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Filed:	November 9, 2001
49 th Day:	Waived
Staff:	Randall Stemler
Staff Report:	December 28, 2001
Hearing Date:	January 9, 2002
Commission Action:	

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	A-1-MEN-01-063
APPLICANT:	Herb Kennedy
AGENT:	Richard Perkins
PROJECT LOCATION:	27700 South Highway One, south of Point Arena, Mendocino County (APN 027-421-11)
PROJECT DESCRIPTION:	Move an existing home 34 feet south away from an existing slide area; remove, relocate, and replace the existing septic tank with a new 1,200-gallon tank; and construct a 624-square-foot garage with a 624- square-foot second story guest room above.
APPELLANTS:	1) Friends of Schooner Gulch, Attn: Peter Reimuller, 2) Sierra Club, Mendocino-Lake Group, Attn: Rixanne Wehren; 3) Roanne Withers, and 4) Julie Verran
SUBSTANTIVE FILE: DOCUMENTS	1) Mendocino County CDP No. 87-00; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

Commission staff recommends that the Commission find that the project as approved, raises a SUBSTANTIAL ISSUE of conformance with the certified LCP.

The development, as approved by the County, involves moving an existing dwelling 34 feet south away from an existing slide area; removing the existing septic tank, and replacing it with a new 1,200-gallon tank in a new location; and building a 624-square-foot garage with a 624-square-foot addition above it for a total of 1,248 square feet of new construction.

The appeal raises contentions involving inconsistency of the approved project with Mendocino County's certified LCP policies and standards relating to runoff and bluff retreat hazards, sufficiency of information provided in the permit application, visual resource protection, and provision of adequate utilities. The appellants assert that no analysis was performed or determinations made for mitigating runoff impacts and bluff retreat hazards resulting from the project as approved. The appellants also assert that insufficient information was provided at the time of the application. In addition, the appellants contend that the project as approved is not visually subordinate to the character of its setting. Specific allegations of visual resource incompatibility include issues involving lighting, landscaping, color of building materials, height, and bulk. Finally, the appellants contend that local approval of the project was inconsistent with LCP policies and standards requiring demonstration of adequate sewage disposal capacity.

Staff recommends that the Commission find that the project as approved, raises a substantial issue of conformance with the certified LCP and the public access policies of the Coastal Act with respect to contentions raised concerning runoff and bluff retreat hazards. No drainage plan or recommendations were provided by the applicant to address the control of stormwater runoff from the project site. In addition, the County did not require that any storm water collection and conveyance system be installed that would attenuate any excess stormwater generated from the new impervious surfaces that would be created by the development. Furthermore, the County's findings for approval of the project do not address how the approved project conforms with the runoff control policies and standards of the certified LCP. Without drainage controls, the potential exists for the project as approved to contribute to erosion of the bluff face or contribute to the instability of the bluff itself.

Staff recommends that the Commission determine that no substantial issue is raised with respect to the other grounds on which the appeal has been filed, including the appellants' contentions involving the sufficiency of information presented in the permit application, visual resource protection, and provision of adequate utilities.

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 approved development can be found consistent with provisions of the certified LCP regarding runoff and bluff retreat hazards.

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 three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or the top of the seaward face of any 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 and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because: (1) it is located between the sea and the first public road; and 2) it is located within 300 feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that 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

An appeal was filed by Friends of Schooner Gulch, Peter Reimuller; Sierra Club, Mendocino-Lake Group, Rixanne Wehren; Roanne Withers; and Julie Verran (Exhibit 5). The appeal was filed with the Commission in a timely manner on November 9, 2001 within 10 working days of receipt by the Commission on November 8, 2001 of the County's Notice of Final Action (Exhibit No. 4).

On December 18, 2001, the Commission staff received a one page letter from appellant Julie Verran (within Exhibit No. 4). This letter provides supplemental discussion and support for contentions previously raised by appellants during the appeal without raising new contentions of inconsistencies of the project as approved with the certified LCP.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-01-063 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 by a majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-01-063 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.

I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS.

The Commission received one appeal of the County of Mendocino's decision to approve the development from Peter Reimuller representing Friends of Schooner Gulch; Rixanne Wehren representing the Mendocino-Lake Group of the Sierra Club; Roanne Withers; and Julie Verran.

The project as approved by the County consists of moving an existing dwelling 34 feet south away from an existing slide area; removing the existing septic tank and replacing it with a new 1,200-gallon tank in a new location; and building a 624-square-foot garage with a 624-square-foot addition above it for a total of 1,248 square feet of new construction. The project site is located along the Mendocino County coastline, south of Point Arena, on the west side of Highway One just south of Ross Creek, at 27700 South Highway One.

The appeal raises contentions involving inconsistencies with the County's LCP policies regarding visual resources, drainage, provision of adequate utilities, and sufficiency of information provided in the permit application.

The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 5.

1. Visual Resources

The appellants contend that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas. The visual resources of the Schooner Gulch—Bowling Ball Beach—Saunders Reef Scenic View Corridor offer premiere aesthetic opportunities available to tourists and locals along the south coast of Mendocino County. These views are specifically recognized in the Local Coastal Plan, and as such, the subject property is designated highly scenic. New development in highly scenic areas is required to be sited and designed to protect views to and along scenic coastal areas, and be visually subordinate to the character of the natural setting.

The appellants assert that a substantial issue of conformance exists with the visual policy for protecting highly scenic areas because the development as approved would provide for development in a highly scenic area that would be visually prominent and would not be subordinate to the character of its setting. The appellants also assert that the proposed development is on a lot visible from Highway One that "will block the views of the ocean from the Highway."

In addition, the appellants contend that light from the proposed development will intrude on the recreational experience of night beach users on the State Park beach below. "Any interior lighting which goes beyond the site becomes de facto exterior lighting and must also be downcast and shielded and required not to shine brightly on the public areas of the beach. Night use of the beach is common... There is no standard in the approval which speaks to the problem of bright points of light shining through windows at night. Such lighting at night, which may shine through the windows, could be a detriment from all public view points... Without performance standards on interior lighting shining through windows this development will not be subordinate to the landscape."

The appellants assert that Special Condition 3, included by the County to insure that all exterior building materials and finishes match those specified in the coastal development permit application, is "insufficiently specific" because the existing house, which is being relocated on the lot, has bright blue trim. "If the blue is not removed, then the building will not be subordinate to the landscape. The appellants assert that the approval of this development raises a substantial issue in regard to all of the foregoing as specified within LCP policies and standards 3.5 et seq., and Coastal Zoning Code Section 20.504.015 et seq.; and Section 30001.5 (a) of the California Coastal Act.

2. Runoff and Bluff Retreat Hazards

The appellants contend that the project is inconsistent with the Mendocino County LCP because the approved development includes no analysis or development conditions addressing the subject development and its potential to increase and concentrate surface water runoff that might eventually lead to increased bluff erosion.

In referring to the geological report, the appellants contend that, "No grading or drainage notes were included with the plans submitted. The change in house location and the addition of an additional roof and driveway will change the drainage patterns on the lot. Drainage may be directed over the lip of the cliffs onto the beach... No provisions are made for handling the concentrations of water created by this permit. This will be a few feet back from the overhanging loose cliff face as it now exists." The appellants contend that the approval of this development is inconsistent with the provisions of Coastal Zoning Code Section 20.492 et seq. dealing with grading, erosion and runoff. The appellants also raise concerns about the adequacy of the geotechnical report relating to determination of the coastal bluff setback, and assert that the geotechnical report is

incomplete because it "fails to analyze and provide for the rise of the seas due to global warming." The appellants assert that the setback formula is improperly applied to "...this overhanging and undercut part of the cliff. A reasonable future calculated angle of repose for the cliff face should be established, and then projected onto the surface of the flats above the cliff in order to establish the present effective cliff edge."

The appellants contend that the approval of the development is inconsistent with the bluff retreat and geologic hazard policies of Coastal Zoning Code Section 20.500. This section requires that new structures be set back a sufficient distance from the edge of bluffs to ensure their safety from bluff erosion and bluff retreat during their economic life spans, and that development minimize risks to life and property in areas of high geologic hazards and neither create nor contribute significantly to erosion and geologic instability.

3. Adequate Utilities

The appellants cite the County's LCP policies and standards requiring demonstration of adequate sewage disposal capacity, and assert that "insufficient details about the septic system have been submitted with the application to ensure that it will fulfill the requirements of the code." The appellants assert that "adequate utilities, including water and septic must be considered and provided for at the time of the approval, and contend that the approved development is inconsistent with LUP Policies 3.8-1, and 3.9-1, and Zoning Code Section 20.532.095 (2)]."

4. Sufficiency of Information Provided

A primary contention of the appellants is that "the Coastal Permit Administrator approved an application which was not complete." The appellants point to the County's LCP policies and standards requiring sufficient information to be provided at the time of the application. The appellants assert that "complete details were not presented on matters of landscaping, colors, lighting, septic, and other items," and that therefore the approved development is inconsistent with the provisions of Coastal Zoning Code Sections 20.532 et seq., 20.532.035 et seq., and 20.536.010 et seq.

B. LOCAL GOVERNMENT ACTION.

On October 25, 2001 the Coastal Permit Administrator for Mendocino County approved a Coastal Development Permit for the subject development to move an existing house 34 feet south away from the coastal bluff and an existing slide area. The permit includes authorization to remove and replace the existing septic tank with a new 1,200-gallon tank in a new location, and to construct a 1,248-square-foot structure composed of a 624-square-foot garage and 624-square-foot room addition above it. 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, which was received by Commission staff on November 8, 2001 (Exhibit 4).

The County attached to its coastal permit a number of Special Conditions, including requirements that:

1. The applicant shall incorporate all recommendations within the Geotechnical Investigation prepared by BACE Geotechnical dated June 28, 1999, into the design and construction of the proposed residence.
2. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator that shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
 - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

- f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
3. All exterior building materials and finishes shall match those specified in the coastal development permit application. Windows shall be made of non-reflective glass. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
4. All existing trees within the construction area which screen the proposed residence from the south turnout and from the beach shall be protected during the construction phase with construction fencing. All screening trees shall be retained. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.
5. Prior to the issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a final landscape plan based on the preliminary landscape plan in Exhibit B of this report. Specifications shall be included to indicate species, size, and establishment techniques, (e.g. irrigation, fertilization, etc). All required landscaping shall be established prior to the final inspection of the dwelling, or occupancy, whichever occurs first and shall be maintained in perpetuity.
6. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall not glare beyond the project site.
7. Prior to issuance of the building permit the applicant shall submit, for the review and approval of the Division of Environmental Health, a revised septic system design prepared by a County approved site consultant to address the delivery of waste water from the new house location to the existing leachfield.

C. PROJECT AND SITE DESCRIPTION.

The project site is on a blufftop parcel above Bowling Ball Beach, in an area along the Mendocino coastline designated as highly scenic. The site is located approximately three miles southeast of Point Arena, situated on the southwest side of Highway One, approximately one mile northwest of Schooner Gulch, and approximately 1,200 feet south of Ross Creek (see Exhibits 1 and 2).

The project site is a 17,136-square-foot parcel located within a mature Bishop pine forest with sparse understory. No environmentally sensitive habitat is known to exist on the property. The development site is situated on a coastal terrace at an elevation slightly in excess of 80 feet above sea level. Bordering the property on the east side, a lateral frontage road runs north-south between the parcel and Highway One. An existing two-story house neighbors the subject parcel to the north, and the immediate parcel to the south is undeveloped. Other two-story houses have been constructed within the subdivision to the north of the subject parcel.

Approval has been granted by the County to move an existing house 34 feet south away from the coastal bluff and an existing slide area. The permit includes authorization to remove and replace the existing septic tank with a new 1,200-gallon tank in a new location, and to construct a 1,248-square-foot structure composed of a 624-square-foot garage and 624-square-foot room addition overhead. The garage and overhead room addition is proposed to be attached to the residence with a bridge/hallway. The average height of the residence would be 24 feet above natural grade.

The existing residence as constructed in the early 1970's pre-dates the Coastal Act, and currently blocks views to the ocean from Highway One. Relocation of the existing house as approved would actually open up public views from Highway One to the ocean through a view corridor currently obstructed by the house. The existing house is not easily visible from the Ross Creek public trail to the north, or from the most commonly used portions of the public beach below. The relocation of the house and approved new construction is not likely to increase the visibility from these same public recreational trails and beach areas.

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.

All 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 or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding:

- (1) The Protection of Visual Resources;
- (2) Runoff and Bluff Retreat Hazards;

(3) Adequate Utilities; and

(4) Sufficiency of Information Provided.

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations regarding runoff and bluff retreat, a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP. As further discussed below, the Commission finds that with respect to the allegations regarding impacts on visual resources, the adequacy of utilities, and the sufficiency of the information presented in the permit application, the development as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

Allegations Raising Substantial Issue

a. Runoff and Bluff Retreat Hazards

The appellants contend that the project is inconsistent with the Mendocino County LCP because the approved development includes no analysis or development conditions addressing the subject development and its potential to increase and concentrate surface water runoff that might eventually lead to increased bluff erosion. The appellants also contend that the approved project is inconsistent with the LCP because the approved development does not fully account for bluff retreat hazards.

LCP Policies

LUP Section 3.4-9 states that:

"Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself."

Coastal Zoning Code Section 20.492 dealing with grading, erosion and runoff states in applicable part:

Section 20.492.005 Purpose and Applicability.

The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are required, specifically development projects within Development Limitations Combining Districts.

Section 20.492.010 Grading Standards.

(A) Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.

(B) Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.

Section 20.492.015 Erosion Standards

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

Section 20.492.025 Runoff Standards.

- (A) Water flows in excess of natural flows resulting from project development shall be mitigated.*
- (D) Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.*
- (E) Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes.*
- (G) Subsurface drainage devices shall be provided in areas having a high water table and to intercept seepage that would adversely affect slope stability, building foundations, or create undesirable wetness.*

Coastal Zoning Code Section 20.500 dealing with hazard areas states in applicable part:

Section 20.500.010 Purpose.

- (A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:*
 - (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
 - (2) Assure structural integrity and stability; and*
 - (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas...*

Section 20.500.015 General Criteria

- (A) Determination of Hazard Areas.*
 - (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards*

Section 20.500.020 Geologic Hazards – Siting and Land Use Restrictions.

- (B) Bluffs.*
 - (1) New structures shall be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be set back from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

Setback (meters) = structure life (75 years) x retreat rate (meters/year)

Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.

(3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.

Coastal Zoning Code Section 20.532.070 dealing with evaluation and supplemental application information for geological hazards states in applicable part:

Section 20.532.070 (A)(3)(b)-Landsliding - All development plans shall undergo a preliminary evaluation of landsliding potential.

Discussion:

The appellants raise a concern about runoff and bluff retreat hazards resulting from the development as approved, and contend that the application accepted by the County did not provide sufficient information regarding erosion and runoff areas to enable the County to determine whether the development is consistent with the erosion and runoff provisions of Coastal Zoning Code Sections 20.492.005, 20.492.015 (A), and 20.492.025 (A) and (G). The appellants therefore contend that the approved project is inconsistent with the requirements of Coastal Zoning Code Sections 20.532.025(A) that the application shall include information in sufficient detail to determine if the development conforms with LCP standards.

