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Filed:	November 17, 2000
49 th Day:	Opened and Continued
Staff:	Jim Baskin
Staff Report:	December 22, 2000
Hearing Date:	January 12, 2001
Commission Action:	

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	A-1-MEN-00-052
APPLICANT:	Barbara A. McNeely
PROJECT LOCATION:	37100 Highway One, situated between Highway One on the east and County Road No. 526 (former Highway 1) on the west, approximately 2½ miles north of the town of Gualala, Mendocino County, APN 144-170-03.
PROJECT DESCRIPTION:	Construction of a 1, 550-square-foot, 26-foot-high, single-family residence on a 1½-acre parcel with a on site sewage disposal system, detached garage, and extension of utilities 90 feet to the new structures.
APPELLANTS:	Peter Reimueller, Friends of Schooner Gulch
SUBSTANTIVE FILE: DOCUMENTS	1) Mendocino County CDP No. 50-00; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

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

The project as approved by the County of Mendocino consists of the development of a single-family residence, detached garage, and septic system and utility improvements on a 1.5-acre double-frontage lot located between Highway One on the east and County Road No. 526 (former route of Highway One) on the west, approximately 2½ miles north of the town of Gualala. The site development would result in the construction of a 1,550-square-foot, 26-foot-height, 2-story residence, a 576-square-foot, 18-foot-height detached garage, installation of an onsite sewage disposal system, and a 90-foot extension of utilities to serve the new structures.

The project was approved under Coastal Development Permit No. 50-00 (CDP #50-00) issued by the County's Coastal Permit Administrator on October 26, 2000. The permit included conditions addressing the securement of building and highway encroachment permits, contingencies for the discovery of archaeological resources during construction, and submittal and approval of landscape and lighting plans prior to issuance of the coastal development and building permits, respectively.

The appellants contend that the approved project raises a substantial issue of conformance with the County's LCP policies pertaining to visual resource protection. First, the appellant asserts that the County's action is inconsistent with standards within the Mendocino County Coastal Zoning Code which requires that new development be subordinate to the natural setting, minimize reflective surfaces, and in highly scenic areas have building materials, including siding and roofing, that blend in hue and brightness with their surroundings. The appellant asserts that the approved "nautical blue" base, "colonial blue" trim, and "sea blue" deck color scheme does not meet the requirements of the cited zoning code, in that its dark grayish blue-green colors are not "dark earthtones."

Staff notes that the County's approval of the color scheme for the home and garage came after a previous proposed color choice (light gray base, gray nuance trim, beige deck and porch) was rejected as being too bright. Moreover, though the authorized color choice does not constitute "dark earthtones," which the appellants allege to be the only color selections interpreted by the County as permissible based upon past project approvals, the LCP does not mandate such a limitation. Regardless of apparent County practice, only color compatibility in hue and brightness of the proposed development with its setting is required. In addition, the appellant has not provided compelling or factual information to

support the contention that the color choice would not blend in hue and brightness with the surroundings and would thus be inconsistent with the LCP. Therefore staff believes the contention does not raise a substantial issue of conformance of the project as approved with the certified LCP.

Secondly, the appellants further assert that the approved development is inconsistent with standards within the Coastal Zoning Code that limit the height of new development to 18 feet, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The appellant contends that since the approved 26-foot height for the home would make it visible from Highway 1, public views to the ocean would be adversely affected. The appellants observe that although additional mitigation to view impacts might have been achieved by further restricting the height, the County instead chose to lessen the visual expression of the structure by requiring that trees be planted to completely screen the development from Highway 1.

Although the approved residences would block portions of some ocean views from public vantage points, the degree to which coastal visual resources would be affected is not substantial. The "view window" through the site from Highway 1 is a relatively small gap of about 80 feet between road cuts that affords only a one-second glimpse of blue-water views from traveling at the posted speed limit. In addition, other public views to the ocean exist from the county road along the western side of the parcel. Furthermore, with regard to the project's compatibility with neighboring character, the surrounding area is diverse and the proposed residence would be similar in height and bulk to homes located on the adjoining parcel to the north and within the Glennen Glen subdivision east of the project parcel across Highway 1. Therefore staff believes the contention does not raise a substantial issue of conformance of the project as approved with the certified LCP.

The appellants also contend that the project was approved and findings adopted without the application being complete. The appellant cites the inability of the public to review the applicant's final color choices until the day of the hearing, and the deferral of approval of final landscape and lighting plans to a condition of permit issuance. Furthermore, the appellants allege that the Coastal Permit Administrator directed that these plans be reviewed and considered for approval without the benefit of a site visit and at a later time outside of the public hearing process. The appellants argue that these procedures had a chilling effect on public participation, preventing the public from reviewing the finalized plans and assessing their effectiveness to comply with visual resource standards and to mitigate impacts.

Though it would certainly be helpful to the public if all details of a development project were finalized and available for review well in advance of its project hearing, the certified LCP does not mandate that the County provide such comprehensiveness and convenience of access to final project details as part of its coastal development permit procedures. Provided that adequate information is made available prior to action on the permit in sufficient detail to assure consistency of the development with the policies and

standards of the LCP, no further detailing or disclosure of finalized project details is mandated by the LCP for a set time prior to or at the public hearing. Therefore, staff believes the contention does not raise a substantial issue of conformance of the project as approved with the certified LCP.

Finally, the appellants assert that conflicting information within the project application regarding the height of the proposed residence and subtle adjustments to the location of its building site led to the project being inaccurately represented before the Gualala Municipal Advisory Council (GMAC) and the public. This conflicting information purportedly caused GMAC staff to erect story poles on the project site at an incorrect height (20 feet instead of 26 feet). The appellants claim that this action comprised the referral input provided by the council, caused confusion to the public and may have falsely alleviated local concerns regarding visual impacts, and inhibited participation in the permit proceedings.

Although inaccuracies in the project description may have inadvertently led to confusion during the initial review of the visual aspects of the project, this incident did not compromise the approved project's consistency with the County's certified LCP. Notwithstanding incorrect story pole placement and an initial erroneous public notice, once the conflicting height information and building site information was discovered, affirmative steps were taken by the County to assure that the project height was properly described in the subsequent public notice for the hearing at which action on the project was taken. In addition, the County updated and supplemented its review of the project's visual impacts in a number of independent contexts prior to the hearing, including the relative degree of effect on views to the ocean, sight lines, existing site topography and vegetation, alternative building sites on the parcel, whether the chosen color scheme would blend with its surroundings, and the compatibility of the proposed improvements with the character of nearby structures. Therefore, staff believes the contention does not raise a substantial issue of conformance of the project as approved with the certified LCP.

For all of the above reasons, staff recommends the Commission find that the appeal raises no substantial issue of consistency with the certified LCP. The Motion to adopt the Staff Recommendation of No Substantial Issue is found on Page 6.

STAFF NOTES:

1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea 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 pursuant to Coastal Act Section 30603(a)(3) because it is located in a sensitive coastal resource area: the highly scenic area designated in the certified LCP as comprising lands west of Highway One between the south boundary of the City of Point Arena and the Gualala River.

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, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

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 (see Exhibit No. 7) to the Commission in a timely manner on November 17, 2000, within 10 working days of receipt by the Commission on November 9, 2000 of the County's Notice of Final Action.

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 issued coastal development permit is filed. On November 28, 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 only just been requested and had not yet been received as of the day of the mailing of staff reports to the Commission and interested parties on November 28, 2000. 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 December meeting agenda. Consistent with Section 13112 of Title 14 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 on December 15, 2000.

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-MEN-00-052 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-1-MEN-00-052 does not present a substantial issue with respect to the grounds on which the appeal has been filed

under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to approve the development. The appeal was received from Peter Reimuller representing The Friends of Schooner Gulch, and joined by Rexanne Wehren of the Mendocino & Lake Group of the Sierra Club. The project as approved by the County consists of the construction of a 1,550-square-foot, 26-foot-height, 2-story residence, a 576-square-foot, 18-foot-height detached garage, installation of an onsite sewage disposal system, and a 90-foot extension of utilities to serve the new structures. The appellants' contentions are summarized below, and the full text of the contentions are included as Exhibit No. 7.

The appeal raises contentions involving inconsistency with the County's LCP policies regarding visual resources from two perspectives: (1) the authorized structural height above 18 feet will affect public views to the ocean or is out of character with surrounding structures, and secondly that new development be subordinate to the natural setting and minimize reflective surfaces; and (2) in highly scenic areas, building materials including siding and roof materials must blend in hue and brightness with their surroundings.

The appellants further assert inconsistencies with the County's LCP policies regarding the conformance with coastal development permit procedures, specifically that: (1) the application accepted for processing was incomplete for processing as paint color, landscaping and lighting details had not been finalized, and it contained a contradictory information regarding proposed building height; and (2) this conflicting information within the application led to a misrepresentation of the visual intensity of the proposed structures due to story poles being erected in the wrong location on the parcel and at a lower height. The appeal can be structured in terms of three issues or points, as follows:

1. Visual Resources.

The appellants contend that the project as approved by the County will negatively impact the designated highly scenic area in which it is located. The appellants assert that the project as approved with a 26-foot height is inconsistent with the requirement that new development be limited to eighteen (18) feet above natural grade, unless such an authorized increase in height can be shown not to affect public views to the ocean or be out of character with surrounding structures. The appellants contend that public views to the ocean will be affected by a 26-foot building height. Furthermore, the appellants

assert that the project as approved is inconsistent with LCP policies requiring that the authorized new development will not be subordinate to the natural setting as the approved colors for the structures, shades of dark grayish blue-green, will not blend in hue and brightness with their surroundings. The appellants cite the following LUP policies and Coastal Zoning Code (CZC) Sections as the basis for the approved project being inconsistent with the visual resources provisions of the certified LCP: LUP Policy 3.5-3, CZC Sections 20.376.045, 20.504.015(C)(2) & (3).

2. Completeness of Application.

The applicants also assert that the project as approved conflicts with the standards of the LCP that require development applications to contain complete and accurate information in a timely manner such that the environmental effects and merits of the project can be adequately assessed and required findings made to approve the project. The appellants cite that the application was approved without the final color scheme being disclosed until the day of the public hearing. In addition, the review and approval of final landscape and lighting plans was delegated as a permit condition to Planning Department staff to be considered at a later time with no opportunity for the public to review the plans' specifics during the hearing process. Accordingly, the appellants note that adequate information was not available with which to conduct the required reviews and base all required findings to approve the project as consistent with the LCP. Accordingly, the appellants assert that the application was incomplete and that all subsequent review and hearing actions were premature. The appellants cite the following Coastal Zoning Code (CZC) Sections as the basis for the approved project being inconsistent with the certified LCP: CZC Sections 20.532.025(A), 20.532.035(A), & 20.532.095(A)(1).

3. Misrepresentation of Project.

Related to the preceding contention, the appellants further contend that the project as approved is inconsistent with LCP policies in that by determining that the application was complete without first addressing conflicting building height information therein, the height and location of the proposed residence were inaccurately described to referral agencies and the public. The appellants note that the application form stated a 20-foot height for the residence while attached plan drawings illustrated a 26-foot height. Additionally, in response to comments regarding the sewage system design, the location and orientation of the house were adjusted after the application had been determined to be complete. Nevertheless, the 20-foot building height and initial building site appeared in the referral materials sent to review agencies, notably the Gualala Municipal Advisory Council (GMAC), and in the first public hearing notice for the project.

These errors and design modifications are alleged to have resulted in story poles, placed by the GMAC to demonstrate the height and bulk of the proposed residence, being erected in the wrong location on the parcel and at the wrong height. Although these

errors were later corrected in the public notice for the second public hearing at which the project was approved and the County took efforts to update and supplement its visual impact analysis, the appellants assert that these initial misrepresentations of building height and location within project referral documents, notices, and story pole placement nonetheless compromised the integrity of comments provided by the GMAC on the project. Furthermore, the appellants contend that this situation resulted in local public concerns regarding impacts to visual resources being falsely alleviated, resulting in less public participation in the permit hearing process.

B. LOCAL GOVERNMENT ACTION

On May 24, 2000, Barbara A. McNeely submitted Coastal Development Permit Application No. 50-00 (CDP #50-00) to the Mendocino County Planning and Building Services Department for a coastal development permit seeking authorization to construct a single-family residence, detached garage, onsite sewage disposal system, and extension of utilities on a parcel of land north of the unincorporated town of Gualala in southern Mendocino County (see Section II.C.2, below, for a more detailed project description). The application was accepted and on June 1, 2000 copies of the application materials were referred to various review agencies requesting comments on the project.

Unbeknownst at the time that requests for agency comments were circulated, the application packet submitted by Ms. McNeely contained conflicting information regarding the proposed height for the residence. In response to Coastal Development Permit Application Questionnaire Item 11, "Project Height. Maximum height of structure(s). _____ feet," a response of "20' " was provided. However, the attached elevation view diagrams for the house revealed an overall 26-foot height for the house as scaled from the finished grade line to the top of the chimney.

This inconsistency initially escaped detection by County staff resulting in the 20-foot height stated on the application form being used in subsequent text descriptions of the project for agency review materials and within the public notice for the initial September 28, 2000 hearing before the Coastal Permit Administrator. It should be noted, however, that the subject elevation view diagrams did not clearly indicate an overall building height. Only the heights of the foundation above and below grade, first and second floors, and chimney, and a "10 in 12" roof pitch were stated on the drawings (see Exhibit No. 5).

Among the review bodies that received a copy of the referral packet containing the conflicting building height information was the Gualala Municipal Advisory Council (GMAC).

Section 31010 of the California Government Code provides that the board of supervisors of any county may, by resolution with certain specified contents, establish and provide funds for the operation of a municipal advisory council for any unincorporated area in the county to advise the board on such matters which relate to that area as may be designated

by the board concerning services which are or may be provided to the area by the county or other local governmental agencies, including but not limited to advice on matters of public health, safety, welfare, public works, and planning.

