments: Record of Action
Agenda Item Transmittal
Planning Commission Resolution
Conditions of approval

EXHIBIT NO.	5
APPLICATION NO.	A-1-HUM-00-01
Pg. 1 of 5	
NOTICE OF FINAL ACTION	



PLANNING DIVISION
OF THE PLANNING AND BUILDING DEPARTMENT
COUNTY OF HUMBOLDT
3015 H STREET
EUREKA, CALIF. 95501-4454 PHONE (707) 445-7541

Dear Applicant:

The Humboldt County Planning Commission has approved the referenced Coastal Development Permit. The Planning Commission's decision on the project may be appealed by any aggrieved person within ten (10) working days of the Planning Commission's action. In addition, your development is appealable to the State Coastal Commission. There is a State ten (10) working day appeal that begins after the local appeal process ends. You will receive a "Notification of Appeal Period" from the California Coastal Commission. If no appeals are received, the permit is effective on the day following the last day to appeal to the California Coastal Commission. For more information concerning the appeal process or for filing an appeal, please contact the Planning Division. (Appeals may be filed in the Planning Division office, Room 1, Mondays through Fridays, 8:30 AM to 5:00 PM).

This is to advise you of the Planning Commission's action and to inform you of the conditions of approval and the steps you will need to complete the Coastal Development Permit.

The Planning Commission's approval will expire in one year from the effective date. If the use or necessary construction has not begun before the approval expires, a new application must be filed. The new application will require additional fees and may be subject to different requirements and standards. If development or necessary construction cannot begin within said one year period, you may apply to the Planning Division for an extension. Applications for such extensions must be submitted before the scheduled expiration date, accompanied by the appropriate fees, and may be granted only when the circumstances and conditions of the original approval have not changed.

The Coastal Development Permit may be revoked or rescinded, in whole or in part, if grounds are found to exist in accordance with terms and proceedings of the County Code. Please note that other permits, including a building permit, may be required before the proposed development is commenced. For information regarding the required permits, contact the Building Inspection Division of the Planning and Building Department at 445-7245.

If you have any questions regarding this application, please contact this office at your convenience.

Kirk Girard, Director
PLANNING DIVISION OF THE HUMBOLDT
COUNTY PLANNING AND BUILDING DEPT.

Attachments: Record of Action
Agenda Item Transmittal
Planning Commission Resolution
Conditions of Approval

cc: California Coastal Commission
Agent (if any)

AGENDA ITEM TRANSMITTAL

TO: HUMBOLDT COUNTY PLANNING COMMISSION

FROM: *Kirk A. Girard*
Kirk A. Girard, Director of Planning and Building

Meeting Date 12/2/99	SUBJECT: <input type="checkbox"/> Public Hearing Item <input checked="" type="checkbox"/> Consent Agenda COASTAL DEVELOPMENT PERMIT	CONTACT: Joe Mateer
-------------------------	--	------------------------

Before you is the following:

PROJECT: Development of an approximately 4,000 square foot, two story (<35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes an approximately 768 square foot attached garage, a 6'X6' detached greenhouse and an approximately 6'X30' lap swimming pool.

PROJECT LOCATION: The project site is located in Humboldt County, in the McKinleyville area, on the west side of Letz Road, approximately 200' north from the intersection of Letz Road with Airport Road (nearly opposite the underpass), on the property known as 3524 Letz Road.

PRESENT PLAN DESIGNATIONS: Residential Estates (RE). McKinleyville Area Plan. Density: 0 - 2 units per acre.

PRESENT ZONING: Residential Single Family with a special representation for prohibiting further subdivision and Airport Safety Review, Alquist-Priolo Fault Hazard Regulations and Noise Impact combining zones (RS-X/AP,G,N).

ASSESSOR PARCEL NUMBERS: 511-061-08

APPLICANT

Kate Bell & Orm Aniline
1125 Searles Street, #14
Eureka, CA 95501
707-443-7307

OWNER(S)

Arthur Dodge
128 Runnymede Dr.
East Hampton, NY 11937

AGENT

Ray Wolfe Const/Wes Marshall
5460 Ericson Way, Suite A
Arcata, CA 95521
phone: 707-822-4285
fax: 707-822-5802

ENVIRONMENTAL REVIEW:

Project is categorically exempt from environmental review (Class 3, Section 15303 of the CEQA Guidelines).

STATE APPEAL STATUS:

Project is appealable to the California Coastal Commission.

