

**CALIFORNIA COASTAL COMMISSION**

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Filed:	August 25, 2003
49 <sup>th</sup> Day:	Waived
Staff:	Randall Stemler
Staff Report:	November 21, 2003
Hearing Date:	December 11, 2003
Commission Action:	

**STAFF REPORT: APPEAL****SUBSTANTIAL ISSUE**

<b>APPEAL NO.:</b>	<b>A-1-MEN-03-055</b>
<b>APPLICANTS:</b>	<b>Brian &amp; Della Zita</b>
<b>LOCAL GOVERNMENT:</b>	County of Mendocino
<b>DECISION:</b>	Approval with Conditions
<b>PROJECT LOCATION:</b>	38017 Old Coast Highway, 1½ miles north of Gualala, Mendocino County (APN 145-122-11).
<b>PROJECT DESCRIPTION:</b>	Construct a 2,225-square-foot, two-story, single-family residence with a maximum average height of 27 feet 5 inches above finished grade. Construct a two-story detached structure consisting of a 730-square-foot garage/storage space on the first floor and a 630-square-foot guest cottage above for a total of 1,360 square feet and a maximum average height of 25 feet four inches above finished grade. Services would be provided by the Gualala Community Services District for sewage disposal, and the North Gualala Water Company for domestic water.

**APPELLANT:** Friends of Schooner Gulch

**SUBSTANTIVE FILE:  
DOCUMENTS**

- 1) Mendocino County CDB No. 70-94; and
- 2) Mendocino County Coastal Development Minor Subdivision No. 22-95;
- 3) Mendocino County Local Coastal Program.

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

The development, as approved by the County, would involve construction of a 2,225-square-foot, two-story, single-family residence and decking with a maximum average height of 27 feet 5 inches above finished grade. An additional two-story detached structure with decking would be constructed consisting of a 730-square-foot garage/storage space on the first floor and a 630-square-foot guest cottage situated above that for a total of 1,360 square feet at a maximum average height of 25 feet 4 inches above finished grade. Services would be provided by the Gualala Community Services District for sewage disposal, and the North Gualala Water Company for domestic water. An existing paved driveway would be extended with a new gravel driveway and concrete apron to connect to the garage.

The appeal raises a number of contentions involving inconsistency of the approved project with Mendocino County's certified Local Coastal Program (LCP) policies and standards relating to rare plant ESHA protection, recreational access, application completeness, visual resource protection, geologic hazards, procedure for filing appeals, second residential units, and major vegetation removal.

Staff recommends that the Commission find that the project as approved, raises a substantial issue of conformance with the certified LCP only with respect to contentions raised concerning protection of rare plant ESHA resources. Without (1) the performance of a current botanical survey pursuant to LUP Policies 3.1-2 and 3.1-7, and Coastal Zone Code Sections 20.496.015, (2) analysis of adequate buffer widths to protect ESHA as required by LUP Policy 3.1-7 and CZC Section 20.496.020, which provide the criteria by which buffers are to be established in order to protect ESHA resources; and (3) any findings in the County staff report adequately discussing the occurrence or absence of rare plants on the property, approval of the project raises a substantial issue with regard to ESHA protection measures of the certified LCP.

Staff also recommends that the Commission determine that invalid grounds for appeal exist in relation to contentions raised involving the procedure for filing appeals, and second residential units. Staff further recommends that the Commission find that no substantial issue is raised with

respect to all of the other contentions presented including recreational access, application completeness, visual resource protection, and geologic hazards.

Staff further 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 protection of rare plant ESHA.

**The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 4.**

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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 within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

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 the proposed house is located (1) between the sea and the first public road paralleling the sea; (2) within 300 feet of the mean high tide line; and (3) 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. It takes a majority of Commissioners present to find that no substantial issue is raised. 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. If the

Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the *de novo* 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 LCP and with the public access and public recreation policies of the Coastal Act.

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

## **2. Filing of Appeal**

The appellant filed an appeal (Exhibit No. 5) with the Commission in a timely manner on August 25, 2003, within 10 working days of receipt by the Commission on August 12, 2003 of the County's Notice of Final Action (Exhibit No. 4). On September 5, 2003, prior to the 49<sup>th</sup> day after the appeal was filed, the applicants signed a waiver of the requirements of Section 30621 that an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed.

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## **I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:**

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

### **MOTION:**

I move that the Commission determine that Appeal No. A-1-MEN-03-055 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-03-055 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 the Friends of Schooner Gulch.

The project as approved by the County consists of the construction of a 2,225-square-foot, two-story, single-family residence and decking with a maximum average height of 27 feet 5 inches above finished grade. An additional two-story detached structure with decking would be constructed consisting of a 730-square-foot garage/storage space on the first floor and a 630-square-foot guest cottage situated above that for a total of 1,360 square feet and a maximum average height of 25 feet four inches above finished grade. Services would be provided by the Gualala Community Services District for sewage disposal, and the North Gualala Water Company for domestic water. An existing paved driveway would be extended with a new gravel driveway and concrete apron to connect to the garage. The project site is located along the Mendocino County coastline, approximately 1½ miles north of Gualala, on the west side of Highway One, and east of Old Coast Highway at 38017 Old Coast Highway.

The Commission received four submittals from the appellant relevant to the appeal of the subject project. On August 25, 2003, the Commission received a timely, 3-page appeal application raising five contentions that the project as approved by the County is inconsistent with the LCP provisions regarding: (1) protection of rare plant ESHA; (2) provision of recreational access required by the Gualala Town Plan; (3) submittal of a complete coastal development permit application; (4) limiting major vegetation removal; and (5) visual resource protection. On August 26, 2003, the last day of the appeal period, the Commission received a one-page letter from the appellant adding two additional contentions to the appeal including contentions that the project as approved by the County is inconsistent with the LCP provisions regarding: (1) visual resource protection within a designated highly scenic area; and 2) avoiding geologic hazards. On September 8, 2003, 13 days after the close of the appeal period, the Commission received a seven-page letter (mistakenly dated August 8, 2003) from the appellant providing additional information to augment these issues previously raised in a timely manner during the appeal period. In this letter received September 8, 2003, the appellant also requested that two of the contentions previously raised be dropped from the appeal. These two contentions withdrawn from the appeal are the contentions that the project as approved by the County is inconsistent

with LCP provisions regarding: (1) visual resource protection in an area designated highly scenic; and (2) limiting major vegetation removal. This same letter of September 8, 2003, closed by raising one additional contention that the project as approved by the County is inconsistent with the LCP, stating that the appellants "are concerned about the proliferation of second residential units on lots west of Highway 1." This assertion of inconsistency with the certified LCP was raised nearly two weeks after the appeal period had closed, and therefore, because it was not raised during the appeal period, it presents invalid grounds for appeal. The fourth submittal was received from the appellant on September 26, 2003. This three-page letter augmented contentions previously raised in the earlier letters with additional discussion.

The appellant's contentions are summarized below, and the full text of the contentions is included as Exhibit No. 5 in the copy of the appeal submittals attached.

**1. Rare Plant Environmental Sensitive Habitat Area Protection**

The appellant asserts that the County-approved residential development would be inconsistent with rare plant ESHA resource protection embodied in CZC Section 20.496.020 because no current botanical study was required. The appellant contends that rare plant ESHA is likely found on the subject parcel.

**2. Gualala Town Plan Requires Recreational Access**

The appellant asserts that the project as approved, is inconsistent with the provisions of LUP Policy G3.7-4 contained in the Gualala Town Plan (GTP) portion of the Mendocino Land Use Plan (LUP) that state "A pedestrian and bicycle trail...shall be developed within Highway 1 and Old Coast Highway (CR#513) right-of-way and easements acquired for public access." The appellant maintains that as the County did not require the applicants to provide a trail or easement, the project as approved is inconsistent with LUP Policy G3.7-4.

**3. Incomplete Application**

The appellant asserts that not enough information was provided by the applicants for the public to determine whether the proposed project would comply with all applicable provisions of the LCP as required by Coastal Zoning Code (CZC) Section 20.532.025(A). Specifically, the applicant noted that no samples of the proposed building materials and colors were available for public review at the CDP hearing, and the map provided with the application did not indicate the location of the subject property in relation to Highway One.

**4. Visual Resource Protection**

The appellant asserts that inconsistent with LUP Policy 3.5-1, the County-approved project would not protect the scenic and visual qualities of Mendocino County coastal areas. Citing the requirement that permitted development be visually compatible with the character of surrounding areas, the appellant notes that the County only compared the proposed development with the

nearest neighbor to determine the character of the neighborhood. Furthermore, no restriction that outdoor lighting be downcast and shielded was required as a condition of County approval of the project.

**5. Geologic Hazards**

The appellant contends that the approved development is at risk from bluff retreat and landsliding and that, therefore, County approval of the proposed project is inconsistent with the Mendocino County LCP geologic hazard provisions contained in CZC Section 20.500 et.seq.; especially CZC Section 20.500.020(E); and CZC Section 20.532.070.

**6. Second Residential Units**

The appellant raises concerns that the approved detached structure might be used as a residence, and contends that the County approval is inconsistent with provisions of the LCP including the certified Gualala Town Plan LUP Policy G3.2-3 stating that second residential units shall not be allowed on parcels located west of Highway One.

**B. LOCAL GOVERNMENT ACTION.**

On July 24, 2003, the Mendocino County Coastal Permit Administrator approved a Coastal Development Permit for the subject development. The County attached to its coastal development permit three special conditions of approval, included in their entirety in Exhibit No. 4. Of particular relevance to the contentions of the appeal is Special Condition No. 3. This condition requires the applicant to submit an exterior lighting plan and design details or manufacturer's specifications for all the exterior lighting fixtures, and requires that exterior lighting be downcast and shielded and shall be positioned in a manner that will not shine light or allow glare to exceed the boundaries of the parcel on which it is placed. In approving the proposed project, the County adopted findings in their staff report that conclude the project is consistent with all certified provisions of the LCP.

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 August 12, 2003, (Exhibit No. 4). The project was appealed to the Commission in a timely manner on August 25, 2003, within 10 working days after receipt by the Commission of the Notice of Final Local Action.

**C. PROJECT AND SITE DESCRIPTION.**

The project site is on an approximately 1.6-acre parcel situated between Highway One and Old Coast Highway about 1½ miles north of Gualala, at 38017 Old Coast Highway, Mendocino County (Exhibit Nos. 1 and 2). Although this site is within 300 feet of the bluff edge, it is not a bluff edge property as it is separated from the bluff by a dedicated accessway along the old railroad right-of-way, Old Coast Highway, and portions of an intervening parcel. Access to the

site is from Old Coast Highway up a steep, existing, paved driveway that also provides access to the neighboring property to the east. The approved residential development site is located on a relatively flat (10%), to moderately sloped (20%), portion of the otherwise steeply-sloped parcel primarily vegetated with a dense Bishop pine forest. There are no known faults in close proximity to the approved development.

Highway One is located to the northeast of the subject parcel in an approximately 25-foot-deep through-cut that parallels the property. The property is not in a location designated as highly scenic, and the approved house site would not be readily visible from Highway One due to the geography and dense forest vegetation. The house would be partially visible from Old Coast Highway that runs between the property and the coast.

Under the certified LCP, the Land Use Plan classification for subject property is Rural Residential RR-5 intended to encourage local small-scale food production (farming) in areas which are not well suited for large scale commercial agriculture. Principal permitted uses include residential and associated utilities, light agriculture, and home occupation. Conditional uses include cottage industry, conservation and development of natural resources, public facilities and utilities determined to be necessary on Rural Residential lands, and recreation-education. An RR-5 classification allows one dwelling per legally created parcel, or one dwelling unit per 5 acres as designated on the Land Use Maps. The CZC Section 20.376.025(C) designates the Rural Residential 5-acre minimum as allowing one unit per five acres except as provided pursuant to Section 20.456.015 (Accessory Uses), Section 20,460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit).

Approval has been granted by the County for the proposed development, which would consist of a 27-foot, 5-inch-high, 2,225-square-foot, two-story, single-family residence, and a 25-foot, 4-inch-high, two-story detached structure that would be constructed on the north side of the residence, consisting of a 730-square-foot garage/storage space on the first floor, and a 630-square-foot guest cottage above that for a total of 1,360 square feet. Sewage disposal and domestic water services would be provided by the Gualala Community Services District and the North Gualala Water Company. The existing paved driveway would be extended with gravel surfacing and a concrete apron connecting to the garage.

**D. SUBSTANTIAL ISSUE ANALYSIS.**

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

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

**1. Appellant’s Contentions that are Valid Grounds for Appeal**

Five of the six contentions raised in this appeal present potentially valid grounds for appeal in that they allege the local approval’s inconsistency with policies of the certified LCP or with the



public access policies of the Coastal Act, and were submitted in a timely manner within the appeal period. In one case, the Commission finds that a substantial issue is raised.

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

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

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

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

Even when the Commission chooses not to hear an appeal, 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 allegation concerning the consistency of the project as approved with the provisions of the LCP regarding rare plant ESHA, 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 concerning the consistency of the project as approved with the provisions of the LCP regarding, recreational access, application completeness, visual resource protection, and geologic hazards, 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. ESHA Protection

The appellant contends that the approved project raises a substantial issue regarding conformance with requirements of Mendocino County LCP policies standards relating to the protection of rare plant ESHA resources, since no current botanical survey was performed prior to the County's approval of the proposed development. The appellant cites inconsistency with Coastal Zoning Code Section 20.496.020 as a reason for the appeal:

LCP Policies:

LUP Policy 3.1-2 states in applicable part:

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

LUP Policy 3.1-7 states in applicable part,

*“A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall*

*not be less than 50 feet in width [emphasis added]. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

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

Policy 3.1-29 of the Mendocino County General Plan Coastal Element states:

*“The California Department of Fish and Game, the California Native Plant Society, and the U.S. Fish and Wildlife Service shall be requested to maintain and augment mapped inventory of all rare, endangered, threatened and protected plant and wildlife habitats on the Mendocino Coast based on up-to-date survey information. Symbols indicating rare or endangered plants and wildlife are placed on the Land Use Maps to generally locate listed species and will be pinpointed as necessary to prevent degradation prior to issuing any development permit. Furthermore, the Department of Fish and Game is requested to work with the county during the planning and permit process to evaluate the significance of mapped sites as they apply to individual development applications.”*

Section 20.496.015 of the Coastal Zoning Ordinance states in applicable part:

*(A) developments that “ have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060...”*

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

*“ESHA- Development Criteria*

- (A) Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(1) *Width.*

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width [emphasis added]. ...Standards for determining the appropriate width of the buffer area are as follows:

- (a) *Biological Significance of Adjacent Lands.* ...
- (b) *Sensitivity of Species to Disturbance.* ...
- (c) *Susceptibility of Parcel to Erosion.* ...
- (d) *Use of Natural Topographic Features to Locate Development.* ...
- (e) *Use of Existing Cultural Features to Locate Buffer Zones.* ...
- (f) *Lot Configuration and Location of Existing Development.* ...
- (g) *Type and Scale of Development Proposed.*

Discussion:

As set forth above, LUP Policy 3.1-2 states that development proposals in environmentally sensitive habitat areas such as sensitive plant habitats shall be subject to special review to determine the current extent of the sensitive resource. LUP Policy 3.1-29 states that the Department of Fish and Game is requested to work with the county during the planning and permit process to evaluate the significance of mapped rare plant and wildlife habitat sites as they apply to individual development applications. Section 20.496.015 of the Coastal Zoning Ordinance provides that developments that have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist. LUP Policy 3.1-7 states in applicable part, that a buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. CZC Section 20.496.020 provides the criteria by which buffers are to be established in order to protect ESHA resources.