In 1990, the Mendocino County Board of Supervisors established the Gualala Municipal Advisory Council (GMAC) which, among other tasks, was given the mandate to initiate long-range planning efforts to update the Coastal Element of the Mendocino County General Plan as it pertains to the Gualala area. In addition to providing advice regarding long range planning efforts, the GMAC's mandate included the review of new development applications for the Gualala area, with particular emphasis on commercial developments and proposed new development within highly scenic areas. The GMAC does not generally review applications for single-family housing development on existing parcels.

In response to the referral, GMAC representative placed story poles on the McNeely parcel to help its members and the public assess the effects the development would have on visual resources of the area. Based upon the textual information stated in the application, the poles were set to a 20-foot height.

At its regular meeting on July 10, 2000, the GMAC subsequently reviewed and took testimony pertaining to the McNeely application, voting unanimously to recommend that the Coastal Permit Administrator approve the development "as submitted," finding that, "...although the project is in an area designated 'Highly Scenic' in the Coastal Element, the proposed home and its garage will have little if any impact on views from Highway 1 or any likely public viewing area." (see Exhibit No. 8)

The conflicting building height information was subsequently discovered by County Planning staff but not before the public notice was issued for the September 28, 2000 Coastal Permit Administrator hearing. On September 20, 2000, County Planning staff issued a memo to the Coastal Permit Administrator noting the conflicting building height information within the application and the resulting errant length and location of the story poles erected by the GMAC. The memo recommended that the hearing be continued until the correct height, location, and orientation of the story poles could be accurately presented and analyzed. The September 28, 2000 hearing was subsequently continued by the Coastal Permit Administrator to October 28, 2000.

On October 12, 2000, County Planning staff reissued the project staff report with a cover memo updating the Coastal Permit Administrator as to the events that had transpired since the September 28, 2000 hearing continuance. The memo reported that the story poles now matched the correct orientation of the revised building site. The memo further explained that the house site had been shifted 10 feet westward and down slope from its original location. In this new location, the effects on views to the ocean from a 26-foot-height building would be slightly less than indicated by the 20-foot story poles in their location at the former proposed building site. Planning staff also noted that further

mitigation to screen the residence from passing highway motorists could be achieved by the planting of several shore pines. The memo also contained supplemental impact analysis with respect to the effects of the project site design on visual and other coastal resources, reported that the applicant had submitted a revised color scheme for the buildings that could be found to be compatible with LCP standards, and recommended conditional approval of the project with the addition of a condition requiring approval of a final landscaping plan for the vegetative screening.

On October 26, 2000, the Coastal Permit Administrator for the County of Mendocino approved Coastal Development Permit No. #50-00 (CDP #50-00) for the subject development. The Coastal Permit Administrator attached a number of special conditions, including requirements that: (1) lighting fixture specifications be submitted prior to issuance of the building permit showing that site illumination would be downcast and not allow light or glare beyond the parcel boundaries; (2) an encroachment permit be secured from the Mendocino Department of Transportation prior to commencement of construction within county road rights-of-way; and (3) a final landscape plan for complete screening of site improvements from Highway One views be submitted, reviewed and approved by the Coastal Permit Administrator prior to issuance of the coastal development permit.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action on November 7, 2000, which was received by Commission staff on November 9, 2000 (see Exhibit No. 6).

C. SITE AND PROJECT DESCRIPTION

The project site for the approved single-family residential development comprises the southernmost Parcel 4 of the Rhodes Subdivision, created by parcel map in 1962. The site is one of the series of double-frontage lots located between Highway One on the east and County Road No. 526 (former alignment of Highway 1) on the west, approximately 2½ miles north of the unincorporated town of Gualala (see Exhibit No. 2). This roughly triangular-shaped property is approximately 1.5 acres in size and consists of a moderately sloped brushy lot with scattered tree cover. Plant cover includes upland grasses, forbs, and shrubs, including coyotebrush (Baccharis pilularis), bush lupine (Lupinus sp.), and blueblossom (Ceanothus thyrsiflorus). Several patches shore pine (Pinus contorta ssp. contorta) lies across the eastern half of the parcel. The site does not contain any known environmentally sensitive habitat areas. Adjacent to the site on the west lies the coastal terrace headland known as Bourns Landing, the former site of the Mar-Lyn Planing Mill. Across Highway One to the east lies the Glennen Glen residential subdivision. To the south of the site, the coastline continues on as the rocky cliffs off of Wilson Field, a former airfield.

The project site lies within the LCP's Iversen Road to Sonoma County Line Planning Area. The parcel is currently designated in the Land Use Plan and on the Coastal Zoning Map as Rural Residential – 5-acre Minimum Lot Area (RR:L-5). The subject property is within a highly scenic area as designated on the Land Use Map (see Exhibit No. 4). With the exception of the utility poles and vaults along the county road frontage and lines crossing the site from east to west, the site is largely undeveloped. Distant views to and along the ocean across the Bourns Landing terrace are afforded across the lot from Highway One through a small approximately 80-foot-wide gap in the road cut along the eastern frontage of the property, and along the western county road frontage.

The proposed development would result in the construction of a 1,550-square-foot, 26-foot-height, 2-story residence and 756-square-foot, 18-foot-height detached garage on the site (see Exhibit Nos. 3 & 5). These improvements would be situated on the parcel in a manner such that most of the house and garage would be visible from the county road looking eastward and the upper portion of the house would be visible from Highway One looking west through the road cut gap. Consequently, the blue-water views presently visible from the highway across the site and through the utility lines along the county road would be partially obscured by construction of the house at the approved location and height.

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.

1. Appellant's Contentions That Are Valid Grounds for Appeal.

All three of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises substantial issues related to LCP provisions regarding: (1) the protection of visual resources; (2) coastal development application processing standards; and (3) that accurate and complete information on the project be provided to allow for adequate review by referral agencies and the public. The Commission finds that all three of these contentions do not raise a substantial issue, for the reasons discussed below.

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., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- 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;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- 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 raises no substantial issue.

a. Visual Resources

The appellants contend that the approved project raises a substantial issue of conformance with Mendocino County LUP Policy 3.5-3 and Coastal Zoning Code (CZC) Sections 20.376.045, 20.504.015(C)(2) & (3) requiring that new development be visually compatible with its surroundings and protect views to the ocean. Specifically, the appellants contend that any blockage of a public view to the ocean from the highway would render approval of a height greater than 18 feet inconsistent with the LCP. Furthermore, the appellants assert that the approved house colors will not blend into the surrounds in terms of hue and brightness as they are not "dark earthtones." The

appellants state that it has been the practice of the County to only approve color choices matching this category as being compatible with the LCP regulation.

Summary of LCP Provisions:

LUP Policy 3.5-1 states in applicable part:

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

LUP Policy 3.5-3 states, in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures... New development should be subordinate to natural setting and minimize reflective surfaces....

LUP Policy 3.5-4 states, in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open area shall be avoided if an alternative site exists.

Minimize visual impacts of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside...

LUP Policy 3.5-5 states:

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

In circumstances in which concentrations of trees unreasonably obstruct views of the ocean, tree thinning or removal shall be made a condition of permit approval. In the enforcement of this requirement, it shall be recognized that trees often enhance views of the ocean area, commonly serve a valuable purpose in screening structures, and in the control of erosion and the undesirable growth of underbrush.

Coastal Zoning Ordinance Section 20.376.045 provides the building height limit for Rural Residential (RR) zoning districts stating, in applicable part:

Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area...

Coastal Zoning Ordinance Section 20.504.015(C) states, in applicable part:

- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes*
- (2) *In highly scenic areas west of Highway 1, as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials shall be selected to blend in hue and brightness with their surroundings...*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area.*
- (6) *Minimize visual impact of development on hillsides by the following criteria:*
 - (a) *Requiring grading or construction to follow the natural contours;*
 - (b) *Resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms;*
 - (c) *Designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites;*
 - (d) *Concentrate development near existing major vegetation, and*
 - (e) *Promote roof angles and exterior finish which blend with hillside...*

- (9) In specific areas, as designated on the Land Use Maps and in other circumstances in which concentrations of trees unreasonably obstruct views to and along the ocean and scenic coastal areas, tree thinning or removal shall be made a condition of permit approval.
- (10) Tree planting to screen buildings shall be encouraged, however new development shall not allow trees to interfere with coastal/ocean views from public areas. [emphases added]

Discussion:

In addition to calling for the protection of views to and along the ocean and scenic coastal areas, LUP Policies 3.5-1, 3.5-3, and Coastal Zoning Ordinance Section 20.504.015 provide that development in highly scenic areas must be subordinate to the character of its setting. The policies also provide guidance on how to ensure that new development is subordinate to its setting in highly scenic areas. LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015 provide that buildings and building groups that must be sited in highly scenic areas shall be sited: (a) near the toe of a slope; (b) below rather than on a ridge; and (c) in or near a wooded area. These policies also state that the visual impacts of development on hillsides must be minimized by requiring grading or construction to follow the natural contours, re-siting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms, designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites, concentrating development near existing major vegetation, and promoting roof angles and exterior finish which blend with the hillside.

Coastal Zoning Ordinance Section 20.504.015 further provides that new development in highly scenic areas: (1) be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures; (2) be subordinate to the natural setting and minimize reflective surfaces; (3) that building materials be selected to blend in hue and brightness with their surroundings; and (4) in specified areas require that tree thinning or removal be made a condition of permit approval. As to this last criterion, LUP Policy 3.5-5 sets forth guidance for administering tree removal requirements, directing that considerations be made of circumstances where the beneficial use of tree planting (i.e., to screen structures) should be pursued, even in areas designated for tree removal.

The development is located within a designated highly scenic area along the western side of Highway One. The subject property is located in a rural residential area north of the Town of Gualala on a roughly 2,000-ft.-long x 500-ft.-wide sliver of land situated between Highway 1 to the east and County Road No. 526 (former alignment of Highway 1) to the west. This roughly triangular lot slopes moderately from the highway down to

the county road and is vegetated with a variety of brushy plant species and scattered tree cover. The site affords very limited distant blue-water views to motorists traveling on Highway One, restricted to a small, approximately 80-foot-long opening in the through-section road cut on the west side of the highway. This opening allows for an approximate one-second glimpse of a blue water view across the project site. Travelers along the parcel's western frontage with the county road, the first road inland from the sea, are presented with somewhat more expansive ocean vistas, though they are hindered by the mature vegetation growing on the property to the west.

The approved project entails the construction of a single-family residence, detached garage, associated sewage disposal system, and utility extensions. Of these developments, the residence is approved for a location and at a height greater than 18 feet that will partially obscure views to the ocean from Highway 1 through the above-described road cut gap. In addition, a dark grayish blue-green color scheme was approved by the County for the exterior paint colors.

The appellants contend that any blockage of a public view to the ocean from the highway would render approval of a height greater than 18 feet inconsistent with the LCP. Furthermore, the appellants assert that the approved house colors will not blend into the surrounds in terms of hue and brightness as they are not "dark earthtones." The appellants state that it has been the practice of the County to only approve color choices matching this category as being compatible with the LCP regulation.

As noted previously, the parcel involved in the approved development is within a highly scenic area and as such is subject to the LCP policies and standards cited above. With respect to compliance with these policies and standards, under the approved permit, the house would be located near the toe of a slope and clustered near existing vegetation, natural landforms, or artificial berms. The approved home site would not be located on a ridge, involve extensive grading that would conflict with natural contours, alter or destroy the appearance of natural landforms, or force accommodation of a specific building design. Therefore, the Commission finds that the project as approved raises no substantial issue with regard to conformance with the requirements of LUP Policy 3.5-4 and Coastal Zoning Code Sections 20.504.015(C)(5) & (6) for siting development within designated highly scenic areas.

Furthermore, although the certified LCP recognizes the regional visual qualities as being remarkable, the particular coastal visual resources that would be affected by the decision are not of great significance. The blockage of views to the ocean from the highway due to the approved building and screening would not be significant as the existing viewing opportunities are fleeting and limited to an approximately 80-foot-wide gap in the road cut along this segment of Highway 1. In addition, the development would have no effect on ocean views from the county road along the west side of the project parcel or from other public vantage points. Therefore, the Commission finds that the project as approved raises no substantial issue with regard to conformance with the requirements of

LUP Policy 3.5-1, 3.5-3, and Coastal Zoning Code Section 20.504.015(C)(1) that permitted development be sited and designed to protect views along the ocean and scenic coastal areas.

As specifically regards the approval of a structural height greater than 18 feet, the County undertook substantial factual-based analysis of the effects that a 26-foot building height would have on views to the coast. The analysis included assessment of the view effects at a revised building site, consideration of other possible alternative home sites on the parcel, and consideration of the appropriateness for using tree planting to screen the development, notwithstanding its location within a designated tree removal area. The analysis demonstrates that the effects of the proposed 26-foot height of the structure on views to and along the ocean would not be significant because of the previously described very limited view that is afforded currently through the site to the ocean and the fact that an 18-foot structure would also block some of this limited view of the ocean.

Furthermore, any future tree removal in the area would not significantly improve upon the view through the site that is currently afforded from Highway One because the earthen sides of the existing Highway One road cut would still block virtually all views to the ocean along this particular section of Highway One. In contrast, the appellant has not presented any compelling or factual information addressing what effects the approved project would have on "public views to the ocean." Therefore, the Commission finds that the project as approved raises no substantial issue with regard to conformance with the height restrictions of Coastal Zoning Sections 20.376.045 and 20.504.015(C)(2).

