

CALIFORNIA COASTAL COMMISSION

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 Staff: Randall Stemler
 Staff Report: March 28, 2003
 Hearing Date: April 9, 2003
 Commission Action:

STAFF REPORT:
DE NOVO HEARING ON APPEAL

APPEAL NO.: **A-1-MEN-01-063**

APPLICANT: **Herb Kennedy**

LOCAL GOVERNMENT: **County of Mendocino**

DECISION: **Approval with Conditions**

PROJECT LOCATION: **27700 South Highway One, south of Point Arena, Mendocino County (APN 027-421-11)**

PROJECT DESCRIPTION: **Move an existing dwelling 34 feet south away from an existing slide area; abandon existing septic tank and replace with a relocated new 1,200-gallon tank; and construct a 1,248-sq.-ft. accessory building. For the purposes of the Commission's *de novo* review, the applicant has amended the project description to limit the project to only the abandonment of the existing septic tank and installation of a new septic tank at a location approximately 31 feet from the bluff edge away from the projected bluff retreat area, at 27700 South Highway One, Point Arena, Mendocino County.**

APPELLANTS: **1) Friends of Schooner Gulch,
 Attn: Peter Reimuller,
 2) Sierra Club, Mendocino-Lake Group,
 Attn: Rixanne Wehren;
 3) Roanne Withers, and 4) Julie Verran**

SUBSTANTIVE FILE:
DOCUMENTS

1) Mendocino County CDP No. 87-00; and
2) Mendocino County Local Coastal Program

STAFF NOTES:

1. Procedure

On January 9, 2002, the Coastal Commission found that the appeal of Mendocino County's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Because the proposed development is between the first road and the sea, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Submittal of Additional Information by the Applicant

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of an engineering geologic evaluation for the planned septic tank relocation, and a revised site evaluation report for enhancement/repair of the existing sewage disposal system. Additionally, the applicant has amended the project description to no longer seek authorization to move the existing house, or to construct a garage/guestroom, but only to abandon the existing septic tank and install a new septic tank in a location and manner consistent with recommendations contained in the revised geologic report, and the revised sewage disposal system enhancement/repair proposal. The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. The supplemental geologic report includes a revised bluff edge setback recommendation, an updated aerial photographic analysis, and discussion related to the recommended bluff edge setback with regard to sea level rise. The revised sewage disposal system enhancement/repair report includes a new plot plan and system specifications consistent with the revised geologic report recommendations.

SUMMARY OF STAFF RECOMMENDATION DE NOVO:
APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the County of Mendocino certified LCP and the access policies of Chapter 3 of the Coastal Act.

The subject property is a 17,136-square-foot parcel located within a mature Bishop pine forest with sparse understory. It is situated at the edge of a bluff on a coastal terrace at an elevation slightly in excess of 80 feet above sea level. A lateral frontage road borders the property on the east side, and runs north-south between the parcel and Highway One.

Since the Commission found that the appeal raised a substantial issue of conformance with the LCP, the applicant has amended the project description to eliminate the portion of the project that involved moving the existing house, and construction of a new garage/guestroom. The applicant now only seeks authorization to abandon the existing septic tank and install a new 1,200-gallon septic tank to be located at a site consistent with the updated geologic report dated February 18, 2003. Staff recommends that the Commission attach two special conditions, including a condition requiring the submittal of a plan for the review and approval of the Executive Director for the removal of the septic tank to be abandoned to ensure that the excavation and backfilling of the location where the tank exists near the bluff edge does not become a locus for bluff top runoff and accelerate bluff erosion. The second recommended condition would require the reseeded of the area to be disturbed for installation of the new septic tank and the covering of any stockpiles of excavated material or debris to control erosion and sedimentation of coastal waters.

As conditioned, staff has determined that the proposed project is consistent with the provisions of the certified Mendocino County LCP.

I. MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-01-063 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea, and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

II. STANDARD CONDITIONS: (See Attachment A)

III. SPECIAL CONDITIONS:

1.

A. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit for the review and approval of the Executive Director, a plan for the removal of the abandoned septic tank to ensure that the excavation and backfill does not become a locus for bluff top runoff and subsequent erosion:

1. The plan shall demonstrate that:

- (a) Runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall not be directed toward the abandoned septic tank location.
- (b) Damage to the existing tree roots in the vicinity shall be minimized.
- (c) The size of heavy equipment utilized for excavation shall be the minimum necessary to accomplish the job.
- (d) The abandoned septic tank shall be removed within 60 days of discovery that the tank has become exposed due to erosion of the bluff edge.
- (e) Spoils material from the excavation shall not be allowed to fall over the bluff edge, or be placed where it may be washed over the bluff edge.
- (f) Backfill of the excavated hole shall be performed in compacted lifts using a vibraplate or jumping-jack compactor, and the finished level shall not form a depression where water may collect.
- (g) The finished site shall be revegetated with native plant or seed species wherever the soil surface has been disturbed. As an alternative to planting or seeding, the disturbed sites may be thickly mulched with weed-free rice straw. In no event shall invasive exotic species be used for revegetation.

2. The plan shall include, at a minimum, the following components:

- (a) A narrative report describing all elements of the project.
- (b) A site map depicting all elements of the project on the subject parcel.
- (c) A schedule for removal of the tank.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Erosion and Sedimentation Control

- A. On-site vegetation shall be maintained to the maximum extent possible during construction, and following project completion any disturbed areas shall be replanted or seeded with native vegetation that shall not include invasive exotic species.
- B. All stockpiles of excavated material or debris shall be covered and contained at all times.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated December 28, 2001.

B. Project History / Background.

On October 25, 2001 Planning & Building Services Director Ray Hall, acting as Coastal Permit Administrator (CPA), approved with conditions Coastal Development Permit No. CDP-87-00 (Kennedy). The approved development included authorization to move an existing house 34 feet south away from the coastal bluff and an existing slide area, as well as construction of a 24-foot-high, 1,248-square-foot garage/game room addition; authorization to remove and replace the existing septic tank with a new 1,200-gallon tank in a new location. The CPA's decision was not appealed at the local level to the Board of Supervisors.

The County attached to its coastal permit a number of Special Conditions, including requirements that (1) final plans conform to the recommendations of the geotechnical report, (2) the applicant record a deed restriction stating that the landowner assumes the risks of developing on a hazardous site subject to bluff retreat and other geologic hazards and stating that the landowner shall not construct a seawall or other protective device to protect the development in the future, (3) exterior building materials and finishes match those specified in the permit application, (4) screening trees be maintained and replaced over the life of the project, (5) submittal of a final landscaping plan, (6) submittal of a lighting plan demonstrating that all exterior lighting shall be downcast and shielded and not glare beyond the project site, and (6) submittal of a revised septic system plan.

After the close of the local appeal period, the County issued a Notice of Final Action on the coastal development permit, which was received by Commission staff on November 8, 2001 (Exhibit 6). The project was appealed to the Coastal Commission in a timely manner on November 9, 2001, within 10-working days after receipt by the Commission of the Notice of Final Local Action. On December 14, 2001 the public hearing before the Commission to determine whether substantial issue existed with respect to the grounds on which the appeal was filed, was opened and continued. On January 9, 2002, the Commission found substantial issue with respect to contentions raised concerning runoff and bluff retreat hazards. For the purposes of the Commission's *de novo* review, the applicant has since amended the project description to limit the scope of the project to abandoning the existing septic tank and installing a replacement tank in an area that would be safe from bluff retreat.

C. Project and Site Description.

Project Setting

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

The project site is a 17,136-square-foot parcel located within a mature Bishop pine forest with sparse understory. It is situated on a coastal terrace at an elevation slightly in excess of 80 feet above sea level. A lateral frontage road borders the property on the east side, and runs north-south between the parcel and Highway One. Development that currently exists on the site includes a two-story house and gravel driveway and small utility shed constructed prior to the February 1973 coastal development permit requirements. The existing house is served by an on-site water source and septic system.