MAJOR ISSUES:

Building siting relative to potential bluff retreat

RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 99-71

MAKING THE REQUIRED FINDINGS FOR CONDITIONALLY APPROVING THE BELL
COASTAL DEVELOPMENT PERMIT APPLICATION:
CASE NUMBERS CDP-99-22
ASSESSOR PARCEL NUMBER 511-061-08

WHEREAS, Kate Bell submitted an application and evidence in support of approving the Coastal Development Permit for the development of the parcel with a single family residence;

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the project is categorically exempt from environmental review pursuant to Class 3 of the California Environmental Quality Act (CEQA); and

WHEREAS, Attachment 1 in the Planning Division staff report includes evidence in support of making all of the required findings for approving the proposed Coastal Development Permit (Case No.: CDP-99-22)

*WHEREAS, based on the staff report and testimony from the public hearing on December, 2, 1999, the Planning Commission finds that:

1. The Bell project is located on a coastal bluff which is subject to erosion and landslide activity.
2. The McKinleyville Area Plan (Section 3.28) requires that new development minimize risks to life and property in areas of high geologic hazard.
3. A condition of project approval requires a qualified geologist to demonstrate a 75 year useful economic life for the structure at the selected building site location. The rate of bluff retreat in this vicinity is difficult to predict and at times has been both sudden and severe as documented in materials on file with the County and California Coastal Commission. Retreat rates different from those predicted in the geologic report may occur due to unforeseen changes in river or coastal landforms (i.e., sand spit) in the vicinity of the project site.
4. Due to this unpredictability, there is an inherent risk in siting development in proximity to a coastal bluff, even when building within the recommendations of the geologic report. In such an event, taxpayers could be required to bear financial responsibility for the costs of relocation and/or reconstruction of the residence and site improvements. While the risk associated with the building location is within the scope of the General Plan finding, requiring that the applicant indemnify and hold harmless the County is deemed to be in the public interest and appropriate in this case.

EXECUTIVE SUMMARY
Bell Coastal Development Permit
Case Number: CDP-99-22

The applicant is proposing the development of an approximately 4,000 square foot, two story (<35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes an approximately 768 square foot attached garage, a 6'X6' detached greenhouse and an approximately 6'X30' lap swimming pool.

The project is located to the west of Letz Avenue on Lot 2 of the Seffner/Wolf Subdivision in an area of large lot residential development overlooking the Pacific Ocean. Factors affecting site development include its proximity to the runway protection zone for the Arcata-Eureka Airport, potential noise impacts from Highway 101 to the east, and retreat of the coastal bluff along the western edge of the property. The applicant has addressed these factors by siting the development towards the center of the parcel which places the building outside of the runway approach zone, and with separation from the freeway and bluff face to reduce noise and geologic stability issues. The building site will be located over 500 feet from Highway 101 and a minimum of 185 feet from the bluff face which is outside the "area of demonstration" required under the MCAP. The Department is recommending that project conditions of approval require the dedication of an Avigation easement to the County for airport operations, require certification of noise insulation requirements in building construction to address airport and highway noise effects, and require a geologic report to provide a minimum geologic setback for residential construction from the coastal bluff.

With regard to bluff stability issues, the project is located just to the south of the coastal area in which CalTrans installed rock slope protection to halt the northerly migration of the Mad River which posed a threat to Highway 101 near Clam Beach. The Seffner/Wolf Subdivision was created in 1978 prior to the Mad River's migration north to this part of McKinleyville. River chronologies provided as part of the CalTrans project show that the river had not reached as far north as Murray Road at the time of the subdivision. However, subsequent changes in river conditions and the effect of recent storm events on bluff stability has increased concerns over the rate of likely bluff retreat in this area. While immediate suitability of the selected building site is not in question (as noted, the site is outside of the area of demonstration), due to concerns over the retreat rates for this section of the coastline, staff is seeking a geologic evaluation of the proposed building setback to provide assurances that the site will not be negatively affected by bluff retreat during the economic life of the project. The project has been conditioned accordingly.

Based on the site investigation and a review of Planning Division reference sources, and comments from all involved referral agencies, staff believes that the applicant has submitted evidence in support of making all of the required findings for approving the Coastal Development Permit. A single family residence is an allowed use in the Residential Single Family zone and project addresses needs of the combining zones.

STAFF RECOMMENDATIONS:

1. Describe the application as part of the Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as a part of the consent agenda:

"I move to make all of the required findings, based on evidence in the staff report, and approve the application(s) on the Consent Agenda subject to the recommended conditions."

ALTERNATIVES: The Planning Commission could elect not to approve the project. This alternative should be implemented if your Commission is unable to make all of the required findings. Planning Division staff is confident that the required findings can be made. Consequently, staff does not recommend further consideration of this alternative.