With respect to the contention regarding the compatibility of the exterior appearance of selected building materials, the authorized color dark grayish blue-green color scheme was reviewed by the County and the County determined that the colors would blend in with the generally dark green hued coastal bluff shrub community plants that occur on the moderately sloped site in terms of hue and brightness. Therefore, the Commission finds that no substantial issue is raised with regard to the conformance of the project as approved with the requirements of Coastal Zoning Code Section 20.504.015(C)(3) that in highly scenic areas, building materials be selected to blend in hue and brightness with their surroundings. The appellants' assertion that the choice of color may be inconsistent with the alleged past practice of the County to only approved "dark earthtones" does not raise a substantial issue of conformance with the certified LCP, as the LCP establishes no such limitation.

b. Completeness of Application

The appellants contend that the project as approved conflicts with the standards of the LCP that require development applications to contain complete and accurate information in a timely manner such that the environmental effects and merits of the project can be adequately assessed and required findings made to approve the project. The appellants cite that the application was approved without the final color scheme being disclosed

until the day of the public hearing. In addition, the appellants assert that review and approval of final landscape and lighting plans was delegated as a permit condition to Planning Department staff to be considered at a later time with no opportunity for the public to review the plans' specifics during the hearing process. Accordingly, the appellants note that adequate information was not available with which to conduct the required reviews and base all required findings to approve the project as consistent with the LCP. Accordingly, the appellants assert that the application was incomplete and that all subsequent review and hearing actions were premature. The appellants cite the following Coastal Zoning Code Sections as the basis for the approved project being inconsistent with the certified LCP: CZC Sections 20.532.025(A), 20.532.035(A), & 20.532.095(A)(1).

Summary of LCP Provisions:

Section 20.532.025 of the Coastal Zoning Code states, in applicable part:

Each application for a coastal development permit (administrative, use permit, variance or standard permit) shall be submitted to the Department of Planning and Building Services on forms provided by the department and completed by the applicant, accompanied by a fee set by resolution of the Board of Supervisors. When more than one development is proposed on a parcel, the applications shall be processed concurrently, where possible as one (1) application. The application shall include the following information:

- (A) *A description of the proposed development, including maps, plans, and other relevant data of the project site and vicinity in sufficient detail to determine whether the project complies with the requirements of these regulations. Sufficient information concerning the existing use of land and water on or in the vicinity of the site of the proposed project, insofar as the applicant can reasonably ascertain for the vicinity surrounding the project site, should also be provided... [emphasis added]*

Section 20.532.035 of the Coastal Zoning Code states, in applicable part:

- (A) *The Planning and Building Services Department shall review all applications for completeness and accuracy before the applications are accepted and officially filed as complete...*
- (C) *The application shall be deemed complete and accepted unless the department finds that the application is not complete and notifies the applicant of such finding by mail within thirty (30) calendar days after receipt of the application. If the application is*

determined to be incomplete, the department shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete...

Coastal Zoning Code Section 20.532.095(A)(1) states:

The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

- (1) The proposed development is in conformity with the certified local coastal program...*

Discussion:

Though it would arguably be a benefit to the public if all details of a development project were finalized and available for review well in advance of its project hearing, the certified LCP does not mandate that the County providing such comprehensiveness and convenience of access to final project details as part of its coastal development permit procedures. Provided that adequate information is made available prior to action on the permit in sufficient detail to determine whether the project complies with the requirements of the LCP, as required by Coastal Zoning Code Section 20.532.025, no further detailing or disclosure of finalized project details for a set time prior to or at the public hearing is mandated by the LCP. Moreover, such a practice is not uncommon: It is a standard custom of both local coastal jurisdictions and the Commission to base project approvals on draft or preliminary plans and to condition the permit's approval that finalized development plans based on the approved initial plan be submitted for review and approval. While this practice may place some burden upon interested and concerned parties to diligently monitor a project's condition compliance, such a practice is necessary to ensure timely processing of development permit applications in compliance with state mandated timelines, and so as not to unduly burden applicants with requirements for providing often costly project specifications before the fate of their permit has yet to be determined.

In this case, the applicant did provide color information in a follow-up submittal of application materials on July 14, 2000, after County staff had found the information missing during its initial review of the application for completeness. The applicant's initial color choice was "Spider's Web" (light grayish white) for the base, "Gray Nuance" for trim, and "High Tea" (a mid-tone neutral). These colors were subsequently determined by County staff to be too light in hue to blend in with the dark green coastal bluff scrub plants that grew on the parcel. Upon being informed of this determination, the applicant submitted an amended color choice in early October, 2000, of the varying shades of dark grayish blue-green "Nautical blue" base, "Colonial blue" trim, and "Sea blue" for the deck that was subsequently approved by the Coastal Permit Administrator.

Although the County ultimately required building material colors that differed from those colors specified in the project application, the applicant did indicate choices of color in the application that enabled the County to consider the project's conformance with LCP requirements, particularly the code provisions of Coastal Zoning Code Section 20.504.015(C)(3) that in highly scenic area, building materials be selected to blend in hue and brightness with their surroundings.

Thus, there is a high degree of factual support for the County staff's determination that the application contained sufficient color information to determine the project's conformance with the color requirements of the LCP and to deem the permit application complete. Furthermore, as noted previously, the coastal visual resources ultimately affected by considerations of building material color choices are not of great significance given the site's low prominence with respect to views from public vantage points. The Commission therefore concludes that the appeal raises no substantial issue with respect to conformance of the approved project with the requirements of Coastal Zoning Code Section 20.532.025(A) that a permit application contain sufficient detail to determine whether the project complies with the requirements of the LCP and with the requirements of Coastal Zoning Code Section 20.532.035 that the Planning and Building Services Department review applications for completeness and accuracy before they are accepted and officially filed as complete.

Furthermore, the Commission finds that as sufficient information to review the project's conformity with the color requirements of the LCP policies was provided in the application, and as the County addressed the conformity of the requested colors with these policies in the findings, the appeal raises no substantial issue with respect to conformance of the project as approved with Coastal Zoning Code Section 20.532.095(A)(1) and its requirements that the approval of the coastal development permit be supported by findings that establish the conformity of the development with the certified LCP.

c. Misrepresentation of the Project to Advisory Agencies and the Public

Related to the preceding contention, the appellants further contend that the project as approved is inconsistent with LCP policies in that by determining that the application was complete without first addressing conflicting building height information therein, the height and location of the proposed residence were inaccurately described to referral agencies and the public. The appellants note that the application form stated a 20-foot height for the residence while attached plan drawings illustrated a 26-foot height. Additionally, in response to comments regarding the sewage system design, the location and orientation of the house were adjusted after the application had been determined to be complete. Nevertheless, the 20-foot building height and initial building site appeared in the referral materials sent to review agencies, notably the Gualala Municipal Advisory Council (GMAC), and in the first public hearing notice for the project.

These errors and design modifications are alleged to have resulted in story poles, placed by the GMAC to demonstrate the height and bulk of the proposed residence, being erected in the wrong location on the parcel and at the wrong height. Although these errors were later corrected in the public notice for the second public hearing at which the project was approved and motivated the County to update and supplement its visual impact analysis, the appellants assert that these initial misrepresentations of building height and location within project referral documents, notices, and story pole placement nonetheless compromised the integrity of comments provided by the GMAC on the project. Furthermore, the appellants contend that this situation resulted in local public concerns regarding impacts to visual resources being falsely alleviated, resulting in less public participation in the permit hearing process. The appellants cite the following Coastal Zoning Code (CZC) Sections as the basis for the approved project being inconsistent with the certified LCP: CZC Sections 20.532.025(A), 20.532.035(A), & 20.532.095(A)(1).

Summary of LCP Provisions:

(Refer to the summary of LCP provisions regarding the completeness of applications under Staff Report Section II.D.1.b above)

Discussion:

Although the conflicting depiction of proposed building height in the project description and site plans may have inadvertently led to confusion during the initial review of the visual aspects of the project, this incident did not compromise the approved project's consistency with the County's certified LCP. Notwithstanding the oversight of County staff to detect the contradiction in height information during its application check, and the GMAC's subsequent incorrect story pole placement, once the conflicting building height and site information were discovered, the County took affirmative steps to assure that the project height was properly described in the public notices for the hearing at which action on the project was taken two weeks before that hearing. In addition, as discussed previously in Staff Report Section II.C.1 above, the County updated and supplemented its review of the project's visual impacts in a number of independent contexts prior to the hearing, including the relative degree of effect on views to the ocean, sight lines, existing site topography and vegetation, alternative building sites on the parcel, whether the chosen color scheme would blend with its surroundings, and the compatibility of the proposed improvements with the character of nearby structures. Furthermore, the County staff report contains findings addressing the conformity of the project with the height requirements of the LCP.

As noted previously, the coastal visual resources ultimately affected by the difference in height of the structure between 18 feet and 26 feet is not of great significance, given the very limited views afforded through the project site from Highway One.

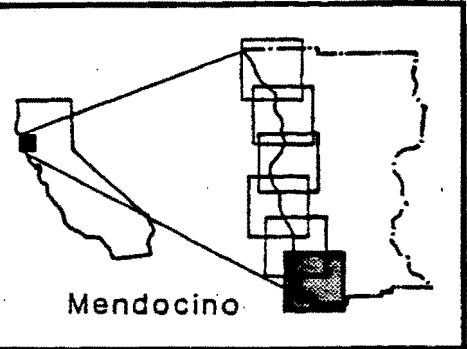
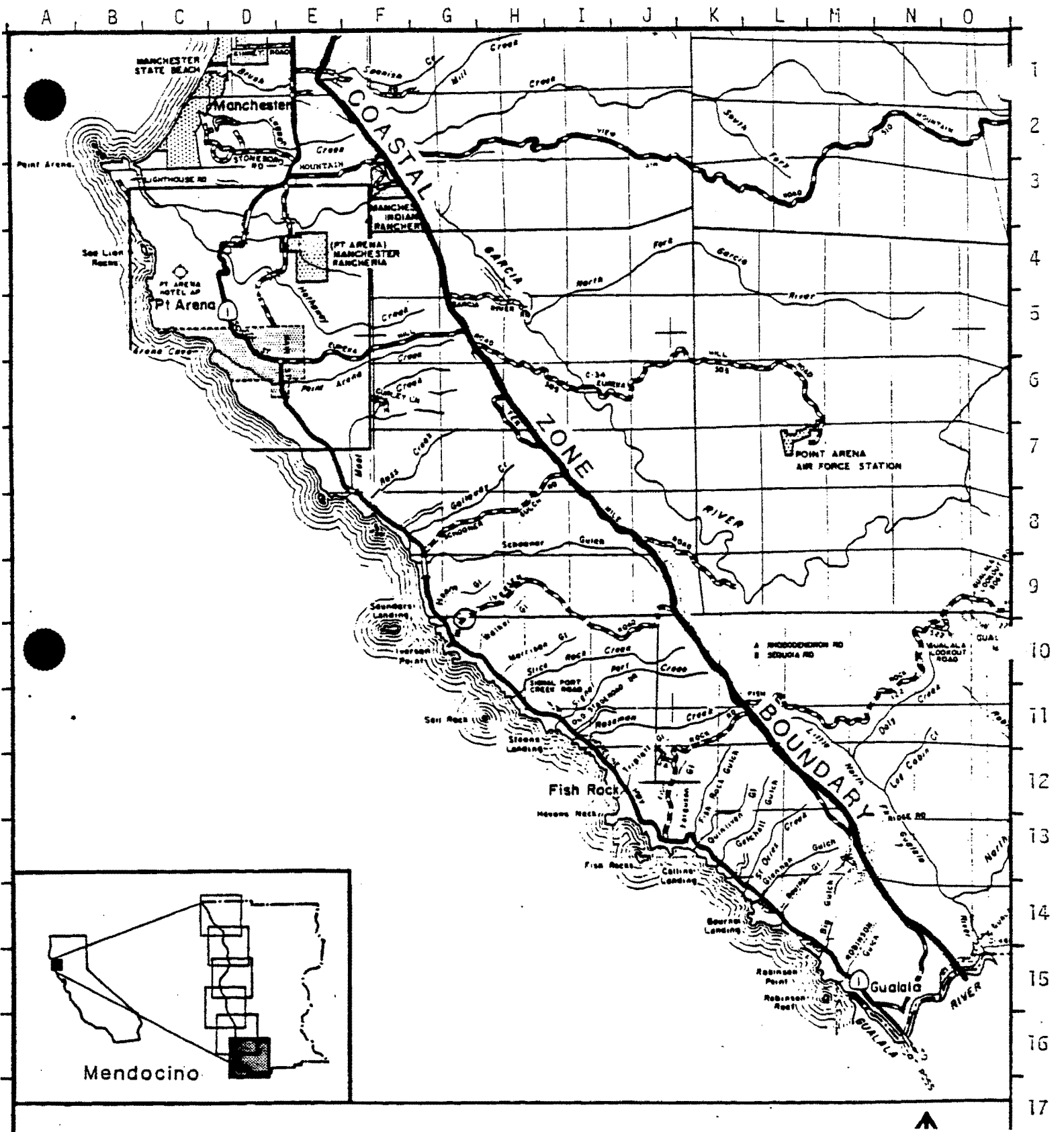
Therefore, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the approved project with Coastal Zoning Code Section 20.532.025(A) that a permit application contain relevant data in sufficient detail to determine whether the project complies with the requirements of the LCP. Furthermore, the Commission finds that the appellants' contention raises no substantial issue with regard to the conformance of the project with Coastal Zoning Code Section 20.532.095(A)(1) and the requirements that the approval of the coastal development permit be supported by findings that establish the conformity of the development with the certified LCP as the County's findings discuss the conformity of the proposed house with the height requirements of the LCP.

d. Conclusion

The Commission finds that, for the reasons stated above, that the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Portion, Land Use Plan Map No. 31 - *Gualala*
5. House and Garage Elevation and Floor Plans
6. Notice of Final Action
7. Appeal, filed November 17, 2000 (Reimuller)
8. Correspondence