The appellant asserts that the project as approved is not consistent with the Mendocino County certified LCP that provides for protection of rare plant ESHA habitat. No current botanical survey was required or provided prior to the County approval of the proposed project. The County relied on a botanical survey that had been conducted by Mary Rhyne on January 10, 1995 for a previous subdivision that created the applicant's parcel and two other parcels from an original approximately four-acre property division seven years earlier. That previous botanical study contained a detailed plant list, and recommended protecting a riparian ESHA associated with a small drainage located on the parcel immediately to the northwest adjacent to the subject property, with a 100-foot buffer.

The appellant states that a purpose of the appeal is to "*protect the local coastal forest ecosystem, which is rich in uncommon, endemic, and rare species of plants...*," and contends that without a current botanical survey, rare plant habitat that is likely to exist on the applicant's property would not be protected. The appellant states: "*in view of the recent loss to construction grading and tree death of much of Gualala's south-facing coastal forest, which is known to support unusual plants and animals, site-specific surveys are needed.*"

The appellant has voiced concern for protection of a particular plant known as coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*). Coastal bluff morning-glory was only recently recognized to be an uncommon plant with the 2001 printing of the California Department of Fish and Game's California Natural Diversity Database Special Vascular Plants, Bryophytes, and Lichens List and the August 2001 publication of the sixth edition of the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Plants of California. Coastal bluff-morning-glory is listed by CNPS as a 1B protected plant, meaning that it is a rare plant species vulnerable under present circumstances or to have a high potential for becoming so because of its limited or vulnerable habitat, its low numbers of individuals per population (even though they may be wide ranging), or its limited number of populations. Consequently, the plant meets the definition as a "threatened" or "endangered" species and is eligible for listing as such under the California Endangered Species Act (CESA). Additionally, given this status, the plant and the area in which it grows also meet the definition within the County of Mendocino's LCP as an "environmentally sensitive habitat area," and is subject to the protections enumerated therein (i.e., providing adequately wide buffer areas from development and other similar preclusions). No current botanical survey has been completed for the subject property that investigates if the Coastal bluff morning-glory is present on the site. The botanical survey completed by Mary Rhyne on January 10, 1995 for the previous subdivision of the property, is over eight years old, and was not conducted before the coastal bluff morning-glory was listed in the California Natural Diversity Database as a Category 1B protected plant in 2001. Therefore, the 1995 botanical survey did not specifically examine whether the coastal bluff morning-glory was present on the site.

Commission staff arranged for a field visit to the site on October 1, 2003, to meet with the applicant and Department of Fish and Game Associate Botanist Gene Cooley to determine if there are indications the coastal bluff morning-glory may be present on the site. Mr. Cooley

identified specimens of what may likely be coastal bluff morning-glory plants growing within the staked-out perimeter of the approved development. Due to the intergradation common among species of the genus *Calystegia*, plants in the genus often have conflicting identifying features that makes definitive taxonomic identification problematic. A thorough survey and investigation would have to be performed to accurately identify the protected sub-species of *Calystegia* and rule out misidentification because of the considerable variability in the sub-species. Mr. Cooley recommended that specimen samples be collected from the subject property at the appropriate time of year, and should be compared to voucher specimens in the Jepson Herbaria at U.C. Berkeley, and sent as well to Richard Brummitt, an expert in *Calystegia* taxa, at the Kew Royal Botanical Gardens in England.

As a botanist from the Department of Fish and Game has identified a specimen of what may be the rare plant within the proposed development site, the development as approved may not only fail to provide for any buffer between the development and the rare plant ESHA, the development as approved may directly displace rare plant ESHA. LUP Policy 3.1-7 requires that a buffer area shall be established adjacent to all environmentally sensitive habitat areas to adequately protect the ESHA resource.

In making its determination to approve the proposed development, the County relied on a botanical survey that was outdated. Without the performance of a current botanical survey pursuant to LUP Policies 3.1-2 and 3.1-7, and Coastal Zone Code Section 20.496.015, and without any findings in the County staff report adequately discussing the occurrence or absence of rare plants on the property, 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 possibility that the approved development may adversely impact rare plant ESHA, the coastal resources potentially 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 rare plant ESHA.

#### **Allegations Raising No Substantial Issue**

As discussed below, the Commission finds that with respect to the appellant's allegations regarding 1) recreational access, 2) application completeness, 3) visual resource protection, and 4) geologic hazards, the project as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

##### **1. Recreational Access**

The appellant asserts an inconsistency of the local approval with Gualala Town Plan (GTP) LUP Policy G3.7-4, which is a portion of the certified LCP.

Coastal Act and LCP Policies

Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30210 of the Coastal Act requires that maximum public access be provided consistent with public safety, public rights, private property rights and the need to protect natural resource areas.

LUP Policy G3.7-4 (Gualala Town Plan) states:

*"A pedestrian and bicycle trail which links Gualala and Anchor Bay and connects to coastal access trails shown on the Land Use Plan maps shall be developed within Highway 1 and Old Coast Highway (CR #513) right-of-way and easements acquired for public access."*

LUP Policy 3.6-21 states:

*"The County of Mendocino coastal trail shall be integrated with the coastal trails in the cities of Fort Bragg and Point Arena, and with Humboldt County to the north and Sonoma County to the south so as to provide a continuously identifiable trail along the Mendocino County coast."*

LUP Policy 3.6-24 states:

*"The coastal access program shall be implemented in a manner that ensures coordination among and the most efficient use of limited fiscal resources by federal, state, county agencies, and private organizations responsible for acquisition, development, and maintenance of public coastal access ways."*

LUP Policy 3.6-27 states:

*"No development shall be approved at a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's 'Manual on Implied Dedication and Prescriptive Rights'. Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological*

*resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site."*

In applying Sections 30210, 30211 and 30212 of the Coastal Act and LUP Policies G3.7-1, 3.6-21, 3.6-24, and 3.6-27, the County and the Commission on appeal is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

### Discussion

The appellant states that the primary purpose of the appeal is to protect and enhance a section of the California Coastal Trail within the Gualala Town Plan area. The appellant alleges that the *"county appears not to be using the GTP in coastal planning..."*

Land Use Map #31 for the subject area does not indicate any existing or proposed shoreline access routes in the vicinity of the approved project. However the appellant cites the GTP's LUP policy that requires a pedestrian and bicycle trail to be developed, which links the towns of Gualala and Anchor Bay, and connects to coastal access trails shown on the Land Use Plan maps. This trail *"shall be developed within Highway 1 and Old Coast Highway (CR #513) rights-of-way and easements acquired for public access."* The appellant states the belief that *"there is a reasonable nexus for requiring a trail easement as a condition to CDP#30-03 [the County's approval of the subject development] along the old Gualala Mill RR right of way which traverses the subject parcel just inland and above CR #513. Pedestrians currently leave Highway 1 rather than enter the highway cut, and traverse the Old Milano Hotel property on the former Highway 1 route which continues as CR 513, where they now walk in the roadway. Development on the inland side of CR #513 under CDP #61-02 [the approved residential development for the adjacent neighbor to the southeast] is already increasing traffic and creating hazards for pedestrians, and more lots are available for development. The CR #513 traverses the bluff top too closely to allow for a trail on the ocean side... [T]he RR right of way was used by pedestrians. Sections of it were taken by bluff retreat, trestles collapsed or were burned, and the coastal path had to detour inland. The section of RR along CR #513 is the longest remaining. It was damaged by installation of utility lines in recent years, but enough of it remains that it is realistic to recruit the interest of rail preservation groups. We believe public use over many decades has created a public right that was the basis for G#.7-4... In summary, we believe a trail easement condition should be added to CDP #30-03 and any future CDPs along CR #513, and that a nexus and a public right exist."*

The Commission received a submittal from the applicants on October 22, 2003, entitled Response to Appellant's Concerns, in which they discuss the appellant's contention that the County approval was inconsistent with LUP Policy G3.7-4. As stated above, the appellant believes that the County was obligated to acquire an easement for public access as a condition to the local approval of CDP #30-03 *"along the old Gualala Mill RR right of way."* The applicant explains that the old railroad grade adjacent to his property on the inland side of Old Coast



Highway has already been dedicated to the County for public access purposes as a requirement of the County's approval of the subdivision that created the parcel.

*A 30' land dedication to the County was done and can be easily conformed, please refer to the minor subdivision parcel map CDMS 22-95 filed for record March 4, 2002 in maps drawer 69, pages 48 and 49, Mendocino County Records... The land deeded to the County is consistent with the policies described in the Gualala Town Plan. Specifically review the cross section for local roads – GTP Figure 3.6. In a conversation I had with the appellant, Peter Reimuller (09/15/03), I don't believe he was aware of this dedication at the time he submitted his initial or revised appeal."*

Therefore, to the extent that the approved development would increase traffic and create hazards for pedestrians, the impacts were addressed at the time the County approved the subdivision creating the parcel by the dedication of an accessway on the old railroad right-of-way. Therefore, the Commission finds that no substantial issue is raised of conformance of the approved development with the public access requirements of the Coastal Act and certified LCP, including the requirements of the LUP Policy G3.7-4 that easements for a pedestrian and bicycle trail within the Old Coast Highway (CR #513) right-of-way be acquired. 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 grounds for appeal raised with regard to rare plant ESHA raises a substantial issue of conformance of the project as approved with the certified LCP.

2. Application Completeness

The appellant contends that the County approved an application for this Coastal Development Permit that was incomplete, inconsistent with Coastal Zoning Code Section 20.532.025 (A) of the Mendocino County certified LCP requiring provision of sufficient information to describe the project.

LCP Policy

CZC Section 20.532.025 states in applicable part:

*"Each application...shall include the following information:*

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

Discussion:

The appellant states that not enough information was provided by the applicant for the public to determine whether the project complies with applicable policies. The appellant believes that the incomplete application does not provide the public with the means to analyze the project. The appellant complains that no samples of the proposed building materials or colors were available for public review at the CDP hearing. The appellant states that the map provided with the application is deficient because it does not show where Highway One is in relation to the lot, the actual relief of the cut slope, or the slope of the lot toward Old Coast Highway. As a result, the public cannot tell how close the structures and driveway will be to the roads or trail. The appellant also is concerned that no drainage plan or landscape plan was included with the application. Furthermore, the appellant also raised a concern that a current botanical survey should have been performed for this project. The lack of a botanical survey is discussed above under the "ESHA Protection" finding.

The purpose of Chapter 20.532 of the LCP is to establish the procedures and requirements for obtaining a Coastal Development Permit to implement the Coastal Element of the General Plan in accordance with the California Coastal Act of 1976. CZC Section 20.532.025(A) sets forth procedural requirements of completing an application for a coastal development permit. It should be noted that the appellant's procedural contention does not 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 this procedural complaint, the Commission also finds that this procedural complaint fails to allege an inconsistency of the approved project with the certified LCP.

The Coastal Zoning Code section cited above, requires that "*sufficient detail*" be provided by the applicant in order for the County to determine if the project complies with the requirements of the Coastal Zoning Ordinance. There is no provision in the LCP giving the public the authority to determine if an application can be accepted by the County as complete. Obviously, however, interested persons have the opportunity to appear and present their viewpoints at a public hearing. It should be noted that there is no requirement in the LCP policies and ordinances for exhaustive or "complete detail," only the requirement of Section 20.532.025(A) of the Coastal Zoning Code that information be provided "*sufficient*" for the County to determine compliance with the requirements of the certified zoning ordinance.

The appellant contends that color samples and building material samples were not available at the public meeting. The colors of the building materials to be used in the development were identified in the permit application and discussed in the staff report. Although it would give the public a better idea of the actual color, there is no LCP policy or standard requiring that color samples be available for review prior to, or even during the public hearing. Therefore, the fact that samples of the colors may not have been available for public review prior to the hearing does not raise a substantial issue of conformance with Section 20.532.025(A) requirements that sufficient information be provided to determine conformance with the Coastal Zoning Ordinance provisions.

The appellant states that the map submitted with the application is incomplete because it does not show the relationship of the residential structures to Highway One. Commission staff notes that as part of the CDP application, a vicinity map was prepared which clearly shows the relationship of the property relative to Hwy 1, CR 513 and the Pacific Ocean.

The appellant contends the application is incomplete because it is not accompanied by a drainage plan. The appellant states concern about the drainage from the development because the site is in a sensitive area and the drainage could also affect an existing bluff-top home located below the steep subject lot. However, the appellants provide no information that details how drainage from the approved development would adversely affect sensitive habitat on the site or the home on the nearby bluff-top parcel. The property to the north of the parcel contains a riparian corridor. Drainage from the existing driveway that will serve the approved development was engineered when the driveway was approved to mitigate impacts to the riparian zone. The approved house and garage are located on the opposite end of the parcel, approximately 210 feet from the riparian area. Any drainage from the approved development that drains towards the riparian corridor would be conveyed by the driveway, which has already been engineered to handle runoff from the site. It is also not clear how runoff from the approved development that drains towards the ocean, rather than towards the riparian zone would affect the existing home on the nearby bluff-top parcel. The existing bluff-top home is not directly below the approved development. In addition, any runoff from the approved house and garage would have to travel through a forested area where the runoff would infiltrate to some degree into the soil and across County Road 513, which has its own drainage facilities, before even reaching the bluff top parcel where the neighboring home has been constructed. Furthermore, even if additional drainage details were provided in the application, the appellant does not cite a specific drainage policy of the certified LCP against which the approved development is allegedly inconsistent. Therefore, no substantial issue is raised that lack of additional plans such as landscaping information or drainage plans was inadequate to determine the consistency of the project with the policies and standards of the certified LCP.