REVISED CONDITIONS OF APPROVAL

APPROVAL OF THE COASTAL DEVELOPMENT PERMIT IS CONDITIONED UPON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE FULFILLED BEFORE A BUILDING PERMIT MAY BE ISSUED:

Conditions of Approval:

1. Four (4) non-tandem, independently accessible parking spaces shall be constructed on-site, outside the 20' front yard setback, and must be constructed prior to occupancy of the dwelling or before a "final" is issued for the building permit. **This item shall appear on the Building Permit plot plan.**
2. The turnaround area shall be constructed on-site prior to occupancy of the dwelling or before a "final" is issued for the building permit. **This item shall appear on the Building Permit plot plan.**
3. The applicant shall provide certification by an engineer that the residence reduces interior noise levels to 45 dB CNEL-Ldn in all habitable rooms.
4. The applicant shall grant the County of Humboldt an "overflight" easement in accordance with provisions of the Arcata-Eureka Airport Land Use Plan. The forms are available at the Dept. of Public Works, Land Use Division.
5. The applicant shall submit written verification of connection to community water and sewer from McKinleyville Community Services District prior to occupancy of the single family residence.
6. The applicant shall submit to the Humboldt County Building Inspection Division for review and approval three (3) wet-stamped copies of an "R-2" preliminary geologic report and/or a soils engineering report for the subject parcel. The report shall be prepared in accordance with the provisions of Section 3.28 of the McKinleyville Area Plan and Section A314-16 of the Humboldt County Code. The "R-2" report shall contain the information required for an R-2 report; and specifically, a geologic evaluation of the proposed building setback from the bluff. The report shall use 75 years as the economic life of the residence for this analysis. All recommendations set forth in the report(s) shall be implemented as a condition to the issuance of this permit.
- *7. Prior to issuance of the Building Permit, the applicant shall enter into an Assumption of Risk, Indemnification and Hold Harmless Agreement with the County. By execution of the agreement the owner will acknowledge and agree 1) that the site may be subject to hazards from bluff retreat; 2) to assume the risks to the applicant and the property that is the subject of this permit (CDP-99-22) of injury and damage from such hazards in connection with this permitted development; 3) to unconditionally waive any claim of damage or liability against the County of Humboldt, its officers, agents and employees for injury or damage from such hazards; and 4) to indemnify and hold harmless the County of Humboldt, its officers, agents and employees with respect to the County of Humboldt's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses and amounts paid in settlement arising from any injury or damage due to such hazards. This agreement shall be in a format and content acceptable to the Planning Director and County Counsel, and shall be recorded as a deed restriction on the property.

NOW, THEREFORE, be it resolved, determined, and ordered by the Planning Commission that:

1. The proposed Coastal Development Permit application is categorically excluded from environmental review pursuant to Class 3 of the CEQA Guidelines;
2. The Planning Commission makes the findings in Attachment 1 of the Planning Division staff report for Case No.: CDP-99-22 based on the submitted evidence; and
3. The Planning Commission conditionally approves the proposed Coastal Development Permit as recommended in the Planning Division staff report for Case No.: CDP-99-22.

Adopted after review and consideration of all the evidence on December 16, 1999.

The Motion was made by COMMISSIONER GARRETT SMITH and seconded by COMMISSIONER MARY GEARHEART.

AYES: Commissioners: BLYTHER, EMAD, GEARHEART, HANGER, & G. SMITH

NOES: Commissioners: NONE

ABSTAIN: Commissioners: RICE

ABSENT: Commissioners: J. SMITH

I, Kirk Girard, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

Kirk Girard, Director of Planning and Building

By: 

Mandi Cobum, Clerk

Last day to Appeal to the Board of Supervisors: January 3, 2000 (file with Planning Division Only).

THIS PROJECT IS NOT EFFECTIVE UNTIL ALL APPEAL PERIODS HAVE ENDED.

* Revised by staff per 2 December 1999 Planning Commission Public Hearing

Informational Notes:

1. If buried archaeological or historical resources are encountered during construction activities, the contractor on-site shall call all work in the immediate area to halt temporarily, and a qualified archaeologist is to be contacted to evaluate the materials. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, dietary bone, and human burials. If human burial is found during construction, state law requires that the County Coroner be contacted immediately. If the remains are found to be those of a Native American, the California Native American Heritage Commission will then be contacted by the Coroner to determine appropriate treatment of the remains.

The applicant is ultimately responsible for ensuring compliance with this condition.

2. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
3. This permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section A315-24 of the Humboldt County Code.
4. Prior to occupancy, the applicant shall apply for and obtain an encroachment permit from the Department of Public Works. The permit will require the driveway entrance to be surfaced with asphalt concrete or portland cement concrete.

*** Revised by staff per 2 December 1999 Planning Commission Public Hearing**

Assumption of Risk, Indemnification and Hold Harmless Agreement with the County of Humboldt

We, Kate Bell and Orm Aniline, OWNERS of record of Assessor Parcel Number: 511-061-08, lot 2 of the Seffner/Wolf Subdivision, by execution of this agreement, acknowledge and agree: 1) that the site may be subject to hazards from bluff retreat; 2) to assume the risks as the owner and to the property that is the subject of Coastal Development Permit (CDP-99-22) of injury and damage from such hazards in connection with this permitted development; 3) to unconditionally waive any claim of damage or liability against the County of Humboldt, its officers, agents and employees for injury or damage from such hazards; and 4) to indemnify and hold harmless the County of Humboldt, its officers, agents and employees with respect to the County of Humboldt's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses and amounts paid in settlement arising from any injury or damage due to such hazards. This agreement shall be in a format and content acceptable to the Planning Director and County Counsel, and shall be recorded as a deed restriction on the property.