Mendocino

LOCATION MAP

California Coastal Commission

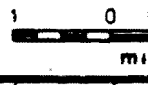
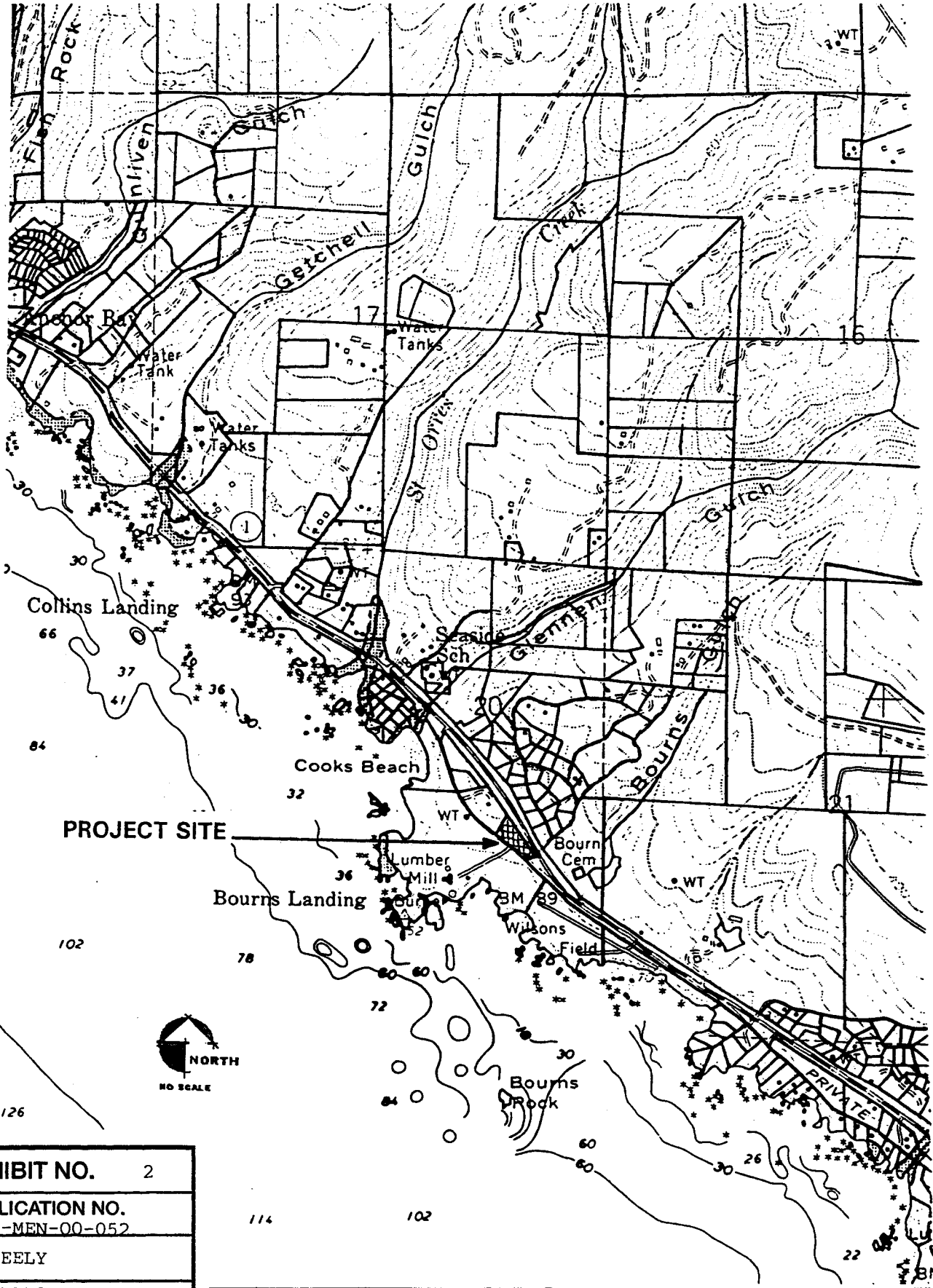


EXHIBIT NO.	1
APPLICATION NO.	A-1-MEN-00-052
MCNEELY	
LOCATION MAP	

County of Mendocino

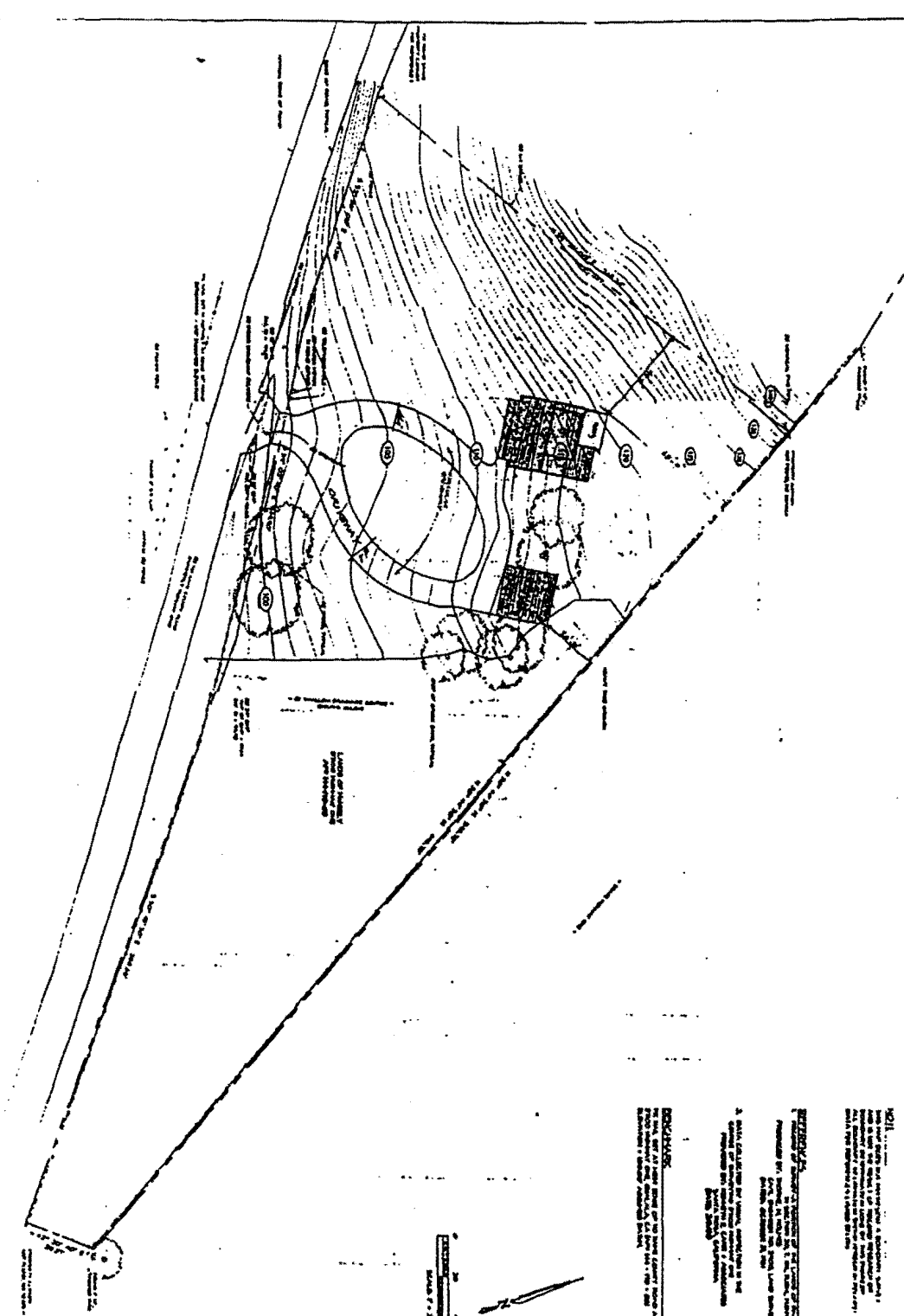


PROJECT SITE



EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN-00-052
McNEELY	
LOCATION MAP	

LOCATION MAP



NOTES:
 1. ALL UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.
 2. THE EXISTING UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.
 3. THE PROPOSED UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.
 4. THE PROPOSED UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.
 5. THE PROPOSED UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.

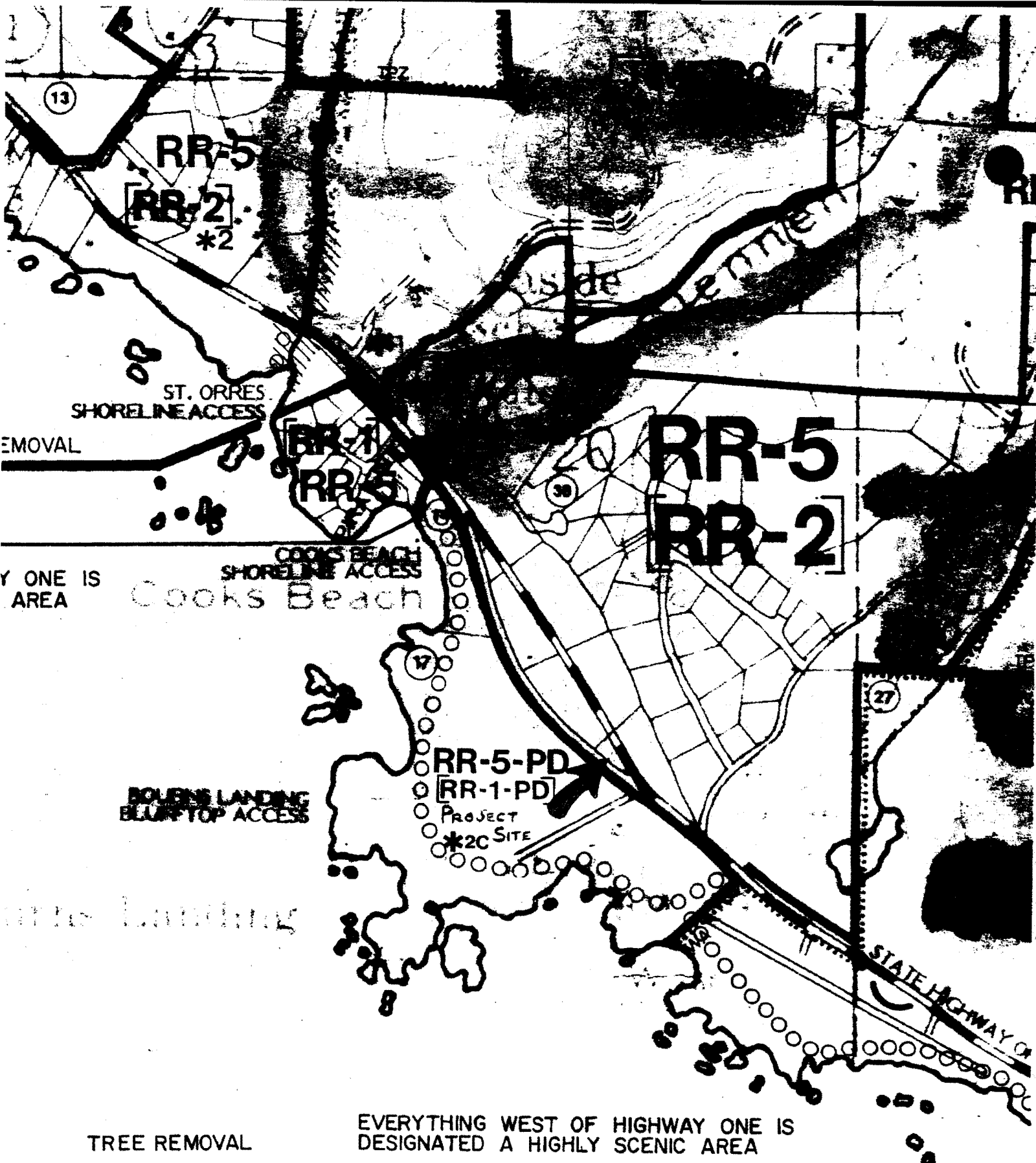
EXHIBIT NO. 3
APPLICATION NO.
 A-1-MEN-00-052
 MCNEELY
 SITE PLAN

BARBARA MCNEELY
 5700 HIGHWAY ONE
 GUALALA, CALIFORNIA
 APR 1984 - PRE - PRE

TOPOGRAPHY

Kenneth E. Carr & Associates
 civil engineering services

SITE PLAN

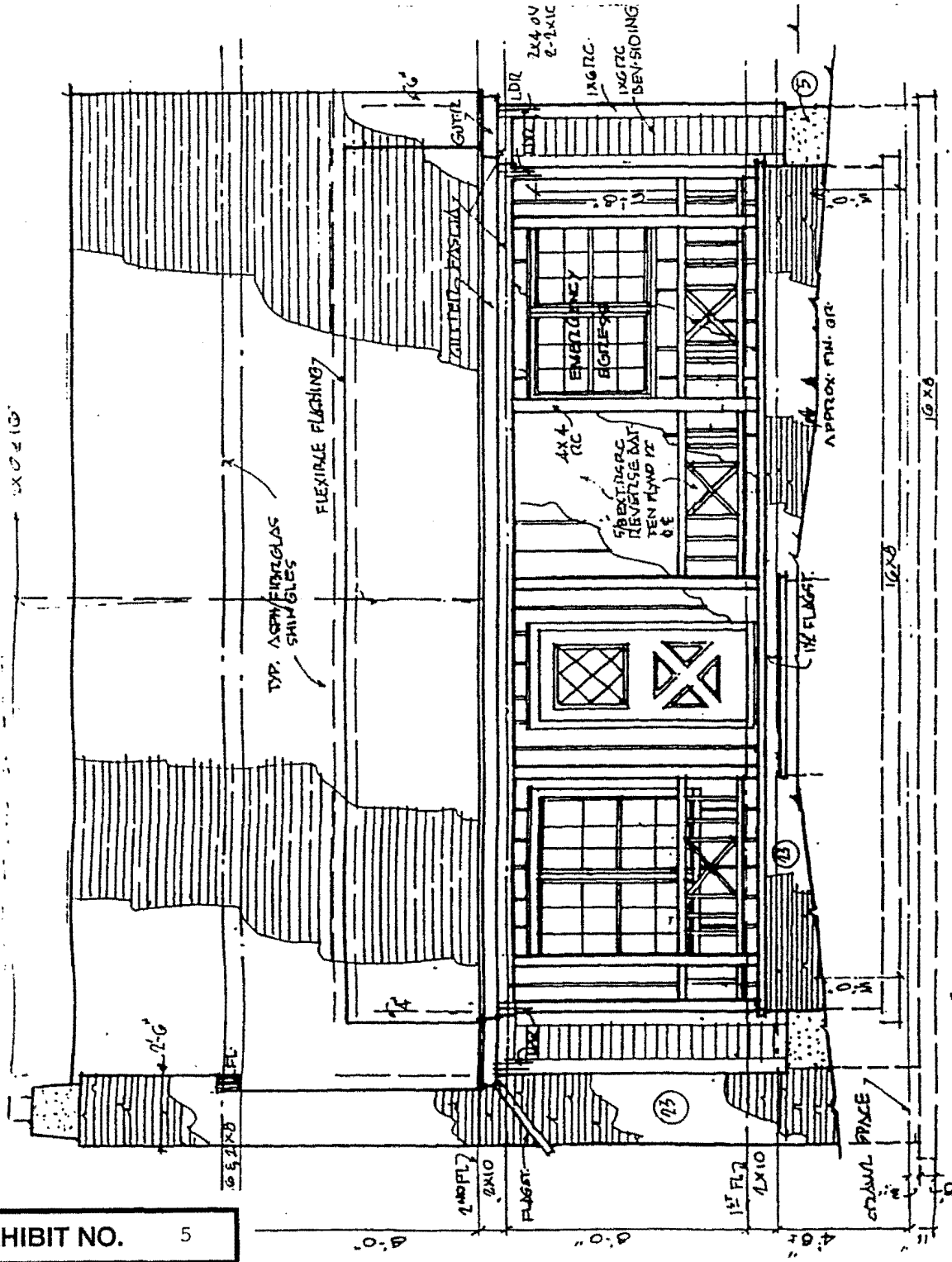


TREE REMOVAL

EVERYTHING WEST OF HIGHWAY ONE IS DESIGNATED A HIGHLY SCENIC AREA

EXCLUDED FROM THE HIGHLY SCENIC AREA

EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-00-052
McNEELY	
PORTION, LAND USE MAP #31 - "GUALALA"	