The appellants further contend that, "no provisions are made for handling the concentrations of water created by this permit." The relocation of the house is necessitated by coastal bluff erosion that has progressed to within approximately 15 feet of the existing residence. The appellants assert that this cliff failure resulted for several reasons. "The catastrophic cliff failure mentioned above, in which a huge chunk (maybe up to thousands of cubic yards) of the front yard slipped into the Pacific Ocean all at once, was caused by several factors: 1) soft cliffs which could not carry a full load of runoff because of their geological angle of repose and bedrock quality, 2) roof runoff concentrating water in the areas outside of the foundations, 3) removal of trees which previously had transpired some of the water from the ground and the roots of which maybe helped hold the cliffs together, and 4) leach field runoff adding to the load of water carried by the cliffs. By increasing the size of the house and removing more trees, adding more leachate with the new bathroom, and adding more roof runoff, these added flows will permeate the cliffs and the problem of catastrophic cliff subsidence will be exacerbated. Moving and enlarging this house will not cause the problem of cliff subsidence to go away. Indeed it will accelerate cliff retreat. ...No grading or drainage notes were included with the plans submitted. The change in house location and the addition of an additional roof and driveway will change the drainage patterns on the lot. Drainage may be directed over the lip of the cliffs onto the beach."

The proposed development entails moving an approximately 700-square-foot residence, the construction of a 624-square-foot detached garage with a mechanical room above,

and the construction of an approximately, 650-square-foot driveway. A total of over 1,900-square feet of impervious surface area would result from the approved project, a net increase over the existing of approximately 1,000 square feet. Development of the subject residential project could result in surface runoff being concentrated and directed toward the bluff edge, that could eventually lead to increased bluff erosion or the instability of the bluff itself if not mitigated.

LUP Policy 3.4-9 requires that *"Any new development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself."*

In addition, Coastal Zoning Code Section 20.492.005 states in applicable part that *"The approving authority shall review all permit applications for coastal developments to determine the extent of project related impacts due to grading, erosion and runoff. The approving authority shall determine the extent to which the following standards should apply to specific projects, and the extent to which additional studies and/or mitigation are required, specifically development projects within Development Limitations Combining Districts."*

In the County's staff report, within the Hazards section of the Local Coastal Program Consistency Review, it is noted that *"The Development Limitation (DL) combining district overlay was assigned to parcels, which according to available data, have serious constraints that may prevent or seriously limit development. The parcels along Bowling Ball Beach, including the subject parcel, were given the DL designation due to narrow parcel width and a steep and fragile bluff face."*

Consistent with LUP Policy 3.4-9 and Coastal Zoning Code Section 20.492.005, the approving authority must determine the extent of project related impacts due to erosion and runoff, and to determine the extent to which erosion standards and runoff standards should apply to this project. In addition, under the same LCP provisions, the approving authority must determine the extent to which additional studies and/or mitigation are required, specifically development projects within property subject to Development Limitations Combining Zone Districts such as this proposed project. In the absence of this analysis and determination, a substantial issue is raised.

In its findings for approval, the County references the requirements of LUP Policy 3.4-9 that new development not contribute to the erosion of the bluff face or to the instability of the bluff itself. The County states that "BACE Geotechnical performed a Geotechnical Survey on June 28, 1999..." and the County stipulated that "Special Condition #1 is included to ensure that all the recommendations of the BACE report are followed."

A review of the June 28, 1999 material submitted by BACE regarding the subject property indicates that the "Geotechnical Survey" is actually a letter stating that "The purpose of our services was to evaluate the suitability of the new septic tank location,

from a bluff stability standpoint, and provide recommendations for abandonment of the existing septic tank." (See Exhibit 6.) It is not a "geotechnical survey", or as BACE refers to the typical report they produce to evaluate site geology and nearby ocean bluff stability relating to bluff retreat rates and geologic suitability of client sites, an "Engineering Geologic Reconnaissance." The scope of the letter is limited and is not a full evaluation of the geologic stability of the property in regard to the proposed residential development project. It appears the letter was written prior to the applicant's decision to seek authorization to move the residence.

Within the body of the letter, BACE does include the following several paragraph discussion of bluff erosion and setback criteria and a suggestion that BACE could provide specific drainage recommendations. However no such drainage recommendations are provided in the letter itself:

Bluff Erosion and Setback Criteria

The active erosion area is within an indentation of the bluff where concentrated subsurface seepage has been exiting the bluff face, taking with it the upper terrace soils and deeply weathered bedrock materials. The accumulated debris at the bluff toe is periodically removed during high tides and storms. Based upon our recent and previous site observations, including studies of aerial photographs dated 1964 and 1981, enlarged to a scale of one inch equals 300 and 200 feet, respectively, and file photographs dating back to 1977, we estimate the average bluff retreat rate in the property vicinity is on the order of 1-1/3 inches per year. The active erosion area has a higher average rate of approximately five inches per year. This rate would have resulted in an erosion of about 12 feet of the bluff in this local area over the last 28 years since the house was built; which appears roughly accurate.

Based upon continuation of this erosion rate, the bluff should erode back an additional 20 feet, approximately, over the next 47 years, the remainder of the 75-year economic lifespan of the house (as considered by the Coastal Commission). Therefore, the 21-foot distance between the septic tank and the bluff edge shown on the Rittiman site plan is geotechnically acceptable.

It should be noted that the residence is about 15 feet from the bluff edge and, therefore, could become undermined by erosion in substantially less than 47 years (since erosion rates are averages, amounts of erosion may vary from year to year, depending upon amount of rainfall, storm intensities, tide levels during storms, rainfall totals during and prior to storms, etc.). Furthermore, we typically would apply a factor of safety of two or three to the bluff setback for a house. Therefore, we suggest that you consider moving the house and the leach field, if possible, as far back as possible within the confines of your property. A variance from the

private road setback at the northeast end of the property would also be desirable, if appropriate.

Since Public Health codes prohibit subsurface drains within 50 feet downslope of a leach field, moving the leach field as far back as possible may allow drainage improvements that could slow the active erosion rate. Specific drainage recommendations could be provided by BACE if the leach field can be moved back sufficiently (emphasis added).

The development as approved by the County does not identify any stormwater collection and conveyance system designed to attenuate any excess stormwater that could be generated from the new impervious surfaces that will be created by the development.

No study was performed, and no drainage recommendations were provided to mitigate the acknowledged "active erosion...where concentrated subsurface seepage has been exiting the bluff face..."

Furthermore, the findings of approval do not discuss consistency of the project with the runoff control policies and standards of the LCP.

Moreover, without drainage controls there is no assurance that the project as approved will be constructed in a manner that will keep drainage from the development from flowing over the bluff edge and contributing to erosion of the bluff. Similarly, without requisite runoff management practices included, or required to be included within the project's design, there is the potential that site grading would significantly disrupt natural drainage patterns, significantly increase volumes of surface runoff, or that construction landward of the setback would contribute to erosion of the bluff face or to instability of the bluff. Therefore, the project as approved raises a substantial issue of conformance with the requirements of LUP Policy 3.4-9 and Coastal Zoning Ordinance Sections 20.492.010(A) and 20.500.020(B)(3) that: (1) the development be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to instability of the bluff itself; (2) site grading would not significantly disrupt natural drainage patterns or significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff; and (3) construction landward of the setback would not contribute to erosion of the bluff face or to instability of the bluff.

The appellants contend that the application submitted did not provide sufficient geotechnical information to enable the County to determine whether the development is consistent with the bluff setback requirements of the certified LCP policies concerning geologic hazards.

The appellants assert that the geotechnical report is incomplete because it "fails to analyze and provide for the rise of the seas due to global warming." The appellants assert

that the setback formula is improperly applied to "...this overhanging and undercut part of the cliff. A reasonable future calculated angle of repose for the cliff face should be established, and then projected onto the surface of the flats above the cliff in order to establish the present effective cliff edge."

As noted above, the geotechnical information prepared for the project consists of a letter prepared for the specific purpose of evaluating moving an existing septic tank threatened by bluff erosion. The letter was written before the applicant applied for the permit and requested authorization from the County to not only move the septic tank, but move the house and build a new garage/guest house addition as well. Although the letter does provide some information on bluff retreat rate, the letter does not address such factors critical for determining the safety of proposed blufftop structures such as drainage, building foundations, and grading recommendations. The local approval requires that the development be performed in accordance with the recommendations of the geotechnical report, but the geotechnical letter submitted does not fully address the geologic hazard issues raised by the development. Therefore, the application submitted did not provide sufficient geotechnical information to enable the County to determine whether the development is consistent with the bluff setback requirements of the certified LCP policies concerning geologic hazards. The County's findings of approval do not address how in the absence of geotechnical recommendations or permit conditions dealing with drainage, building foundations, and grading, the approved project is consistent with the geologic hazard policies of the LCP which require that development minimize risk to life and property in areas of high geologic hazards and neither create nor contribute significantly to erosion and geologic instability. Therefore, the approved project raises a substantial issue of conformance of the local approval with the requirements of Coastal Zoning Code Section 20.500 that new structures shall be setback a sufficient distance from the edge of bluffs to ensure their safety from bluff retreat during their economic life spans and that new development minimize risks to life and property in areas of high geologic hazard and neither create nor contribute significantly to erosion and geologic instability.

Without any drainage, foundation, or grading requirements having been proposed or required by the County and without any findings discussing the project's consistency with LUP Policy 3.4-9 and Coastal Zoning Code Sections 20.492 and 20.500 there is 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. In addition, given the project's location adjoining Bowling Ball Beach, a recreational resource frequently used by the public, and the hazards that exacerbated bluff retreat would create for members of the public using that beach, the coastal resources affected by the County's decision are significant. Thus the Commission finds that the project as approved by the county raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding geologic hazards and drainage.

Allegations Raising No Substantial Issue

As discussed below, the Commission finds that with respect to the allegations regarding impacts on visual resources, the adequacy of utilities, and the sufficiency of the information presented in the permit application the development as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

b. Visual Resources

The project would be conducted on property within a highly scenic area designation, where development must be subordinate to the character of its setting. The appellants contend that the approved project raises a substantial issue regarding conformance with requirements of Mendocino County LUP policies relating to the protection of visual resources. The appellants cite Coastal Zoning Code Section 20.544.020 (C)(2) and (E)(4) as reasons for the appeal: "*Reason for the appeal is in CAC [sic] Chapter 20.544 et seq. Especially 20.544.015[sic] (C)(2) 'The development fails to protect public views from any public road or from a recreational area in [sic] and along the coast'....*" Specifically, the appellants assert that the project is inconsistent with LCP Policy 3.5 et seq., especially Policy 3.5-3 and Policy 3.5-4; and Coastal Zoning Ordinance Sections 20.504.010 (C)(3); 20.504-015 (C)(2), (C)(3), and (C)(10); 20.504.020 (D); 20.504.025 (A); 20.504.035; and 20.544.020 (C)(2), and (E)(4).

The appellants refer to Coastal Zoning Code Section 20.504.035 and contends that a substantial issue results from inconsistency with the regulation and "...bright points of light shining through windows at night." The appellants contend that "any interior lighting which goes beyond the site becomes de-facto exterior lighting and must also be downcast and shielded and required not to shine brightly on the public areas of the beach."

The appellants contend that the landscaping plan "calls for the installation of 'Bishop pines' on the property for screening. Bishop pines are dying on the coast with Pitch Canker disease. This is short-sighted 'plan' if it is to achieve the goals of the Code. The pines will certainly die, and they will never accomplish the screening needed." Also, the appellants contend that "Sufficient permanent vegetation will not remain to effectively block the views to the house from both the beach (especially when people walk far out on the marine terrace at low tide), and from Highway One from the south, and from Highway One immediately adjacent to the development."

The appellants assert that the proposed project as approved is not in conformance with Coastal Zoning Code 20.504.015 et seq. because "*The approved color of the stone facing for the house is too light in tone. It is not a 'dark earthtone'.*"

The appellants contend that the development as approved will "intrude on the landscape from the Highway because of its excessive height and bulk (and the fact that so many trees will be removed from the lot as well)."

LCP Policies:

Policy 3.5-1 states in applicable part, *"The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a protected resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, 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."*

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 Area and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1. In addition to other visual policy requirements, new development west of Highway One in designated 'highly scenic areas' is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within 'highly scenic areas' will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies."

Policy 3.5-4 states in applicable part, *"...(5) promote roof angles and exterior finish which blend with hillside."*

Policy 3.5-5 states in applicable part, *"...Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged..."*

Policy 3.5-15 states in applicable part, *"In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible."*

Coastal Zoning Ordinance Section 20.504.010 relates to the purpose of the Visual Resource section, and states in applicable part, *"The purpose of this section is to insure that 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."*

Coastal Zoning Ordinance Section 20.504.015 states in applicable part, *"(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting...(C1) 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... (C2) 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...(C3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings... (C10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas."*

Coastal Zoning Ordinance Section 20.504.020 states in applicable part, *"(C2) New development shall be sited such that public coastal views are protected... (D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting."*

Coastal Zoning Ordinance Section 20.504.035 states, *"(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone. (1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser. (2) Where possible, all lights, whether installed for security, safety or landscape design purposes,*

shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed. (3) Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas. (4) Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit. (5) No lights shall be installed so that they distract motorists."

Discussion:

The appellants present an overall assertion that the project as approved is not subordinate to the character of its setting. As discussed above, the appellants make specific allegations of inconsistency with the visual resource policies with regard to 1) exterior lighting, 2) landscaping, 3) color of building materials, 4) height and visual bulk, and 5) visual blight.

The contentions regarding the protection of visual resources do not raise a substantial issue of conformance with the visual resource policies of the LCP. Because of the forested nature of the parcel, the location of the proposed structure would not block a significant view to the ocean from Highway One or any other public vantage point, including the Ross Creek and Whiskey Shoals public access trails, Bowling Ball Beach, Schooner Beach and its publicly accessed headlands, and the open ocean. Currently, the existing house blocks views from Highway One to the ocean. The project as approved would move the house 34 feet back from the coastal bluff edge and south to a position within the trees where it would not block views from Highway One to the ocean. The approved project would actually improve visual resource values by opening up a view corridor through the space previously occupied by the house.

The County's approval includes a provision to protect the public's visual resources by requiring that all screening trees be retained, and that any screening trees that die be replaced. This provision is embodied in Special Condition 4, which states that, "*All existing trees within the construction area which screen the proposed residence from the south turnout and from the beach shall be protected during the construction phase with construction fencing. All screening trees shall be retained. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.*" In addition, Special Condition 5 of the approved project requires that prior to issuance of the permit, the applicant submit for review and approval a final landscape plan that indicates species, size, and establishment techniques including irrigation and fertilization. The County further requires that all landscaping be established prior to the final inspection.

The four existing residences in the same subdivision are all two stories in height. Because the new location of the proposed development will not block a significant view to the ocean from Highway One, and the two story structure is not out of character with other structures in the same subdivision, no substantial issue is raised that the approved

two story height of 24 feet complies with the Local Coastal Plan policies and ordinances relating to height limitations.