The appellant contends the application is incomplete because it is not accompanied by a landscaping plan. However, the appellant does not explain why a landscaping plan is needed to ensure consistency with the LCP on this forested parcel that is not designated as highly scenic and will only be minimally visible from public vantage points. Therefore, the fact that no detailed landscaping plan was submitted with the permit application does not raise a substantial issue of conformance with Section 20.532.025(A) requirements that sufficient information be provided at the time of application to determine conformance with the Coastal Zoning Ordinance provisions.

Therefore, no substantial issue is raised of conformance of the project as approved with Section 20.532.025(A) requirements that sufficient information be provided to determine conformance with the Coastal Zoning Ordinance provisions. 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 grounds for appeal raised with regard to rare plant ESHA raises a substantial issue of conformance of the project as approved with the certified LCP.

3. Visual Resource Protection

The appellant contends that the approved project is inconsistent with requirements of Mendocino County LUP Policy 3.5-1 relating to the protection of visual resources.

LCP Policy:

LUP Policy 3.5-1 states in applicable part, *"The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a 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."*

Discussion:

The appellant submitted an addendum to their appeal, received by the Commission on August 26, 2003, on the last day of the appeal period, stating that the subject property is in an area that *"is designated Highly Scenic on the County LCP map..."* and citing several LCP policies that the appellant wished to add to the appeal asserting an inconsistency of the local approval with the LCP. Contrary to this statement, the subject property is not located in an area designated as highly scenic, and is therefore not subject to the LCP policies that the appellant cited that regulate development in highly scenic areas. When the appellant discovered this error in fact, the appellant sent a letter received by the Commission on September 8, 2003 requesting the Commission to *"please drop"* highly scenic reasons for the appeal cited in the addendum. *"We cited Highly Scenic due to a mistake in map reading for which we sincerely apologize: The subject property and neighborhood are not designated Highly Scenic."*

However, the appellant continues to assert that the County approval is inconsistent with LUP Policy 3.5-1, which requires that the scenic and visual qualities of Mendocino County coastal areas to be considered and protected as a resource of public importance. This policy also requires permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The appellant alleges that the approved project is inconsistent with the provisions of LUP Policy 3.5-1 requiring that (1) development to be sited and designed to protect views to and along the coast and with (2) development be visually compatible with the character of surrounding areas. With regard to the view blockage issue, the appellant states:

*“The project is likely to be or to become visible from Highway 1, and its visibility from the trail easement is unknown, but probable.... We believe that the structures will be visible from Highway 1, because the existing building on CDP #61-02 [the neighbor to the southeast of the subject property] is visible, and the buildings on CDP #30-03 [the subject project] will be closer to the gap in the highway cut through which the existing structure is visible. Visibility from Highway 1 should not be determined from the viewpoint of a driver of a standard vehicle but from the viewpoint of a traveler on the Mendocino Transit Authority’s 14-passenger vans, from tour buses, and from the viewpoints of passengers on larger private vehicles such as SUVs and RVs. The structures will be visible from CR #513, which has a recreational status conferred by Coastal Element G3.7-4...trees are likely to be cut during construction, to die, or to be blown down in storms, increasing the visibility of the structures.”*

There is no requirement under LUP Policy 3.5-1 that permitted development be invisible from Highway One or from Old Coast Highway (CR#513), but rather that permitted development be sited and designed to protect views to and along the coast. The approved site of the residential development would not obstruct any views to the coast from Highway One, because the highway is situated in a through-cut located below the subject parcel (see page 16 of Exhibit No. 6). There are no views to the coast that the approved development would block from Highway One. The only possible view that someone on Highway One might have of the approved development along the coast would be a fleeting glimpse of a portion of the garage while traveling south. The existing geography of the area in combination with the forested setting would prevent any significant view of the approved structures from Highway One, from a passenger car or from a public transit bus. Furthermore, public views from Highway One along the ocean and scenic coastal area would be protected for the same reason, because there are no significant views of the approved development from Highway One. Views of the approved development from Old Coast Highway (CR 513) would not block views to the ocean because the approved residential development is inland of CR 513.

With regard to the compatibility of the approved development with the character of surrounding areas, the appellant states:

*“The County did not do an adequate analysis of the character of the surrounding area, in terms of the size, bulk and appearance of existing homes. The county memo dated 7/22/03 states, ‘The only neighboring residence, which is currently under construction, is to be a 1856-square-foot, single-family residence and a 1228-square-foot detached garage.’ In fact, there are eight or more neighboring homes located along the CR#513 within less than a quarter mile of the subject lot. The county should not count only the newest, largest structure in determining neighborhood character.”*

The Commission received a submittal from the applicant on October 22, 2003, entitled Response to Appellant’s Concerns, in which he discusses the appellant’s contention that the County approval was inconsistent with LUP Policy 3.5-1 related to the requirement that permitted

development be sited and designed to be visually compatible with the character of surrounding areas.

*"It is our understanding that the County Planner's reference to the neighboring house was made not because it was the only house considered in determining the character of the neighborhood, but due to the fact that the house was so close to our proposed project. Its proximity generated the need for greater consideration.*

*As far as the over all character of the neighborhood, please review the houses visible on California Coastal Records Project [www.californiacoastline.org] Image # 12083 to 12088. As you can see the houses vary considerably from new larger two story structures to old smaller single story structures. Some are attached, others have detached accessory buildings. Heights of houses also vary, as does the color and exterior finishes. I would describe the character of the neighborhood as eclectic."*

Commission staff has visited the site and the project area and confirms that there is variation in the height, size, colors, and materials of the houses in the project vicinity, and that a number of the existing houses, not just the immediately adjacent house under construction, are two-story and have detached structures similar to the approved development. Additionally, the approved residential development is designed and sited in the best location on the parcel to minimize visual impacts. The structures would be built on the flattest, least forested portions of the property, thereby reducing the amount of grading and ground disturbance necessary to complete the development. The house and garage design utilizes a compact footprint minimizing the building frontage along Old Coast Highway (see page 17 of Exhibit No. 6). The approved design would reduce the perceived horizontal mass of the house as viewed upward from Old Coast Highway. The approved design would use a terraced building elevation that matches the adjacent slope of the hillside, thereby reducing the perceived vertical height of the residence as viewed from Old Coast Highway. Clustering the structures near the existing development of the adjacent neighbor to the southeast would provide minimum disruption to the existing northwest forested slope landscape as viewed from Old Coast Highway. The painting scheme of the approved development uses earth tone colors, browns and dark greens, to be visually compatible with the character of the forested setting and to match the character of neighboring structures by blending with the natural landscape as viewed from Old Coast Highway.

Furthermore, the significance of the coastal visual resource affected by the County's decision is not great. As noted above, the development is not in a designated highly scenic area and is only minimally visible from Highway One and other public vantage points. Therefore, the project as approved raises no substantial issue of conformity with the visual resource provisions of LUP Policy 3.5-1 as discussed above. 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 grounds for appeal raised with regard to rare plant ESHA raises a substantial issue of conformance of the project as approved with the certified LCP.

4. Geologic Hazards

The appellant contends that the approved project is inconsistent with requirements of Mendocino County CZC Sections 20.500.010(A), 20.500.020(E) and 20.532.070 relating to geologic hazards.

LCP Policies:

CZC Section 20.500.010(A) states:

*“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, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

CZC Section 20.500.020(E) states:

*(E) Erosion.*

- (1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.*
- (2) The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access and shall minimize visual impacts through all available means.*

*(3) All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineer's report and Chapter 20.492 of this Division. (Ord. No. 3785 (part), adopted 1991)*

CZC 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:

CZC Section 20.500.010(A) requires permitted development in high geologic hazard areas to minimize risk to life and property, and to not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. CZC Section 20.500.020(E) regulates the construction of seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes and requires that all grading specifications and techniques follow recommendations cited in the Uniform Building Code. CZC Section 20.532.070(A)(3)(b) requires all development plans to undergo a preliminary evaluation of landsliding potential.

The appellant has raised a number of contentions relating to geologic hazards. The appellant explains that the subject parcel and neighboring parcel *"lots are not blufftop, so standard hazard and seawall conditions would not apply....* The appellant goes on to say, however, that the approved development would *"involve considerable impermeable surfaces and actual and planned vegetation removal. Drainage...could impact CR #513 and the existing home, and 'require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.'* *The county or the owners of the blufftop house across CR #513 from the subject parcel could be forced to construct protective devices. This may be the house that lost 80 feet of setback in a single night when the late Olive and Harold Rapp owned the property."*

The appellant cites concerns about the driveway that traverses the subject parcel. The appellant states:

*"During the Gualala Municipal Advisory Council review of adjacent CDP #61-02 [the neighboring southeast parcel], council members who viewed that site raised strong concerns about drainage. One said an engineer should look at it, especially regarding the driveway. We believe a drainage plan is needed for CDP #30-03 [the subject parcel], where the same concerns apply."*

In the letter received by Commission staff on August 26, 2003, the appellant states:

*"The Zita structures, as well as the Eckles / Shaddick structures (CDP # 61-02) under construction on the neighboring parcel [to the east] , will be perched at the top of the cut bank which drops down to Highway 1. At least one member of the Gualala Municipal*



*Advisory Council during discussion of CDP #61-02 raised serious concerns about the possible impact of construction at the top of this cut bank on [the] Highway.”*

During several phone conversations between Commission staff and the appellant, concerns were expressed by the appellant that the approved structures risk falling from the “perched” cliff onto Highway One.

The Commission finds that none of these contentions that the approved project is inconsistent with the geologic hazard provisions of the LCP raise a substantial issue. First, it should be noted that the Gualala Municipal Advisory Council sent a letter dated May 13, 2003, to the County staff reviewing the project application stating:

*“At the regularly scheduled Gualala Municipal Advisory Council meeting May 12, 2003, the council reviewed and discussed CDP #30-03 (Brian and Della Zita), construction of a two-story, 2,225 square foot single-family residence with a maximum height of 27’5” above finished grade. The Council reviewed the above-mentioned project and unanimously agreed [to] recommend approval of the project as submitted.”*

Second, pursuant to CZC Section 20.532.070(A)(3)(b) the County staff conducted a preliminary analysis of landsliding potential on the property and stated the following on page 2 of their staff report on the proposed project under the heading of Hazards:

*“The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure. There are no known faults, landslides or other geologic hazards in close proximity to the proposed development (emphasis added).”*

Third, Commission staff conducted a site visit on October 1<sup>st</sup> and 2<sup>nd</sup>, 2003, and saw no indication of any potential drainage problems or slope instabilities associated with the subject property. Commission Staff Geologist Mark Johnson noted at that time, that the bedrock substrate associated with the applicant’s property is composed of competent sandstone.

Fourth, the applicant’s property is not considered to be a high geologic hazard area and no evidence that has been supplied by the appellant or the County that the approved development would compromise structural integrity and stability at the project site.

Fifth, the applicant has not applied for, nor has the County’s approved any shoreline protection device associated with the subject project. As previously discussed under the finding entitled “Application Completeness,” no evidence has been presented by the appellant that drainage from the approved development would exacerbate erosion on the neighboring blufftop parcel that would threaten the existing house on that property. The existing bluff-top home is not directly below the approved development. The existing driveway on the applicant’s parcel has been engineered to accommodate runoff from the site that drains along the driveway. The drainage facilities convey the water to an existing creek to the north of the applicant’s property. In

addition, any other runoff from the approved house and garage would have to travel through a forested area where the runoff would infiltrate to some degree into the soil and across County Road #513, which has its own drainage facilities, before even reaching the bluff top parcel where the neighboring home has been constructed.

Therefore, for all of the above reasons the assertions raised by the appellant contending that the County approval of the proposed project is inconsistent with provisions of the certified LCP related to CZC Section 20.500.010(A) and Section 20.500.020(E) as described above, raise no substantial issue.

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 grounds for appeal raised with regard to rare plant ESHA raises a substantial issue of conformance of the project as approved with the certified LCP.

## **2. Appellant's Contentions that are Not Valid Grounds for Appeal**

The appellant raises a contention that is not a valid grounds for appeal. As discussed below, the contention raised regarding the inconsistency of the project as approved with the second residential unit provisions of the LCP was not received in a timely manner and thus is not a valid ground for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

### **a. Second Residential Unit**

The appellant raises a concern about "*the proliferation of second residential units on lots west of Highway 1...*" and contends that the project as approved is inconsistent with Coastal Zoning Code Section 20.458 et. seq., and LUP Policy G3.2-3. CZC Chapter 20.458 and LUP Policy G3.2-3 regulate development of second residential units in the Coastal Zone and within the Gualala Town Plan area.

The appellant's assertion that the County approved the development inconsistent with the second residential unit provisions of the LCP is invalid because the assertion was not received in a timely manner. The appellant added the second residential unit assertion of inconsistency of County approval with provisions of the certified LCP in the seven-page letter (mistakenly dated August 8, 2003) received by the Commission on September 8, 2003. This letter was received nearly two weeks after the close of the appeal period, and therefore, the assertion related to second residential unit is not valid grounds for appeal.

Even if the contention that the project is inconsistent with CZC Section 20.458 et seq. and LUP Policy G3.2-3 had been raised on appeal during the appeal period, the contention would not have raised a substantial issue. The applicant did not propose development of any second residential units, nor did the County approve any second residential units on the subject property. In fact, in approving the guest cottage above the detached garage, the County imposed a special condition

to ensure the structure would not be used for commercial purposes or human occupancy. In approving the proposed project, the County imposed Special Condition No. 1 stating:

*“The proposed garage storage space shall be for private use only. Commercial use or human habitation of the proposed garage is prohibited.”*

### **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 rare plant ESHA.

### **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.

### **Botanical Survey and Buffers for Environmentally Sensitive Habitat Areas**

As discussed previously, the certified LCP policies on ESHA require that ESHA be protected and that appropriate buffers be established between approved development and ESHA. The last known botanical survey for the property was completed in 1995, prior to the listing of the coastal bluff morning-glory (*Caslystegia purpurata* ssp. *saxicola*) as a category 1B species in the California Natural Diversity Database. As a category 1b species, locations where coastal bluff morning-glory exists may be considered ESHA. During a site visit with Commission staff on October 1, 2003, a Department of Fish & Game botanist identified specimens of what may likely be coastal bluff morning-glory plants growing within the staked-out perimeter of the approved development. Due to the intergradation common among species of the genus *Calystegia*, plants in the genus often have conflicting identifying features that makes definitive taxonomic

identification problematic. A thorough survey and investigation needs to be performed to accurately identify the protected sub-species of *Calystegia* and rule out misidentification because of the considerable variability in the sub-species. Such an investigation should include collecting specimen samples and comparing them to voucher specimens at a recognized herbarium such as the Jepson Herbaria at the University of California or the Kew Royal Botanical Gardens in England. The botanical survey also needs to map the location and extent of any confirmed coastal bluff morning-glory. Because no current botanical survey or analysis of rare plant ESHA was performed to determine appropriate buffers, a determination of adequate buffers is needed as prescribed in Coastal Zoning Code 20.496.020(A)(1)(a-g). Additionally, consultation and agreement by DFG that a protective buffer of less than 100 feet as determined pursuant to CZC 20.496.020 is adequate to protect the ESHA resource is required if development would occur within 100 feet of any delineated ESHA.