FRONT ELEVATION

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-00-052
McNEELY (12 pages)	
HOUSE AND GARAGE	
ELEVATION AND	
FLOOR PLANS	

FRONT ELEVATION (RESIDENCE)

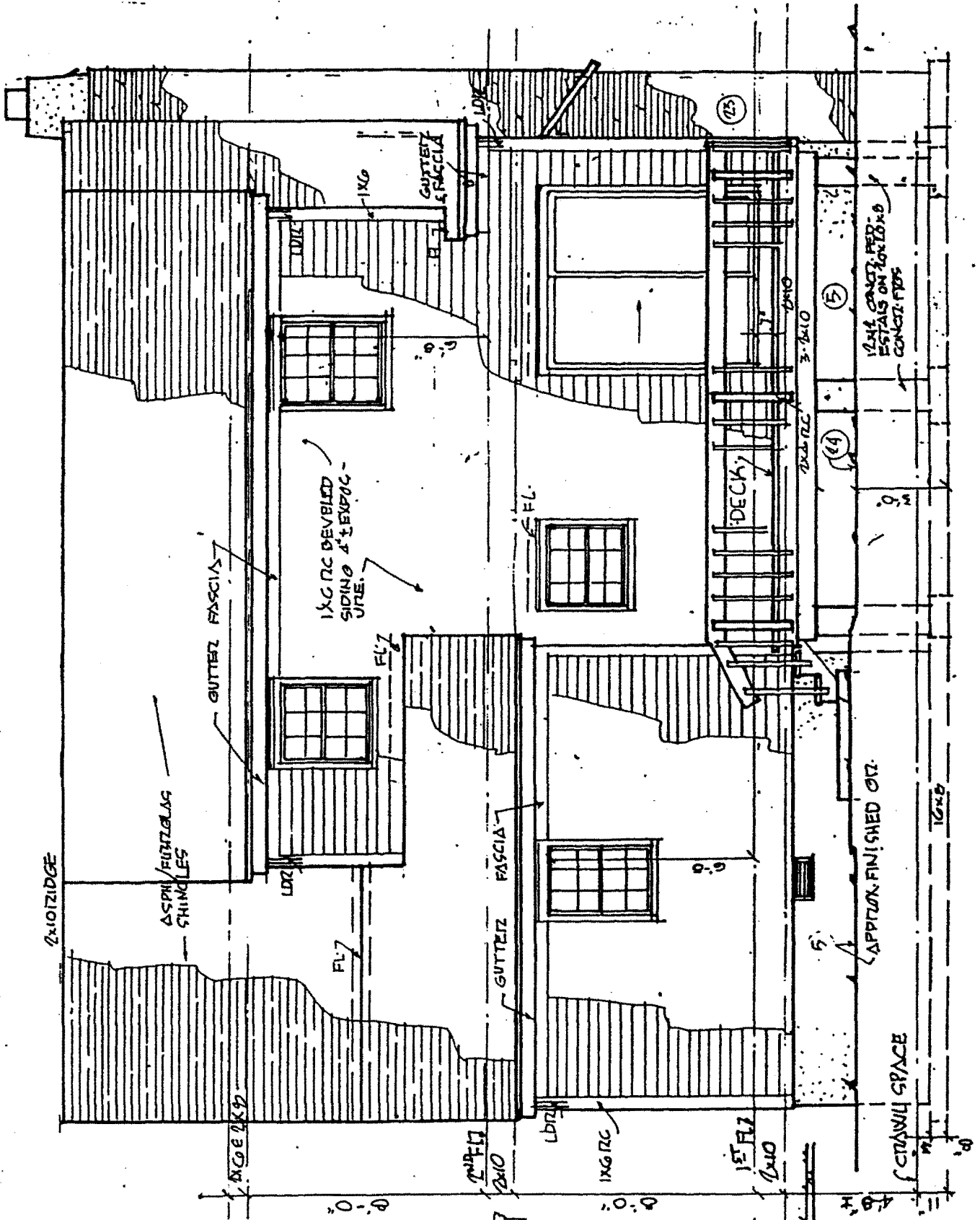
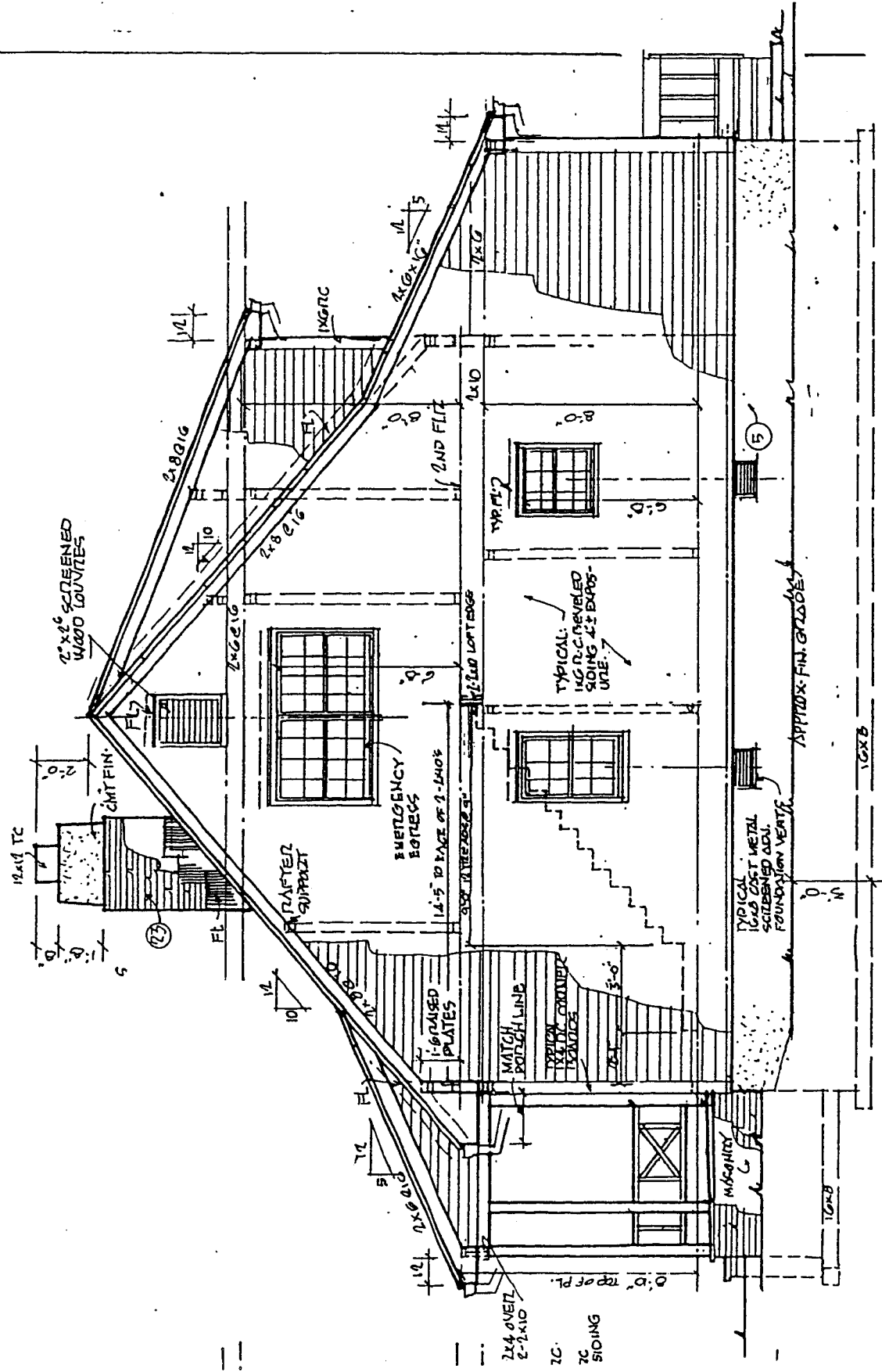


EXHIBIT D

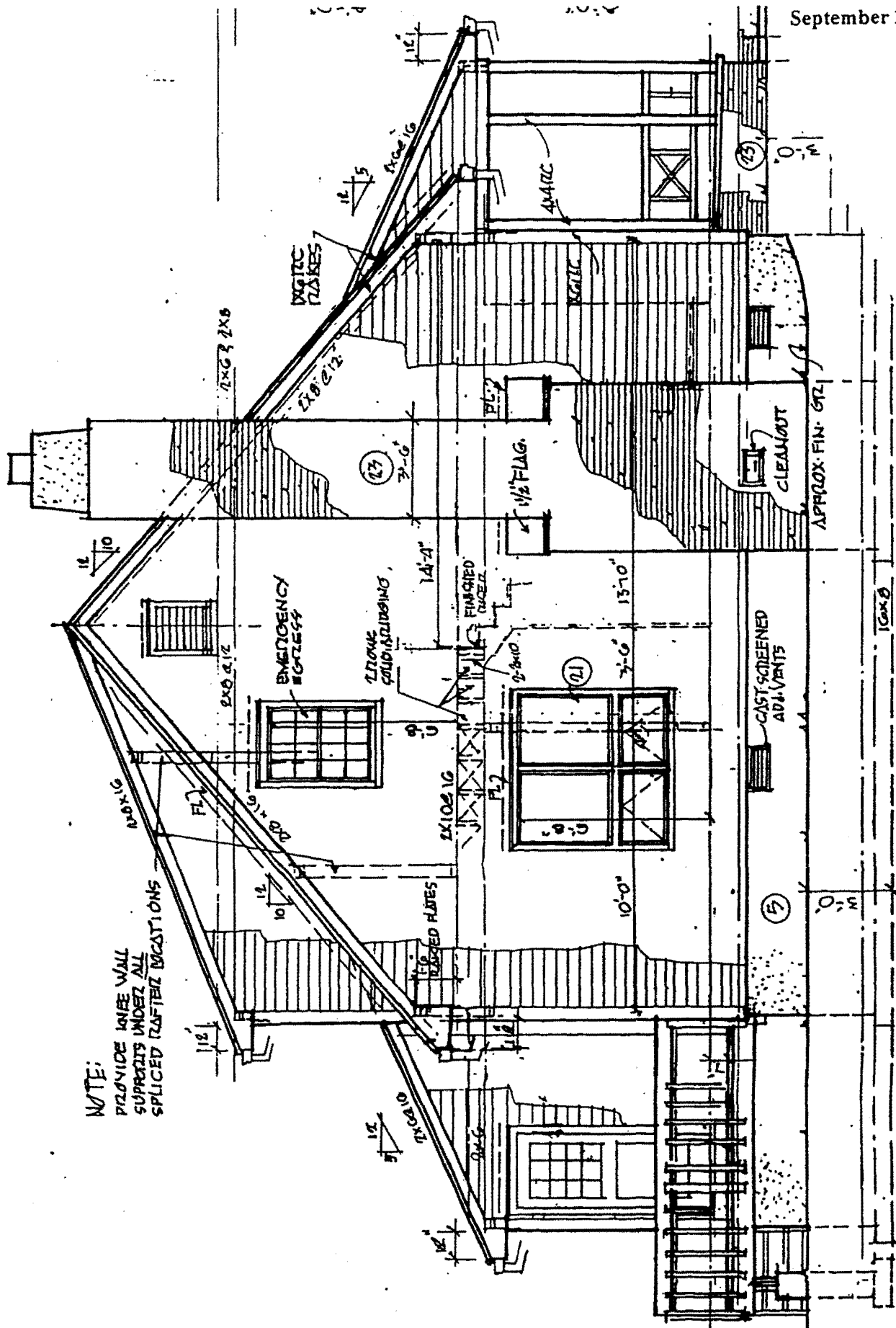
REAR ELEVATION (RESIDENCE)

2912



RIGHT SIDE

3 of 12



NOTE:
PROVIDE KNEE WALL
SUPPORTS UNDER ALL
SPLICED RAFTER LOCATIONS

EXHIBIT F

LEFT SIDE ELEVATION (RESIDENCE)