An existing two-story house neighbors the subject parcel to the north, and the immediate parcel to the south is undeveloped. Between the undeveloped parcel to the south and the subject parcel there is some evidence that a trail exists that receives some degree of public use located between Highway One and the coastal bluff edge in the vicinity of the subject parcel's southern property line. There are no known rare or endangered plant or animal species located on or in close proximity to the project site, and there are no environmentally sensitive habitat areas located within 100' of the proposed development.

Project Description

As originally approved by the County, the project description included moving the existing single-family residence approximately 34 feet south away from the coastal bluff, removing and replacing the existing septic tank with a new 1,200-gallon tank in a new location, and constructing a 1,248-square-foot structure containing a 624-square-foot garage and 624-square-foot guest room addition overhead. The garage and overhead guest room addition was proposed to be attached to the residence with a bridge/hallway.

For the purposes of the Commission's *de novo* review, the applicant has amended the project description as shown in Exhibit 4 to limit the project to only the following elements: (1) abandoning the existing septic tank on-site, and (2) installing a new 1,200-gallon concrete septic tank. The new septic tank would be placed along the north side of, and a minimum of 5 feet from the house (Exhibit 3). The location of the tank would be 31 feet from the edge of the coastal bluff consistent with the applicant's geologic report recommendations, and would utilize the existing leach field located immediately to the northeast. Additionally, the applicant states that he would agree to remove the existing septic tank if it ever becomes exposed due to erosion of the coastal bluff (Exhibit 4). The applicant is aware that the existing house will need to be moved back away from the bluff edge at some point in the future because of the threat of ongoing bluff retreat, and that a separate application would need to be submitted for such work in the future.

D. Geologic Hazards

1. Summary of LCP Provisions

LUP Policy 3.4-1 states the following in applicable part:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps, the County shall require a geologic investigation and report, prior to development to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site...

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

Setback (meters) = Structure life (years) x Retreat rate (meters/year)

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.

LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that:

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.

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

Section 20.500.010 of the Coastal Zoning Code states that development 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.*

Section 20.500.020(B) of the Coastal Zoning Code states that:

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

Discussion

The subject parcel is a bluff top parcel that overlooks the ocean. The vertical distance from the bluff top to the beach is approximately 80 feet and is very steep. As described above, the project proposal would abandon an existing septic tank on-site, and install a new septic tank. The new septic tank would be placed approximately 5 feet from the north side of house and 31 feet from the edge of the coastal bluff (Exhibit 3). The existing house extends both landward and seaward of the proposed location for the new septic tank, coming as close as approximately 10 feet from the current bluff edge. The new septic tank is a new structure that Mendocino County LUP Policy 3.4-7 requires be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during the economic life span of 75 years. Additionally, the setback must be of sufficient distance to eliminate the need for shoreline protection devices.

The applicant's geologist, BACE Geotechnical, had prepared a letter dated June 28, 1999, that evaluated the location and suitability of installing a new septic tank from a bluff stability standpoint, and provided recommendations for abandonment of the existing septic tank. The geologic setback recommended for placement of the new septic tank at that time was 21 feet. As discussed above, the County approval of the permit was appealed, and raised several issues related to drainage, and the adequacy of the coastal bluff setback in regard to sea level rise. At the January 9, 2002 meeting the Commission found that a substantial issue had been raised. For the purposes of the Commission's *de novo* review, a revised engineering geologic evaluation for the planned septic tank relocation, dated February 18, 2003, was submitted by BACE geotechnical that addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. The supplemental geologic report includes a revised bluff edge setback recommendation, an updated aerial photographic analysis, and discussion related to the recommended bluff edge setback with regard to sea level rise (Exhibit 5). The amended project description includes installing the new septic tank in a location and manner consistent with recommendations contained in the revised geologic report. A revised sewage disposal system enhancement/repair report dated March 7, 2003, produced by Carl Rittiman, includes a new plot plan and system specifications consistent with the revised geologic report recommendations.

The revised February 18, 2003, BACE Geotechnical report concludes that the bluff is eroding at an average rate of approximately 5 inches per year. Based upon that retreat rate, BACE concludes that to allow for an economic lifespan of 75 years for the new septic tank, a setback of 31 feet should be required. In response to the appellant's concerns about the adequacy of the time span used for photographic analysis, BACE re-examined their 1964 and 1981 aerial photographs and compared them with a recently-obtained year 2000 aerial photograph. The results of the re-evaluated aerial photograph study confirm an erosion rate of 4-1/2 to 5 inches per year within the local bluff indentation on the west-southwest side of the house. Another recent (2002) aerial photograph study by BACE of other points on the bluffs along Bowling Ball Beach found erosion rates that varied from 2.2 to 3.3 inches per year between 1964 and year 2000. In response to the appellant's concerns regarding global warming and associated sea level rise, BACE provided rationale that their setback recommendation would be adequate to protect new structures from bluff top retreat for a period of 75 years consistent with LUP Policy 3.4-7. The revised geologic report states that the generally-accepted projection for sea level rise is approximately 1.6 feet over the next century, or 1.2 feet over the next 75 years. This rise will be a gradual process, not an over-night event. BACE pointed out that the lower marine terrace at Bowling Ball Beach directly below the applicants parcel is being planed-off flat by the ocean since current sea levels were achieved approximately 5 to 7 thousand years ago. As indicated by their test pits, borings, and their laboratory strength tests at the several properties investigated by BACE at Bowling Ball Beach, the bedrock at the site is low to moderate in hardness. BACE maintains that the bedrock only becomes friable to soft on the bluff face when it exhibits slaking, as a response to wind and water exposure. BACE believes that it will take time for the rocks to be weakened enough to erode by slaking, and that this relatively slow erosion rate of 5 inches per year established for the applicant's parcel should continue, even as the sea level rises.

The Coastal Commission staff geologist has reviewed the BACE reports, visited the site, and conferred with the applicants' geologist. After reviewing the revised geologic report and

recommendations, the staff geologist determined that the applicant's geologist's projection of the bluff retreat rate is appropriate. The Commission finds that as sufficient geotechnical investigations have been conducted to determine the bluff retreat rate and an appropriate bluff setback for the new septic tank to protect the tank from bluff retreat over the life of the facility, the proposed septic tank installation 31 feet away from the bluff edge is consistent with the provisions of LUP policies 3.4-1, 3.4-7, and Coastal Zoning Code Sections 20.500.015(A), 20.500.020(B), and 20.500.010 regarding geotechnical investigations and establishing bluff setbacks that will protect development from the geologic hazards of bluff retreat.

The applicants have submitted information from a geologist which states that if the proposed replacement septic tank is set back as proposed 31 feet from the bluff edge, the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life. Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is appropriate at all on any given blufftop site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. However, even if bluff retreat actually does affect the location of the septic tank over its lifespan, approval of this development will not give rise to the need to construct a seawall as the septic tank can easily be moved or replaced by a new septic tank in a different location. The facts that (1) the applicant is proposing to replace the existing septic tank that is currently threatened by bluff retreat with a new tank in a different location rather than build a seawall to protect it, and (2) the approximately 50-square-foot structure would easily fit within the large portions of the 17,136-square-foot parcel that have not been proposed for additional development demonstrate that relocation or replacement in the future of the proposed replacement septic tank in a different location would be feasible. Therefore, the Commission finds that the development is consistent with the provisions of Section 20.500.010 of the Coastal Zoning Code that state that development shall not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs.