EXHIBIT NO. 6
APPLICATION NO. A-1-HUM-00-01
APPEAL TO COMMISSION

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

Please Review Attached Appeal Information Sheet Prior To Completing This Form

Section I. Appellant(s)

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

Commissioners : Sara Wan and Christina Desser
(See attached)

_____ () _____
Zip Area Code Phone No.

Section II. Decision Being Appealed

1. Name of local/port
Government: County of Humboldt

2. Brief description of development being
appealed: Development of an approximately 4,000 square-foot, two-story (35' high) 5 bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes approximately 768 square-foot attached garage, a 6'x6' detached greenhouse and an approximately 6'x30' lap swimming pool. The development is proposed to be setback 185 feet from the bluff edge and is outside of the "Area of Demonstration" required under the McKinleyville Area Plan.

3. Development's Location (street address assessor's parcel no., cross street etc):
On the west side of Letz Road, approximately 200' north from the intersection of Letz Road with Airport Road (nearly opposite the underpass), on the property known as 3524 Letz Road, Humboldt County, APN 511-061-08.

4. Description of decision being appealed:

a. Approval: no special conditions: _____

b. Approval with special conditions: CDP#99-22

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____
DATE FILED: _____
DISTRICT: _____

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

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: December 16, 1999

7. Local government's file number (if any): CDP#99-22

SECTION III. Identification of other interested parties.

Give the names and addresses of the following parties (use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Kate Bell & Orm Aniline
1125 Searles Street, #14
Eureka, CA 95501

b. Names and 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.

- (1) (See attached)

- (2) _____

- (3) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

(See attached)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussions for the staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Section 5. Certification

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

(see attached)
Signature of Appellant(s) or
Authorized Agent

Date

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 bind me/us in all matters concerning this appeal

Signature of Appellant

Date

Background:

On December 16th, 1999 the Humboldt County Planning Division of the Planning and Building Department issued a Notice of Final Action approving Coastal Development Permit No. CDP-99-22 (Bell & Aniline). The approved development includes construction of a 4,000-square-foot, two-story (<35' high), 5-bedroom single family residence on a vacant 5+/- acre parcel to be served by community sewer and water. The project includes an approximately 768-square-foot attached garage, a 6'x6' detached greenhouse and an approximately 6'x30' lap swimming pool. The subject site is a 5+/- acre (approximately 700-ft.-long x 300-ft.-wide) blufftop parcel overlooking the Mad River and the Pacific Ocean.

The Humboldt County Planning Commission approved the Bell & Aniline coastal development permit on December 16, 1999 with seven Special Conditions. Special Conditions Nos. 6 & 7 relate to the potential geologic hazards associated with the subject parcel. Special Condition No. 6 requires the applicant to submit to the Humboldt County Building Inspection Division for review and approval, an "R-2" preliminary geologic report and/or a soils engineering report for the subject parcel. The "R-2" report shall contain information including a geologic evaluation of the proposed building setback from the bluff (185 feet), shall use 75 years as the economic life of the residence for the analysis, and all recommendation set forth in the report shall be implemented as a condition to the issuance of the permit. Special Condition No. 7 requires the applicant to enter into an Assumption of Risk, Indemnification and Hold Harmless Agreement with the County. By execution of the agreement, the owner will acknowledge and agree 1) that the site may be subject to hazards from bluff retreat; 2) to assume the risks to the applicant and the property that is the subject of this permit (CDP-99-22) of injury and damage from such hazards in connection with the permitted development; 3) to unconditionally waive any claim of damage or liability against the County of Humboldt, its officers, agents and employees for injury or damage from such hazards; and 4) to indemnify and hold harmless the County of Humboldt's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses and amounts paid in settlement arising from any injury or damage due to such hazards. This agreement shall be in a format and content acceptable to the Planning Director and County Counsel, and shall be recorded as a deed restriction on the property.

Reasons For Appeal:

The Bell/Aniline coastal development permit as approved is inconsistent with LCP policies pertaining to geologic hazards, including LUP Policy 3.28 which incorporates Coastal Act Section 30253 with regard to hazards and new development.

Section 3.28 of the McKinleyville Area Plan (MAP) states that all new development shall (1) *minimize risks to life and property in areas of high geologic, flood and fire hazard*, and (2) *assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding*

areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The coastal bluffs adjacent to the Mad River in this area are highly dynamic and the rate of erosion is dependent upon a number of complex variables. According to County staff findings, "The rate of bluff retreat in this vicinity is difficult to predict and at times has been both sudden and severe as documented in materials on file with the County and California Coastal Commission". The project is located just to the south of the area in which CalTrans installed rock slope protection to halt the northerly migration of the Mad River which posed a threat to Highway 101 near Clam Beach. The Seffner/Wolf Subdivision, which includes the subject site, was created in 1978 prior to the Mad River's migration north to this part of McKinleyville and river chronologies provided as part of the CalTrans project show that the river had not reached as far north as Murray Road at the time of the subdivision. However, subsequent changes in river conditions and the effect of recent storm events on bluff stability has led to increased concerns over the rate of likely bluff retreat in this area.