4912

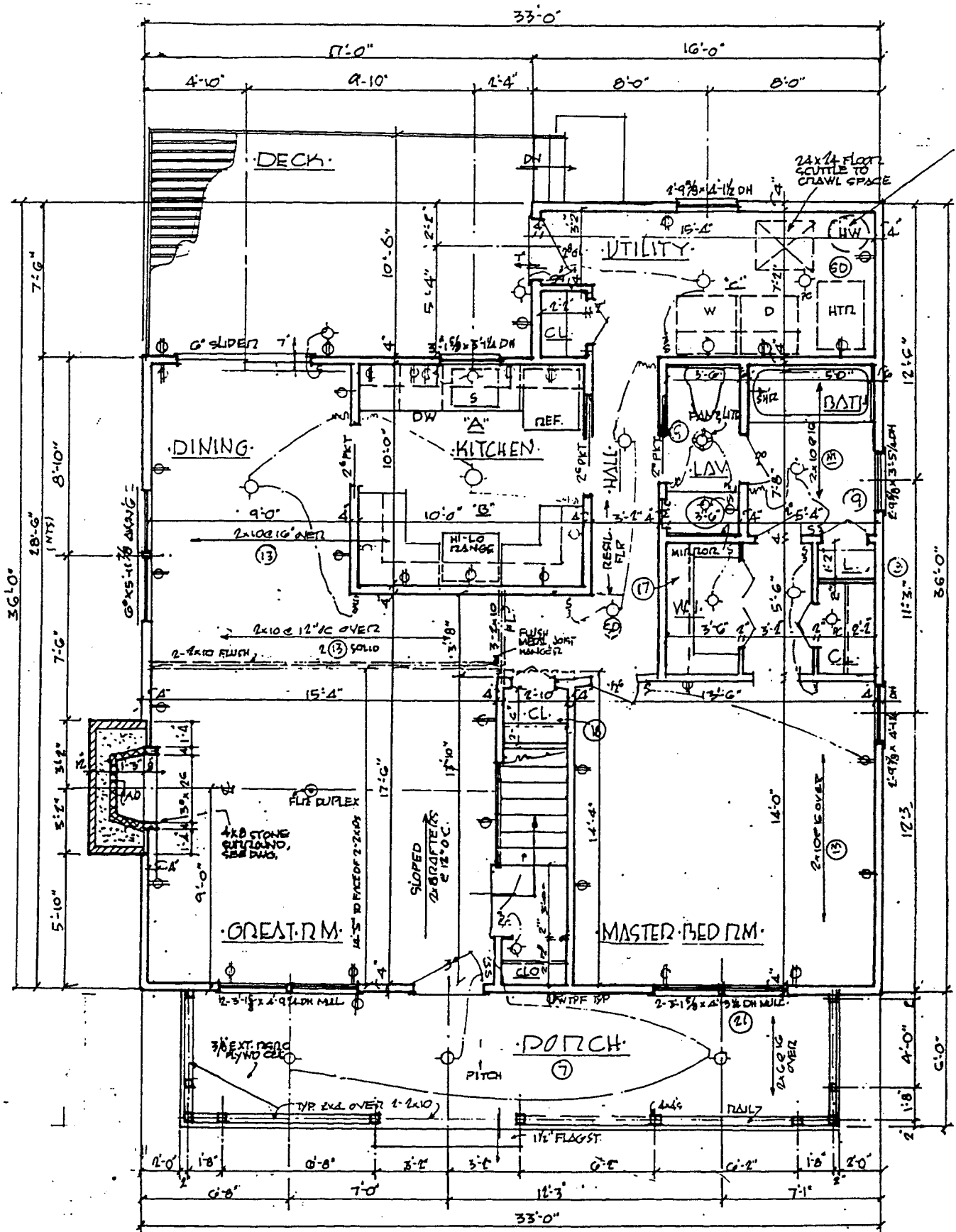
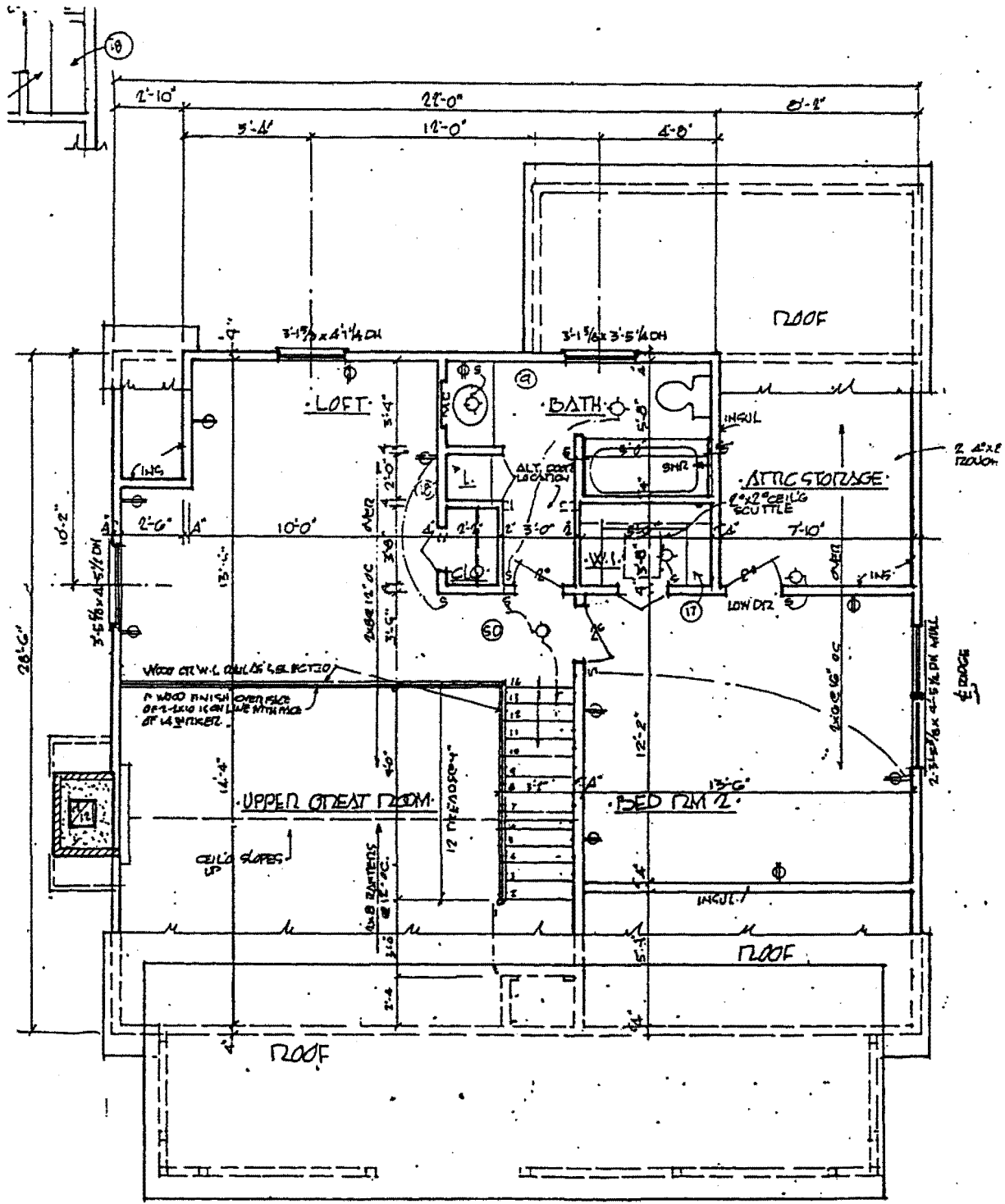


EXHIBIT G

FIRST FLOOR PLAN (RESIDENCE)

5 of 12



SECOND FLOOR PLAN

DATE: 09/27/00 SCALE: 1/8" = 1'-0"

6 of 12

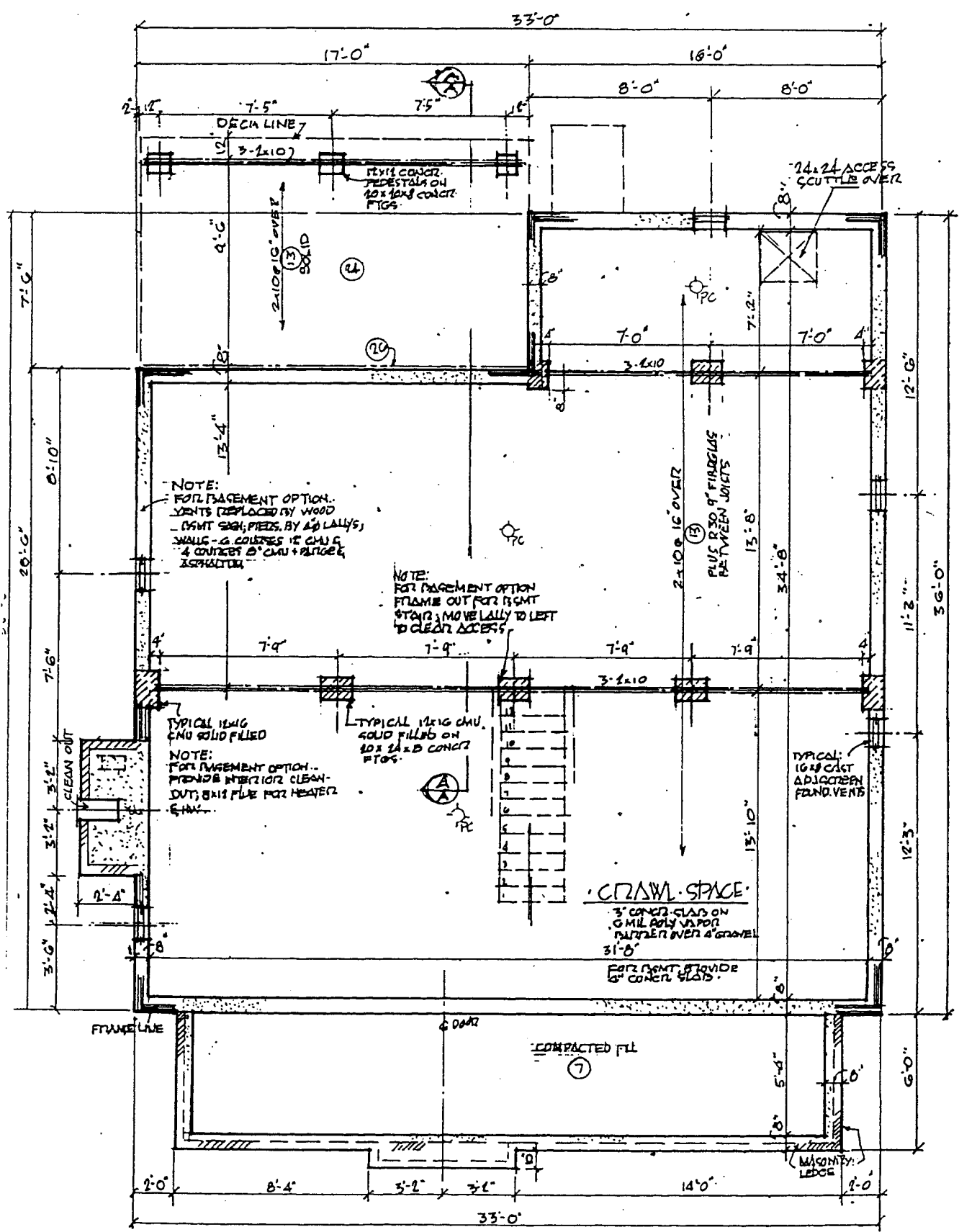
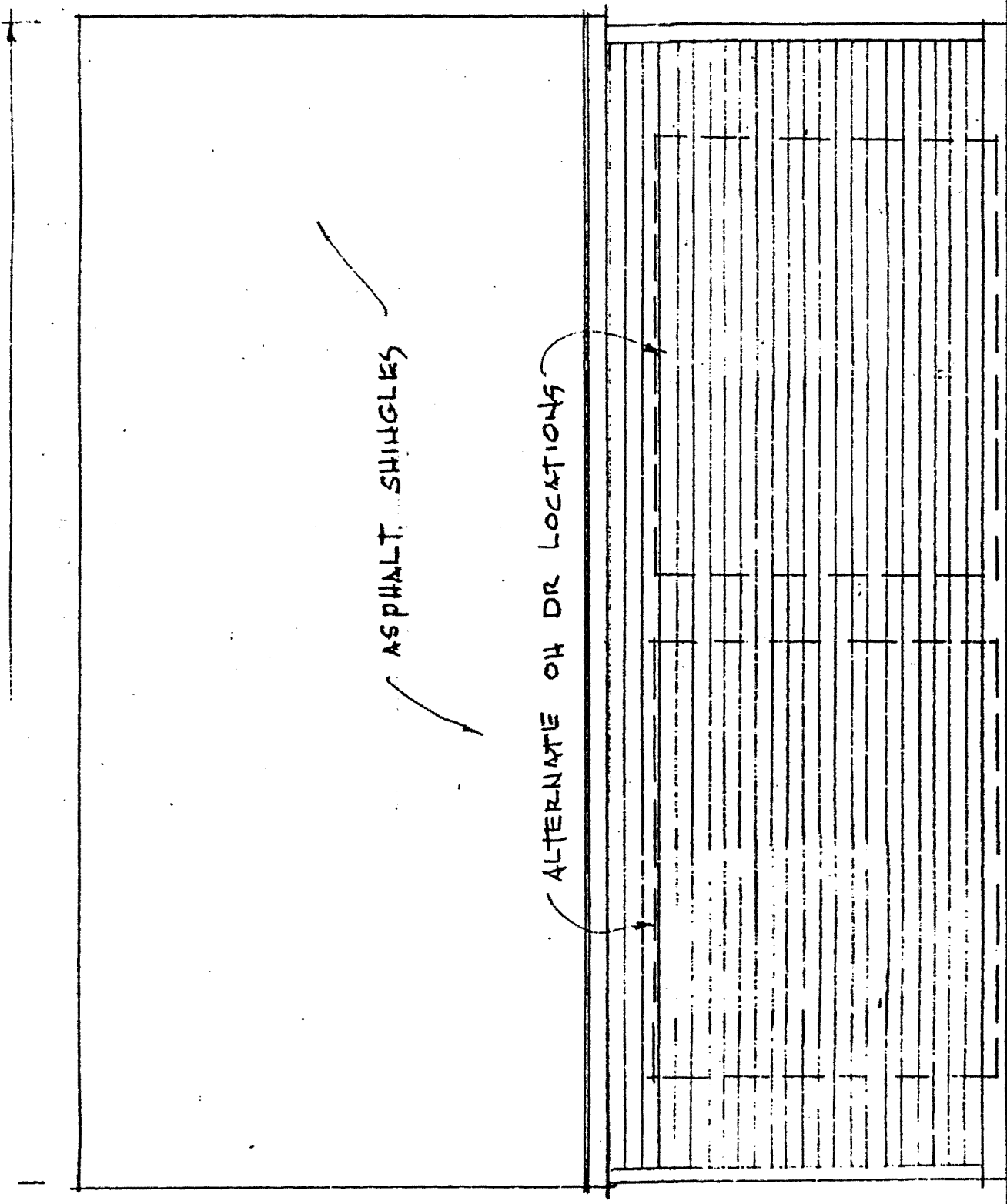