Originally, when the applicant proposed to move his house back 34 feet from the bluff edge, BACE recommended that the existing septic tank be removed, and the resulting hole be backfilled with compacted fill. In BACE's February 18, 2003, revised geologic report a "less-destructive" alternative to excavating a hole and removing the existing tank at the bluff edge is recommended to avoid exacerbating bluff erosion near the existing house. BACE states: "the existing tank could be pumped, then filled with chlorinated water (first verifying that the tank is not leaking). When finally threatened (partially exposed) by erosion, the tank can be pumped again, then excavated and lifted out... With this alternative, the tank remains 'light', and therefore, relatively easy to move, and the bluff disturbance is minimal until the bluff edge actually erodes back to the tank. After reviewing the revised geologic report and recommendations, the Commission staff geologist determined that the applicant's geologist's recommendations were appropriate. The staff geologist believes that with

the septic tank now quite close to the edge, there is danger that slumping would occur between the excavation and the bluff edge, preventing effective compaction of the backfill and leading to a potential erosion hotspot that could expand to ultimately threaten the nearby house. Accordingly, the staff geologist concurs with the recommendation in the 18 February 2003 report that the tank be left in place, either empty or filled with water rather than with soil.

The staff geologist emphasizes that the location of the existing septic tank to be abandoned should never become a site where bluff top runoff could lead to subsequent erosion of the bluff edge. To ensure that the site does not become a locus of bluff top runoff and subsequent erosion, the Commission attaches Special Condition No. 1 requiring the submittal of a plan for removal of the abandoned septic tank. The plan is required to include a narrative report and site map describing and depicting all elements of the project, as well as a schedule for removal of the tank. The plan is also required to demonstrate that all runoff generated from impervious surfaces on the parcel is not directed toward the abandoned septic tank location. Additionally, the plan is required to minimize damage to nearby tree roots during excavation and removal of the abandoned septic tank, require that heavy equipment used at the site be the minimum size necessary to conduct the work, and that the excavation and removal of the abandoned septic tank be accomplished within 60 days of discovery that the tank has become exposed due to erosion of the bluff edge. The preparation and implementation of a plan for removal of the abandoned septic tank would prevent the removal of the tank from creating greater geologic hazards on the site and thereby would ensure consistency with the requirements of Coastal Zoning Code Section 20.500.010 that development neither create nor contribute significantly to erosion, geologic instability or the destruction of the site or surrounding areas.

E. Water Quality

1. Summary of LCP Provisions

LUP Policy 3.1-25 states:

The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

Coastal Zoning Code Section 20.492.020(B) incorporates sedimentation standards and states:

To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.

2. Discussion

LUP Policy 3.1-25 calls for the protection of the biological productivity of coastal waters. Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation.

As discussed above, the subject parcel is located on a coastal terrace atop an 80-foot-tall coastal bluff. Runoff originating from the development site could drain toward the bluff edge. Sediment and other pollutants entrained in runoff from the development located between the development site and the bluff that reaches the ocean would contribute to degradation of the quality of marine waters.

Sedimentation impacts from runoff would be of greatest concern during and immediately after construction. Installation of the new septic tank would disturb an area around where the septic tank would be placed, as well as any new trench lines necessary for connecting the new tank to the inlet lines and outlet lines to the existing leach field. Consistent with CZC Section 20.492.020(B), the Commission attaches Special Condition No. 2 has been imposed to minimize erosion and sedimentation impacts from the excavation and finished backfilling of the construction. Special Condition No. 2 requires that on-site vegetation be maintained to the maximum extent possible during construction, and any disturbed areas be replanted or seeded with native vegetation following project completion. The required planting must not include any invasive exotic species. In addition, Special Condition No. 2 requires that all on-site stockpiles of construction debris be covered and contained to prevent polluted water runoff. The requirements imposed by the inclusion of Special Condition No.1, to provide a plan for the eventual removal of the abandoned septic tank, will further protect coastal waters from potential adverse effects of erosion and sedimentation associated with the project.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; and (3) covering and containing debris stockpiles at all times; and (4) minimizing erosion of the site where the abandoned septic tank will eventually be removed. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be controlled on site by infiltration into vegetated areas and the project would

not have significant adverse effects on water quality or the biological productivity of nearby coastal waters.

F. Visual Resources

1. Summary of LCP Provisions

LUP Policy 3.5-1 states in applicable part:

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

Coastal Zoning Ordinance Section 20.504.015 states, in applicable part:

(C) *Development Criteria.*

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

2. Discussion.

As previously described, the subject property is located on a blufftop parcel above Bowling Ball Beach, in an area along the Mendocino coastline designated highly scenic. The site is approximately three miles southeast of Point Arena, situated on the southwest side of Highway One, approximately one mile northwest of Schooner Gulch, and approximately 1,200 feet south of Ross Creek. As described above, the currently proposed development would abandon the existing septic tank on-site, and install a new 1,200-gallon concrete septic tank. Because the project description has been amended to eliminate the previously proposed construction of above ground structures and only bury a new septic tank in a location consistent with the revised geologic report, the proposed development would not be visible from public vantage points and therefore would not adversely affect public views to the ocean, or be out of character with surrounding structures. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policy 3.5-1 and Coastal Zoning Code Section 20.504.015 because the project would be sited and designed to minimize adverse visual impacts, would be visually compatible with the character of surrounding areas, and would provide for the protection of coastal views.

G. Public Access and Recreation

1. Coastal Act Access Policies

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

LUP Policy 3.6-27 states:

No development shall be approved on 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 that minimizes risks to life and property, or (3) such siting is necessary for consistent 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.

Note: This policy is implemented verbatim in Section 20.528.030 of the Coastal Zoning Code.

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, 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.

As described above, the subject parcel is located on a coastal bluff approximately 80 feet above the ocean. There is no physical access from the subject parcel to the shoreline due to the very steep drop off. The property is situated approximately 1,200 feet south of the Ross Creek Shoreline Access to the north and approximately 2,700 feet north of the Schooner Gulch/Bowling Ball Beach Shoreline Access, both providing adequate signed coastal shoreline access to the beach. The County's Land Use Map #28 for the portion of the county containing the subject parcel designates the beach at the base of the coastal bluff west of the project site for proposed lateral coastal access. The Coastal Element also indicates the intention of establishing a bluff top trail in this location for public coastal access. However, as noted in the County's staff report, establishing a contiguous trail along the bluff top in this location is problematic in that small parcels have been created in this area, which would create conflicts with public access along the bluff top.

The proposed project would not have any adverse impact on existing or potential public access. Coastal Commission staff did identify any trails on the subject property except for a trail extending from Highway One and the coastal bluff edge in the vicinity of the southern property boundary line for the subject parcel. It is not clear whether or not the trail receives substantial public use. However, the proposed development would not affect this trail. The septic tank to be abandoned and the new septic tank to be installed are located adjacent to the northern property boundary of the subject parcel, on the opposite side of the property from the noted trail. Because the site of the proposed project near the north property boundary is approximately 140 feet from the potential prescriptive access near the south property boundary, there is no likelihood that the proposed project would have any affect whatsoever on the trail. Because the proposed project would have no other adverse impacts on existing or potential public access, the Commission finds that the proposed project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP.