#### Geotechnical Investigation

It is possible that the botanical survey and the evaluation of the width of appropriate buffers requested above may indicate that the development site should move further down the slope of the subject property. In that event, the development would be located on a steeper portion of the site where geologic stability and the conformance of the project with the geologic hazard policies of the LCP would become a concern. Therefore, if the information derived from the requested botanical survey and buffer width evaluation indicates that the development site should move further down the slope, the Commission will need to request that a geotechnical investigation be performed for the project. The specific information needed to be addressed by such a geotechnical investigation would include recommendations for foundation types and a surficial slope stability analysis.

#### Information Needed to Evaluate Project Consistency With Coastal Act Section 30010

It is possible that the botanical survey and the evaluation of the width of appropriate buffers requested above may indicate that there is no feasible site to build a residence and still maintain the minimum required buffers from rare plants on the site. In that event, application of the ESHA and ESHA buffer policies of the certified LCP by themselves to the project may require denial of the project. However, the Commission must also consider Section 30010, and the United States Supreme Court decision in Lucas v. South Carolina Coastal Council (1992) 505 U.S., 112 S.Ct. 2886.

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in Lucas v. South Carolina Coastal Council (1992). In Lucas, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in

the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the Lucas decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, the ESHA and ESHA buffer policies of the certified Mendocino Local Coastal Program cannot be read to deny all economically beneficial or productive use of land because these policies cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

Therefore, if the information derived from the requested botanical survey and buffer width evaluation indicate that the project cannot be found consistent with the ESHA and ESHA buffer policies of the certified Mendocino Local Coastal Program, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would interfere with the applicant's reasonable investment-backed expectations. In that event, the Commission will need to request additional information from the applicant concerning alternative proposals and the applicant's reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project. Specifically, this information consists of the following questions:

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;

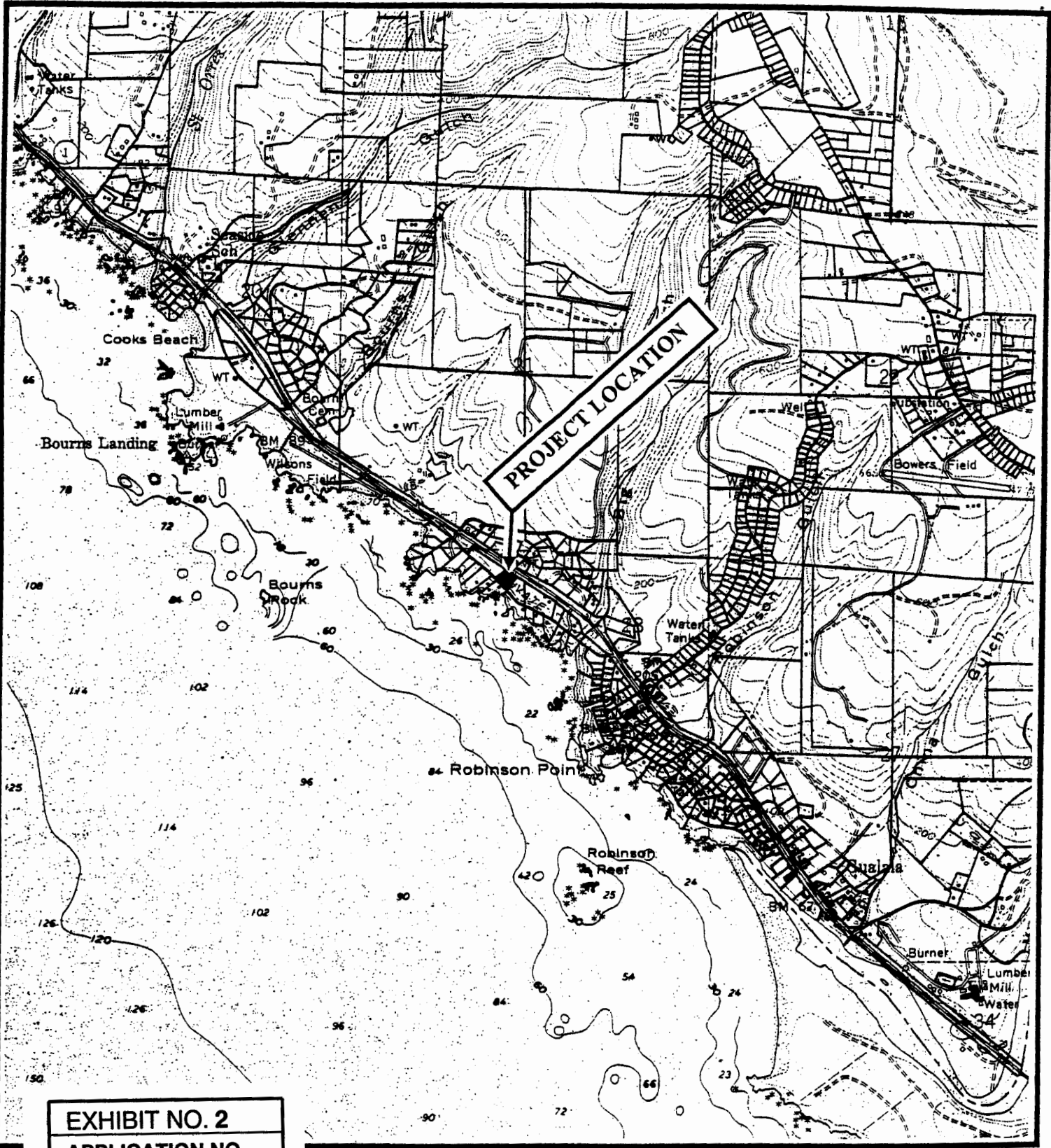
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
  - property taxes
  - property assessments
  - debt service, including mortgage and interest costs; and
  - operation and management costs; and
11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

Without the above information concerning the adequacy of protection for ESHA resources, the Commission cannot reach a final determination concerning the project's consistency with the ESHA 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 Location Maps
3. Project Plans
4. Notice of Final Action
5. Appeal
6. Applicant's Correspondence





**EXHIBIT NO. 2**  
**APPLICATION NO.**  
 A-1-MEN-03-055  
 ZITA  
 VICINITY LOCATION  
 MAPS (1 of 2)

**BRIAN & DELLA ZITA**

1 INCH = 2000 FEET





RMR-4

FL

RR-1

RR-5

PACIFIC OCEAN



PROJECT SITE

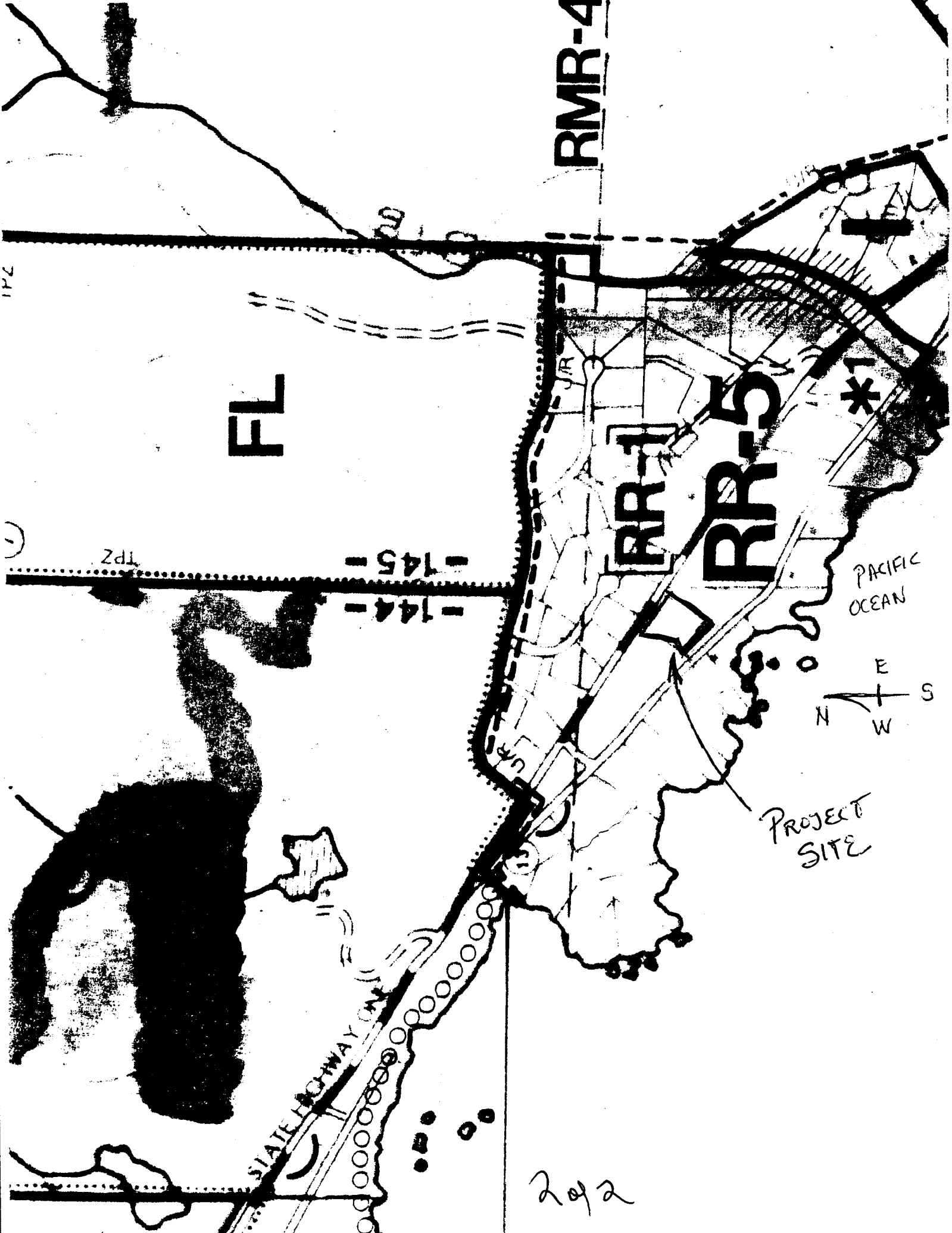
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TPZ

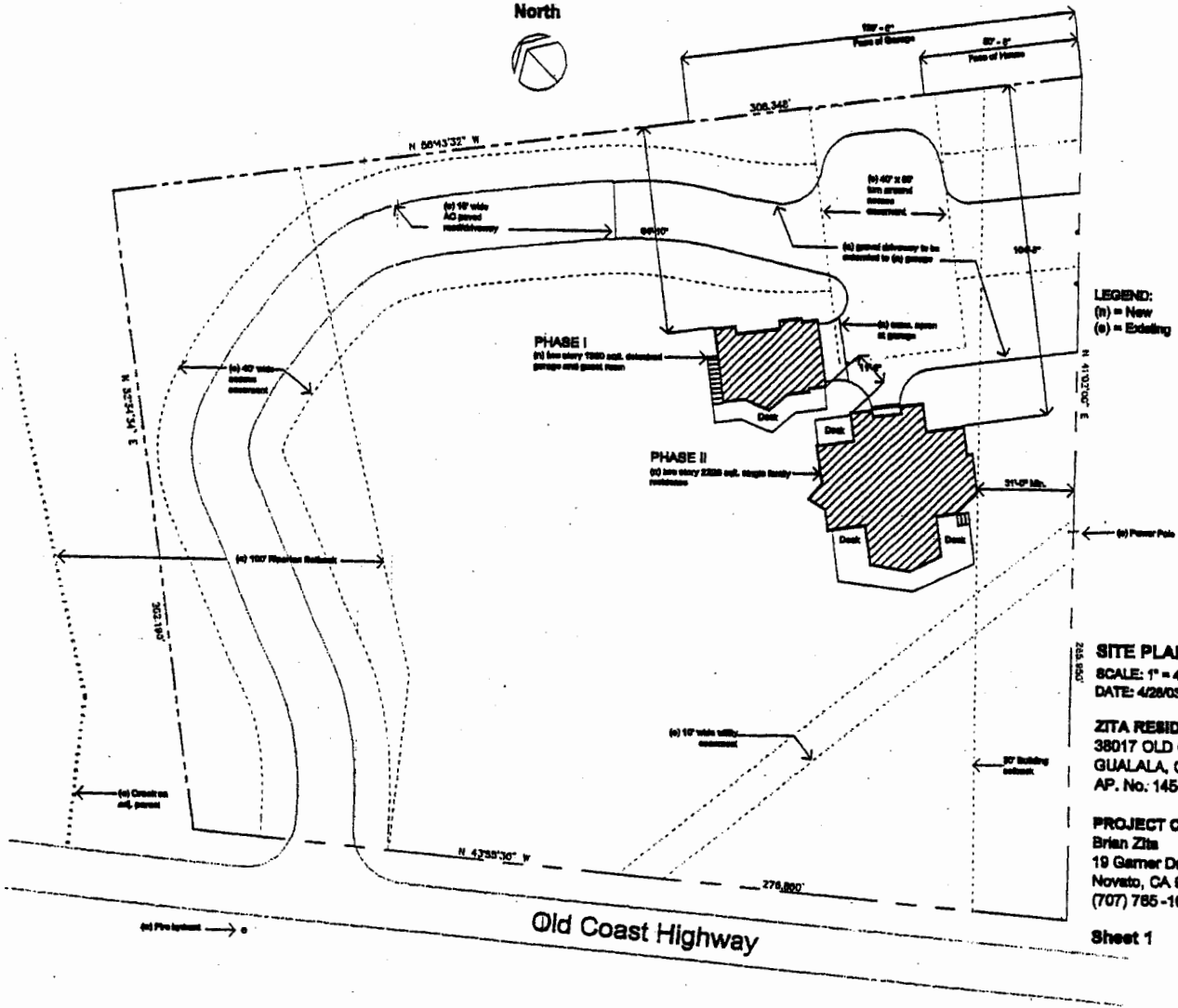
1PZ

STATE HIGHWAY 101

2 of 2



North



**LEGEND:**  
 (h) = New  
 (e) = Existing

**SITE PLAN**  
 SCALE: 1" = 40'-0"  
 DATE: 4/28/03  
 ZITA RESIDENCE  
 38017 OLD COAST HIGHWAY  
 GUALALA, CA 95445  
 AP. No. 145-122-11