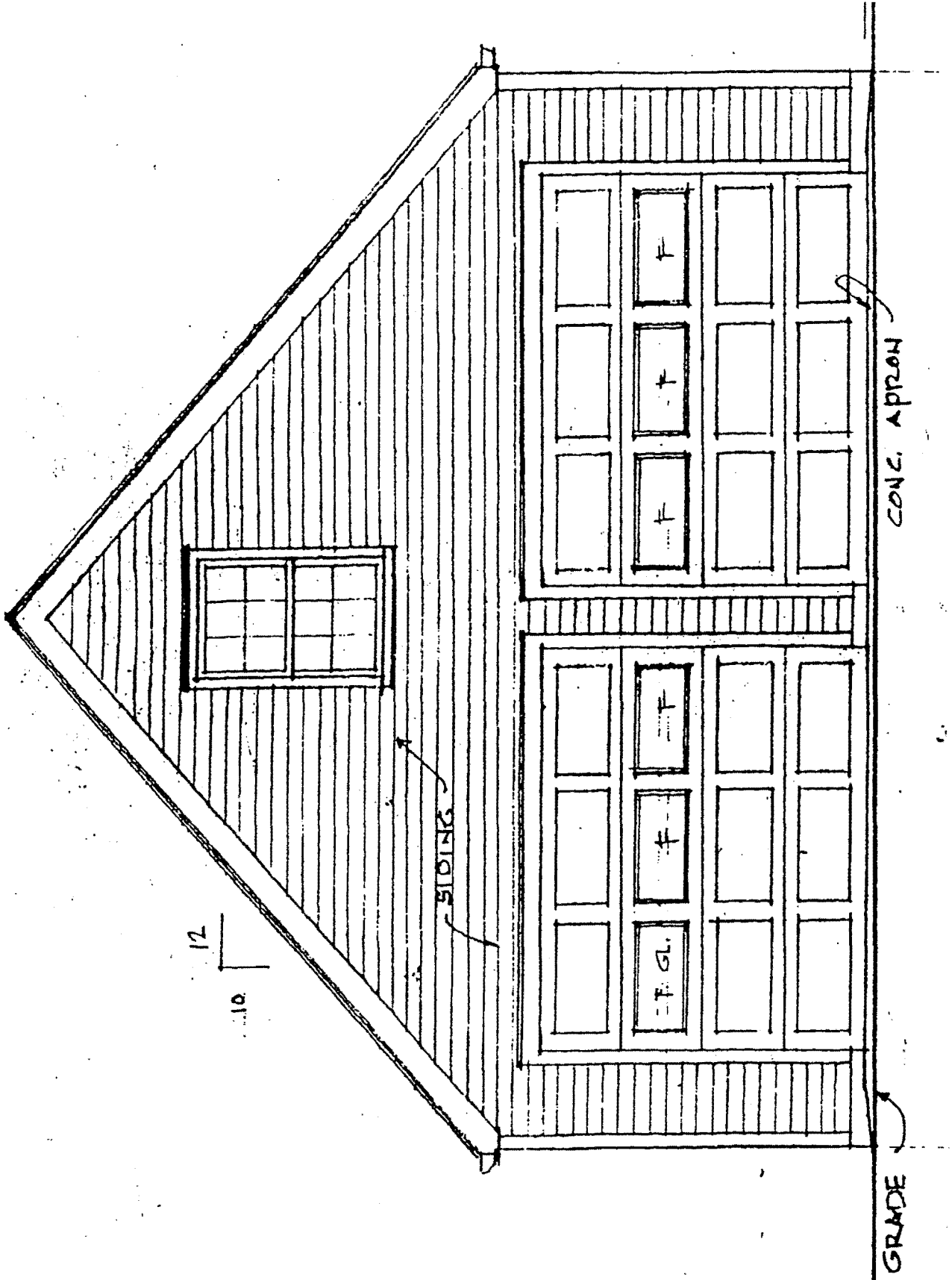
EXHIBIT I

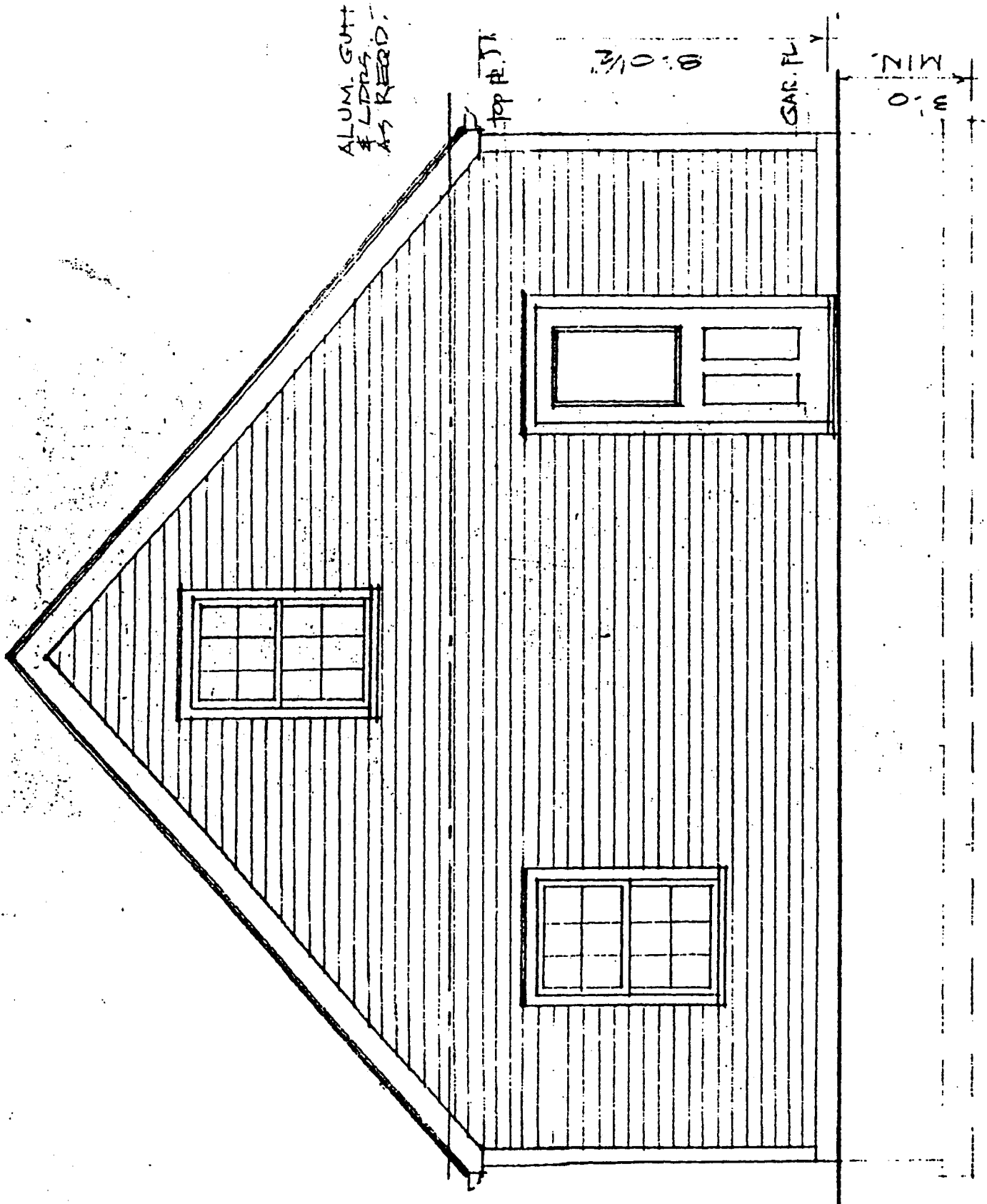
FOUNDATION & CRAWL SPACE PLAN (RESIDENCE)