The colors of the approved roofing material is dark brown and the approved trim color for the new structure is natural cedar. The approved lighter colored stone facing is a mottled, textured stone that is not highly reflective and would blend with the dappled forest background. Therefore, the approved project raises no substantial issue that the building material colors will blend in brightness and hue with the development's surroundings, as required by Coastal Zoning Code Section 20.504.015(C)(3)

The approved permit includes a condition requiring that all exterior lighting be shielded and have a directional cast downward. The existing trees and new landscaping would likely block or partially block beams of light coming from the interior of the development and no evidence is provided that the light that would shine from the interior fixtures of the house as approved would adversely affect visual resources.

For all of the above reasons, the approved project does not raise a substantial issue of conformance with the visual resource policies of the LCP. The Commission need not do an exhaustive analysis of why these contentions do not raise a substantial issue because whether or not these contentions raise a substantial issue, the result would not affect the Commission's determination that the ground for appeal raised with regard to drainage and bluff retreat hazards raises a substantial issue of conformance of the project as approved with the certified LCP.

c. Adequate Utilities

The appellants cite the County's LCP policies and standards requiring demonstration of adequate sewage disposal capacity, and contend that "Insufficient details about the septic system have been submitted with the application to ensure that it will fulfill the requirements of the code." The appellants contend that the approved project is inconsistent with LUP Policy 3.8-1, and 3.9-1, and Zoning Code 20.532.095 (2) because septic capacity was not adequately considered and provided for at the time of the approval.

LCP Policies

LUP Policy 3.8-1 states in applicable part,

"Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits..."

LUP Policy 3.9-1 states in applicable part,

"...One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit."

Coastal Zoning Code Section 20.532.095 states in applicable part,

"The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that: ...(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities..."

Discussion:

The LCP policies cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve proposed development is available *before* approving a coastal development permit. Policy 3.9-1 states that one housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that the determination of service capacity shall be made *prior* to the issuance of a coastal development permit. Coastal Zoning Ordinance Section 20.532.095 states that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

The existing house is served by an onsite septic system. Moving the house as approved would not increase the demands on the septic system. However, depending on the floor plan and design, the proposed new garage with the guest room above could increase the demands on the septic system by accommodating more use of the home.

As discussed in the County's findings for approval, the Mendocino County Division of Environmental Health reviewed the adequacy of the existing septic system to accommodate the approved project. The Division prepared a letter indicating that with certain modifications to the system, the existing septic system would be sufficient to accommodate the approved development (see Exhibit 7). The letter states:

"The latest revisions to the garage removed the requirement to expand this septic system. However, the change in location of the house, from the location specified in the septic permit #1447F, leaves the possibility that the new delivery system may have to incorporate a pump in the septic tank. While DEH [Division of Environmental Health] can now issue a clearance to the CDP [coastal development permit], DEH will not clear a building permit application until a

County Approved Site Consultant deals with potential problem of delivering the waste water from the new house location to the existing leach field."

To ensure that the requirements of DEH have been met prior to issuance of the building permit, the Coastal Permit Administrator imposed a special condition requiring that the applicant submit for the review and approval of DEH, a revised septic system design prepared by a County approved site consultant to address the delivery of waste water from the new house location to the existing leachfield.

Thus, the County did consider whether an adequate on-site sewage disposal system would be available to serve proposed development before approving the coastal development permit. The fact that the final septic system design to address the need for a pump system to deliver wastewater from the septic tank to the leach field was not submitted at the time of approval of the coastal development permit but rather was required to be submitted prior to issuance of the building permit does not mean that a suitable on-site septic system is not available. To the contrary, DEH has specifically found that there is no need to expand the septic system. There is no indication that DEH believes the possible need for a pump makes it infeasible to modify the existing septic system to accommodate the approved project. Rather, the need for a pump is a design detail that simply needs to be addressed in revised plans prior to issuance of the building permit.

As a determination that adequate on-site septic capacity exists to accommodate the approved development was based on a review of the system by the County agency with the primary responsibility for evaluating the adequacy of on-site septic systems, the Mendocino County Division of Environmental Health, there is a relatively high degree of factual support for the County's decision that the development is consistent with the septic capacity policies of the certified LCP. Therefore, the Commission finds that the local approval does not raise a substantial issue of conformance with the provisions of the certified LCP for ensuring that new development will be served with adequate sewage facilities, including LUP Policies 3.8-1 and 3.9-1, and Coastal Zoning Ordinance Section 20.532.095.

d. Sufficiency of Information

The appellants contend that with respect to other issues besides drainage and bluff retreat hazards and septic capacity (discussed separately above), the County accepted an incomplete application for filing, and that complete details were not provided for items dealing with landscaping, colors, and lighting. "Mendocino County has established a procedural habit of approving Coastal Development Permits which are incomplete at the time of filing." The appellants assert the local approval was inconsistent with Coastal Zoning Code Sections 20.532.025 (A), and 20.536.010.

LCP Policies

Coastal Zoning Code Section 20.532.025 (A) states that the application shall include the following information: *"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."*

Coastal Zoning Code Section 20.536.010 in applicable part relating to the requirement for conducting a public hearing states that *"The approving authority shall hold at least one public hearing on each coastal development application for an appealable development or for a non-appealable development which requires a public hearing pursuant to other provisions of this Division. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing. The hearing shall occur no earlier than ten (10) calendar days following the mailing of the notice required in Subsection (C) below."*

Discussion:

It should be noted that none of these procedural contentions allege an inconsistency of the approved project with the certified LCP. That is, rather than challenging the project as approved, the appellants challenge the process leading up to the County's approval. Although the below analysis addresses these procedural complaints, the Commission also finds that these procedural complaints fail to allege an inconsistency of the approved project with the certified LCP.

The appellants contend that the application is deficient in necessary detail in regard to several aspects of the development. The alleged deficiencies include the lack of certain landscaping details, and a failure to present color samples in an appropriate format for public review.

The Coastal Zoning Code Sections cited above require that *"sufficient detail"* be provided by the applicant in order for the County to determine if the project complies with the Coastal Zoning Ordinance and that a public hearing be conducted *"to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing."* It should be noted, however, that there is no requirement in the LCP policies and ordinances for exhaustive or "complete detail," but only that information be provided *"sufficient"* to determine compliance with the requirements of the regulations.

Detailed information concerning landscaping and building material colors was available to the Coastal Permit Administrator and the public to determine compliance with the

visual resource policies of the certified LCP. Therefore, the approved project raises no substantial issue of conformance with the application filing requirements of Coastal Zoning Code Section 20.532.025(A).

Also, it should be noted that the requirement for a public hearing does not state that the public hearing must be held at a time and location convenient for all parties, but only that the public has an "*opportunity to appear and present their viewpoints either orally or in writing.*" A public hearing concerning this project was held on October 25, 2001, in the Department of Planning and Building Services conference room located at 790 South Franklin Street, Fort Bragg. The appellants attended the public hearing, and submitted written comments, and therefore had the opportunity to present their viewpoints both orally and in writing. Therefore, the project as approved raises no substantial issue of conformity with the public comment policies of Coastal Zoning Code Section 20.536.010.

In any event, the Commission need not do an exhaustive analysis of why these contentions do not raise a substantial issue because whether or not these contentions raise a substantial issue, the result would not affect the Commission's determination that the ground for appeal raised with regard to drainage and bluff retreat hazards raises a substantial issue of conformance of the project as approved with the certified LCP.

Conclusion

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to contentions raised concerning drainage and bluff retreat hazards.

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.

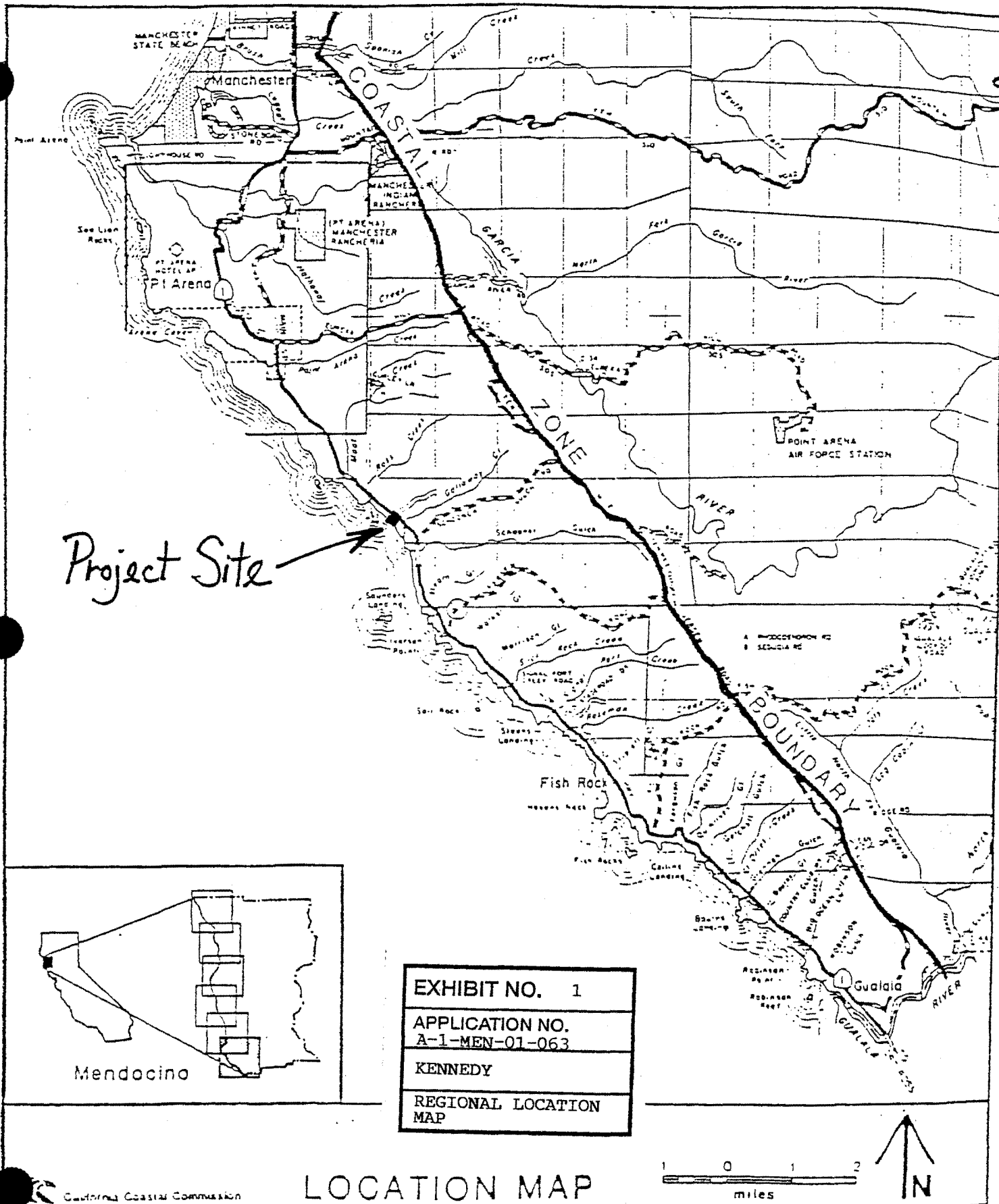
Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent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

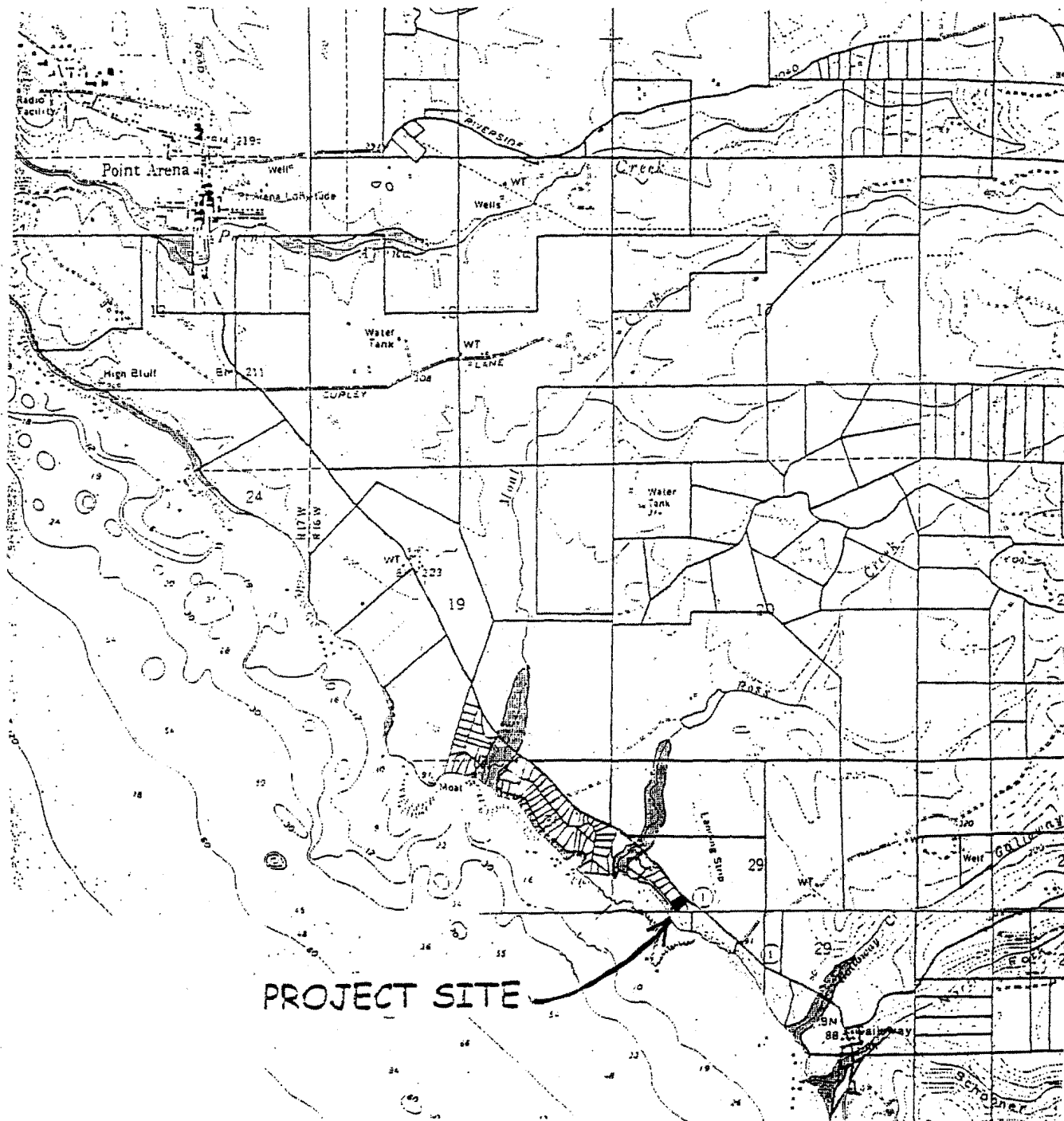
Coastal Zoning Ordinance Section 17.82.010 instructs that a coastal permit shall assure that a project site is suitable and adequate for the proposed use. Given the above findings, *de novo* analysis of the coastal development permit application by the Commission would involve consideration of geologic hazard issues and associated policies and standards of the certified LCP. As discussed previously, a complete geotechnical investigation that evaluates the entire project has not been performed. The geotechnical information that was provided in the local record establishes bluff retreat rates and makes certain recommendations with regard to moving the existing septic tank on the site. Additional information is needed in the form of an analysis and recommendations on the siting and design of the house to be relocated and the new garage/guest house structure. Specific recommendations should address at least building foundations, grading, and drainage and runoff controls. With regard to drainage and runoff controls, a description of the site-specific erosion and runoff control methods proposed for building construction and on-going stormwater management needs to be submitted. This information would identify the best management practices (BMPs) to be employed at site-specific locations on the parcel. The description and analysis should include a description of the BMPs to be employed during construction at the site, provide hydrological calculations as to the sizing of the facilities, and illustrate the location of drainage facilities.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency of the project with the geologic hazard and drainage policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Project Plans
4. Notice of Final Action
5. Appeal
6. Geotechnical Opinion
7. Septic Clearance
8. General Correspondence