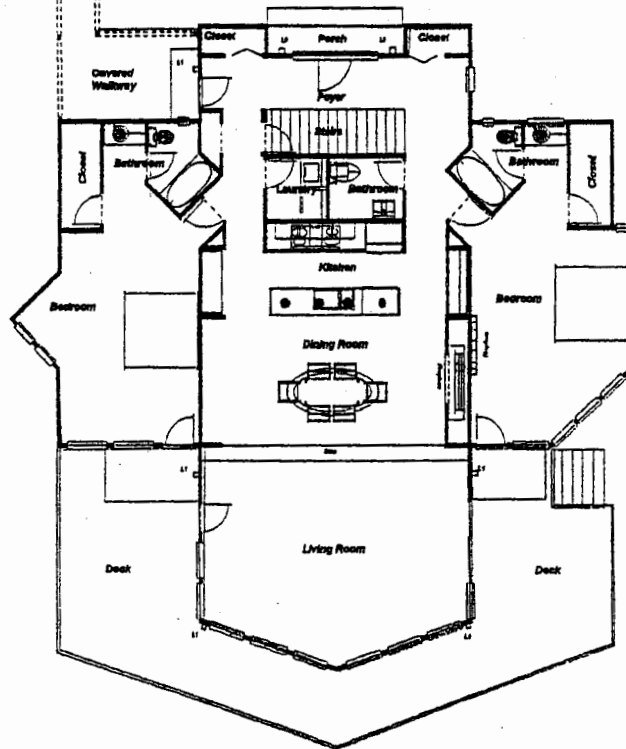
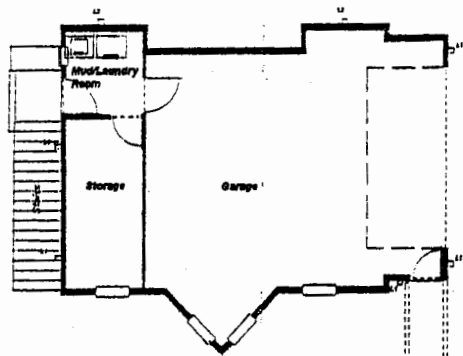
**PROJECT CONTACT:**  
 Brian Zita  
 19 Garner Drive  
 Novato, CA 94947  
 (707) 785-1880

Sheet 1

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
 A-1-MEN-03-055  
 ZITA  
 PROJECT PLANS (1 of 5)

**BRIAN & DELLA ZITA**  
**SITE PLANS**  
 No Scale





(L1) Shielded Downward Exterior Light  
 (L2) Shielded Up and Downward Exterior Light

FIRST FLOOR PLAN

Scale: 3/16" = 1' - 0"

BRIAN & DELLA ZITA

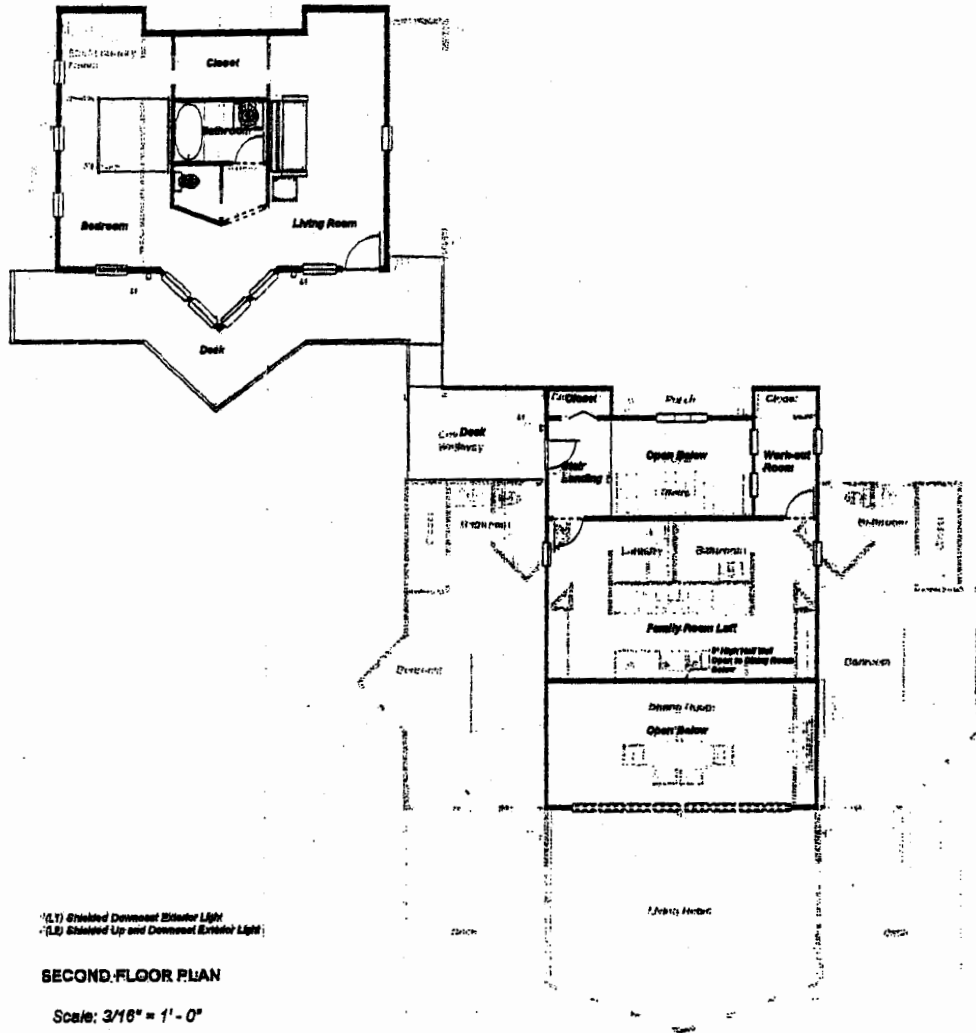
FIRST FLOOR PLAN

No Scale



NORTH

2 of 5



BRIAN & DELLA ZITA

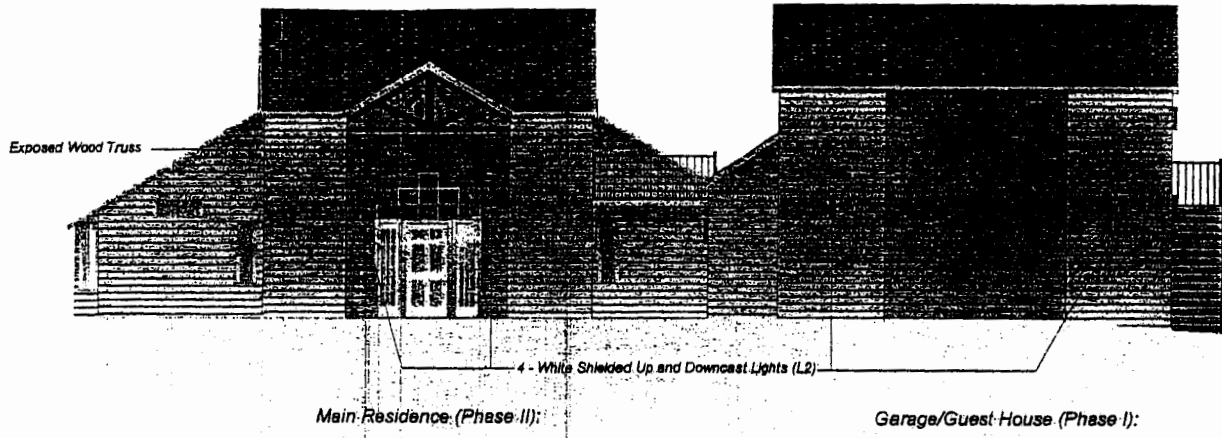
SECOND FLOOR PLAN

No Scale

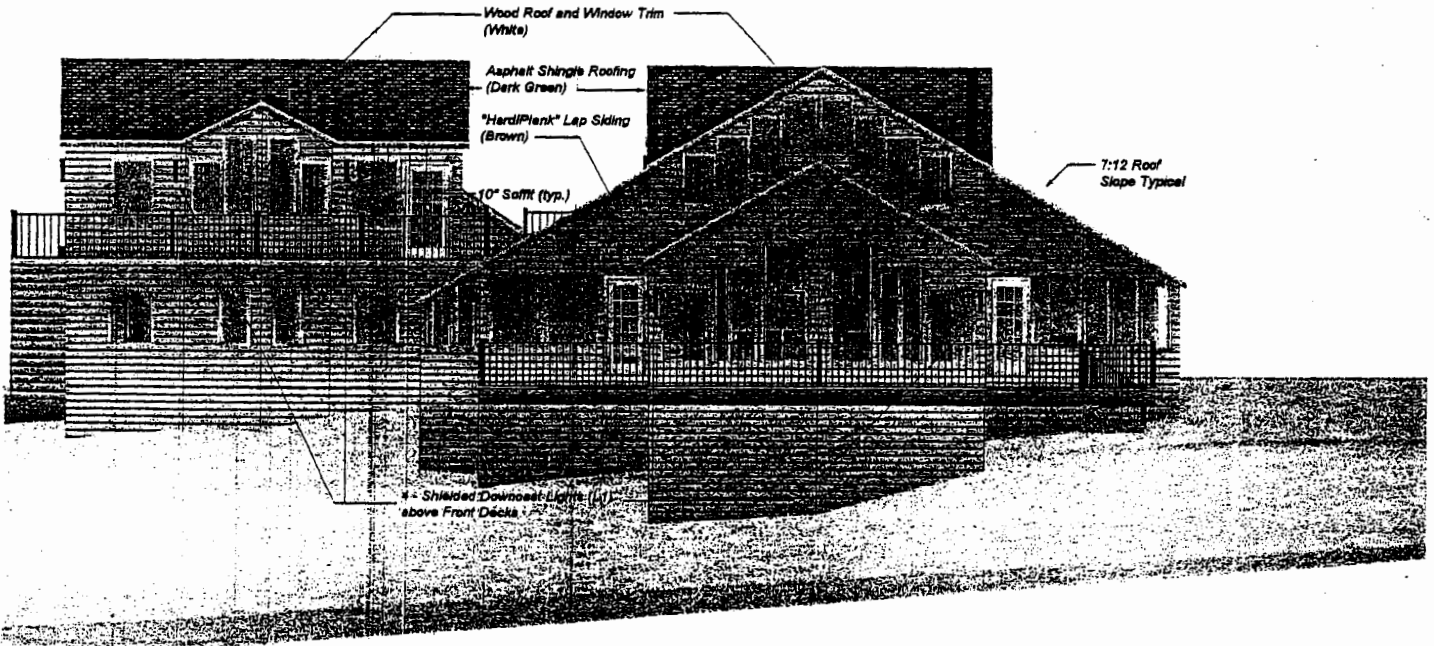


NORTH

395



# North Elevation



# South Elevation

BRIAN & DELLA ZITA

ELEVATIONS

No Scale

4 of 5



-MEN-03-112

RAYMOND HALL  
DIRECTOR

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

TELEPHONE  
(707) 964-5379

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

RECEIVED

August 4, 2003

AUG 12 2003

NOTICE OF FINAL ACTION

CALIFORNIA  
COASTAL COMMISSION

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

**CASE#:** CDP #30-03  
**OWNER:** Brian & Della Zita  
**REQUEST:** Construct a two-story 2,225 square foot single-family residence with a maximum average height of 27'5" above finished grade. Construct a two-story detached structure consisting of a 730 square foot garage/storage space on the first floor and a 630 square foot guest cottage above for a total of 1,360 square feet and a maximum average height of 25'4" above finished grade. Connect to the Gualala Community Services District and the North Gualala Water Company for sewage disposal and domestic water. The proposed development will utilize an existing paved driveway for access off of Old Coast Highway. The existing gravel driveway is to be extended to the proposed garage.  
**LOCATION:** Approximately 1.5 miles N of Gualala on the W side of Highway One on the E side of Old Coast Highway (CR #513) at 37941 Old Coast Highway (using 38017) (APN 145-122-11).

**PROJECT COORDINATOR:** James Essig

**HEARING DATE:** July 24, 2003

**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-03-055

ZITA

NOTICE OF FINAL ACTION

(1 of 12)

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## MENDOCINO COUNTY MEMORANDUM

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**TO:** ATTACHMENT TO STAFF REPORT CDP 30-03

**FROM:** JAMES ESSIG

**SUBJECT:** CDP 30-03

**DATE:** 7/22/03

VISUAL RESOURCES

ALTHOUGH THIS PROPERTY IS ADJACENT TO HWY 1, THIS PROJECT IS NOT VISIBLE FROM HWY 1 DUE TO HEAVY VEGETATION AND TOPOGRAPHY. THE HOME IS LOCATED ON THE WEST SIDE OF THE PROPERTY, WHICH IS ELEVATED ABOVE THE HIGHWAY CORRIDOR. THE ONLY NEIGHBORING RESIDENCE, WHICH IS CURRENTLY UNDER CONSTRUCTION, IS TO BE A 1856 SQ. FT. SINGLE FAMILY RESIDENCE AND A 1228 SQ. FT. DETACHED GARAGE. BOTH STRUCTURES ARE TO HAVE GREY-GREEN SIDING WITH A DARK BROWN ROOF. FURTHER INFORMATION CONCERNING THE ADJACENT PROJECT CAN BE FOUND IN CDP#61-02.

3 of 12

**OWNER/APPLICANT:** Brian and Della Zita  
19 Garner Drive  
Novato, CA 94947

**REQUEST:** Construct a two-story 2,225 sq. ft. single-family residence with a maximum average height of 27'-5" above finished grade. Construct a two-story detached structure consisting of a 730 sq. ft. garage/storage space on the first floor and a 630 sq. ft. guest cottage above for total of 1,360 sq.ft. and a maximum average height of 25'-4" above finished grade. Connect to the Gualala Community Services District and the North Gualala Water Company for sewage disposal and domestic water. The proposed development will utilize an existing paved driveway for access off of Old Coast Hwy. The existing gravel driveway is to be extended to the proposed garage.

**LOCATION:** Approximately 1.5 miles north of Gualala, on the west side of Highway One, on the east side of Old Coast Highway (CR# 513) at 37941 Old Coast Highway (using 38017) (APN 145-122-11).