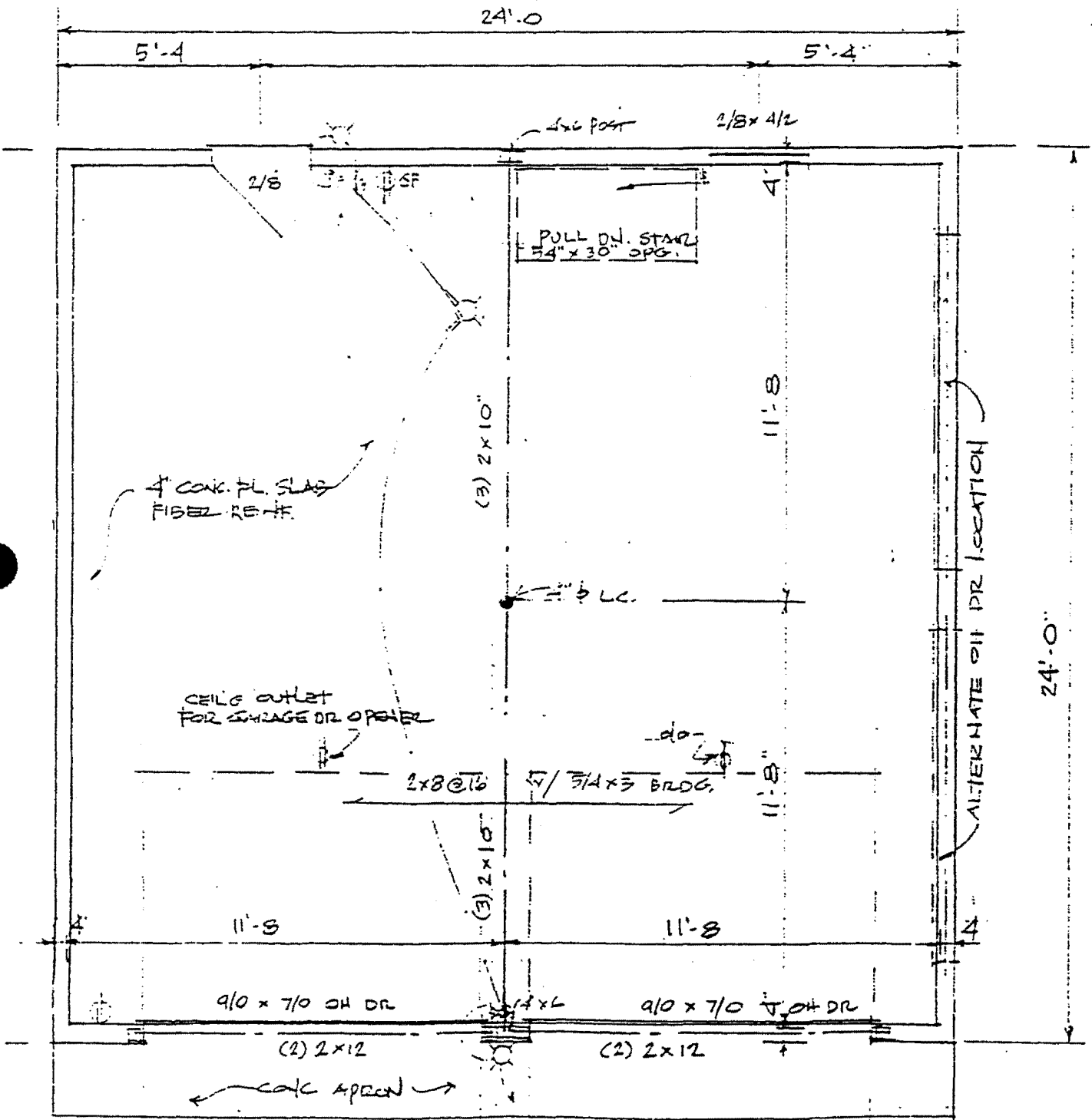
7912

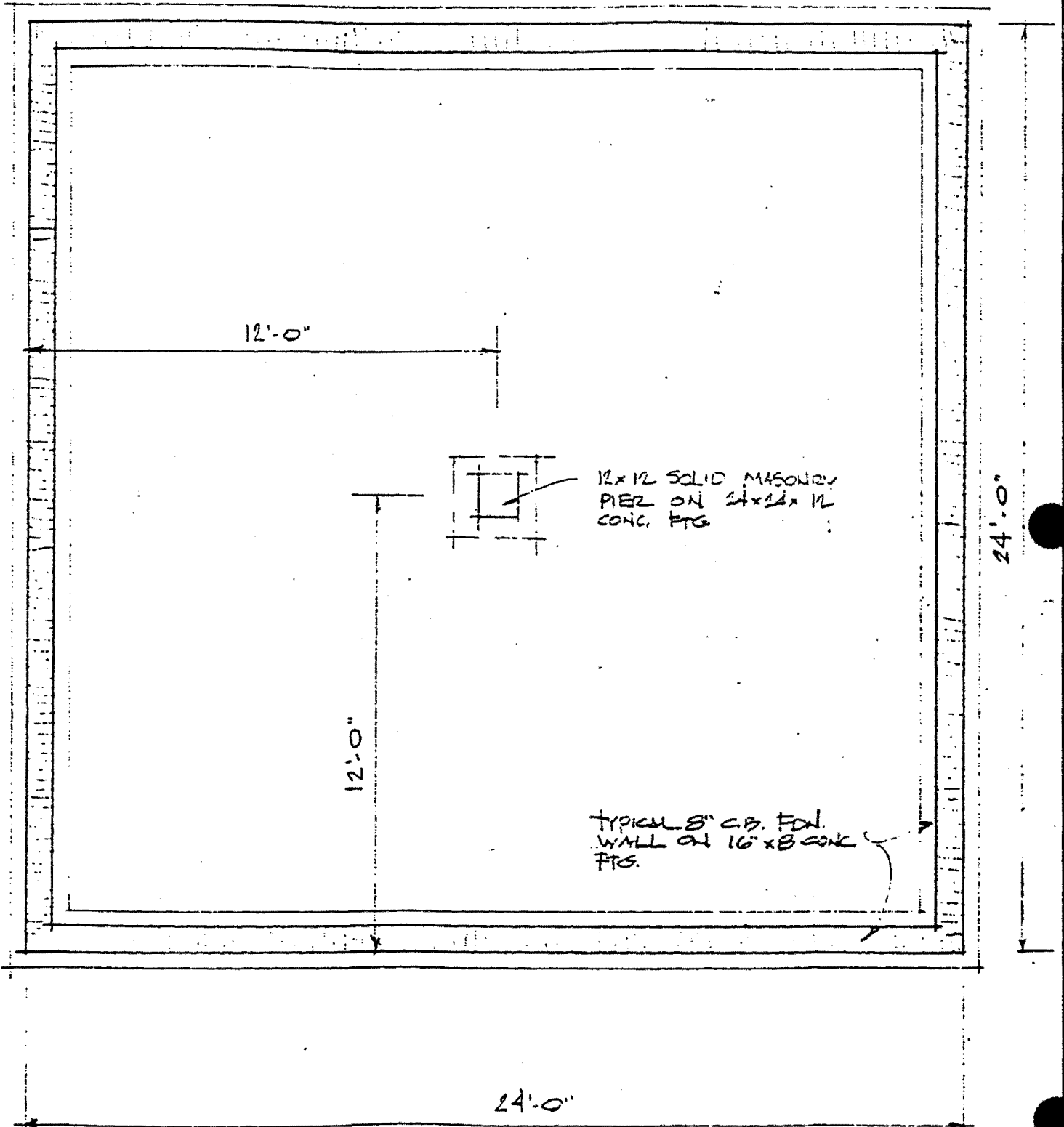


2. APPROX F











LYMOND HALL
DIRECTOR

TELEPHONE
(707) 964-5379

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

RECEIVED
NOV 09 2000

November 7, 2000

CALIFORNIA
COASTAL COMMISSION

NOTICE OF FINAL ACTION

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

CASE#: CDP #50-00
OWNER: Barbara McNeely
REQUEST: Construct a 1,550 square foot, 26-foot high single-family residence on a 1.5 acre parcel with septic system and detached garage. Extension of utilities 90 feet to the new structures.
LOCATION: E of County Road #526 and W of Highway One at 37100 S. Highway One, Gualala (APN 144-170-03).
PROJECT COORDINATOR: Robert Dostalek

HEARING DATE: 10/26/00

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 6
APPLICATION NO. A-1-MEN-00-052
McNEELY (6 pages)
NOTICE OF FINAL ACTION

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #50-00

HEARING DATE: 10/26/00

OWNER: McNeely

ENVIRONMENTAL CONSIDERATIONS:

Categorically Exempt

Negative Declaration

EIR

FINDINGS:

Per staff report

Modifications and/or additions

ACTION:

Approved

Denied

Continued _____

CONDITIONS:

Per staff report and

Modifications and/or additions:

Special Condition #3 modified as per attached sheet.

NOTE: Sample of roof "Weatherwood" provided in CDP file.

Signed: Coastal Permit Administrator

Due to the unique conditions and constraints of the subject parcel, staff recommends the Coastal Permit Administrator approve the project with the conditions provided in the staff report and the addition of Special Condition #3.

Special Condition #3

Prior to issuance of the Coastal Development Permit, the applicant shall submit a final landscape plan based on the preliminary landscape plan which provides complete screening of the structure from Highway One, for the review and approval of the Coastal Permit Administrator. The required landscaping shall be installed prior to the final inspection for the residence and shall include container size, species, location and method of irrigation for the screen trees. All required landscaping shall be irrigated, staked, maintained and replaced, as necessary, to ensure that they are established and maintained in perpetuity. Any future revisions to the required landscaping shall not be subject to a CDP modification but shall be subject to the written administrative approval from planning staff to insure that the revision maintains the required screening.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator approves the proposed project, and adopt the following findings and conditions.

FINDINGS:

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

STANDARD CONDITIONS:

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

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

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

3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. Prior to issuance of a Building Permit, the applicant shall submit lighting fixture specifications that shall be downcast and shielded and shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.
2. Prior to commencement of any construction activities performed in the County right-of-way, the applicant shall secure an encroachment permit issued by the Mendocino Department of Transportation.

Staff Report Prepared By:

Date

Robert Dostalek
Coastal Planner

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Front Elevation (Residence)
Exhibit D: Rear Elevation (Residence)
Exhibit E: Right Side Elevation (Residence)
Exhibit F: Left Side Elevation (Residence)
Exhibit G: First Floor Plan (Residence)
Exhibit H: Second Floor Plan (Residence)
Exhibit I: Foundation & Crawl Space Plan (Residence)
Exhibit J: Side Elevation (Garage)
Exhibit K: Front Elevation (Garage)
Exhibit L: Rear Elevation (Garage)
Exhibit M: Floor Plan (Garage)
Exhibit N: Foundation Plan (Garage)

Appeal Period: 10 days
Appeal Fee: \$555

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

RECEIVED
NOV 17 2000

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

CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

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

Friends of Schooner Gulch
P.O. BOX 4
POINT ARENA CA 95468 (707) 882-2001
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MENDOCINO COUNTY

2. Brief description of development being appealed: Residence in Highly Sensitive Area

3. Development's location (street address, assessor's parcel no., cross street, etc.): E. of Road 526, west side of Highway One @ 37100 Hwy 1 APN 144-170-03

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: _____
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-00-052

DATE FILED: 11/17/00

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-00-052
McNEELY
APPEAL (7 pages)

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

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

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

6. Date of local government's decision: OCT 26, 2000

7. Local government's file number (if any): CDP 50-00

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

BARBARA A. MCNEELY
BOX 1045
GUALALA CA 95445

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

- (1) Friends of Schooner Gulch, Box 4 Pt Arena 95468
(2) Rixanne Wehren, Mendo-Lake Group, Sierra Club,
Box 340 Tiburon CA 95410

- (3) Julie Verran, Box 382 GUALALA CA 95445
(4) ROSANNE WITTERS, BOX 198, FT BRAGG CA 95437
(5) BRITT BAILEY, BOX 673, GUALALA CA 95445

- (6) COAST ACTION GROUP, BOX 215, PT ARENA 95468
(7) SUPERVISOR DAVID COLFAX, COURTHOUSE, ULIATH 95482

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.

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

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

See Letter Attached

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

SECTION V. Certification

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

Additional Appellants:
Roxanne Wehren
Mendo-Lake Group
Sierra Club
Box 340
Albion CA 95410

[Signature]
Signature of Appellant(s) or
Authorized Agent

Date 11-15-00

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]
Signature of Appellant(s)

Date 11-15-00

Friends of Schooner Gulch

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

Executive Committee:

Sarah Flowers
Charles Peterson
Peter Reimuller

RECEIVED
NOV 17 2000

CALIFORNIA
COASTAL COMMISSION

November 15, 2000

Mr. Robert Merrill
California Coastal Commission
Box 4908
Eureka, CA 95502

RE: McNeely Appeal

Dear Mr. Merrill:

Here are the reasons for our appeal. The original application was sent a few days ago.

Reasons for Appeal

The Mendocino County Permit Administrator approved a color scheme for the house which does not fit the usual "dark earthtones" definition. Also, the approval did not include the usual condition that the color be kept the same in perpetuity. This property is in a key location to influence future development across the street at Bourns Landing. Allowing the colors to deviate from the accepted norm at this time would create a precedent in the Highly Scenic Area which surrounds the parcel. A page with color chips, supplied by the Planning Department, is appended to this letter.

We would like to express our concern that, prior to the hearing, final colors had not been chosen by applicant. Because the representative from Friends of Schooner Gulch was unavailable on the day of the hearing, we were unable to be there to see the new colors in person. It is a great hardship on our organization to be required to attend every hearing just to be sure that the applicant will not submit significantly revised colors, landscape plans or the like.

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

4 of 7

We would also like to request that Mendocino County staff ensure that final plans for all projects will be on file and available for the public for at least several weeks in advance of the Coastal Permit Administrator's hearing. Last minute changes, last minute submittals, and conditional approvals of plan details by staff, to be made at later dates, are not acceptable practice.

The house was approved eight feet over the height limit. Staff said it could not be mitigated, and only required some shore pines to be planted. The final landscape plan was left to staff for final approval in the future, and specifically to be without the benefit of a field visit. As such, the landscape plan that will be adopted was not part of the Gualala Municipal Advisory Council's revue. It is not appropriate for the Coastal Permit Administrator to approve developments without final plans on file. Likewise, but of a less serious nature, the Administrator approved the exterior lighting plan without having the final plans on file.

Staff recommended continuing the item off calendar until the correct height, location and orientation of the story poles could be accurately presented and analyzed. We agree. Apparently the story poles which were reviewed by GMAC did not actually match the plans which were approved.

Because of the above listed items, we feel that the approval has the capacity to negatively impact the Highly Scenic Area.

Sincerely,



Peter Reimuller
Secretary
Friends of Schooner Gulch

Friends of Schooner Gulch

A Watershed Organization

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

RECEIVED
NOV 29 2000

CALIFORNIA
COASTAL COMMISSION

Executive Committee:

Sarah Flowers
Charles Peterson
Peter Reimuller

November 24, 2000

Revised Reasons for McNeely Appeal

Please accept this letter which supersedes all previous letters explaining our reasons for the appeal. Code sections cited are not exhaustive.

The Mendocino County Permit Administrator approved a color scheme for the house which does not meet the requirements of the zoning code. Usually, the requirement is interpreted to only include colors matching "dark earthtones". Also, the approval did not include the usual Mendocino County condition that the color be retained in perpetuity. This property is in a key location to influence future development across the street at Bourns Landing. Allowing the colors to deviate from the accepted norm at this time would create a precedent in this Highly Scenic Area surrounding the parcel. A full set of color chips, supplied by the Planning Department, was appended to the original letter sent regarding this appeal. 20.504.015 C 3; 3.5-3

We would like to express our concern that, prior to the hearing, final colors had not been chosen by applicant. Because the representative from Friends of Schooner Gulch was unavailable on the day of the hearing, we were unable to be there to see the new colors in person. It is a great hardship on our organization to be required to attend every hearing just to be sure that the applicant will not submit significantly revised colors, landscape plans or the like. The applications were not complete at the time of submission. 20.532.035 A; 20.532.025 A

We would also like to request that Mendocino County staff ensure that final plans for all projects will be on file and available for the public for at least several weeks in advance of the Coastal Permit Administrator's hearing. Last minute changes, last minute submittals, and conditional approvals of plan details, to be made by staff

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

(retroactively) at later dates, are not acceptable practice. It is not possible to make the findings required for approval, thereby assuring that the application is in conformity with the LCP, if all the required materials are not complete at the time of submission and at the time of final approval. 20.532.095 A 1.

The house was approved eight feet over the height limit. Staff said it could not be mitigated, and only required some shore pines to be planted. The final landscape plan was left to staff for final approval in the future, and specifically to be without the benefit of a field visit. As such, the landscape plan that will be adopted was not part of the Gualala Municipal Advisory Council's revue. It is not appropriate for the Coastal Permit Administrator to approve developments without final plans on file. See above paragraphs discussing incomplete applications and retroactive approvals. Likewise, but of a less serious nature, the Administrator approved the exterior lighting plan without having the final plans on file. 20.376.045; 20.504.015 C 2; 20.532.095 A 1; 3.5-3.

Staff recommended continuing the item off calendar until the correct height, location and orientation of the story poles could be accurately presented and analyzed. This was not done by the Coastal Permit Administrator. Apparently the story poles which were installed and reviewed by the Gualala Municipal Advisory Council, and the public in general, did not actually match the plans which were on file and approved. The application was incomplete and the incorrect story poles may have confused the public and adversely affected their participation in the hearing. 20.532.095 A 1.

Because of the above listed items, we feel that the approval will negatively impact the Highly Scenic Area. 20.504.015 et seq.

Sincerely,



Peter Reimuller
Secretary
Friends of Schooner Gulch



GUALALA MUNICIPAL ADVISORY COUNCIL

P.O. Box 67, Gualala, Ca. 95445

12 July 00

To: Robert Dostalek, Planner
Mendocino County Planning & Building Services
Fax: (707)961-2427

From: Jim Lotter, Chair

Re: CDP #50-00, Barbara McNeely, Owner

At our regular meeting on 10 July 00, the GMAC reviewed and took testimony pertaining to the above referenced Coastal Development Permit application. At the conclusion of our hearing on this item, the Council voted unanimously to recommend that the Coastal Permit Administrator approve this proposed development.

We ascertained that, although the project is in an area designated "Highly Scenic" in the Coastal Element, the proposed home and its garage will have little if any impact on views from Highway 1 or any likely public viewing area. We found no reason that the project should not be approved as submitted.

Thank you for referring this matter to the GMAC for review.

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-00-052
	McNEELY
	CORRESPONDENCE