PROJECT SITE



EXHIBIT A

EXHIBIT NO. 2
APPLICATION NO. A-1-MEN-01-063
KENNEDY
VICINITY MAP

LOCATION MAP

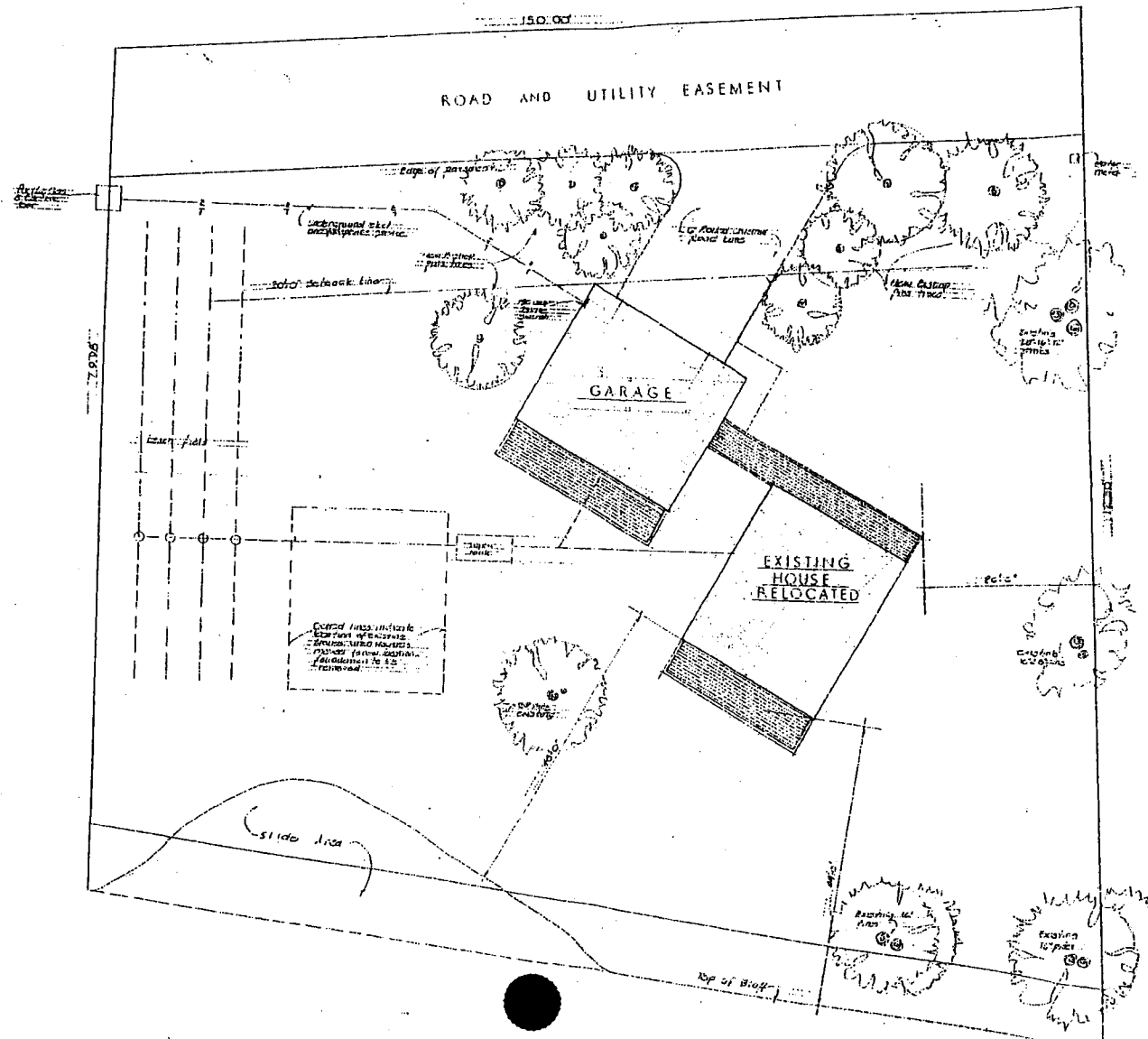
EXHIBIT NO. 3

APPLICATION NO.
A-1-MEN-01-063

KENNEDY

PROJECT PLAN
(1 of 3)

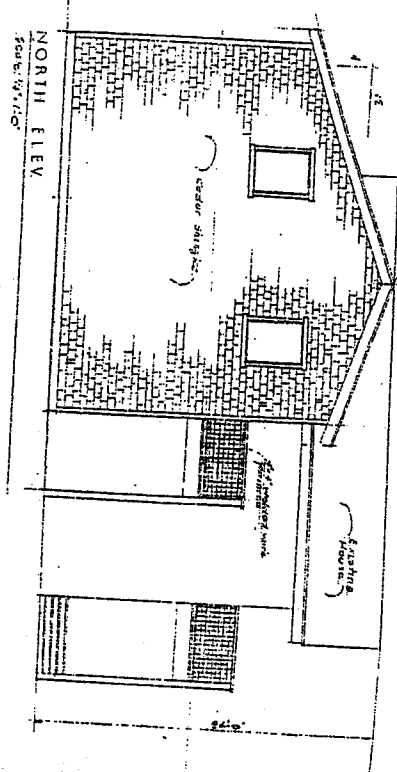
STATE HWY ONE



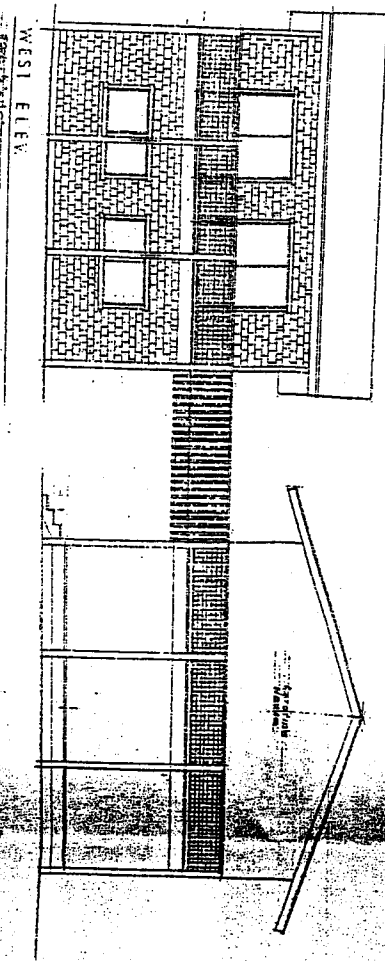
SITE PLAN

HOUSE RELOCATION AND NEW GARAGE
MR. HERBERT KENNEDY
2770 S. I. POINTE AVENUE, CA
RICHARD H. PERKINS

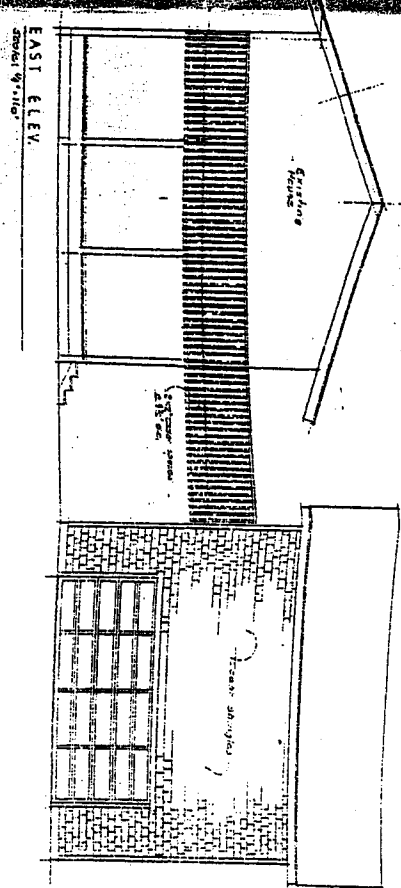
NORTH ELEV
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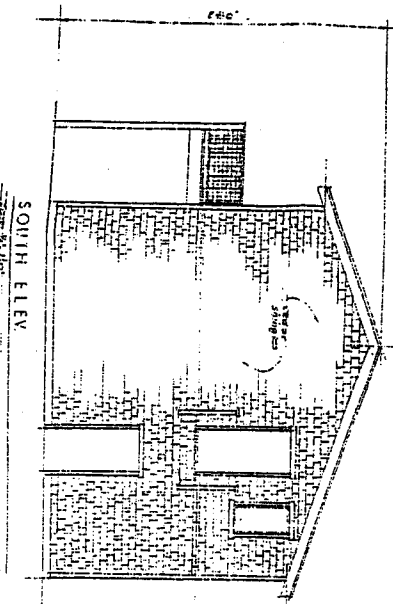
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EAST ELEV
Scale: 1/4" = 1'-0"

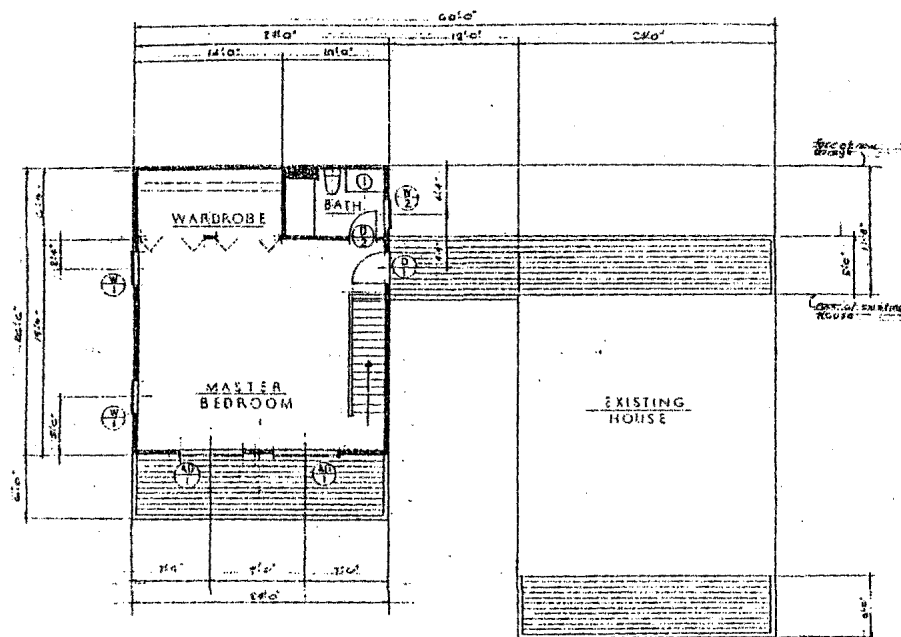


SOUTH ELEV
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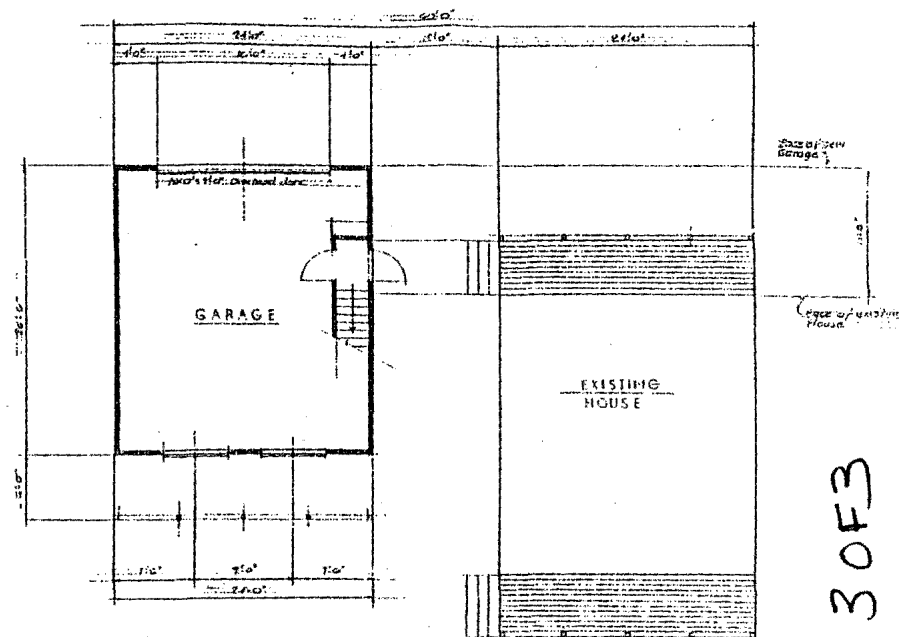


20F3

HOUSE RELOCATION AND NEW GARAGE
FOR
MR. & MRS. HERBERT KENNEDY
27700 S. HWY. 1, RICHMOND, CA
RICHARD H. PERKINS
ARCHITECT
GUALALACA, CALIF. 94041



UPPER FLOOR PLAN



LOWER FLOOR PLAN

30F3



RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

CALIFORNIA
COASTAL COMMISSION

TELEPHONE
(707) 964-5379

November 5, 2001

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 #87-00
OWNER: Herb Kennedy
AGENT: Richard Perkins
REQUEST: Move existing dwelling 34' south away from an existing slide area; remove existing septic tank and relocate; replace with a new 1,200-gallon tank; construct a 624 square foot garage with a 624 square foot addition above (1,248 square feet total).
LOCATION: W side of Highway One approximately 1,200 feet S of Ross Creek at 27700 S. Highway One (APN 027-421-11).
PROJECT COORDINATOR: Doug Zanini

HEARING DATE: October 25, 2001

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. 4
APPLICATION NO. A-1-MEN-01-063
KENNEDY
NOTICE OF FINAL ACTION (1 of 14)

1-MEN-DI-148

OWNER:

Herb Kennedy
7080 Saconi Drive
Oakland, CA 94611

AGENT:

Richard Perkins
46351 Gypsy Flat Road
Gualala, CA 95445

RECEIVED
OCT 17 2001

REQUEST: CALIFORNIA
COASTAL COMMISSION

On a blufftop parcel, move existing dwelling 34' southward, away from an existing slide area; remove existing septic tank and relocate and replace with a new 1,200 gallon tank; construction of a 624 square foot garage with a 624 square foot gameroom addition above (1,248 square feet total).

LOCATION:

On the west side of Highway One approximately 1,200 feet south of Ross Creek at 27700 South Highway One (APN: 27-421-11).