**APPEALABLE AREA:** Yes (West of 1<sup>st</sup> public road)

**PERMIT TYPE:** Standard

**TOTAL ACREAGE:** 1.6 ± acres

**ZONING:** RR: L-5 [RR]

**GENERAL PLAN:** RR-5 [RR-1]

**EXISTING USES:** Vacant-Existing Driveway

**SUPERVISORIAL DISTRICT:** 5

**ENVIRONMENTAL DETERMINATION:** Categorically exempt, Class 3 (a) & (e)

**OTHER RELATED APPLICATIONS:** Boundary Line Adjustment CDB# 70-94, and Coastal Development Minor Subdivision #22-95

**PROJECT DESCRIPTION:** The owner proposes to construct a 2,225 sq. ft. single family residence and a two-story detached structure consisting of a 730 sq. ft. garage/storage space on the first floor and a 630 sq.ft. guest cottage above for a total of 1,360 sq.ft. The proposed project is approximately 1.5 miles north of Gualala on a 1.6 ± acre parcel. The main level of the house would have two bedrooms, two bathrooms, a kitchen, dining and living room, and a deck on the south side of the structure facing Old Coast Highway. The second floor would have a family room loft and workout room. The residence would

5 of 12



Policy 3.5-1 States:

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

The project site would not be visible from Highway One or other public view areas, but would be visible from Old Coast Highway. The proposed structures would be constructed with brown "Hardiplank" lap siding with white "Harditrim" and dark green composition shingle roofing. The two-story residence would have a maximum average height of 27'-5" above finished grade. The two-story detached garage/storage and guest cottage structure would have a maximum average height of 25'-4" above finished grade. The proposed development would be visually consistent with the height and scale of the surrounding residential neighborhood and would comply with Policy 3.5-1 of the Coastal Element.

The application indicates the exterior lighting would be shielded and downcast. However, Special Condition #3 requires that the applicant submit lighting specifications to ensure compliance with exterior lighting requirements of Section 20.504.035 of the Zoning Code prior to issuance of building permits.

Natural Resources. The proposed project would have no adverse impact on natural resources. There are no environmentally sensitive habitat areas within 100 feet of the proposed development. A creek is located on the adjacent parcel to the northwest of the subject property. A 100 ft. riparian set back has been identified on the site plan, which encompasses a portion of an existing 40 ft. wide access easement and 18 ft. wide paved driveway which serves the adjacent parcel to the southeast. No new development is proposed within this riparian buffer area.

Archaeological/Cultural Resources. This project was referred to the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University (SSU) for an archaeological records search. SSU responded that the site has a probability of containing archaeological resources and further investigation was recommended. The Mendocino Archaeological Commission responded that a survey was not required prior to commencement of project activities at their hearing on June 11, 2003. 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 the North Gualala Water Company for a water supply and the Gualala Community Services District for sewage disposal and would not adversely affect groundwater resources.

Transportation/Circulation. The project would contribute incrementally to traffic on local and regional roadways. The cumulative effects of traffic due to development on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur. The Mendocino County Department of Transportation reviewed this project and found that the existing driveway approach is in good condition. However, any improvements to the existing driveway approach onto the County road, or other work within the County road right-of way, will require an encroachment permit from the Department of Transportation.

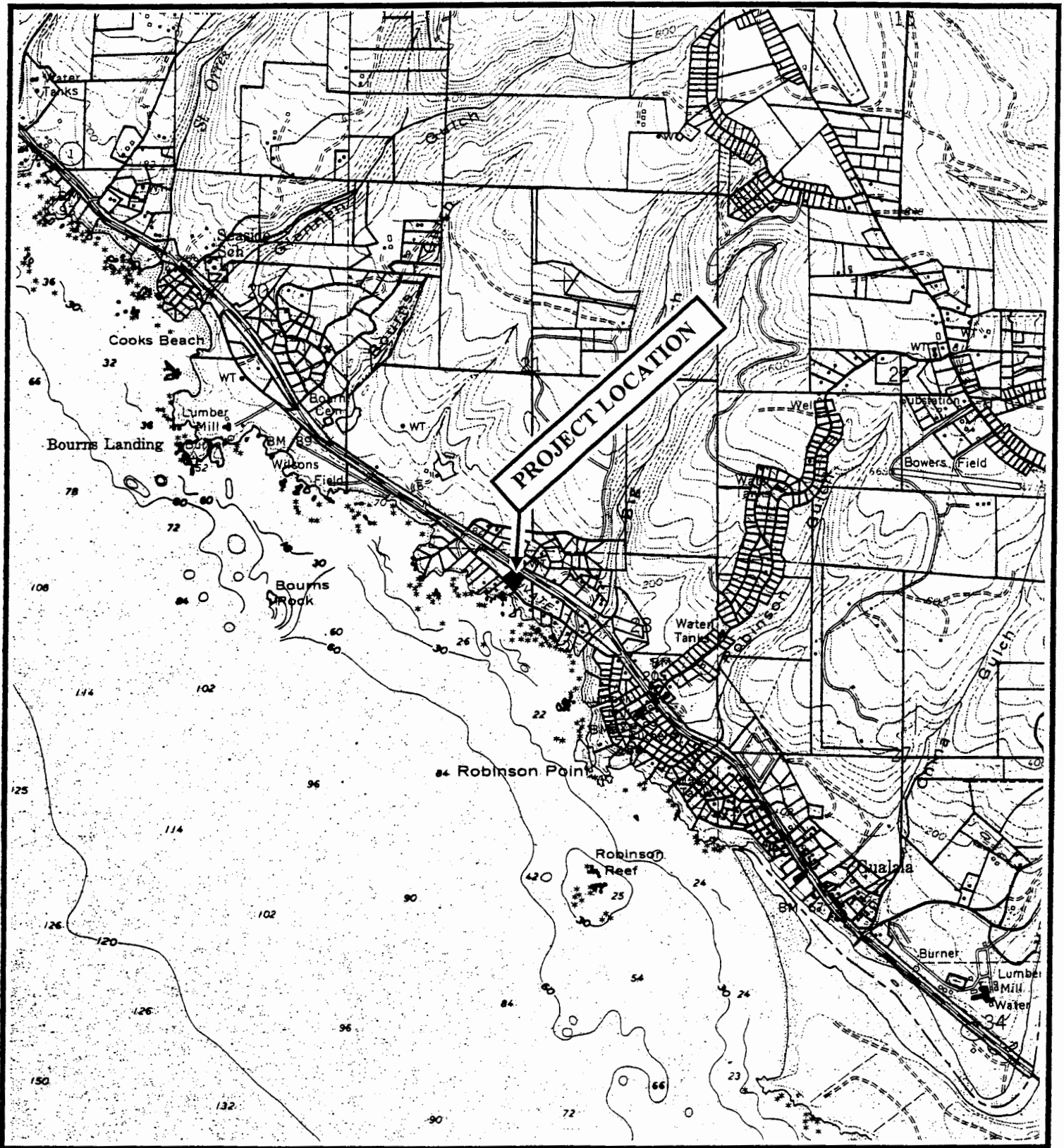
7 of 12

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety or is a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more the 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 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 proposed garage storage space shall be for private use only. Commercial use or human habitation of the proposed garage is prohibited.

9412



CASE NO: CDP 30-03  
**EXHIBIT A**

**BRIAN & DELLA ZITA**  
**LOCATION MAP**  
1 INCH = 2000 FEET



11 of 12

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
710 E STREET - SUITE 200 P. O. BOX 4900
EUREKA, CA 95501-1885 EUREKA, CA 95502-4908
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

RECEIVED



AUG 25 2003

CALIFORNIA COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

Friends of Silliman Gulch
P.O. Box 04
Point Arena, CA 95468 (707) 882-2001, (707) 874-3740
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

- 1. Name of local/port government: County of Mendocino
2. Brief description of development being appealed: Single family dwelling with detached garage/guest cottage
3. Development's location (street address, assessor's parcel no., cross street, etc.): Ca. 1.5 mi. N of Eureka, W side of Highway E side of Old Coast Highway (County Road #513) at 38017 O.R.H. (APN 145122-11)
4. Description of decision being appealed:
a. Approval; no special conditions:
b. Approval with special conditions: [check]
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-03-055

DATE FILED: 8/25/03

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-03-055
ZITA
APPEAL (1 of 16)

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

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

*C2C 20.496.020 - there was no botanical survey. ESHA is likely.*

Gualala Town Plan, p. 306, E3.7-4's "A pedestrian + bicycle trail... shall be developed within Highway 1 and Old Coast Highway (CR #513) rights-of-way and easements acquired for public access." This was not done, nor discussed at ESHA or CDP hearing. (C2C 20.52.025(A) incomplete application; not enough info for public to determine whether project complies with applicable policies. 20.308.280(B) Major Vegetation Removal. LUP 3.5-1: Veg. Clearing opened a view to ocean from Hwy 1, structures will obstruct it; County located only at neighboring project v. construction - some one at least 8 other structures in surrounding area not located)

See CA Coastal Records Project Image # 12086 (www.californiacoast.org)

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. *longer letter and photographs will follow.*

SECTION V. Certification

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

*Pete Semmler*

*Friends of Seawater Garden*

Signature of Appellant(s) or Authorized Agent

Date Aug. 21, 2003

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

Section VI. Agent Authorization

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

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

Date \_\_\_\_\_

*3 of 16*

# 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*

August 8, 2003

Mr. Randall Stemler  
 California Coastal Commission, North Coast  
 P.O. Box 4908, Eureka, CA 95502-4908

RECEIVED  
 (BY FAX)  
 SEP 08 2003

RE: Zita appeal, Mendocino County CDP #30-03

CALIFORNIA  
 COASTAL COMMISSION

Dear Mr. Stemler,

You have already received our original appeal form. Following you will find the reasons and facts for our appeal.

The primary purpose of this appeal is to protect and enhance a section of the California Coastal Trail within the Gualala Town Plan Area. The Gualala Town Plan is part of the Coastal Element of the Mendocino County General Plan. It was adopted by the Mendocino County Board of Supervisors on January 15, 2002, and approved by the Coastal Commission on March 6, 2002. The county appears not to be using the GTP in coastal planning; we believe this is the first appeal to cite the GTP.

A secondary purpose is to carry forward our work in a series of Coastal Commission appeals based on incomplete applications accepted by the Mendocino County Coastal Permit Administrator which do not provide the public with the means to analyze the projects. This can lead to unpleasant surprises, most commonly, structures intrusively visible from Highway 1 and other public places; sometimes, projects which pose risks to life and property.

Another secondary purpose is to protect the local coastal forest ecosystem, which is rich in uncommon, endemic, and rare species of plants and small animals such as invertebrates, which is not well studied by the scientific community. It is being extirpated at an alarming annual rate.

The Sundstrom Decision speaks to the requirement for full submission of details at the time of the application, or certainly by the time of the public hearing.

We request that you please drop two of the reasons for appeal cited in our appeal form and addendum: Highly Scenic and Major Vegetation Removal. We cited Highly Scenic due to a

1.

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

5 of 16

3.

they now walk in the roadway. Development on the inland side of CR #513 under CDP #61-02 is already increasing traffic and creating hazards for pedestrians, and more lots are available for development. The CR #513 traverses the bluff top too closely to allow for a trail on the ocean side.

The coastal portion of the Gualala Mill Railway was originally built as a wide gauge tramway in about 1862. Draft horses pulled carloads of timber from the mill in Gualala to the main schooner port at Bourns Landing. In about 1874 locomotives replaced the horses.

According to rail enthusiasts, it was the only RR in the United States to remain wide-gauge throughout its working life. The trains kept running through the 1920s after the mills shut down apparently as public transit to and from favorite fishing spots and viewpoints. Even after the train stopped running around 1930, people used sidecars to traverse the tracks, until the iron rails were pulled up and sold to Japan just before World War II.

Then, the RR right of way was used by pedestrians. Sections of it were taken by bluff retreat, trestles collapsed or were burned, and the coastal path had to detour inland. The section of RR along CR #513 is the longest remaining. It was damaged by installation of utility lines in recent years, but enough remains that it is realistic to recruit the interest of rail preservation groups. We believe public use over many decades has created a public right that was the basis for G3.7-4.

Inland from the Old Milano property, and extending southeast almost to Pacific Woods Road, is the Bed Rock gravel processing plant, which is undergoing intense expansion. This industrially zoned property forecloses any opportunity for a trail route on the inland side of Highway 101.

In summary, we believe a trail easement condition should be added to CDP #30-03 and any future CDPs along CR #513, and that a nexus and a public right exist.

*Mendocino County Coastal Zoning Code Sec. 20.532.025 Application and Fee. (1)  
[ . . . ] The application shall include the following information: (A) A description of the proposed development, including maps, plans, and other relevant data of the project site and vicinity in sufficient detail to determine whether the project complies with the requirements of these regulations. Sufficient information concerning the existing use of land and water on and 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.*

This section is one that Friends of Schooner Gulch has worked to refine over a period of years. Time and again the community has been surprised by a conspicuous building that was not expected to be noticeable. We regularly ask that non-reflective dark earth tones be used on structures, and

7 of 16

5.

As we discussed, I am sending some proposed language for conditions of approval of the new home construction in the coastal conifer forest. I assume that there are no issues that would be so unmitigable and significant as to cause denial, so I'm focusing on what I view as feasible mitigation measures to minimize impacts, to be included as conditions for approval. I'll include an introductory explanation before the proposed conditions.

I interpret two plant/vegetation issues for the site we visited: conservation of forest floor herbs, mostly native orchids; and potential for significant wind-throw of Bull Pine (*Pinus contorta*) if pines lower on the slope are cut to allow for views or solar panels.

Although we observed no evidence of special status plant species or their habitats (specifically, seeps, swales, or associated species of *Veratrum fimbriatum*, *Campanula californica*, *Lilium maritimum*...or even notables like *Calystegia purpurata* ssp. *saxicola*), we did find very high densities of a clonal orchid, rattlesnake-plaintain (*Goodyera oblongifolia*), and at least one forest floor herb, possibly *Clintonia andrewsiana* (lily family). These have conservation significance for several reasons: (1) increasing intensity of residential development along the Gualala-Anchor Bay coast is likely to cause significant population declines and preclude population recovery because of irreversible habitat loss and degradation; (2) orchids are weak and slow colonizers, and colonizing potential and rates are likely to decline as local source populations decline; (3) some populations may represent distinctive variations of wide-ranging species, disjunct (outlier) populations, or important extensions of known ranges.

The orchids present in the footprint of the home would be extirpated unless translocated. Orchids present outside the footprint are likely to be damaged or destroyed by soil disturbances associated with movement of construction equipment, staging areas, soil stockpile areas, temporary excavation areas (e.g. utility lines), and soil compaction.