Although the residence is proposed to be setback 185 feet from the bluff edge, and is sited outside the "Area of Demonstration of Stability," no geologic investigation was submitted prior to project approval to provide assurances that the site and surrounding area will not be negatively affected by bluff retreat during the economic life of the project. Therefore, there is no evidence to sufficiently determine that the approved project is consistent with MAP Policy 3.28 to ensure that the development will (1) minimize risks to life and property in areas of high geologic hazard, and (2) assure that the proposed development will provide stability and structural integrity, and will neither create nor contribute significantly to erosion, geologic instability, or cause destruction of the site or surrounding areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. In many such instances the developers have later applied for coastal permits to build seawalls to protect the previously approved development from unanticipated bluff retreat that did in fact occur. The project as approved is inconsistent with Section 3.28 of the McKinleyville Area Plan because there is no mechanism in place under the approved permit to ensure that shoreline protective devices will not be constructed in the future should unexpected bluff retreat occur.

Therefore, for the reasons stated above we hereby appeal this decision of the County of Humboldt on the grounds that the approved development (CDP-99-22) does not conform to the standards and policies set forth in the County's certified LCP.

(Section I. Appellants)

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

Commissioner Sara Wan
22350 Carbon Mesa Road
Malibu, CA 90265
(310) 456-6605

Commissioner Christina Desser
319 2nd Street
Sausalito, CA 94965
(415) 561-2627

b. Names and 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.

Kate Bell & Orm Aniline
1125 Searles Street, #14
Eureka, CA 95501

Wes Marshall
Ray Wolfe Construction
5460 Ericson Way, Suite A
Arcata, CA 95521

Arthur Dodge
128 Runnymede Drive
East Hampton, NY 11937

Harry & Margaret Conner
P.O. Box 2358
McKinleyville, CA 95519

John & Christine White
3412 Letz Ave.
McKinleyville, CA 95519

Raoul & Helen Alvarado
P.O. Box 1212
McKinleyville, CA 95519

Joe Mateer, Planner
County of Humboldt Planning Division
3015 H Street
Eureka, CA 95501-4484

Steve Werner, Supervising Planner
County of Humboldt Planning Division
3015 H Street
Eureka, CA 95501-4484

County of Humboldt
Building Inspection Division
3015 H Street
Eureka, CA 95501-4484





September 14, 1998

EXHIBIT NO.	7
APPLICATION NO.	A-1-HUM-00-01
Pg. 1 of 2	
GEOTECHNICAL REPORT	

BUSCH GEOTECHNICAL CONSULTANTS

IN THE COUNTY OF HUMBOLDT BEFORE THE HUMBOLDT COUNTY PLANNING COMMISSION

RE: Public Hearing on Caltrans Case No. CDP-02-95 and SP 19-95
Coastal Development Permit File No. APN 511-351-01

STATEMENT OF R. E. BUSCH, JR., PH.D.

My name is R. E. (Bob) Busch, Jr. I am Registered Geologist #3862 and Certified Engineering Geologist #1448. Attached to this statement is a summary of my educational and professional background. My business address is Busch Geotechnical Consultants, 905 Sixth Street, Arcata, CA 95521. I have been a resident of Arcata, and have practiced geology in Humboldt County, since 1975. I make the following statements of opinion regarding the causes and consequences of the recent erosion of the bluff east of the mouth of the Mad River.

I am personally and professionally familiar with Mad River Beach, Clam Beach near Vista Point, the terminal reach of the Mad River between School Road and the mouth, and the coastal bluffs in these areas. Mad River Beach is a sand and gravel spit that protects the bluffs on the east side of the river from marine erosion. I have walked along sections of the east bank many times between School Road and the mouth, have taught Humboldt State University geology classes that took field trips to this area, and, as a consultant, have conducted engineering geologic studies of both private and public properties in the area. I am personally and professionally aware of the dramatically decreased stability and increased erosion rate of the coastal bluff near the mouth of the Mad River, which has occurred since 1992.



Beginning a few years ago, marine undercutting triggered widespread landsliding of the coastal bluffs along the terminal reach of the river. The bluffs are composed not of the regional bedrock but of easily erodible, poorly consolidated, ice-age sediments. Landsliding is continuing unabated today. In 1996, in my professional capacity as an engineering geologist, and again within the last two months, I inspected the bluffs and shoreline of the river between about Widow White Creek and the Caltrans rock slope protection (RSP) at Vista Point.