H. California Environmental Quality Act.

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential

significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the Mendocino County LCP and the access and recreation policies of the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits

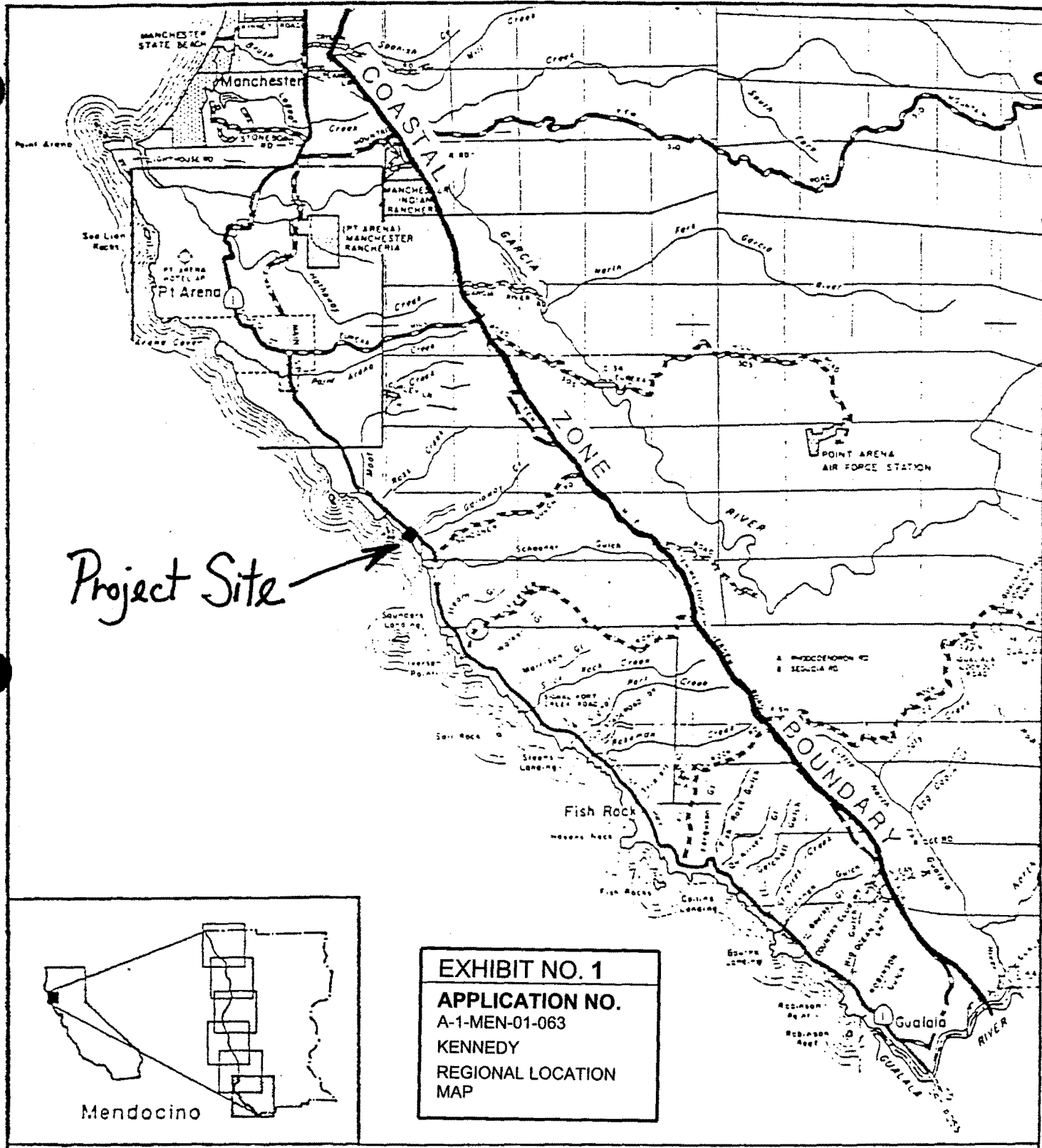
1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Amended Project Description
5. Revised Geologic Evaluation Excerpts
6. Notice of Final Action
7. Appeal

ATTACHMENT A

Standard Conditions:

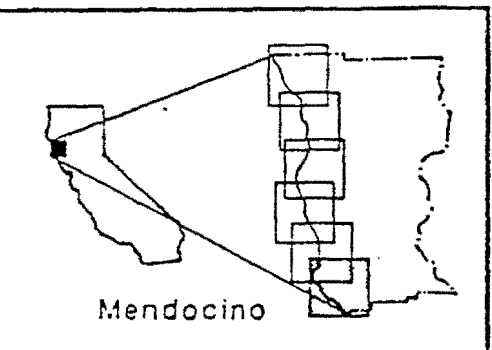
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.