APPEALABLE AREA:

Yes (blufftop lot)

PERMIT TYPE:

Standard

TOTAL ACREAGE:

17,136 square feet

ZONING:

RR:L-5 DL

GENERAL PLAN:

RR-5 DL

EXISTING USES:

Residential

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 1 and Class 3

OTHER RELATED APPLICATIONS: Septic permit #1447F

PROJECT DESCRIPTION: The applicant proposes to move the existing dwelling 34' southward, away from an existing landslide area. In addition, the applicant proposes to remove the existing septic tank, relocate it away from the bluff, and replace it with a new 1,200-gallon tank. The project also includes the construction of a 624 square foot garage with a 624 square foot addition above (1,248 square feet total). The garage/gameroom addition is proposed to be attached to the residence via a bridge/hallway.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below. A ☒ indicates that the statement regarding policy consistency applies to the proposed project.

Land Use

- ☒ The residence/garage is compatible with the zoning district and is designated as a principal permitted use and a permitted accessory use.

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The project is located in a designated highly scenic area. The proposed residence is 24 feet tall as measured from average grade. Per policy 3.5-3 of the Coastal Element and Section 20.504.015 of the Coastal Zoning Code, the maximum allowable building height in this location is 18 feet (average) above natural grade (and one-story) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. If those two criteria can be met, the building height can be raised to a maximum of 28 feet.

The four residences in the same neighborhood are all two-stories in height and a fifth (Williamson) has been approved at 23.85 feet and two-stories. Currently, the Kennedy residence is visible from the Highway and blocks views to the ocean. The implementation of this project should not substantially block additional ocean views. Furthermore, the relocation of the residence should reduce its visibility as seen from the beach and the Caltrans turnout to the south. Therefore, based on the visual analysis below, the proposed building height complies with the Local Coastal Plan policies and ordinances relating to height limitations.

Per Section 20.376.045 of the Coastal Zoning Code, the minimum building setback from property lines is 20 feet in the front and 6 feet on the sides. The proposed buildings are located a minimum of 20 feet from the closest property line; therefore, the proposed project meets the required setbacks.

- ☒ The site is located across Highway One from parcels designated Rangeland (RL). The proposed dwelling would be located more than 200 feet from the boundaries of said parcels.

Public Access

The project is on a blufftop parcel. The property is situated approximately 1,200 feet south of the Ross Creek shoreline access and approximately 3/4 mile north of the existing shoreline access at Schooner Gulch/Bowling Ball Beach.

Proposed lateral coastal access is identified on the County's Land Use Map on the beach west of this parcel. The Coastal Element indicates the intention of establishing a blufftop trail in this location as well. Establishing a contiguous trail along the blufftop in this location is problematic in that small parcels have been created in this area which would create conflicts with public access along the blufftop. Furthermore, a nexus cannot be established linking the project's impact on public access facilities to the benefits derived from the exaction of an access easement across the property. No prescriptive trails were identified as a result of staff's site visit. Therefore, no dedication for a public trail has been required for this application.

Hazards

- ☒ The project site is less than one acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process.

The Development Limitation (DL) combining district overlay was assigned to parcels, which according to available data, have serious constraints that may prevent or seriously limit development. The parcels along Bowling Ball Beach, including the subject parcel, were given the DL designation due to narrow parcel width and a steep and fragile bluff face.

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

"New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). New

development shall be setback from the edge of bluffs a distance determined from information derived from the required geological investigation..."

Policy 3.4-9 states:

"Any new development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself."

BACE Geotechnical performed a Geotechnical Survey on June 28, 1999. BACE states:

"... we estimate the average bluff retreat rate in the property vicinity is on the order of 1-1/3 inches per year. The active erosion area has a higher average rate of approximately five inches per year. This rate would have resulted in an erosion of about 12 feet of the bluff in this local area over the last 28 years since the house was built; which appears roughly accurate."

Based upon continuation of this erosion rate, the bluff should erode back an additional 20 feet, approximately, over the next 47 years, the remainder of the 75-year economic lifespan of the house (as considered by the California Coastal Commission). Therefore, the 21-foot distance between the septic tank and the bluff edge shown on the Rittiman site plan is geotechnically acceptable."

It should be noted that the residence is about 15 feet from the bluff edge and, therefore, could become undermined by erosion in substantially less than 47 years (since erosion rates are averages, amounts of erosion may vary from year to year, depending upon amount of rainfall, storm intensities, tide levels during storms, rainfall totals during and prior to storms, etc.). Furthermore, we typically would apply a factor of safety of two or three to the bluff setback for a house. Therefore, we suggest that you consider moving the house and the leach field, if possible as far back as possible within the confines of your property. A variance from the private road setback at the northeast end of the property would also be desirable, if appropriate."

The proposed residence has been set back 40 feet from the bluff. Therefore, the proposal meets the 75-year requirement. The Special Condition #1 is included to ensure that all the recommendations of the BACE report are followed.

The Coastal Commission and Mendocino County have been applying a deed restriction for blufftop parcels where the development is within 100 feet of the bluff prohibiting the construction of seawalls with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development that might fall onto a beach. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. Staff recommends including Special Condition #2 to address this issue.

Visual Resources

The proposed project lies within a designated "highly scenic" area and is subject to the visual resource policies within the Mendocino County Coastal Element and Chapter 20.504 of the County Zoning Code.

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

"The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed

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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."

Policy 3.5-3 states:

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

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

Colors/Materials: The materials/colors proposed for the exterior of the residence are:

Roof: Fiberglass shingles – dark brown
Siding: Natural cedar shingles
Trim: Natural cedar

The selected materials are dark earth tones and will help blend the structure into its environment. As viewed from Highway One, the dark colors with the backdrop of trees would reduce the potential visual impact of the project. Special Condition #3 ensures that the building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

The addition is proposed to be two stories and is 24 feet in height. The siting options on this parcel are limited because of the required setbacks and the geotechnical setback. All of the residences along the access road are two-stories in height. Therefore, this project is in character with surrounding structures.

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."

The backdrop of trees and the dark colors, in themselves, are not sufficient to make the structure "subordinate" to the setting. The applicant has proposed to plant nine Bishop pines between the Highway and the structures to bring the project into compliance with Policy 3.5-1 and 3.5-3 of the Coastal Element.

Special Condition #4 requires that the existing trees be protected during construction and in perpetuity. Special Condition #5 requires that a final landscape plan be submitted with specifications to include species, size, and establishment techniques. (e.g. irrigation, fertilization, etc.) from the newly proposed landscaping.

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

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

The applicant's agent has stated that all exterior lighting will be downcast and shielded. Special Condition #7 requires that the lighting fixtures be reviewed and approved by the Coastal Permit Administrator prior to issuance of the building permits for this project.

Natural Resources

The parcel to the east of the subject site is zoned as "Rangeland", which is afforded protection as an agricultural resource in the County Zoning Code. Section 20.508.015 (A) (1) states:

"No new dwellings in a residential area shall be located closer than two hundred (200) feet from an agriculturally designated parcel unless there is no other feasible building site on the parcel."

The subject residence is separated from the RL designated land by Highway 1 and the private road. The proposed residence would be elevated above the RL land. Therefore, it is not anticipated that there would be a conflict with the agricultural uses to the east. Also, there is no alternative building site within the parcel that would meet the requirement of the 200-foot setback; therefore, the proposed project is consistent with this requirement.

- ☒ There are no known rare or endangered plant or animal species located on or in close proximity to the project site.
- ☒ There are no environmentally sensitive habitat areas located within 100' of the proposed development.

Archaeological/Cultural Resources

- ☒ The project site is not located in an area where archaeological and/or cultural resources are likely to occur. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Groundwater Resources

- ☒ The proposed development would be served by an existing on-site water source and would not adversely affect groundwater resources.

The proposed development would be served by an upgraded septic system and would not adversely affect groundwater resources. The Division of Environmental Health states:

"The latest revision to the garage removes the requirement to expand this septic system. However, the change in location of the house, from the location specified in the septic permit #1447F, leaves the possibility that the new delivery system may have to incorporate a pump in the septic tank. While DEH can now issue a clearance to the CDP, DEH will not clear a building permit application until a County Approved Site Consultant deals with potential problem of delivering the waste water from the new house location to the existing leach field."

Special Condition #7 has been added to ensure that the requirements of the Division of Environmental Health have been met prior to issuance of the building permit.

Transportation/Circulation

- ☒ The project site is presently developed and the proposed project would not increase the intensity of use at the site. No impacts to Highway 1, local roads and circulation systems would occur.

Zoning Requirements

- ☒ The project complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

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

STANDARD CONDITIONS:

1. This action shall become final on the 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.

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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. The applicant shall incorporate all recommendations within the Geotechnical Investigation prepared by BACE Geotechnical dated June 28, 1999, into the design and construction of the proposed residence.

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2. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator that shall provide that:
 - a) The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
 - b) The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
 - c) The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d) The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e) The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;
 - f) The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
3. All exterior building materials and finishes shall match those specified in the coastal development permit application. Windows shall be made of non-reflective glass. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
4. All existing trees within the construction area which screen the proposed residence from the south turnout and from the beach shall be protected during the construction phase with construction fencing. All screening trees shall be retained. In the event that the screening trees die during the life of the project, they shall be replaced with similar species in the same location.
5. Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a final landscape plan based on the preliminary landscape plan in Exhibit B of this report. Specifications shall be included to indicate species, size, and establishment techniques. (e.g. irrigation, fertilization, etc.). All required landscaping shall be established prior to the final

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inspection of the dwelling, or occupancy, whichever occurs first and shall be maintained in perpetuity.

6. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall not allow glare beyond the project site.
7. Prior to issuance of the building permit the applicant shall submit, for the review and approval of the Division of Environmental Health, a revised septic system design prepared by a County approved site consultant to address the delivery of waste water from the new house location to the existing leachfield.

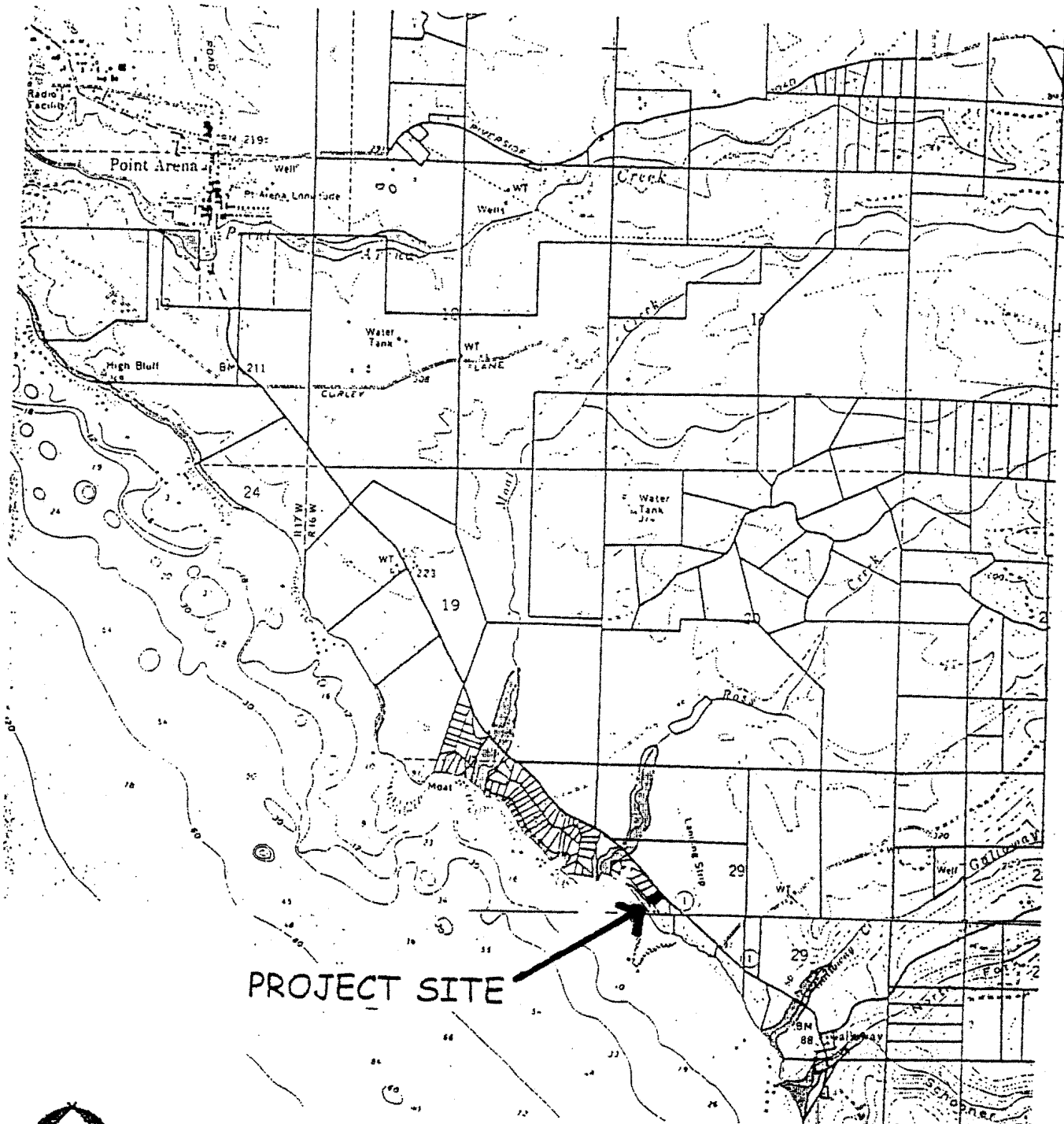
Staff Report Prepared By:

10/15/01
Date

Doug Zanini
Doug Zanini
Supervising Planner

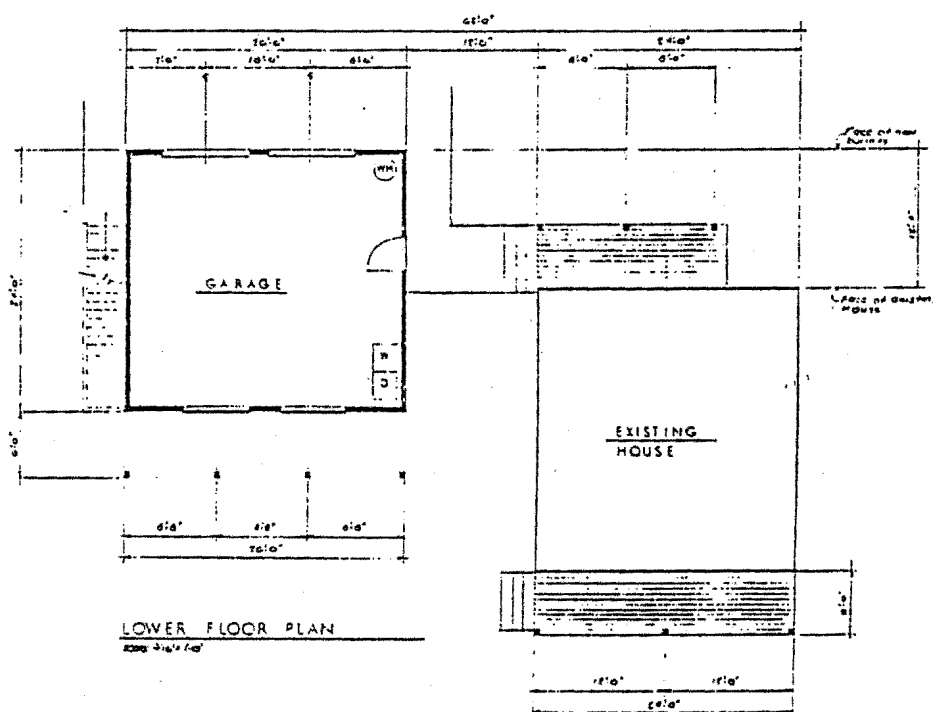
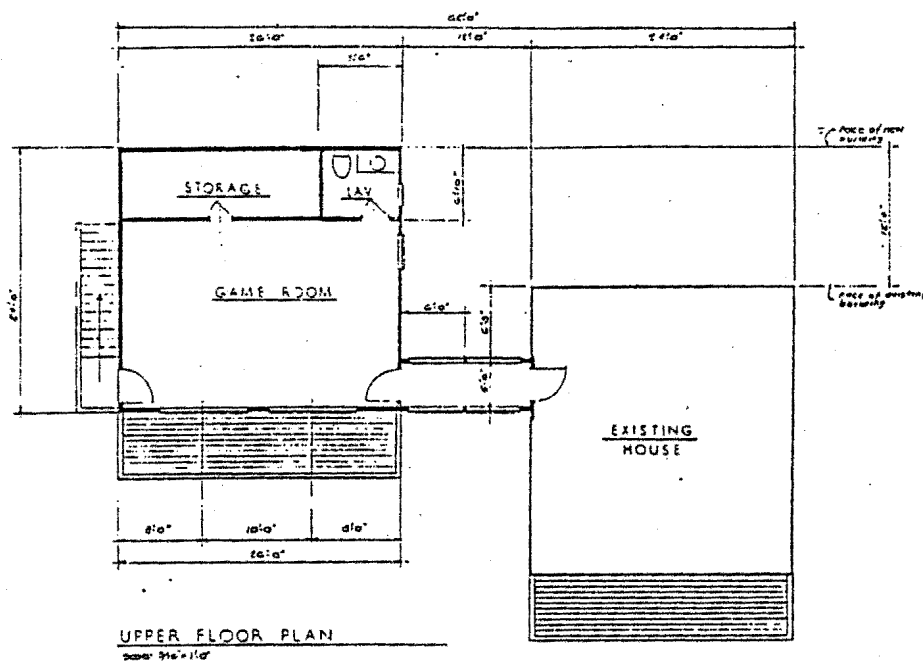
Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Floor Plans
Exhibit D: Elevations

Appeal Period: 10 days
Appeal Fee: \$555

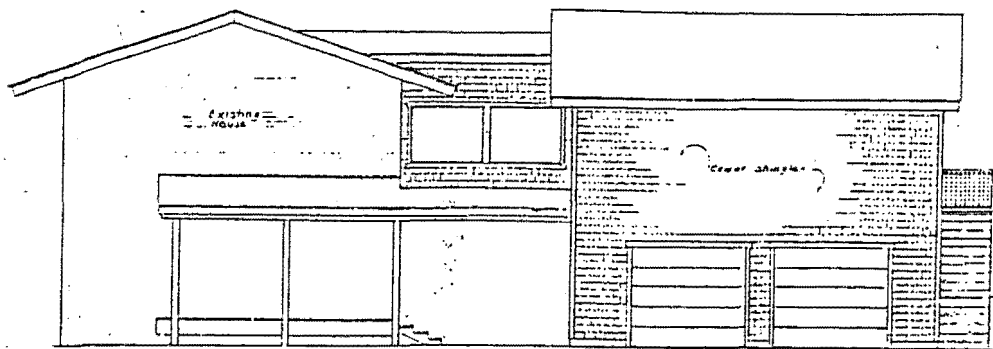


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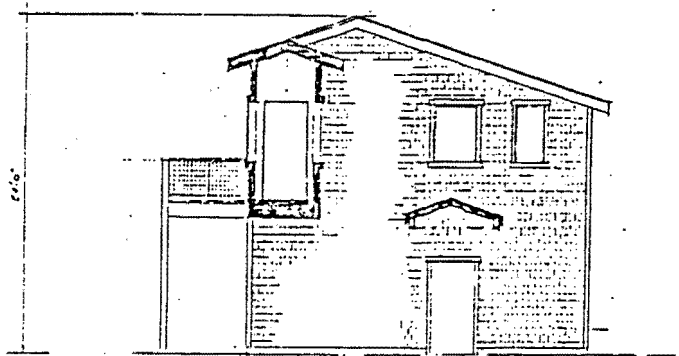




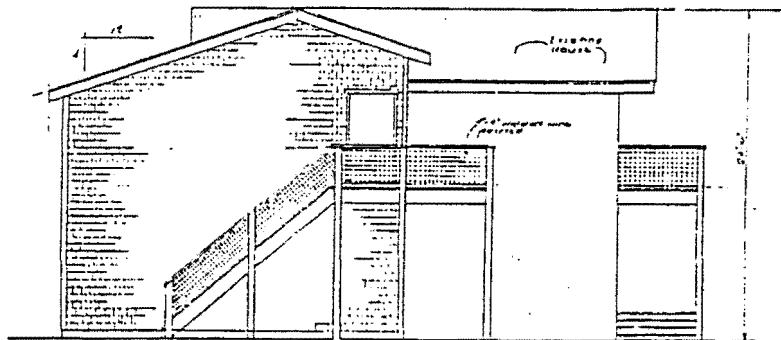
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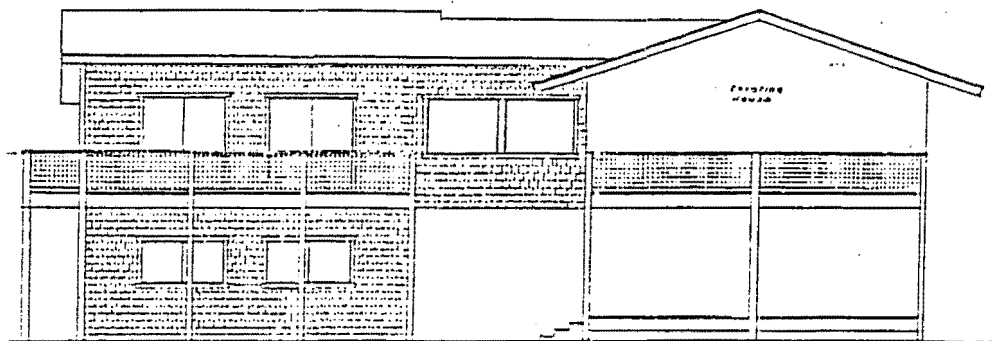
EAST ELEV.
Scale: 1/4" = 1'-0"



SOUTH ELEV.
Scale: 1/4" = 1'-0"



NORTH ELEV.
Scale: 1/4" = 1'-0"



WEST ELEV.
Scale: 1/4" = 1'-0"

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CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECEIVED
NOV 05 2001CALIFORNIA
APPEAL FROM COASTAL PERMIT COASTAL COMMISSION
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):

FRIENDS OF SCHOONER GULLCHBOX 4POINT ARENA CA 95468 (707) 882-2001

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: MENDOCINO CO.2. Brief description of development being
appealed: single family dwelling3. Development's location (street address, assessor's parcel
no., cross street, etc.): 27700 S. HWY ONE, AP 27-421-11
approx. 1200 feet south of ROSS CREEK.

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-DI-063DATE FILED: 11/9/01DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 5

APPLICATION NO.
A-1-MEN-01-063

KENNEDY

APPEAL (1 of 17)

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 herewith.

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
Merdo - Lake Group
Sierra Club
Box 340 Albion
CA 95445
- Roanne Withers
Box 198 Ft Bragg
CA 95437

Peter Remmiller

Signature of Appellant(s) or
Authorized Agent

Date November 2, 2001

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

Section VI. Agent Authorization

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

• Julie Verran
Box 382
Guadalupe, CA
95245

Friends of Sierran Gulch

Signature of Appellant(s)

Date Nov. 2, 2001

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Friends of Schooner Gulch

A Watershed Organization

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

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NOV 05 2001

CALIFORNIA
COASTAL COMMISSION

Executive Committee:

Lucie Marshall
Charles Peterson
Peter Reimuller

November 2, 2001

Mr. Randy Stemler
California Coastal Commission
Box 4908
710 "E" Street
Eureka, CA 95501

RE: Kennedy Appeal (Mendocino County CDP 87-00)

Dear Mr. Stemler:

This letter will explain the reasons for our appeal. Our organization was originally chartered over 20 years ago to protect the recreational values and especially the views of the "Schooner Gulch-Bowling Ball Beach-Saunders Reef Scenic View Corridor." The views across this bay are one of the premiere views available to tourists and locals on the entire South coast of Mendocino County.

These views are specifically recognized in the Local Coastal Plan, and the property in question is designated both a Highly Scenic Area [Zoning Code 20.504.010 et seq.] and a Special Treatment Area [20.504.020 et seq. and especially (D), and 20.504.025 (A)].

Incomplete Application

The Coastal Permit Administrator approved an application which was not complete. [20.532.025 et seq., and especially paragraph A.] Complete details were not presented on matters of landscaping, colors, lighting, septic, and other items. [20.532 et seq., and 20.532.035 et seq., and especially A, and 20.536.010 et seq.]

Three Special Conditions of Approval (numbers 5, 6, and 7) provide for future approvals by the Coastal Permit Administrator or the Division of Environmental Health regarding landscaping, lighting, and septic service. In these cases, the approvals were inadequate to achieve the

From the Coastal Ridge to the Pacific Ocean, since 1986. 3 OF 17

goals of the Zoning Code. In each case there was insufficient specificity as to just how the County would apply the requirements of the Code.

We are not lawyers and cannot afford lawyers, but we have been told that the Sundstrom Decision speaks to the requirement for the full submission of details at the time of the public hearing. Mendocino County has established a procedural habit of approving Coastal Development Permits which are incomplete at the time of filing. This application is one of them.

In many cases, including this one, the County has approved applications the details of which were to be submitted for approval at some time after the hearing. This improper procedure robs the public of its right to complete information, the right to make informed comments at the hearing, and the requirement that decisions of the staff and the CPA will be subject to public hearing scrutiny.

We have requested many times that the County obtain complete information regarding each application prior to accepting it for analysis and public hearing. Other coastal counties in California do not approve Coastal Development Permits with significant details missing. It is time for Mendocino County to get their house in order.

Landscaping

Special Condition of Approval 5 allows a final landscape plan to be submitted in the future. Insufficient details about the species, size and establishment techniques were submitted with the application to ensure that it will fulfill the requirements of the Code. Specifically, the Condition says that those criteria shall be determined later. There is nothing concrete here that staff and the public can rely on in the future.

Special Condition 4 requires all screening trees to be protected and retained. And if any die in the future, they must be replaced "with similar species." This condition contains a logical inconsistency: If the trees die due to endemic diseases, it would be foolish to replace them with the same species. Again, the landscaping screening requirements are not well thought out by the County. Landscape screening in a Highly Scenic Area has proven more complicated than can be efficiently administered by the County Planning Department. A professional should be consulted to develop an acceptable landscaping plan. Such a

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professional could be a Licensed Landscape Architect, and this would ensure that the plan would endure and protect the views as required.

The permit contains insufficient criteria for the future performance of the requirement. The sizes of the replacement trees are not specified. It is not specified whether or not trimming of screening trees will be permitted.

At least some of the trees on the property will have to be removed to make room for the new structure and also to allow the existing unit to be moved. Sufficient permanent vegetation will not remain to effectively block the views to the house from both the beach (especially when people walk far out on the marine terrace at low tide), and from Highway One from the south, and from Highway One immediately adjacent to the development.

It is impossible for the lay person to tell what the effect will be from down the coast to the south, or from the public beach and the State Park just below and to the south of the house.

Many of the screening trees which now exist on the lot are tall and skimpy, and are located right on the edge of the cliff. They don't offer much of a screen now, and they will soon fall into the ocean. Therefore, permanent landscaping to effectively screen the house from both the beach and Highway is required. The application contains some notes about landscaping on the plot plan, but there are no notes about maintenance, watering, fertilizing, replacement or purpose of the landscaping.

The plan calls for the installation of "Bishop pines" on the property for screening. Bishop pines are dying on the coast with Pitch Canker disease. This is a short-sighted "plan" if it is to achieve the goals of the Code. The pines will certainly die, and they will never accomplish the screening needed.

With the advent of Sudden Oak Death (SOD--which also affects 12 other species of local trees) and the (endemic) Pitch Canker diseases on our coast, it is not possible for an Architect, an applicant, the applicant's agent, or the County to know how the landscape will develop over the long-term. With the recent appearance of those diseases in the coastal areas of the county, the matter of permanent

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landscaping to protect visual resources has become more complicated.

Landscape screening is a specialty like Architecture or Civil Engineering. In order for a plan to work, to be effective and to thrive, certain knowledge must come into play. That knowledge is not available to the County or to the Architect. Only a trained Licensed Landscape Architect would be able to best know what the landscape will accomplish over the actual lifespan of the development. Only a Licensed Landscape Architect would be able to ensure the best possible plan for the protection of this Highly Scenic Area.

There is no security to the public that the plan will actually mature in a way that will create a long-term and effective buffer to hide the bulk, lighting, height, and colors of the structure. There are no performance standards submitted which would show how the landscape would screen the house. Only the most sketchy notes are included to specify the sizes or kinds of trees or bushes to be planted.

Further, the CPA and the County staff in general lack the kind of expertise that would enable them to accurately judge any plan, even if submitted with the original application. We feel that only a Licensed Landscape Architect is qualified to effectively develop a plan which will screen the development for the long-term.

The County has made no attempt to solve this problem, and has adopted no list of approved experts, such as Licensed Landscape Architects, which could ensure the accuracy, effectiveness and viability of any landscape plan.

Certainly, at the two houses in the neighborhood to the north, Calone and Jones, which were approved and built within the last decade, the "landscaping" which the County required is a joke. In the case of Jones the landscaping was never effective and never will be. In the case of Calone, the "required" landscaping was never installed and probably would not effectively screen the house from the public views even if it were to be installed. In those cases no performance standards were required, and the staff analysis of the "landscaping" was wrong and ineffectual. Mendocino County staff and CPA are not qualified to design landscape screening. A Licensed Landscape Architect would be qualified.

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The Jones house, to the north, is plainly in view from the public beach area and from the State Park and from the Highway One traveled way, turnouts and Vista Point to the south. The Jones house's visibility was an admitted "mistake" by the staff analyst who wrote up the Jones permit for the County. In fact, the staff report said that it would NOT be visible from the beach areas. As such, it significantly degrades the coastal views there and regrettably cannot be removed. It has NO landscaping requirement to screen that view. Clearly, County staff is not competent to ensure that appropriate landscaping will be required.

Furthermore, Mendocino County has no enforcement procedures, no enforcement officers, and no plans to institute landscape checking after a house is finished. Our experience is that once the plan is approved, the applicant can ignore the landscaping requirements with impunity.

It is likely that the trees on the lot are approaching maturity, or have already. Bishop pines don't have a long life. These are very tall already, and the winds there are very strong. In the eventuality that the owner would remove trees through the years, the house would become definitely very visible in a very sensitive area. Given that problem, permanently young (house-height) shielding landscaping is called for on this development.