Based on my general and specific knowledge I maintain the following:

1. The RSP at Vista Point was installed by Caltrans in 1992 to protect U.S. 101 along Clam Beach from erosion by the Mad River. The north end of the RSP turns westward, functionally becoming a groin rather than a RSP along a shoreline. The groin deflects the mouth of the Mad River westward, thus "freezing" the mouth of the river at its present location. The mouth will remain at this location until a low-probability event such as a great earthquake, marine storm, great flood, or combination of these events causes the river to breach the Mad River Beach south of the present mouth. There is no way to predict when such an event might occur.

2. Caltrans decision to install a groin at Vista Point reduced the risk that additional RSP will have to be installed to protect U.S. 101 north of Vista Point, along Clam Beach. Presumably this decision saved the State millions of highway dollars.

3. The installation of the RSP caused predictable hydraulic effects and consequences. These were discussed in the 1993 Environmental Impact Statement (EIS) prepared by experts for CalTrans. The chief hydraulic effect was a dramatic increase in marine energy in the mouth of the river. One chief consequence was the rapid-rate erosion of the coastal bluff east and southeast of the mouth. Erosion was so rapid and serious that in 1995 the RSP was extended about 1200 feet to the south.

The erosion of the coastal bluff occurred because marine waves and tidal currents removed the "toe support" of the erodible bluffs. This caused the upper part of the bluff to become unstable and begin to landslide. Because the river mouth is now fixed in place and the landslide debris is swept away almost as soon as it reaches the river, erosion is now "biting" (backwasting) ever deeper into the bluff. To date, some property owners have lost up to about 20 feet of bluff-top land, and other land is at risk.



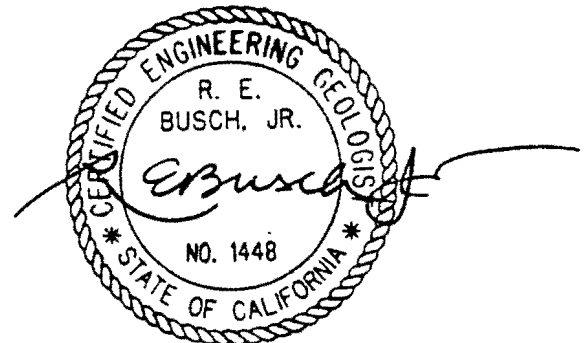


If this rate of erosion continues, which it is likely to, within a few years three of the homes on the bluff top will be destroyed or will have to be moved to the east. Previously, over a time-frame of many decades, the river mouth migrated steadily northward. This steady migration exposed the bluff to marine erosion for a comparatively short length of time. As the mouth moved progressively northward, the Mad River Beach (spit) and a foredune field grew corresponding northward, thereby protecting the bluff from marine erosion.

3. A second chief consequence of the installation of the groin at Vista Point was the erosion of the northern end of Mad River Beach and foredune field. This effectively widened the mouth and exposed more of the bluff south of the RSP to erosion.

4. Before 1992, when the RSP was installed, most of the bluff face between Widow White Creek and Vista Point sloped moderately and was covered by vegetation. Erosion rates were low. Now most of the bluff face is barren and is exposed to erosion by raindrop impact and sheet wash. In addition, the once uniform slopes have become steep slopes marred by landslide scarps.

5. At the time Caltrans elected to build the RSP and groin, it had other alternatives with fewer predictable harsh consequences. The best of the reasonable alternatives was to dig a channel through the Mad River Beach in the vicinity of School Road, and not build any groins or similar "hard structures" at this new mouth. Taking this approach temporarily would have re-established the river mouth at a southerly location, where it immediately would have resumed its natural northward migration. A much lower erosion rate over the length of the coast between School Road and Vista Point would have been the result. In view of the worsening damage to the residential properties between Widow White Creek and Vista Point, and of the additional repairs that are likely to be necessary to the RSP in the Vista Point area, it still is a reasonable alternative for Caltrans to relocate the mouth of the Mad River to the south, near School Road.





BUSCH GEOTECHNICAL CONSULTANTS
ABBREVIATED SUMMARY OF EXPERIENCE OF PRINCIPAL

Robert Edward Busch Jr.

Education

Ph.D., Geology, University of California, Davis, 1983
M.S., Geology, University of California, Davis, 1983
B.S., University of Missouri, Columbia, 1967

Registry

California Registered Geologist #3268
California Certified Engineering Geologist #1448
Oregon Registered Geologist #G989
Oregon Certified Engineering Geologist #E989

Recent Pertinent Work Experience

- Present - 1985 **Principal Engineering Geologist and Owner,**
Busch Geotechnical Consultants, Arcata, CA
Assumed full responsibility for the operation of an engineering geology consulting business.
- pre1985 - 1980 **Staff Geologist**
Part-to full-time with three northern California firms:
Griffith & Associates (Eureka), Huffman & Associates (Healdsburg),
and Northern Geotechnical Inc. (now a wing of SHN, Eureka).
Routinely assumed full responsibility for field investigations and
co-responsibility for reports.
- 1979 - 1975 **Professor, Department of Geology, Humboldt State University, Arcata**

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CHAPTER 6

DEFINITIONS

"AGRICULTURE" - means, the production of food and fiber (including growing and harvesting of timber).