Project Site →

EXHIBIT NO. 1
APPLICATION NO.
 A-1-MEN-01-063
 KENNEDY
 REGIONAL LOCATION
 MAP



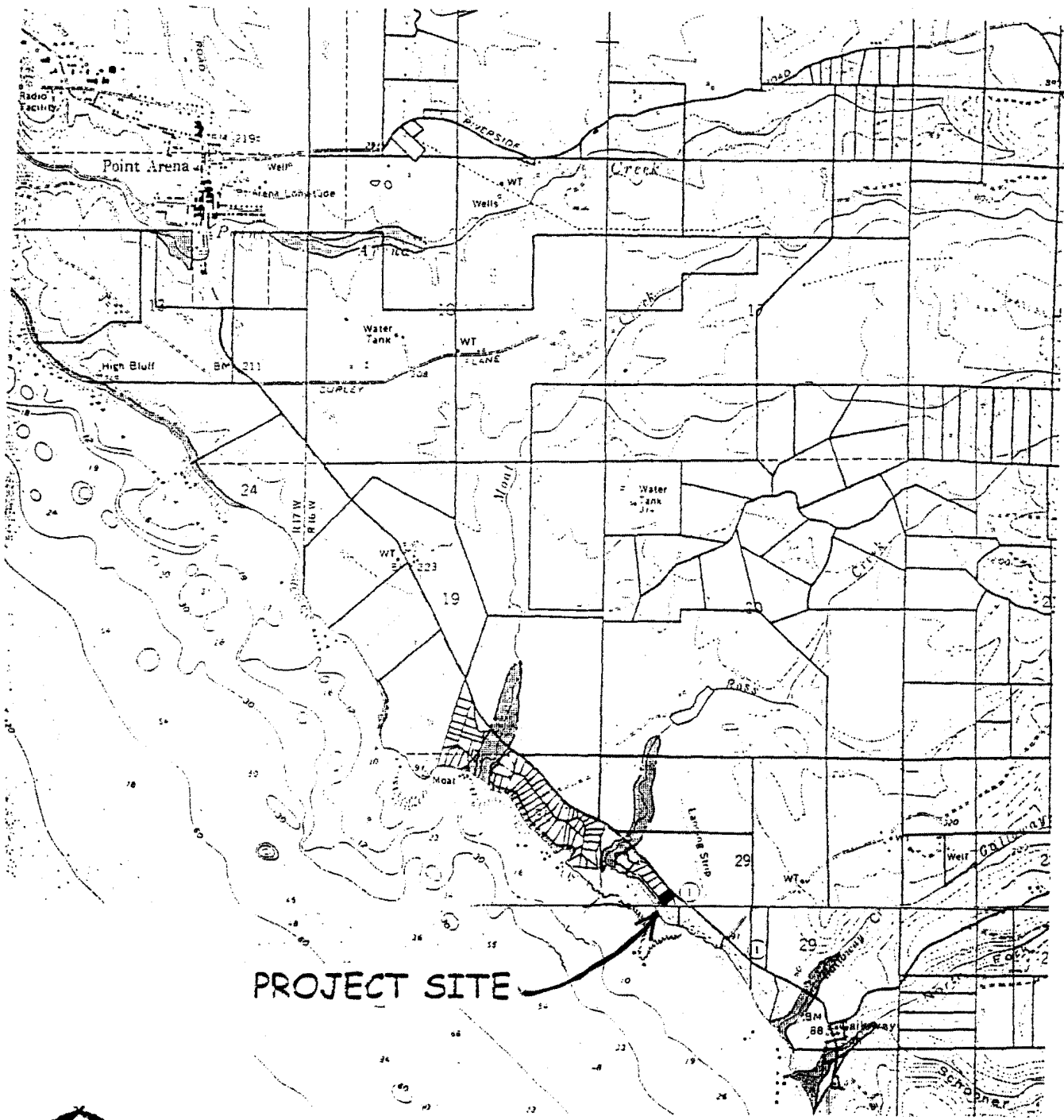
Mendocino

 California Coastal Commission

LOCATION MAP



County of Mendocino



PROJECT SITE



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

KENNEDY PARCEL

← STATE HWY ONE →

← ROAD AND UTILITY EASEMENT →

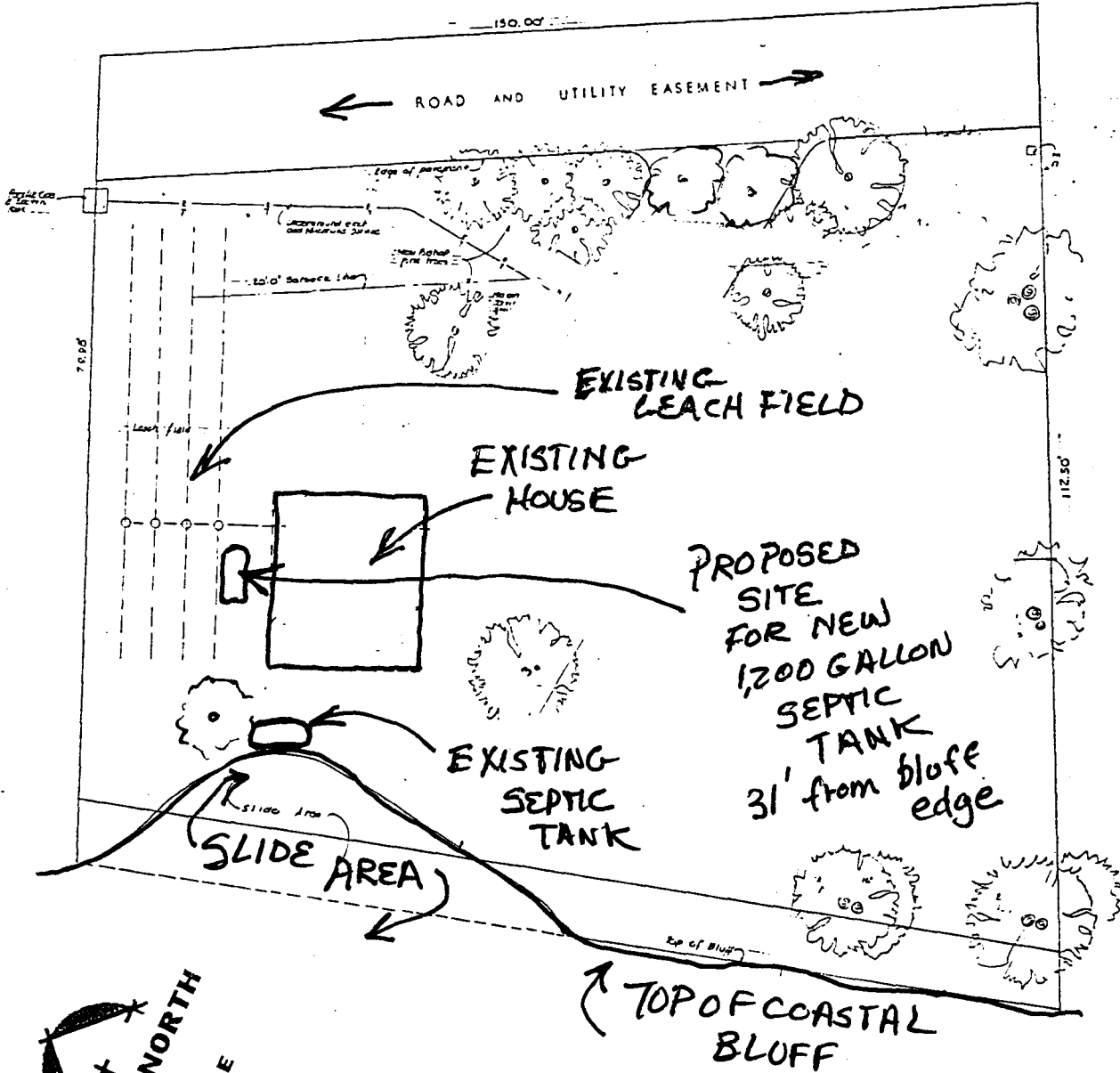
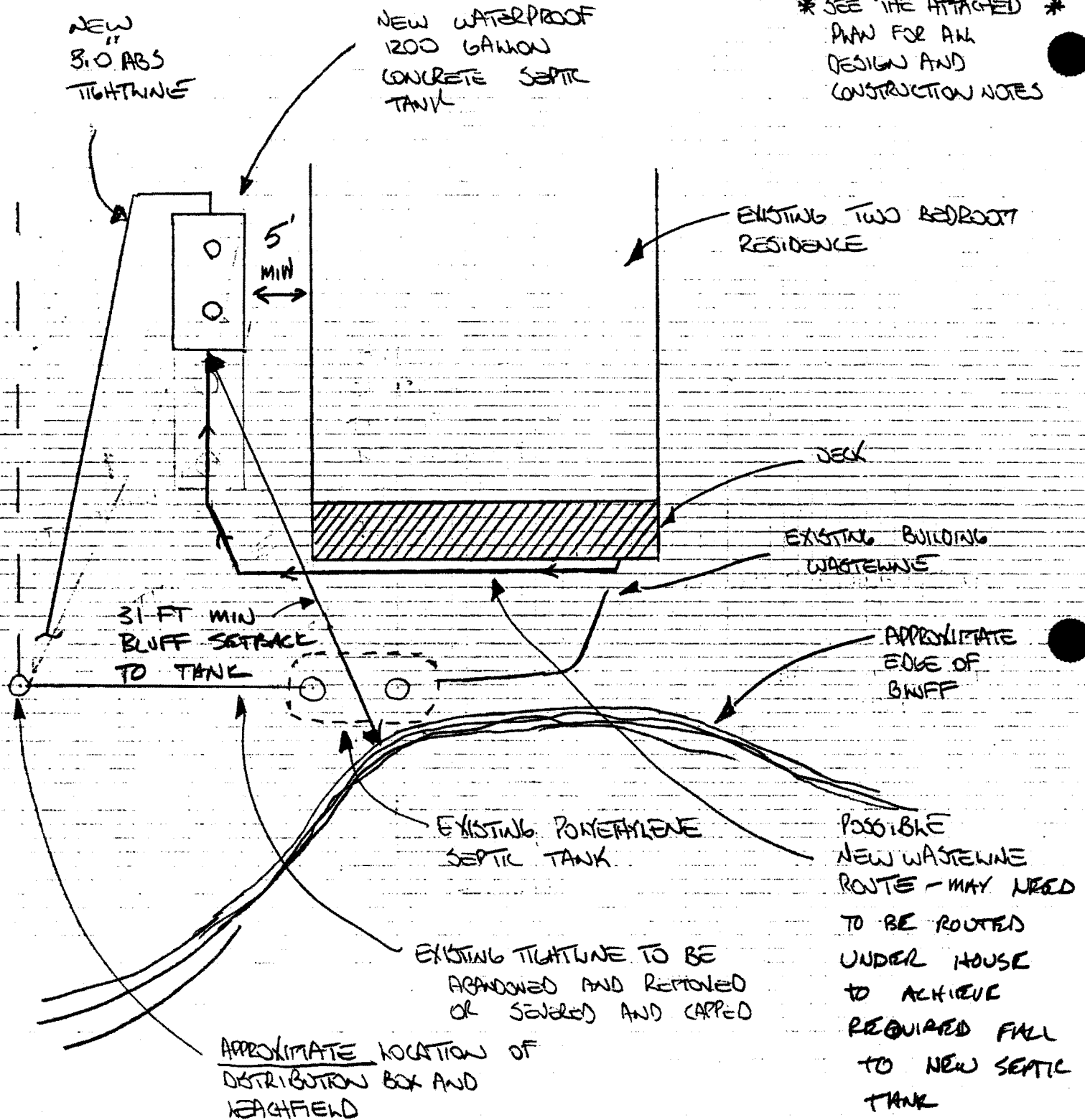


EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-01-063
KENNEDY
SITE PLAN (1 of 2)

SITE PLAN.