Translocation (transplanting to suitable unoccupied habitat onsite) generally has low success rates, and is generally not recommended as a salvage measure for rare or special-status plants. However, in the absence of salvage/translocation, the chances of survival are nil. Therefore, as a last resort and alternative to certain extirpation, it would be reasonable to recommend transplantation in the optimal season, which would be late fall/early winter (dormancy during cool temperatures and moist soil, but not active late winter growth):

"Native orchids and lily family herbs within the construction footprint shall be salvaged by transplanting soil plugs at least one foot in diameter around the centers of individual plants or small colonies, between Nov 15 and December 15. These plants shall be flagged while conspicuous (flower or foliage evident in late summer/fall). Soil plugs/plants shall be translocated on site to unoccupied locations between observed colonies of the same species, under the canopy of bull

9 of 16



7.

subject lot that could be adversely affected by drainage from CDP #30-03.

During the Gualala Municipal Advisory Council review of adjacent CDP #61-02, council members who viewed that site raised strong concerns about drainage. One said an engineer should look at it, especially regarding the driveway. We believe a drainage plan is needed for CDP # 30-03, where the same concerns apply.

Other concerns expressed at the local hearing for CDP #61-02 included dying pine trees, monarch butterflies, and riparian. In the GMAC and CDP hearings, no such concerns were discussed; we believe they apply also to CDP #30-03. Riparian is addressed in the review sheet included with CDP 30-03 and the buffer appears to be the required 100 feet.

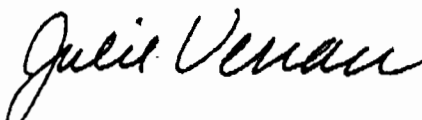
*Coastal Element 3.5-1. [. . .] The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance.*

*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 with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

The county did not do an adequate analysis of the character of the surrounding area, in terms of the size, bulk and appearance of existing homes. The county memo dated 7/22/03 states, "The only neighboring residence, which is currently under construction, is to be a 1856 square foot single family residence and a 1228 square foot detached garage." In fact, there are eight or more neighboring homes located along CR #513 within less than a quarter mile of the subject lot. The county should not count only the newest, largest structures in determining neighborhood character. We are concerned about the proliferation of second residential units on lots west of Highway 1, whether they are termed two story garages, guest houses, or guest rooms. The GTP allows second residential units on lots inland of Highway 1:

*G 3.2-3. [. . .] Second Residential Units shall not be allowed on parcels located west of Highway 1 to protect against the possible conversion of such such units to vacation home rentals which may adversely affect the character of existing residential neighborhoods.*

Respectfully submitted,



Julie Verran, Field Representative  
Friends of Schooner Gulch

11 of 16

Bourn's Landing  
40 ft.

BOURNS LANDING

Bourn Rock

This detail from U. S. Coast and Geodetic Survey sheet, Register No. 1535 a, surveyed 1879 and 1880, published 1884, shows the subject property and vicinity of Mendocino County CDP #30-03. Note the forest existing at that time, the Wallalla Mill Railroad, the coast highway which generally parallels the RR, and the following details:

Subject property. Note that it was wooded then. There appears to be a small building just inland from the road and RR.

Old Milano Hotel and outbuildings. The hotel burned recently, but outbuildings which may date from this period remain.

Roberts Pt.

Wallalla  
Top sheet

13416

2. frontage in the Coastal Co-operative Broker Association listing (#4869) of its March, 2003, sale; the subject parcel probably has highway frontage, but the project map does not show it. Thus, the application is incomplete.

The large scale map used by real estate offices shows a long narrow parcel, APN # 145-122-01, between the CR #513 and the lots in the subdivision. It appears to include the old RR line and bridges. This may also be the old route of the Coast Highway. According to the Mendocino County Assessor's Office, in a phone communication (463-4313) on 9/24/03, the owner is still listed as John Seaman, the subdivider. The parcel was retired, but not merged, and the new designations are APN # 145-122-07-00 and #145-122-08-00. The trail easement may be on this parcel, but that is unclear. The parcel(s) is/are not shown on the project map and thus the application is incomplete. The driveway to the Zita and Eckles/Shaddick building sites is shown on the project map as being on an easement. Is this an easement to cross the long, narrow parcel(s) reserved by Seaman? A diagonal utility easement is also shown. The trail easement if any should have been shown also.

The applicant has told Friends of Schooner Gulch that he intends to apply for a less-than-three-acre conversion exemption to cut the trees on his lot. Under CEQA this intent should have been included with the application as a known future use of the land. Use of the Major Vegetation Permit process provided in the CZC would be far preferable, and would be an appropriate permit condition.

Anthony Lukacic, an official of the California Department of Forestry and Fire Protection stationed at the Forest Practice Office in Santa Rosa, and an expert on the use of exemptions from the Forest Practice Act, said in a phone interview on 9/25/03 that the less-than-three-acre exemption process is entirely ministerial. Provided the form is filled out correctly and accurately to CDF's knowledge, it is approved without inspection. New rules effective 1/01/03 require the Registered Professional Forester to discuss soil, slope, microclimate and how the site can support the proposed development. Lukacic's example is a vineyard proposed at 8,000 feet elevation. Lukacic is an expert on less-than-three-acre exemptions. He was CDF's witness for days on their ins and outs at the preliminary hearing of an environmental conspiracy criminal case against two timber brokers and an RPF developed by CDF and brought to the Mendocino County District Attorney last year. Among the examples that CDF found egregious enough to include in their case were three in or near Gualala. Use of less-than-three-acre exemptions in residential areas is highly unpopular in Mendocino County. Citizens here often complain about vegetation removal.

One reason is the damage tree removal can cause on nearby properties through wind throw. This is recognized in CZC Sec. 20.308.080 (B) (3) which lists reasons for using the Major Veg. Permit.

*(d) The vegetation removal may result in significant exposure of adjacent trees to wind damage, [...] (4) Exempt from this definition would be one or more of the following:*

*(a) Removal of trees and other vegetation that have been reviewed and approved in conjunction with an approved development permit; [...]*

The tree removal now proposed by the applicant was not reviewed during the permit process; the applicant said himself at the CDP hearing that there was no landscape plan: incompleteness. For information about wind throw damage in coastal Gualala, you may wish to consult the Eureka office of PG&E. They will have records of power outages caused by falling bull pines even if their staff has changed. Their staff arborist can outline his recommendations to help prevent wind throw.

There may be ESHA from rare plants or plants which may become rare if they lose habitat. There are no ESHA concerns in this appeal about riparian or blufftop setbacks. A botanical report for the subdivision by Mary Rhyne (884-3043) was not included in files of the Zita or the contiguous Eckles/Shaddick permits when I checked them in Fort Bragg. A copy, ideally, of the report should have accompanied the application. At least a map showing what lots are in the subdivision and where ESHA was delineated should be included with the application, yet another instance of incomplete application which hampers the public evaluation of the project.

15 of 16

September 3, 2003

Mr. Randall Stemler  
California Coastal Commission  
North coast District Office  
710 E Street, Suite 200  
Eureka, CA 95501

RECEIVED

SEP 05 2003

CALIFORNIA  
COASTAL COMMISSION

RE: Commission Appeal No. A-1-MEN-03-055

Dear Mr. Stemler:

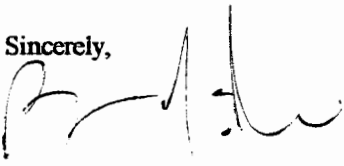
After reviewing the appeal application and supplemental letter from Ms Julie Verran and talking to Rick Miller (Mendocino County Planner), it is clear that this appeal is erroneous in nature. Other than for some vague codes references, the appellant's basis for the appeal comes down to three main issues which can be easily confirmed as incorrect:

- 1) **The project is located in a highly scenic area:** (The project is NOT located in a highly scenic area as you have already confirmed)
- 2) **A pedestrian trail easement or dedication was not done:** (A 30' land dedication to the County was indeed done and can be easily confirmed, please refer to the minor subdivision parcel map CDMS 22-95 filed for record March 4, 2002 in maps drawer 69, pages 48 and 49, Mendocino County Records).
- 3) **A botanical survey was not done:** (The survey was done and was required as part of the minor subdivision approval process please refer to CDB #70-94 and CDMS #22-95. Also as indicated by the identified riparian location and setback on my parcel map.)

Since Ms. Verran's arguments are not based on fact, I ask if there is anything I can do to assist you in resolving this appeal without my requirement to sign a 49 Day Waiver. I realize that you are working under unrealistic deadlines and typically need a waiver to properly evaluate legitimate appeals, but what about in a case where an appeal is clearly based on information that can be quickly verified as blatantly incorrect. It seems that not allowing quick resolution of appeals of this nature encourages greater abuses in the appeal process.

I appeal to you and your supervisors to reevaluate my situation. If you feel nothing can be done, I will go ahead and sign the waiver. I only ask for this matter to be reconsidered based on the circumstances indicated above.

Sincerely,



Brian Zita  
Applicant and Owner  
CDP # 30-03  
Project address: 38017 Old Coast Highway, Gualala  
Mailing Address: 19 Garner Dr. Novato, CA 94947 (707) 765-1660

EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-03-055

ZITA

APPLICANTS'  
CORRESPONDENCE

(1 of 18)

*Response to Appellant's concerns indicated below in italic text:*

RECEIVED

Mr. Randall Stemler  
California Coastal Commission, North Coast  
P.O. Box 4908, Eureka, CA 95502-4908

OCT 22 2003

RE: Zita appeal, Mendocino County CDP #30-03

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Stemler,

You have already received our original appeal form. Following you will find the reasons and facts for our appeal.

The primary purpose of this appeal is to protect and enhance a section of the California Coastal Trail within the Gualala Town Plan Area. The Gualala Town Plan is part of the Coastal Element of the Mendocino County General Plan. It was adopted by the Mendocino County Board of Supervisors on January 15, 2002, and approved by the Coastal Commission on March 6, 2002. The county appears not to be using the GTP in coastal planning; we believe this is the first appeal to cite the GTP.

The secondary purpose of this appeal is to carry forward our work in a series of Coastal Commission appeals based on incomplete applications accepted by the Mendocino County Coastal Permit Administrator which do not provide the public with the means to analyze the projects. This can lead to unpleasant surprises, most commonly, structures intrusively visible from Highway 1 and other public places.

The Sundstrom Decision speaks to the requirement for full submission of details at the time of the application, or certainly by the time of the public hearing.

We request that you please drop two of the reasons for appeal cited in our appeal form and addendum: Highly Scenic and Major Vegetation Removal. We cited Highly Scenic due to a mistake in map reading for which we sincerely apologize: The subject property and neighborhood are not designated Highly Scenic. We will address visual issues under other LCP sections which we cited. The major vegetation removal that affects the subject property took place during the construction of the existing driveway about two years ago and possibly during the installation of the water line inland from the county road about five years ago. We will discuss the effect of vegetation removal under other LCP sections which we cited. It is properly part of the cumulative impacts analysis under the California Environmental Quality Act.

This project is appealable to the Coastal Commission [Coastal Zoning Code 20.544.020 (A) et seq.] (B) (1) it is within three hundred (300) feet of the inland extent of any beach or of the mean high tide line of the sea, and (2) within three hundred (300) feet of the top of the seaward face of any coastal bluff. This appeal does not require the exhaustion of all local appeals because (E) (4) The county charges an appeal fee.

3418

Then, the RR right of way was used by pedestrians. Sections of it were taken by bluff retreat, trestles collapsed or were burned, and the coastal path had to detour inland. The section of RR along CR #513 is the longest remaining. It was damaged by installation of utility lines in recent years, but enough remains that it is realistic to recruit the interest of rail preservation groups. We believe public use over many decades has created a public right that was the basis for G3.7-4.

Inland from the Old Milano property, and extending southeast almost to Pacific Woods Road, is the Bed Rock gravel processing plant, which is undergoing intense expansion. This industrially zoned property forecloses any opportunity for a trail route on the inland side of Highway 101.

In summary, we believe a trail easement condition should be added to CDP #30-03 and any future CDPs along CR #513, and that a nexus and a public right exist.

*A 30' land dedication to the County was done and can be easily confirmed, please refer to the minor subdivision parcel map CDMS 22-95 filed for record March 4, 2002 in maps drawer 69, pages 48 and 49, Mendocino County Records (see attached parcel map - Exhibit A). Please note that prior to the dedication, the existing southwesterly property line was located at the centerline of CR #513. The land deeded to the County is consistent with the policies described in the Gualala Town Plan. Specifically review the cross section for local roads - GTP Figure 3.6. In a conversation I had with the appellant, Peter Reimuller (09/15/03), I don't believe he was aware of this dedication at the time he submitted his initial or revised appeal.*

Mendocino County Coastal Zoning Code Sec. 20.532.025 Application and Fee. (1)

[. . .] The application shall include the following information: (A) A description of the proposed development, including maps, plans, and other relevant data of the project site and vicinity in sufficient detail to determine whether the project complies with the requirements of these regulations. Sufficient information concerning the existing use of land and water on and 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.

This section is one that Friends of Schooner Gulch has worked to refine over a period of years. Time and again the community has been surprised by a conspicuous building that was not expected to be noticeable. We regularly ask that non-reflective dark earth tones be used on structures, and that samples of the building materials be submitted. We have been gratified by the positive response by the county, the Coastal Commission and by individual applicants to this concern in many instances. While dark earth tones are specified for CDP 30-03, no samples were available for public review at the CDP hearing. The public can only guess what the colors will look like, hence the application is

5 of 18

"3.5-3 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."

We would like to reiterate again that the project location has already been confirmed and acknowledge in writing by the appellant as NOT being located in a designated "highly scenic area". So our understanding is Coastal Element 3.5.3 should not apply to our project.

The map provided with the application showing the position of the structures on the lot is deficient in that it does not show where Highway 1 is in relation to the lot. The public cannot tell how close the structures and driveway will be to the highway. This map may have confused county staff, since the county memo dated 7/22/03 states, "The home is located on the West Side of the property, which is elevated above the highway corridor." The building site is actually on the eastern quadrant of the property. Maps submitted with applications should be clear and easy to interpret.

As part of the CDP application, a vicinity map was prepared which shows clearly the relationship of the property relative to Hwy 1, CR 513 and the Pacific Ocean. It is our understanding that the missed directional reference cited in the County Memorandum is more a function of a typo rather than the Planner's confusion regarding where the home is located on the property. We think this misstatement of direction is similar to the numerous misstatements in direction listed on Ms Verran appeal addendum letter dated 8/26/03.

We are also concerned that the application is incomplete in that it is not accompanied by a drainage plan, a botanical survey, or a landscape plan, although the public requested them at both the local and the county hearings. We gather from notes on the permit review sheet that there was an environmental plan done for the whole subdivision. Nevertheless, in view of the recent loss to construction grading and tree death of much of Gualala's south-facing coastal forest, which is known to support unusual plants and animals, site-specific surveys are needed. On the issues of vegetation removal, botanical concerns and landscaping, Friends of Schooner Gulch consulted plant ecologist Peter Baye PhD.