→ **"AREA OF DEMONSTRATION OF STABILITY"** - As a general rule, the area of demonstration of stability (Illustration A) includes the base, face and tops of all bluffs and cliffs. The extent of the bluff top considered should include the area between the face of the bluff and a line described on the bluff top by the intersection of a plane included at a 20 degree angle from horizontal passing through the toe of the bluff or cliff, or fifty feet inland from the edge of the cliff or bluff whichever is greater. However, the county may designate a lesser area of demonstration in specific areas of known geologic stability (as determined by adequate geologic evaluation and historic evidence) or where adequate protective works already exist. The county may designate a greater area of demonstration or exclude development entirely in areas of known high instability.

ILLUSTRATION A

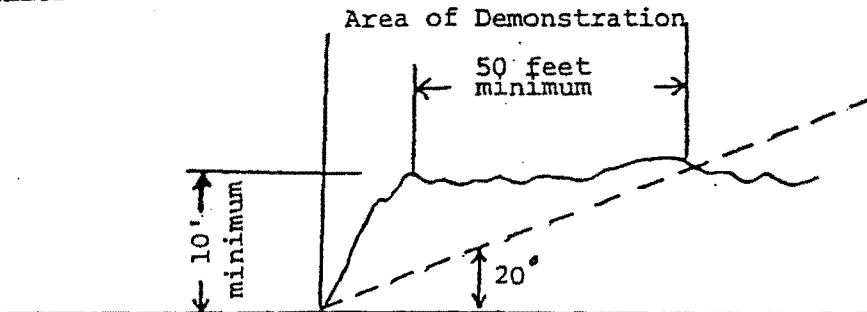


EXHIBIT NO.	8
APPLICATION NO.	A-1-HUM-00-01
AREA OF DEMONSTRATION DEFINITION	

"BLUFF OR CLIFF AREAS" - A bluff or cliff is a scarp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass. The cliff or bluff may be simple planar or curved surface or it may be steplike in section. For the purposes of this guideline, "cliff" or "bluff" is limited to those features having vertical relief of ten feet or more, and "seacliff" is a cliff whose toe is or may be subject to marine erosion.

"BLUFF EDGE" or "CLIFF EDGE" - Is the upper termination of a bluff, cliff or seacliff. When the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the edge shall be defined as that point nearest the cliff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

"BOUNDARY OF A TRANSITIONAL AGRICULTURAL LAND" - Either:

1. the boundary of the area which would be below tidal elevations (+5 feet above mean sea level) if tide gates, dikes, or other drainage works were not in place; or
2. the boundary of a clearly defined slough which is periodically covered with standing water; or

EXHIBIT NO. 9
APPLICATION NO. A-1-HUM-00-01
MAP
LAND USE/HAZARD MATRIX

APPENDIX C

LAND USE/NATURAL HAZARDS INVESTIGATION

TABLE I

BUILDING TYPE/LAND USE	HMZ	Landslide Zone			Liquefaction Zone						Coastal Erosion Zone						
		0	1	2	N	L	M-L	M	H	VH	PDC	PDN	FDC	AP	PB	SR	BF
Nuclear power plants, major dams, hazardous chemical storage	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Hospitals, fire and police stations, civil defense headquarters, life line utility systems (non-redundant facilities), emergency broadcast stations, ambulance stations	X		X	X	X	X	X	X	X	X	X	X	X	X			X
Schools, theaters, auditoriums, hotels, motels, office buildings high and medium density residential, redundant utility systems, major highway bridges	X		X	X	X	X	X	X	X	X	A	A	A	A			X
Normal commercial, industrial, warehousing and storage	X			A	X		X	X	X	X	A	A	A				X
Single family residence				A	X						A	A	A				X

EXPLANATION

- X = Site Investigation required
- A = Site Investigation required if located in Area of Demonstration

HMZ: Hazard Management zone (Applies to Official Alquist-Prilo Special Study Zone)

Landslide Zones: 0=Negligible, 1=Low Instability, 2=Moderate to Moderately High Instability, 3=High Instability

Liquefaction Zones: N=Nil, L=Low Potential, M-L = Moderate to Low Potential, M=Moderate Potential, H=High Potential, VH=Very High Potential

Coastal Erosion Zone: PDC=Present Development Critical, PDN=Present Development Noncritical, FDC=Future Development Critical, AP=Artificial Protection, PB=Protective Beach, SR=Stable Rock, BF=Bay Front