* SEE THE ATTACHED *
PLAN FOR ALL
DESIGN AND
CONSTRUCTION NOTES



2 of 2

March 17, 2003

Mr. Randall Stemler
P. O. Box 4908
Eureka, CA 95502

RECEIVED

MAR 19 2003

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Stemler,

For the purposes of the Coastal Commission's de novo review, I am amending the description of my project proposal to reflect the following changes:

- 1) I am no longer seeking authorization to move my existing home.
- 2) I am no longer seeking authorization to construct a garage/guest room.
- 3) I propose to abandon my existing septic tank on-site, and install a new 1,200 gallon concrete septic tank consistent with my geologist's revised recommendation dated February 18, 2003; and consistent with my revised sewage disposal system enhancement/repair proposal dated March 7, 2003. I have been issued a valid renewed permit from Mendocino County Department of Environmental Health to perform the work as described in the above listed document.
- 4) I agree to remove the existing septic tank if it ever becomes exposed due to erosion of the coastal bluff.
- 5) I no longer authorize Richard Perkins to act as my agent.

If there are further questions please contact me by phone at area code 510-339-9853.

Sincerely,

Herbert M. Kennedy
Herbert M. Kennedy
Owner

EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-01-063 KENNEDY AMENDED PROJECT DESCRIPTION



BACE Geotechnical
A Division of Brunsing Associates, Inc.

EXHIBIT NO. 5

APPLICATION NO.

A-1-MEN-01-063

KENNEDY

REVISED GEOLOGIC
EVALUATION (1 of 6)

February 18, 2003

Mr. Herb Kennedy
7080 Saconi Drive
Oakland, CA 94611

RECEIVED

FEB 25 2003

CALIFORNIA
COASTAL COMMISSION

11242.3

RE: Engineering Geologic Evaluation, Planned Septic Tank Relocation, Kennedy Residence, 27700 South Highway One, Mendocino County, California

Dear Mr. Kennedy:

This memorandum presents BACE Geotechnical's (BACE's) engineering geologic evaluation of the planned septic tank relocation at the Kennedy Residence, 27700 South Highway One, Mendocino County, California. The property is situated on an ocean bluff above Bowling Ball Beach, approximately three miles southeast of Point Arena.

We understand that the existing house was built in the early 1970's (1970-72). The existing septic tank is located at the bluff edge, approximately 10 feet west-southwest of the house. Due to bluff erosion concerns, the septic tank is to be relocated. According to the site plan attached to the undated Site Evaluation Report, prepared by Carl Rittiman, Certified Professional Soil Scientist, the existing tank is to be abandoned and replaced by a new septic tank to be situated a few feet north of the northwest house corner.

BACE previously performed an evaluation of the planned septic tank relocation; the results of that evaluation were presented in a letter dated June 28, 1999. In that letter, BACE stated that the active, bluff erosion area in the house vicinity has an average retreat rate of approximately 5 inches per year. Based upon that retreat rate, BACE concluded that a bluff edge setback of 21 feet for the septic tank should be adequate for the next 47 years, the remainder of the house's 75-year lifespan. We further recommended that the existing septic tank be removed, and the resulting hole backfilled with compacted soil.

According to Bob Merrill via Randy Stemler (oral communication, February 12, 2003) of the California Coastal Commission, a less than 75-year lifespan for a structure is not acceptable; even a relocated structure is considered a "new" structure for setback purposes. Furthermore, our recommended setback should take sea level rise into consideration over the next 75 years.

Therefore, the purpose of our services was to re-evaluate our bluff edge setback, especially with regard to sea level rise. In addition, we were to consider a "less-destructive" method of septic tank abandonment. The scope of our services, as outlined in our Service Agreement dated December 4, 2002, consisted of consultation, field reconnaissance, updated aerial photograph study using a 2000 aerial photograph, and the preparation of this letter.

Field Reconnaissance

Our Project Engineer observed the site on January 30, 2003. During that visit he measured the distance from the house to various points along the bluff edge. We compared these measurements with similar measurements made by BACE in 1998 and 1999. The measurements, which are summarized on the Site Sketch, Plate 1, indicate a few inches to about 1-1/4 feet of bluff erosion over the past 4-1/2 years (an average of approximately 3.3 inches per year).

Our Project Engineer also took photographs from approximately the same location as photographs taken in 1998 and 1999. Three photographs showing the house and the bluff edge in 1998, 1999, and 2003, are presented on Plate 2. In addition, photographs showing an episode of erosion on the bluff face (loss of brush vegetation) between 1998 and 1999 are presented on Plate 3. The appearance of the bluff approximately 2-1/2 years later (February, 2002) is also presented on Plate 3.

Aerial Photograph Analysis

We re-examined our 1964 and 1981 aerial photographs and compared them with a recently-obtained 2000 aerial photograph. The results of our aerial photograph study confirm an erosion rate of 4-1/2 to 5 inches per year within the local bluff indentation on the west-southwest side of the house. Another recent (2002) aerial photograph study by BACE of other points on the bluffs along Bowling Ball Beach found erosion rates that varied from 2.2 to 3.3 inches per year between 1964 and 2000.

Sea Level Rise Effects

In response to global warming, the generally-accepted projection for sea level rise is approximately 1.6 feet over the next century, or 1.2 feet over the next 75 years. This rise will be a gradual process, not an over-night event. The lower marine terrace at Bowling Ball Beach is being planed-off flat by the ocean since current sea levels were achieved approximately 5 to 7 thousand years ago. As indicated by our test pits, borings, and our laboratory strength tests at the several properties investigated by BACE at Bowling Ball Beach, the site bedrock is low to moderate in hardness. The bedrock becomes friable to soft on the bluff face where exposed to wind and water (slaking). It takes time for the rocks to be weakened enough to erode by slaking. This relatively slow erosion rate should continue, even as the sea level rises.

Conclusions and Recommendations

Based upon the results of our periodic site observations from 1977 to the present; our field photographs and measurements from 1998 to 2003; and our aerial photograph analysis from 1964 to 2000, we conclude that bluff is eroding an average of 5 inches per year at the Kennedy property. Based upon this erosion rate, a setback of 31 feet would be appropriate for the re-located septic tank. The final septic tank location should be determined with consideration that the existing house may also need to be moved back some time in the future.

2096

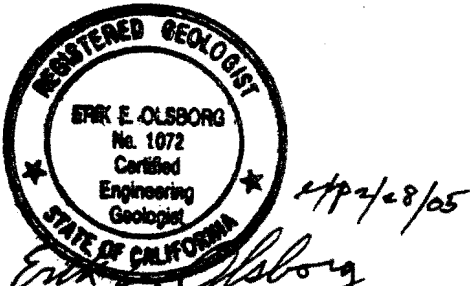


BACE previously recommended that the existing septic tank be abandoned by excavating and removing the tank, then backfilling the resulting hole with compacted fill. As an alternative, the existing tank could be pumped, then filled with chlorinated water (first verifying that the tank is not leaking). When finally threatened (partially exposed) by erosion, the tank can be pumped again, then excavated and lifted out with a backhoe or small excavator. With this alternative, the tank remains "light", and therefore, relatively easy to move, and the bluff disturbance is minimal until the bluff edge actually erodes back to the tank.

Closing

We trust the above provides the information required at this time. Please contact us if you have questions.