7/18

salvaged by transplanting soil plugs at least one foot in diameter around the centers of individual plants or small colonies, between Nov 15 and December 15. These plants shall be flagged while conspicuous (flower or foliage evident in late summer/fall). Soil plugs/plants shall be translocated on site to unoccupied locations between observed colonies of the same species, under the canopy of bull pines, and thoroughly watered once immediately after transplanting. Transplantation shall be implemented by qualified individuals with pertinent horticultural skills".

To protect orchid colonies outside the footprint, "Orchid colonies shall be flagged while conspicuous (flower or foliage evident) in late summer/fall. Soil stockpile areas, equipment and material staging areas, and equipment travel routes shall avoid soil disturbance around marked colonies to the greatest extent feasible. Where temporary disturbance is unavoidable, wooden mats and geotextile fabric shall be placed over affected colonies, and removed as soon as possible after work is completed. Construction workers shall be instructed in protective procedures by qualified individuals with experience identifying affected plants."

*For the record, we did not give permission, nor were we aware of the botanical review done on our property by Dr. Baye. Since the building footprint of the house is not visible from any public viewing location, we can only conclude that the Friends of Schooner Gulch and their Botanist, Dr Baye, conducted their survey while trespassing on our property.*

*However, with that said, we do feel that their observations are consistent with the findings made during the local approval process, in that there is "no evidence of special status plant species or their habitats (specifically, seeps, swales, or associated species of *Veratrum fimbriatum*, *Campanula californica*, *Lilium maritimum*...or even notables like *Calystegia purpurata* ssp. *saxicola*)".*

*Regarding the identification of *Goodyera oblongifolia* or *Clintonia andrewsiana* located within the footprint of the building, both of these plants are NOT listed with CNPS as an endangered species. Requiring special mitigation would be an unreasonable hardship and inconsistent with previous approvals for other similar projects.*

For windthrow, the main risk I see is losing the protective buffer of trees at the toe of the slope, above the blufftop road. These have branches down to nearly ground level, and can deflect windstreams above the canopy to a significant extent. The mature Bull Pines above have no branches below the very shallow, elevated canopy; these would provide much drag if exposed directly to coastal storm winds without the existing upwind buffer of trees. A "domino" of windthrow may cause much greater loss of native, mature coastal forest trees. To address this, "Prior to any tree removal, a qualified Registered Forestry Professional shall be retained to evaluate the threat of windthrow if trees are selectively removed from the stand. If a significant and unmitigable

9 of 18  
7



CZC Chapter 20.500 Hazard Areas et seq.: 20.500.010 (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, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

We are concerned about the drainage from this development, including the driveway, which has extensive rock-work around it that appears to be intended to control drainage. This is a sensitive area and drainage should be engineered, especially since there is an existing bluff-top home located below the steep subject lot that could be adversely affected by drainage from CDP #30-03.

*Erosion issues relative to the installation of the existing paved driveway and gravel extension were reviewed during the approval process for the driveway. Since the driveway was located 50' within the 100' riparian setback and just above the existing house located on the bluff, erosion mitigation ("extensive rock work") was required during the approval process and was installed when the driveway was constructed two years ago.*

*As for our proposed house/garage, it is located on the opposite end of the parcel, the average building pad slopes are considerably less than the existing driveway, and will be located 210'+/- from the riparian (as far as possible). In addition the proposed house/garage location is NOT directly above the existing bluff home which is located over 180' +/- away (as far as possible).*

*Please note specific erosion issues were reviewed during the Local Approval process as indicated in the staff report comment: "...the proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure. There are no known faults, landslides or other geological hazards in close proximity to the proposed development".*

*Furthermore CZC 20.492.015 (E) states: "to control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur". This code section appears to indicate that civil engineer or recognized authority review is not mandatory unless slopes are greater than 30%. Our proposed residence pad slope is less than 20%, and the garage is less than 10%.*

11 of 18

2) The proposed house/garage design has a compact footprint. By minimizing the building frontage along CR 513, we will reduce the perceived horizontal mass of the house as viewed upward from CR 513. Our proposed building frontage is roughly 50% less than that of our neighbor's house (see attached house frontage comparison - Exhibit C).

3) The proposed house design utilizes a terraced building elevation that matches that of the adjacent slope of the hillside. Reducing the height of the vertical facade closest to CR 513 will reduce the perceived vertical height of the residence as viewed from CR 513 looking up the hill.

4) We selected a painting scheme for the house that will incorporate earth tone colors, browns and dark greens. Thus being visually compatible with the character of surrounding areas and blending the house/garage into the natural landscape.

5) The proposed house/garage structures are sited as to minimize requirements for grading. Therefore minimizing the alteration of natural land forms.

Also please note Frank Lynch's, (Coastal Permit Administrator) addition on the Coastal Permit Administrator Action Sheet, dated 7/24/03 under Modifications and/or Additions: "add specifically found project consistent with General Visual Policy 3.5.1" (see attached memo - Exhibit D).

The county did not do an adequate analysis of the character of the surrounding area, in terms of the size, bulk and appearance of existing homes. The county memo dated 7/22/03 states, "The only neighboring residence, which is currently under construction, is to be a 1856 square foot single family residence and a 1228 square foot detached garage." In fact, there are eight or more homes located along CR #513 within less than a quarter mile of the subject lot. The county should not count only the newest, largest structures in determining neighborhood character.

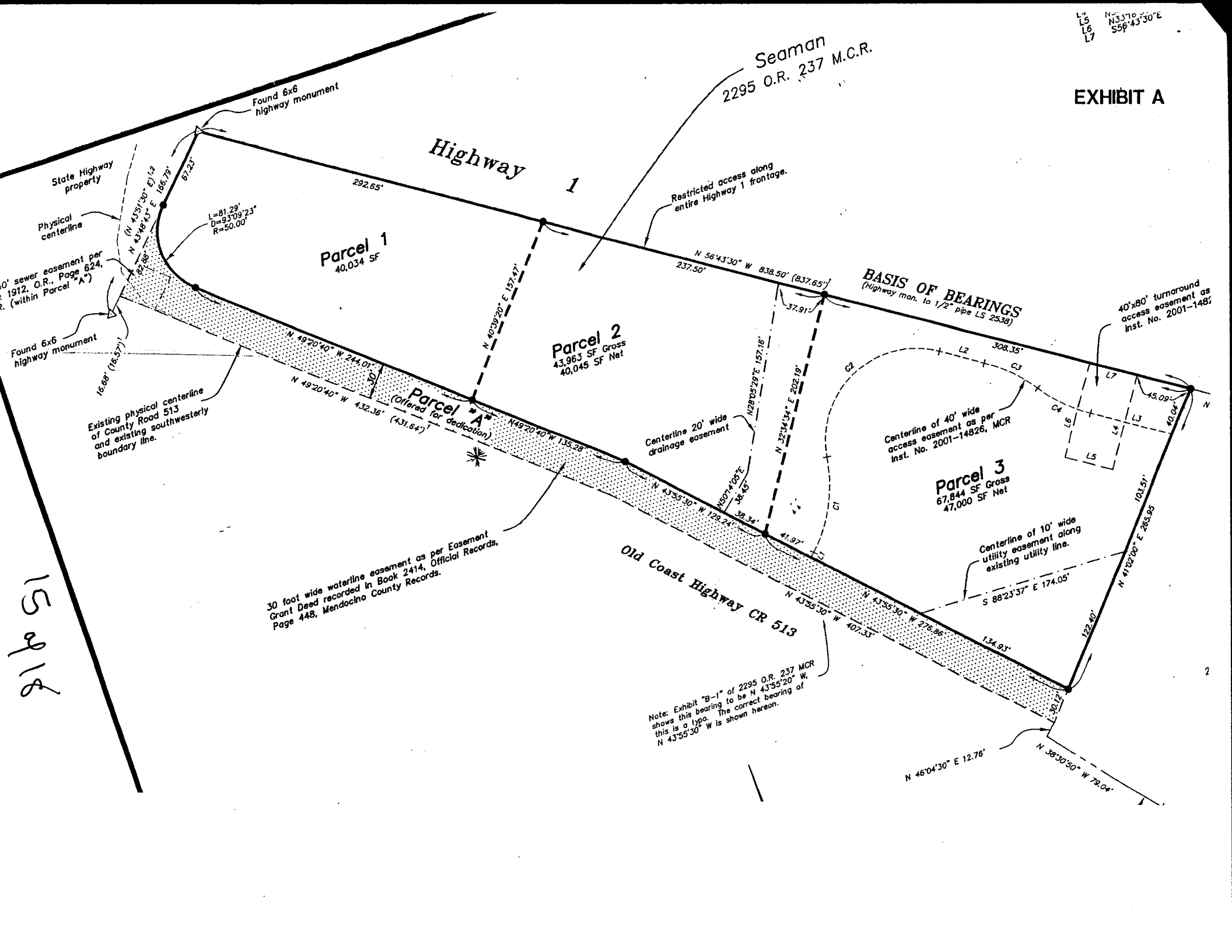
It is our understanding that the County Planner's reference to the neighboring house was made not because it was the only house considered in determining the character of the neighborhood, but due to the fact that the house was so close to our proposed project. Its proximity generated the need for greater consideration.

As far as the over all character of the neighborhood, please review the houses visible on California Coastal Records Project Image # 12083 to 12088. As you can see the houses vary considerably from new larger two story structures to old smaller

13 of 18

N 53°10'00" E  
S 56°43'30" E  
L4  
L5  
L6  
L7

# EXHIBIT A



Seaman  
2295 O.R. 237 M.C.R.

## Highway 1

Parcel 1  
40,034 SF

Parcel 2  
43,963 SF Gross  
40,045 SF Net

Parcel 3  
67,844 SF Gross  
47,000 SF Net

**BASIS OF BEARINGS**  
(Highway man. to 1/2" pipe LS 2938)

40'x80' turnaround  
access easement as  
Inst. No. 2001-148;

Centerline of 40' wide  
access easement as per  
Inst. No. 2001-14826, MCR

Centerline 20' wide  
drainage easement

Centerline of 10' wide  
utility easement along  
existing utility line.

30 foot wide waterline easement as per Easement  
Grant Deed recorded in Book 2414, Official Records,  
Page 448, Mendocino County Records.

Old Coast Highway CR 513

Note: Exhibit "B-1" of 2295 O.R. 237 MCR  
shows this bearing to be N 43°55'20" W,  
this is a typo. The correct bearing of  
N 43°55'30" W is shown hereon.

State Highway  
property

Physical  
centerline

Found 6x6  
highway monument

Existing physical centerline  
of County Road 513  
and existing southwesterly  
boundary line.

15816

Found 6x6  
highway monument

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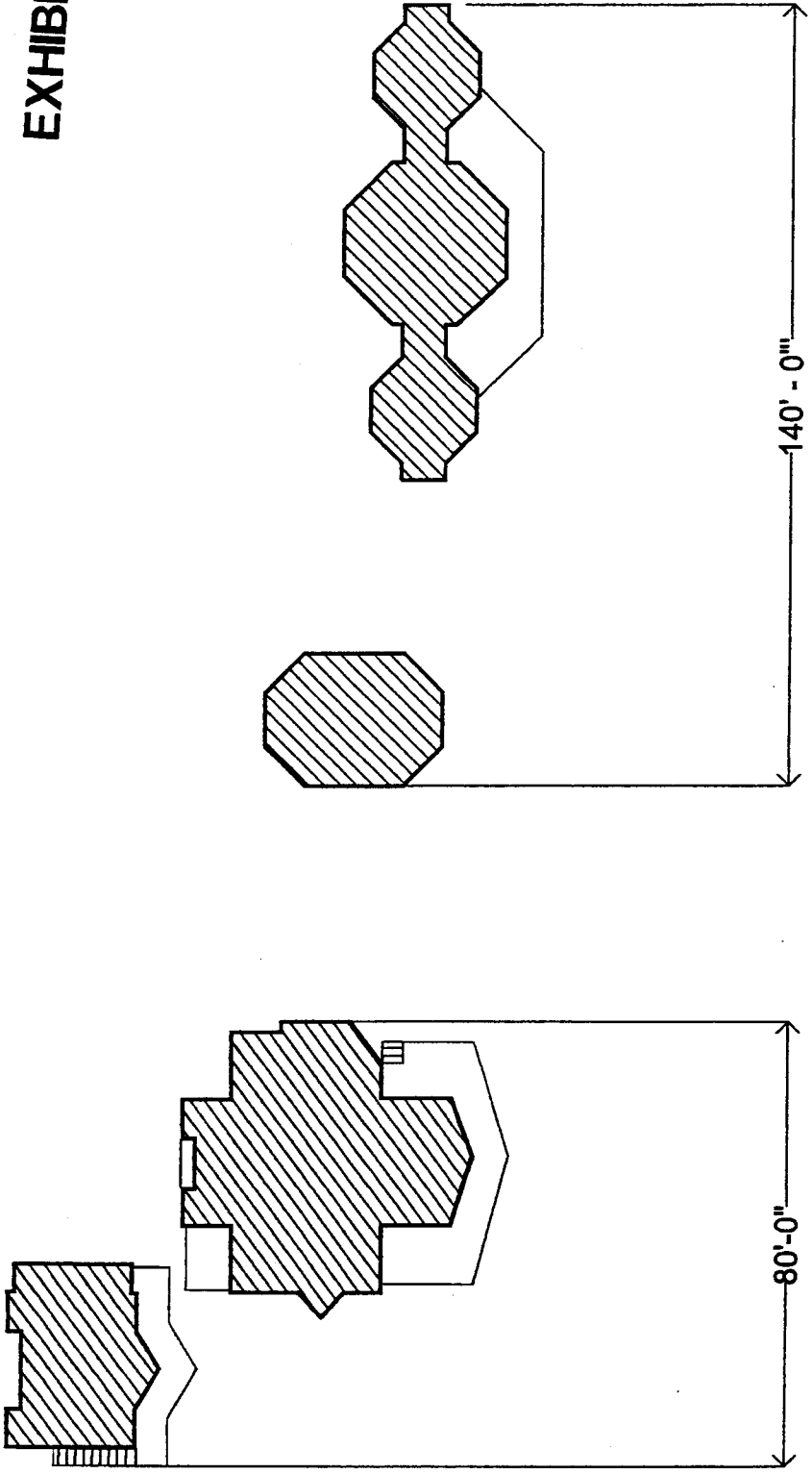
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**EXHIBIT C**



17918

**Proposed Zita House      Existing Eckles/Shaddick House**

**House Frontage Comparison**