↑
Subject
Site

FIGURE 1
GEOLOGIC HAZARDS LAND USE MATRIX

	BUILDING TYPE/LAND USE	Earthquake Shaking	Slope Stability**				Liquefaction	
			0	1	2	3	mod.	high
hazardous essential high risk	Nuclear power plants, major dams, hazardous chemical storage	R 1						
	Hospitals, fire and police stations, civil defense headquarters, life line utility systems, ambulance stations							
	Schools, theaters, auditoriums, hotels, large motels, major office buildings, high density residential, redundant utility systems, major highway bridges							
low risk	Final map subdivisions, heavy industrial	D	R2	R2	R1	R1	D	R2
	Multi-family structures greater than 4-plexes	D	D	D	R2	R1	D	R2
	Parcel map subdivisions	D	D	D	R2	R2	D	D
	Light industrial, warehousing, commercial	D	D	D	D/A*	R2	D	D
	Residential structures on existing lots with footing loads greater than typical two story wood frame dwellings or residential structures with three stories or more	D	D	D	R2	R2	D	D
	Residential wood frame structures two stories or less on existing lots	D	D	D	D/A	D/R2*	D	D

EXHIBIT NO. 10
APPLICATION NO. A-1-HUM-00-01
COASTAL ZONING GEO HAZARD MATRIX

R means preliminary report is required.
D means preliminary report is discretionary.
A within a Coastal Zone Area of Demonstration, an R2 report is required and is not discretionary.
* within the Coastal Zone an R2 report is required and is not discretionary; except as provided in subsection A314-16 E4.
*** As designated on the Geological Map of the Humboldt County General Plan.

registered geologist should it become apparent that an adequate subdivision design or structural solution requires additional geologic input. If, after preliminary investigation of the project site and the surrounding terrain, no geological consultation is felt by the engineer to be required, the engineer shall provide a written statement that such an evaluation is not required. It is incumbent upon the project geologist to recommend that a soils engineer be consulted when it becomes apparent that soils mechanics analyses are needed.

→ (3) **D Discretionary Report Requirements.** The Chief Building Official shall determine if a preliminary geologic report or a preliminary soil engineering report is required for the classes of development and hazard areas indicated by a "D" in the Geologic Hazards Land Use Matrix. The criteria for determining whether or not a report is required when it is designated in the Geologic Hazard Land Use Matrix as discretionary include the following; however, where evaluation of items listed below is inconclusive, a statement is required by a registered engineer that a geologic or soil report is not required for the safety of the project:

- (a) Criteria for either type of report shall include:
- i. a site inspection of the building inspector;
 - ii. geologic maps and reports covering the area;
 - iii. the potential for the development to affect adjacent property or improvements;
 - iv. the degree to which public exposure to risk may be a factor;
 - v. the size and scale of the proposed development; or
 - vi. for development within the Coastal Zone, the policies of certified local coastal plans.
- (b) A soil engineering report is indicated when one or more of the following conditions exist or are proposed:
- i. the depth (or height) of cut or fill is three (3) feet or greater;
 - ii. the fill is to support structural footings;
 - iii. an engineered cut or fill is required;
 - iv. the soils are or may be subject to significant shrink-swell; or
 - v. areas where material exists that may be subject to settlement of subsidence.

EXHIBIT NO. 11

APPLICATION NO.
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"DISCRETIONARY"
CRITERIA

200.141

- (c) An engineering geologic report is indicated when one or more of the following conditions exist or are proposed:
- i. finish cut or fill slope faces with vertical heights in excess of 10 feet;
 - ii. existing slope steeper than five (5) horizontal to one (1) vertical;
 - iii. an existing cut slope having a vertical height in excess of ten (10) feet;
 - iv. existing sea cliffs, stream bank cliffs, etc. in excess of ten (10) feet;
 - v. existing or suspected earthquake or seismic hazards;
 - vi. existing or suspected groundwater hazards;
 - vii. areas that are underlain by landslides or soil creep or by rock material susceptible to landslide or creep activity;
 - viii. areas where materials exist that may be subject to settlement or subsidence; or
 - ix. areas subject to drifting or loose sand.

- (4) **Report Waiver.** The report requirements of subsections E, 1 and 2 may be waived or the contents modified by the Planning Director when:
- (a) An adequate geologic and/or soil assessment at a suitable scale already exists for the site proposed for development; or
 - (b) Reports are not indicated under the criteria listed in subsection E 3; and
 - (c) The proposed development is not within a Critical Water Supply Area as designated in the General Plan.
 - (d) Report requirements may not be waived within the Coastal Zone, except that for Coastal Zone portions of Shelter Cove only, the requirements may be waived if the proposed development is within a waiver area as specified in Appendix E of the Southcoast Area Plan, and the Chief Building Official concurs.
- (5) The above required soil report may serve to meet the soil report requirement under County Code Section 326-24 where, in the opinion of the Chief Building Inspector, it contains substantially the same information and addresses the concerns that may have been identified by the Department's field inspection.