We feel large trees should be specified. And they should be specified as part of a rotating-screen system, whereby the first trees screen the development immediately, and a later date another screen matures to block the lower views after the first trees mature and are no longer effective.

Small trees will just not mature fast enough in this windy and exposed location. The public needs a landscape screen in place immediately when the house is built, not in 10 or 20 or 30 years. Anything less is only lip service to "landscape screening" in a Highly Scenic Area. Planting just any old kind of trees is not going to solve our long-term landscape screen problem here.

Subordination to Landscape

Special Condition 3 requires all exterior building finishes and materials to match those specified in the Coastal Permit Application. That Application calls for the exterior to be cedar shakes.

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However, the existing house, which is to be retained but moved on the lot, already has bright blue trim outlining the building, along with the cedar shake exterior. Does this Condition mean and require that the bright blue will be removed from the existing building? This matter is unclear in the approval.

If the blue is not removed, then the building will not be subordinate to the landscape. The Condition is insufficiently specific for the County to administer in the future. [20.504 et seq. and especially 20.504.015 C 3 et seq.]

Further, the same Condition requires any future change in the colors or finishes of the house to be subject to approval by the County for the life of the project. However, no specific guidelines are given, such as that the colors be the standard "dark earthtone." The Condition is insufficiently specific for the County to administer in the future. [20.504.010 C 3 et seq. and 20.504.020 D et seq. and 20.504.025 A]

Lighting

Special Condition of Approval 6 allows final lighting details and specifications to be submitted for approval in the future. Then it goes on to specify that this only refers to exterior lighting. It is our contention that any interior lighting which goes beyond the site becomes de facto exterior lighting and must also be downcast and shielded and required not to shine brightly on the public areas of the beach. Night use of the beach is common. Therefore, insufficient details about lighting, both interior and exterior, have been submitted with the application to ensure that it will fulfill the requirements of the Code. [20.504.035 et seq., and 20.504.010]

There is no standard in the approval which speaks to the problem of bright points of light shining through windows at night. Such lighting at night, which may shine through the windows, could be a detriment from all public view points. We feel this is a matter which has been necessary but lacking on many permits lately. Whereas exterior lighting is often spoken to and nominally regulated, interior lighting is actually in many cases more of a problem.

8 OF 17

In the Clark case, on the same cliff to the south, there was no Special Condition that the interior lighting not be a problem at night when it shines through the picture windows and becomes exterior lighting. No performance standards were applied which would keep the light bulb from shining through the windows of the house to the beach at night and robbing the beach-going public of their right to a natural night sky. This has become a problem for night beach users on the State Park beach below.

We would recommend that the Commission establish a standard to define light intensities as they shine through windows at night. Perhaps a condition whereby any interior lighting which projects past the boundaries of the property would be required to be "diffused, downcast and shielded and not point-sources".

Without such a standard, the lights from within houses are often brighter and more obnoxious than those from exterior lighting, which is regulated. Without performance standards on interior lighting shining through windows this development will not be subordinate to the landscape.

Septic System

Special Condition of Approval 7 allows a revised septic system design to be submitted in the future. Insufficient details about the septic system have been submitted with the application to ensure that it will fulfill the requirements of the code. Adequate utilities, including water and septic must be considered and provided for at the time of the approval. [LUP Policy 3.8-1, and 3.9-1, and Zoning Code 20.532.095 (2)]

Visibility

Prior to the hearing, we requested that story poles be installed on the property because it is a Highly Scenic Area and must be subject to special attention to ensure that the development will be subordinate to the landscape. This was not done, even though in other Highly Scenic Areas of the County story poles are required to be provided with every proposed development as a matter of policy. Without story poles, the Coastal Permit Administrator and the general public cannot determine how intrusive the development will be.

Visual Bulk

The house and the garage both appear to be too tall for the requirements of the Zoning Code. [20.504.015 C 2 et

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seq.] Just because the a portion of the intended house is already in existence and was permitted to be over-height based on the old requirements prior to the current coastal regulations is no reason to allow the new addition to be over height. It would be better to eliminate the new master bedroom or the new garage, and make the new addition one storey to fit the height requirements of the Code.

The house to the south, Clark, was required to reduce their height to more closely match the 18-foot limit in the area. The County staff report said that all the houses in the area are already 2-storey and that is incorrect, because the neighbor immediately to the south is not.

The development will block the views of the ocean from the Highway, and the development itself will intrude on the landscape from the Highway because of its excessive height and bulk (and the fact that so many trees will be removed from the lot as well). Other houses in the area are more screened, lower, or hidden from view by the cut bank of the Highway. To say that other houses in the area are two storeys in height, and thereby have set a precedent for these tall towers, is not a tenable argument because this lot is more visible than those other lots and houses.

In fact, it is precisely this Kennedy house which started the whole 2-storey trend on these cliffs. When several neighboring houses to the north were applied for, the County felt that because this house had been so tall, that it would be o.k. to approve more like it. Now we are faced with a situation where the very house that started the trend to taller houses is being enlarged in itself. This will surely start a precedent to cause a whole new round of even bulkier, 2-storey houses on the many remaining undeveloped neighboring lots. Where will end? It is appropriate to limit this development to only the existing structure which is to be moved plus perhaps a 1-storey garage or bedroom, and not to allow a twin tower structure which would completely overpower the Highly Scenic views in this very sensitive location.

If the new tower were to be limited to 12 feet, then the average height of the two towers together would be 18 feet, and the total development could be considered to meet the requirements of the Highly Scenic Area zoning height limit.

Additionally, the new construction has not been minimized to allow more of a view of the coast from the Highway. Whereas the existing house presents an approximate 25-foot wide structure to the Highway, the new complex would present a visual width of about 65 feet, more than 250% as wide. The application claims the structure is only 1344 square feet, but actually it is 2544 plus 756 feet of decks and walkways, which equals a total of 3300 square feet--almost 250% of the bulk of the existing structure again. To minimize the environmental impacts of the construction in this Highly Scenic Area, the various components of the residence should be grouped closer, lower, and less spread out. If the new construction were grouped in an east-west axis instead of north-south, there would be less blocking of the views of the coast from the Highway.

The old house as it now exists has a roof ridge oriented east-west. As proposed, the new ridge orientations (perpendicular to each other) will effectively greatly increase the bulk of the development as seen from the Highway. This could be lessened if the roof of the new garage, preferably a one-storey garage, were oriented parallel, not perpendicular, to that of the house.

All in all, several design changes could be made which would greatly decrease the visual blocking which is proposed in this application. This lot is very exposed to the Highway, and design changes are called for in order to keep it from being more of a visual block to the ocean than already exists.

Drainage and Cliff Recession

No grading or drainage notes were included with the plans submitted. The change in house location and the addition of an additional roof and driveway will change the drainage patterns on the lot. Drainage may directed over the lip of the cliffs onto the beach. We note that the "bluff-top" line on the plans is drawn suspiciously straight, suggesting that topographical measurements of the actual edge have not been made. No provisions are made for handling the concentrations of water created by this permit. The application is incomplete. [20.492 et seq.]

Parts of the cliff in front of the house have fallen recently, and are currently in a very unstable condition. Some areas actually are undercut, and the top of the cliff is held together by tree roots and is just waiting to fall. It would be an improper use of the geotechnical annual

setback formula to measure the 75 year setback from the very edge of this overhanging and undercut part of the cliff. A reasonable future calculated angle of repose for the cliff face should be established, and then projected onto the surface of the flats above the cliff in order to establish the present effective cliff edge. This will be a few feet back from the overhanging loose cliff face as it now exists. [20.500 et seq.]

The catastrophic cliff failure mentioned above, in which a huge chunk (maybe up to thousands of cubic yards) of the front yard slipped into the Pacific Ocean all at once, was caused by several factors: 1) soft cliffs which could not carry a full load of runoff because of their geological angle of repose and rock quality, 2) roof runoff concentrating water in the areas outside of the foundations, 3) removal of trees which previously had transpired some of the water from the ground and the roots of which maybe helped hold the cliffs together, and 4) leach field runoff adding to the load of water carried by the cliffs. By increasing the size of the house and removing more trees, adding more leachate with the new bathroom, and adding more roof runoff, these added flows will permeate the cliffs and the problem of catastrophic cliff subsidence will be exacerbated. Moving and enlarging this house will not cause the problem of cliff subsidence to go away. Indeed it will accelerate cliff retreat.

After conferring with a qualified geologist who works for a major state agency and is an expert on the matter of coastal cliff erosion, we would like to note that the geotechnical report fails to analyze and provide for the rise of the seas due to global warming. The Coastal Commission, we have been told by such authority, commonly recognizes that global warming in the 20th century resulted in an average sea level rise of .8 feet. In light of the commonly accepted fact that the seas will be rising more in the future, the Commission is now accepting a minimal figure of double that amount for the 21st century (2000-2099). Therefore the geotechnical report should analyze the cliff recession based on a figure of 1.6 feet of average sea level rise, minimum. The geotechnical report is incomplete.

Enclosed is a recent page from the National Geographic, a very conservative and reliable publication. It says "Sea levels will likely rise 18 or more inches in the next century." Given that they will rise some, there is absolutely no analysis given to this lot's situation and how

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it will be affected by the rising seas. We know that rising seas will accelerate bluff subsidence, but the geotechnical report does not tell us how much. Without a scientific analysis of the rate of the cliff recession as the seas rise, all we are provided is guess-work and rule-of-thumb setbacks.

Sea level has been stable for many years, and wave action has created the level basaltic terrace we see in front of this parcel. The inland retreat of the seashore has created these cliffs by wave action, but the speed has been mediated by the basaltic terraces below. That is to say, the terraces break the action of the waves and their ability to erode the cliffs. Any rise in sea level will greatly exaggerate previous and current cliff recession rates.

The geotechnical report is not complete, because it does not take into account what we know to be true--that rising sea levels will greatly affect this cliff, and this development.

Visual Blight

We note that there is a non-permitted septic or drainage line dangling over the cliff, hanging all the way down to the public beach. It has not been shown on the (incomplete) plot plan submitted with the application. We request that the line be permanently removed as a condition of approval of this permit, as it is an eyesore to those walking on the beach. Several local people have complained to us about this matter. This septic line is a continuing mark of the gross insensitivity of the owner to the incredible beauty of the public beach.

Likewise, the remnants of a wooden stairway to the beach are abandoned on the cliff face and do not appear on the (incomplete) plans submitted with this application. It is a non-permitted structure. This is an extremely dangerous situation, as the dilapidated structure could fall at any time. It is also an attractive nuisance, and, like the drain line, an eyesore. We request that it be carefully removed before it ends up on the beach and hurts someone or becomes trash on the beach.

We have asked Mendocino County to enforce the regulations and require that the owner remove the non-permitted stairway and the non-permitted septic line from the cliffs. We have never received an answer from the

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County. There is simply no enforcement of the regulations in Mendocino County. We are depending on the Coastal Commission to take charge here and give us back our beach.

Summary

We still do not know what kind of landscape, lighting or septic plans we will get with this house nor if they will work when installed. The County has been proven not qualified to approve or administer landscape plans.

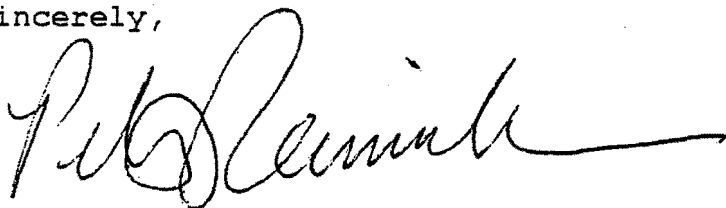
Too much house is proposed in this sensitive location. A single storey addition to the house would fit the lot and meet the requirements of the LCP.

Interior lighting is not regulated and could create an exterior nuisance.

The geotechnical report is incomplete.

We request that Mendocino County staff be required to ensure that the final plans and specifications for all projects be on file and available for the public at least during the 10 day notification period in advance of the CPA's hearing. Last minute changes, last minute submittals, and conditional approvals of plan details to be made at later dates by staff or the CPA are not acceptable practice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Reimuller', with a long horizontal flourish extending to the right.

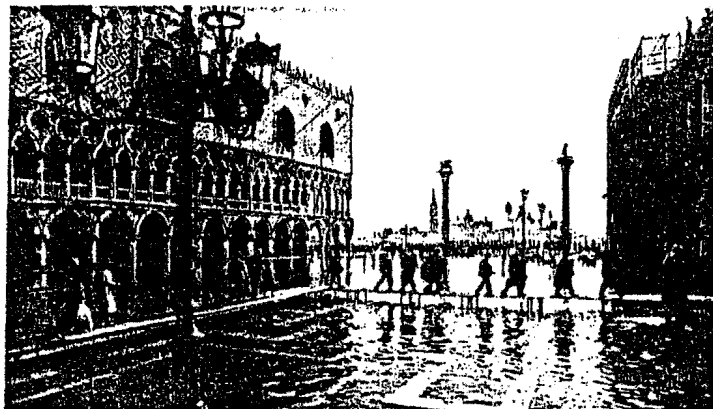
Peter Reimuller
Secretary

encl: page from September, 2001, National Geographic

ENGINEERING

Canaletto to the Rescue

Looking to art for clues to save a soggy Venice



Three centuries after the artist Giovanni Antonio Canaletto—better known as Canaletto—painted his realistic views of Venice's architecture

(above right), his work may help Italians protect that city's treasured buildings from being swamped regularly by flooding seawater (above). Comparing the



ART RESCUE (above), MICHAEL YAMASAKI

18th-century tidemarks portrayed in Canaletto's paintings with modern marks should help engineers in charge of a proposed dam to determine Venice's optimum water level. The project will hold the water, which now fluctuates with rising sea levels and seasonal storms, close to that optimum point.

Sea levels will likely rise 18 more inches in the next century. In addition, Venice's landmass is sinking—ten inches over the past 100 years, says a recent study.

CONSERVATION

Snakes Feel the Bite on Cambodian Lake

Declining fish catches over the past three years in Cambodia's Tonle Sap—the largest freshwater body in Southeast Asia—have led to heavy exploitation of the region's water snakes. Snakes have replaced fish as feed for local crocodile farms and are also consumed by humans. Water snake eggs, like these being extracted at a Cambodian market (right), are a particular delicacy. During 1999 and 2000 more than 8,500 water snakes were caught each day during the wet season. That rate of harvest may not be sustainable, says researcher Bryan Stuart of the Wildlife Conservation Society. He hopes to teach fishermen to recognize and release the most endangered of the snake species.



DEVAN KLEIN

Friends of Schooner Gulch

A Watershed Organization

P. O. Box 4, Point Arena, California 95468

(707) 882-2001, Fax (707) 882-2011

Executive Committee:

Lucie Marshall
Charles Peterson
Peter Reimuller

RECEIVED
NOV 08 2001

November 3, 2001

Mr. Randy Stemler
California Coastal Commission
Box 4908
710 "E" Street
Eureka, CA 95501

RE: Kennedy Appeal (Mendocino County CDP 87-00)

Dear Mr. Stemler:

Here is addenda for the appeal, in which you will find more LCP citations.

Visual resources: 3.5 et seq, especially 5.3 for the west side of the Highway One or 5.4 for east side. Coastal Act section is 30001.5 et seq. especially (A) (under LCP 1.1).

Reason for appeal is in CAC Chapter 20.544 et seq. especially 20.544.015 (C) 2 "The development fails to protect public views from any public road or from a recreational area in and along the coast." (p.532-224), and (reason for appealing to the Commission) (E) 4 "The County charges an appeal fee."

The exterior Lighting section: Coastal Zoning Code 20.504.035 et seq. (p.532-184)

Hazard areas = 20.500 et seq especially (E) for erosion CZC p. 532-180 and 20.532.070 (Geologic Hazards)

Landscaping: CZC Chapter 20.504 et. seq. especially C (2) West of Highway One "18' above natural grade" (not average grade) and (C) 10 "Tree planting to screen buildings shall be encouraged..."

Sincerely,



Peter Reimuller
Secretary

16 OF 17

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

December 18, 2001
J. Verran
P.O. Box 382,
Gualala, CA 95445-0382

Re: A-1-01-63 Kennedy, opposed

Coastal Commissioner via
Mr. Robert Merrill
California Coastal Commission, North Coast
P.O. Box 4908, Eureka, CA 95502-4908

RECEIVED
DEC 18 2001

Via FAX, Hard copy to follow.

CALIFORNIA
COASTAL COMMISSION

Dear Members of the Commission and Mr. Merrill,

As a concerned coastal resident in Mendocino County, I wish to support the appeal of the Kennedy project by Friends of Schooner Gulch and the Sierra Club Mendocino-Lake Group. Please grant Substantial Issue on this appeal, and if possible, hold the De Novo hearing in Monterey in March or in Santa Rosa in May to allow reasonable public participation.

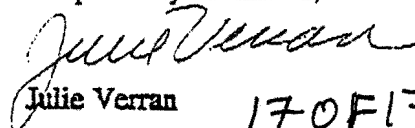
The applicant seeks to move the home to regain blufftop setback lost to coastal retreat. In my opinion, he has an absolute right to do so, but not to make the house larger, as proposed. He also has a reasonable expectation to be able to build an enclosed garage, but not to have two stories. If the house was a vacation retreat and is now to be a permanent home, that close to the ocean an enclosed garage is a must for protecting vehicles on a day to day basis.

The subject lot is part of a narrow strip between Highway 1 and the public beach. A larger house and a second garage story will impede views to and along the coast in an important viewshed. I agree that all the Mendocino County LCP sections cited by FOSG apply.

The drainage pipe that descends the bluff intrudes jarringly on the public beach experience and the CCC should require that it be removed as part of a comprehensive drainage plan designed to forestall further bluff collapse on this lot, which should be submitted to the Commission, not just to staff, for review. A landscape plan should also have public and Commission review.

Hazard conditions should be imposed. There is a real concern here that things such as septic tanks could fall to the beach. Hazard conditions in themselves are not sufficiently protective of the public interest; they need specific companion conditions that insure greater than usual care is taken during the life of the project. Examples are: no winter operations, with the same dates used as the California Department of Forestry uses for winter ops in this area; best management practices for erosion control required; a current geotechnical report.

Respectfully submitted,


Julie Verran

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BACE Geotechnical
A Division of Brunsing Associates, Inc.

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-01-063
KENNEDY	
GEOTECHNICAL OPINION (1 of 3)	

June 28, 1999

11242.2

Mr. Herb Kennedy
7080 Saconi Drive
Oakland, CA 94611

RE: Existing Septic Tank Relocation, Kennedy Residence, 27700 South Highway One, Bowling Ball Beach, Point Arena, Mendocino County, California

Dear Mr. Kennedy:

This letter is in regards to the erosion affecting the existing septic tank at your property, 27700 South Highway One, A. P. No. 027-421-11, Mendocino County, California. The property is situated on an ocean bluff above Bowling Ball Beach, approximately three miles southeast of Point Arena. We understand that the house was built in the early 1970's (1970-72).

The existing septic tank is located at the bluff edge, approximately 10 feet west-southwest of the house. The erosion of the bluff has exposed a portion of the southwesterly (bluff) side of the existing tank. According to the site plan attached to the undated Site Evaluation Report, prepared by Carl Rittiman, Certified Professional Soil Scientist, the existing tank is to be abandoned and replaced by a new septic tank to be situated a few feet north of the northwest house corner.

The purpose of our services was to evaluate the suitability of the new septic tank location, from a bluff stability standpoint, and provide recommendations for abandonment of the existing septic tank.

Previous Site Observations

Our undersigned Principal Engineering Geologist, while with other firms, observed the Kennedy property in 1977 and 1988 during previous geotechnical investigations of neighboring properties to the north and south. He also observed the Kennedy property during the preparation of an article published in California Geology magazine in 1992. He and our undersigned Principal Geotechnical Engineer observed the subject property during a second investigation and house construction operations at the southerly neighboring property in 1994 through 1996. Our Principal Geotechnical Engineer consulted

Mr. Kennedy
June 28, 1999
Page Two

11242.2

with you in regards to the bluff erosion in August 1998. He observed the property again with regards to the subject septic tank replacement in April 1999.

Bluff Erosion and Setback Criteria

The active erosion area is within an indentation of the bluff where concentrated subsurface seepage has been exiting the bluff face, taking with it the upper terrace soils and deeply weathered bedrock materials. The accumulated debris at the bluff toe is periodically removed during high tides and storms. Based upon our recent and previous site observations, including studies of aerial photographs dated 1964 and 1981, enlarged to a scale of one inch equals 300 and 200 feet, respectively, and file photographs dating back to 1977, we estimate the average bluff retreat rate in the property vicinity is on the order of 1-1/3 inches per year. The active erosion area has a higher average rate of approximately five inches per year. This rate would have resulted in an erosion of about 12 feet of the bluff in this local area over the last 28 years since the house was built; which appears roughly accurate.

Based upon continuation of this erosion rate, the bluff should erode back an additional 20 feet, approximately, over the next 47 years, the remainder of the 75-year economic lifespan of the house (as considered by the California Coastal Commission). Therefore, the 21-foot distance between the septic tank and the bluff edge shown on the Rittiman site plan is geotechnically acceptable.

It should be noted that the residence is about 15 feet from the bluff edge and, therefore, could become undermined by erosion in substantially less than 47 years (since erosion rates are averages, amounts of erosion may vary from year to year, depending upon amount of rainfall, storm intensities, tide levels during storms, rainfall totals during and prior to storms, etc.). Furthermore, we typically would apply a factor of safety of two or three to the bluff setback for a house. Therefore, we suggest that you consider moving the house and the leach field, if possible, as far back as possible within the confines of your property. A variance from the private road setback at the northeast end of the property would also be desirable, if appropriate.

Since Public Health codes prohibit subsurface drains within 50 feet downslope of a leach field, moving the leach field as far back as possible may allow drainage improvements that could slow the active erosion rate. Specific drainage recommendations could be provided by BACE if the leach field can be moved back sufficiently.



Mr. Kennedy
June 28, 1999
Page Three

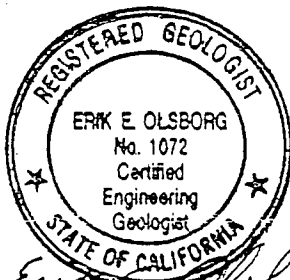
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Septic Tank Abandonment

The existing septic tank should be removed and replaced with compacted, fine-grained (predominantly clay or silt) fill. Prior to backfill, the excavation should be cleaned of loose soils and debris, then lined with a geotextile filter fabric. Backfill soils should be moisture conditioned to near optimum moisture content, placed in thin lifts (approximately six to eight inches in loose thickness, depending upon compaction equipment being used), and compacted to at least 90 percent relative compaction per ASTM D 1557 test method, latest edition. BACE should observe the tank removal and clean out of the excavation prior to the filter fabric installation. BACE should then observe, and test as necessary, the fill being placed and compacted.

We trust the above information and recommendations suit your needs at this time. Please contact us if you have questions, or to inform us when the septic tank abandonment operations are scheduled.

Respectfully submitted,

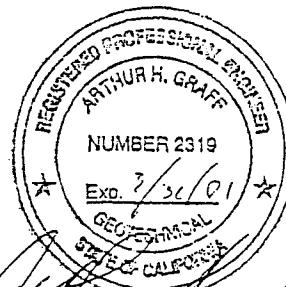


Erik E. Olsborg
Engineering Geologist - 1072

EEO/AHG/mab

2 copies submitted

cc: Carl Rittiman



Arthur H. Graff
Geotechnical Engineer - 2319



MENDOCINO COUNTY MEMORANDUM

TO: Doug Zanini, Planning- FB

DATE: October 10, 2001

FROM: Jim Ehlers, DEH-FB



RE: CDP#87-00, Kennedy
27700 South Highway 1, Point Arena

The latest revision to the garage removes the requirement to expand this septic system. However, the change in location of the house, from the location specified in the septic permit #1447F, leaves the possibility that the new delivery system may have to incorporate a pump in the septic tank. While DEH can now issue a clearance to the CDP, DEH will not clear a building permit application until a County Approved Site Consultant deals with potential problem of delivering the waste water from the new house location to the existing leach field.

cc:Richard Perkins, 4635 Gypsy Flat Road, Gualala, CA 95445

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-01-063
KENNEDY
SEPTIC CLEARANCE

Dr. Hillary Adams
P. O. Box 1936
Mendocino, CA. 95460

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-01-063
KENNEDY	(1 of 3)
GENERAL	CORRESPONDENCE

December 16, 2001

Coastal Commissioners
c/o Mr. Robert Merrill
California Coastal Commission
P. O. Box 4098
Eureka, CA. 95502-4908

Re: A-1-MEN-01-063 (Kennedy)
(CDP 87-00)

Dear Coastal Commissioner:

I am writing in support of the appeal of Friends of Schooner Gulch of A-1-MEN- 01-063 (Kennedy), based on failure to comply with: the Coastal Act (30001, especially .5(a); 30251), the certified LCP (3.5 et seq.) and its policies; and Coastal Zoning Code and its ordinances (20.504.010; 20.504.015 and .20.504.020; "...where feasible, to restore and enhance visual quality in visually degraded areas"); and 20.492.et seq. (drainage, erosion); and 20.500 et seq.(hazard), especially 20.500.020; and 20.532 et seq., especially CZO 20.532.015 (A), administrative permits; and 20.536. 010 et seq., especially G (appealable projects); and CZO 544.020;

The project contains many of the problems which I brought before the Commissioners on December 13 during Public Comment:

1) No story poles: The public could not assess the project, its siting and its impact. The building is to be moved because the cliff fell in, but where will it be?

2) Drainage: there is an unpermitted drain, apparently placed after the cliff face fell off, in an effort to take hazardous water accumulation off the lot to help prevent further collapse of the cliff face. The black plastic drain pipe runs down the entire face of the cliff and ends on Bowling Ball Beach State Park. An adequate drainage plan is not in place. No water should be allowed to be piped over the fragile Mendocino County sea cliffs to fall on the public beach below. It may hasten the collapse of the cliff.

3) Safety: the lots in this area are prone to landslide. This house must be moved back because the cliff face gave way. The owner is entitled to either move the house or rebuild one of the same size, if lot size and safety factors warrant it. However, to double the size in this very hazardous area, could be hazardous. The house is already very close to Highway One and on a level with it. This is an example of the warning given by Dr. Rogers in his geotechnical report for the Riley project: "inches per year" for cliff retreat is only an "average." In fact, the coastal cliffs along the Mendocino coast frequently give way in large chunks. The geotechnical report should have included a factor for global warming.

4) Landscape: there is no adequate landscape plan. The Bishop pine here are old and have lost most of their lower limbs. The life expectancy of such pines on bluff edges is 50-75 years. These are at the end of their lifespan. Trees are subject to extreme wind conditions in this location. The heavy tops of such pine are caught by the wind, which frequently reach 60 mph in winter storms along this coast, and whipped about. Consequently they tend to uproot. Trees are already falling onto Bowling Ball beach near this project. Most of the large trees on what remains of the lot will have to be cut down when the house is moved. There needs to be a landscaping plan which shows which trees will be removed, and provides for new trees to be planted both to protect the house from wind and to replace the screening trees along the road and cliff top as they fall. Near the house, these trees should be *Pinus contortus contortus*, a native species of shore pine which can survive in the extreme climate hazards of wind and salt water at this site if enough are planted. This species grows to only 20 feet and therefore will not be hazardous to the house. It grows fairly quickly, and can provide visual screening both from the State Park and from scenic Highway One. Low growing shrubs should also be planted.

5) Height: This building was the first to be built on a series of lots on the cliff edge above Bowling Ball State Beach. The lots were apparently purchased by immediately before the Coastal Act was signed into law; and subdivided and partially sold immediately after. The LCP was not yet certified. Scenic Highway One runs very close to these lots, and in this case runs immediately in front of the house on the same level. The lots lie to the west of Highway One between it and the ocean. The houses are very close to the cliff edge, since the lots here are both short and narrow in relation to the highway. (The Williams lot is in the same area: A-1-MEN-01-056). The original Kennedy house should have been one story. It was allowed to be two. Later, County staff improperly applied the "character of the neighborhood" to this one house, and allowed another, then another two-story house to be built along the highway, thereby misinterpreting the purpose of the "compatibility of neighborhood" clauses and "creating" a neighborhood of buildings that were in violation of the intent of both the Coastal Act and the LCP. There are still vacant lots to be built upon. This is the time to stop the inroad on the LCP. Both for safety and for visual character, this house should be moved back, but not added to. Several other houses in this subdivision have been allowed to be two-story because they cannot be seen from that portion of scenic Highway One which runs past them, because the highway drops down between high embankments. However, some have great visual impact on Highway One and the view pull out to the south, and on the public beach side at the State Park. All future houses in this area should be held to the single-story rule.

6) Color and material: Color and adequate landscape play an important role here in mitigating visual impacts. Color and material must run on the deed. There

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are no deed restrictions on file for this project, nor are there trim color and material samples in the file. Even the new single-story house in the neighborhood has a strong visual impact on the public beach and scenic highway due to errors in color choice and/or the fact that landscape plan was not followed (Clark; roof shows up miles away from Highway One and from its view areas, and from the State Park). The present two-story Kennedy house blends fairly well because it is a moderate size, and of wood shingle. The shingle has been allowed to age naturally without using preservatives to keep the color bright. The trim color should not be bright blue, as it is now, but a dark brown earth tone which will blend in hue and brightness with the surroundings. "Earth tones" have been taken advantage of in Mendocino County. Staff does not check large samples in the field to see how they act in the bright reflective light of the ocean. Grays, beiges and pale greens are all disastrous even in fog conditions on this coast. I showed a slides of several such houses to the Commissioners in San Francisco.

To allow the County Administrator to decide major and critical issues such as color, material, drainage plans, landscaping plans and exterior lighting as conditions on the permit which will be decided after the permit hearing and out of the public review constitutes an "administrative permit" in my opinion and is contrary to the certified LCP and the intent of the Coastal Act. By following this protocol, the information upon which both staff and public draw their conclusions is inadequate. It can also affect the public's ability to appeal the project, and the reviewing bodies ability to adequately assess it.

Please find substantial issue and make certain this project, located in a geologically and visually fragile area, does not further impact scenic Highway One and the public beach at Bowling Ball State Park. Apply the safeguards necessary to protect our coast and the certified LCP.

Sincerely,



Dr. Hillary Adams

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