Respectfully submitted,


Erik E. Olsborg
Engineering Geologist - 1072

EEO/KAC/mjh

Attachments: Plate 1 - Site Sketch
Plates 2 and 3 - Field Photographs

Five copies submitted

CC: Carl Rittiman

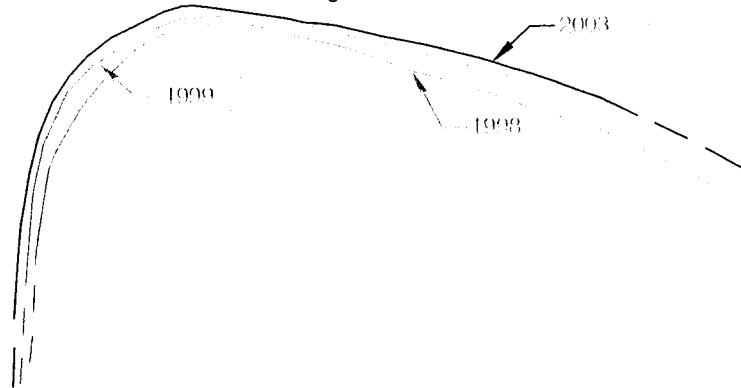
3 of 6



Kennedy House

Deck

Bluff edge

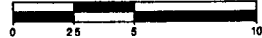


file

REFERENCE:

Field Surveys; dated 08/13/98, 4/20/99,
and 01/30/03; prepared by BACE
Geotechnical, using a tape measure.

APPROXIMATE SCALE: 1in. = 5ft.



BACE Geotechnical
a division of
Brunsing Associates, Inc.
(707) 838-0780

Job No.: 11242.3

Appr.: **EEO**

Date: 02/18/03

SITE SKETCH

KENNEDY BLUFF
27700 South Highway One
Bowling Ball Beach
Mendocino County, California

PLATE

1



Photograph A - 08/13/98




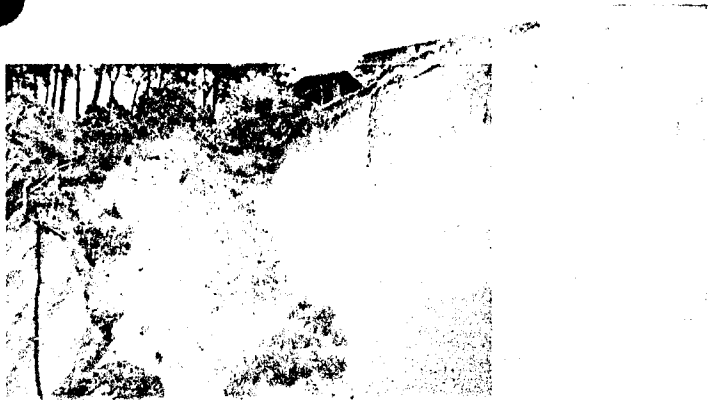
Photograph B - 04/20/99



Photograph C - 01/30/03

5 of 6

	BACE Geotechnical a division of Bruning Associates, Inc. (707) 838-0780	Job No.: 110103 Appr.: <i>BAC</i> Date: 02/18/03	PHOTOGRAPHS A, B, AND C - KENNEDY HOUSE AND BLUFF EDGE KENNEDY BLUFF 27701 South Highway One Mendocino County, California	PLATE 2
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Photograph D - 08/13/98




Photograph E - 04/20/99



Photograph F - 02/26/02

60 of 70

	BACE Geotechnical a division of Brunsing Associates, Inc. (707) 838-9780	Job No: 110123 Appr: <i>RFD</i> Date: 02/18/00	PHOTOGRAPHS D, E, AND F - KENNEDY HOUSE AND BLUFF FACE KENNEDY BLUFF 27700 South Highway One Mendocino County, California	PLATE 3
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1 MEN-01-198

RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

RECEIVED

TELEPHONE
(707) 964-5379

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

CALIFORNIA
COASTAL COMMISSION

November 5, 2001

NOTICE OF FINAL ACTION

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

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

HEARING DATE: October 25, 2001

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 6
APPLICATION NO. A-1-MEN-01-063 KENNEDY NOTICE OF FINAL ACTION (1 OF 14)

1-MEN-01-148

OWNER:

Herb Kennedy
7080 Saconi Drive
Oakland, CA 94611

AGENT RECEIVED
OCT 17 2001
CALIFORNIA
REQUEST COASTAL COMMISSION

Richard Perkins
46351 Gypsy Flat Road
Gualala, CA 95445

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

LOCATION:

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

APPEALABLE AREA:

Yes (blufftop lot)

PERMIT TYPE:

Standard

TOTAL ACREAGE:

17,136 square feet

ZONING:

RR:L-5 DL

GENERAL PLAN:

RR-5 DL

EXISTING USES:

Residential

SUPERVISORIAL DISTRICT:

5

ENVIRONMENTAL DETERMINATION:

Categorically Exempt, Class 1 and Class 3

OTHER RELATED APPLICATIONS:

Septic permit #1447F

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

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

Land Use

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

20F14

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

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

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

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

Public Access

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

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

Hazards

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

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

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

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

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

Policy 3.4-9 states:

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

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

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

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

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

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

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

Visual Resources

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

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

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

40F14

to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting."

Policy 3.5-3 states:

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

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

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

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

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

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

Policy 3.5-5 states:

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

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

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

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

50F14

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

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

Natural Resources

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

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

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

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

Archaeological/Cultural Resources

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

Groundwater Resources

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

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

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

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

Transportation/Circulation

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

Zoning Requirements

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

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

FINDINGS:

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

STANDARD CONDITIONS:

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

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

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

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

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


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

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

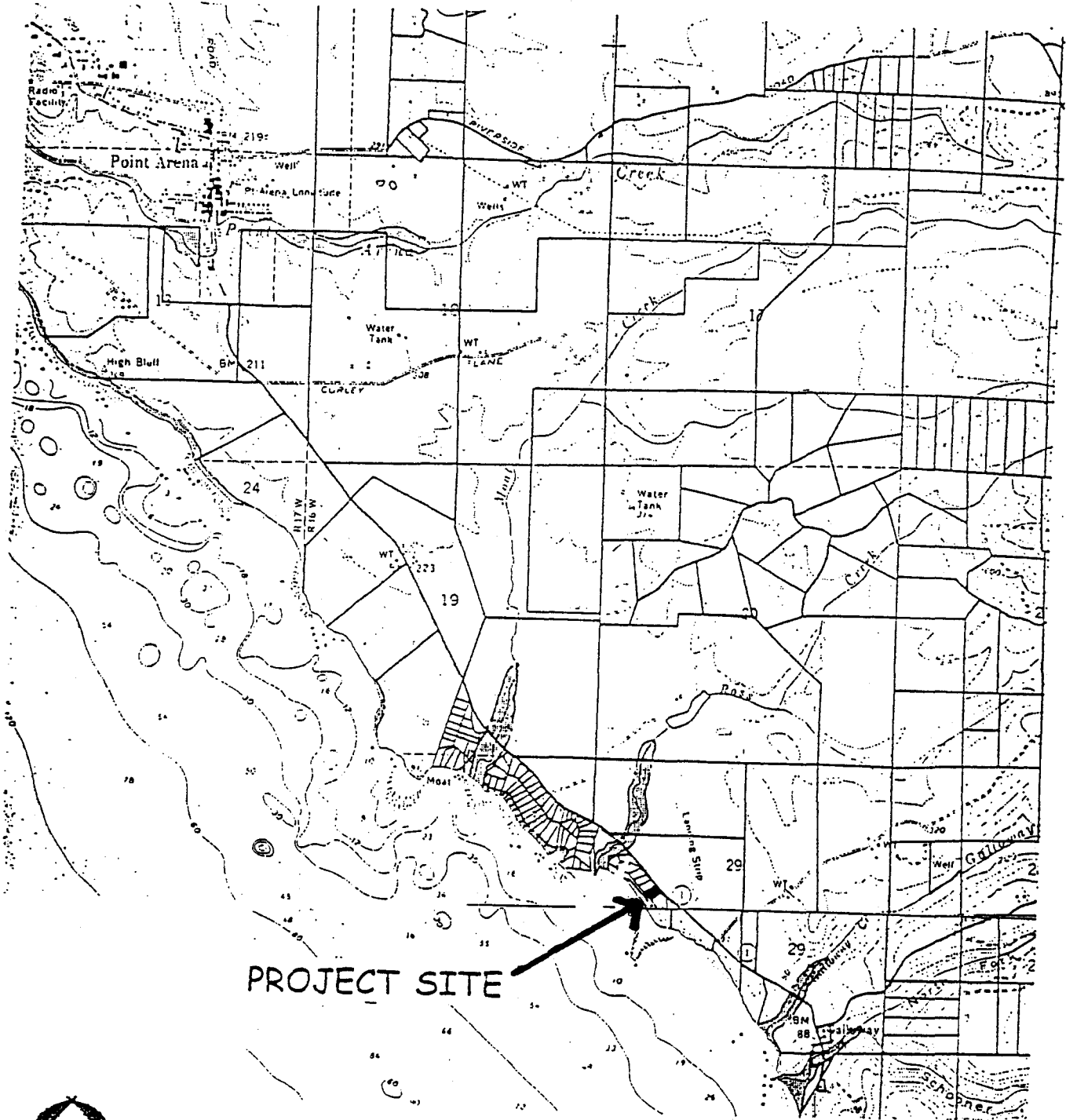
Staff Report Prepared By:

10/15/01
Date


Doug Zanini
Supervising Planner

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

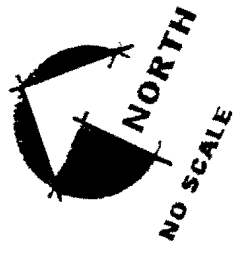
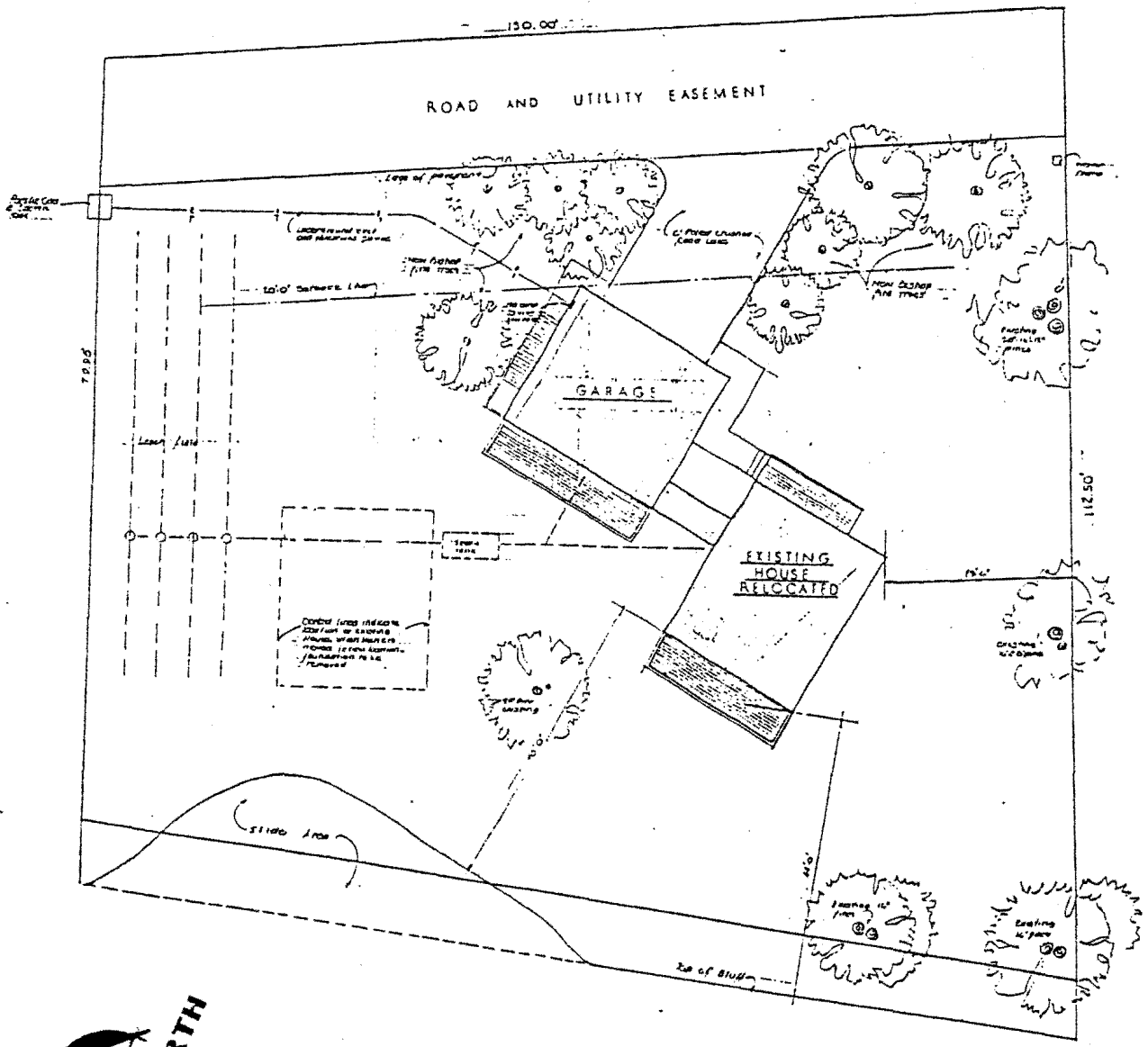
Appeal Period: 10 days
Appeal Fee: \$555



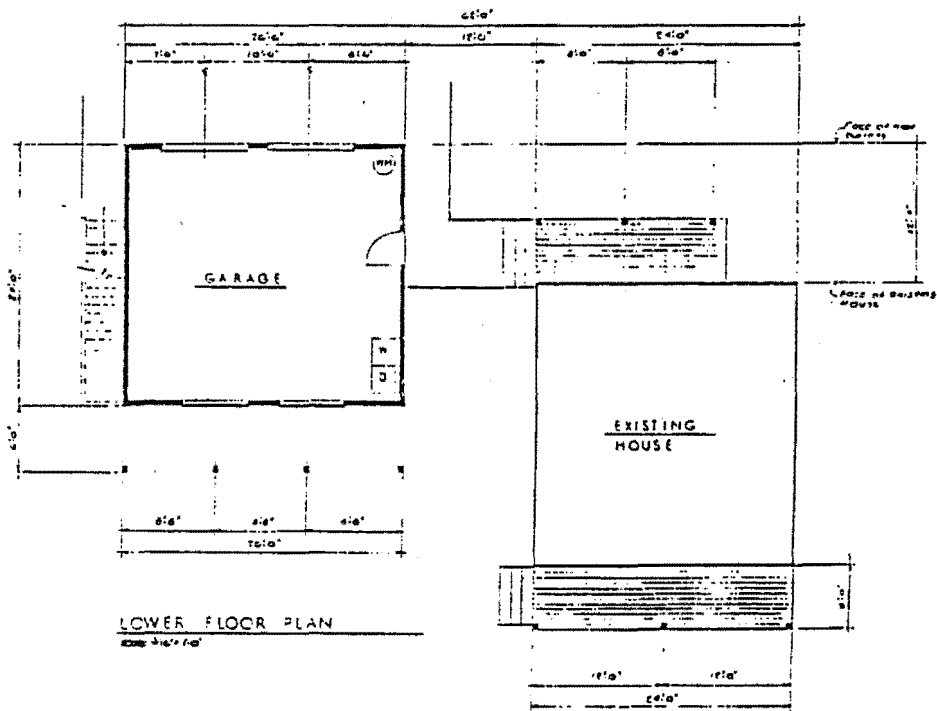
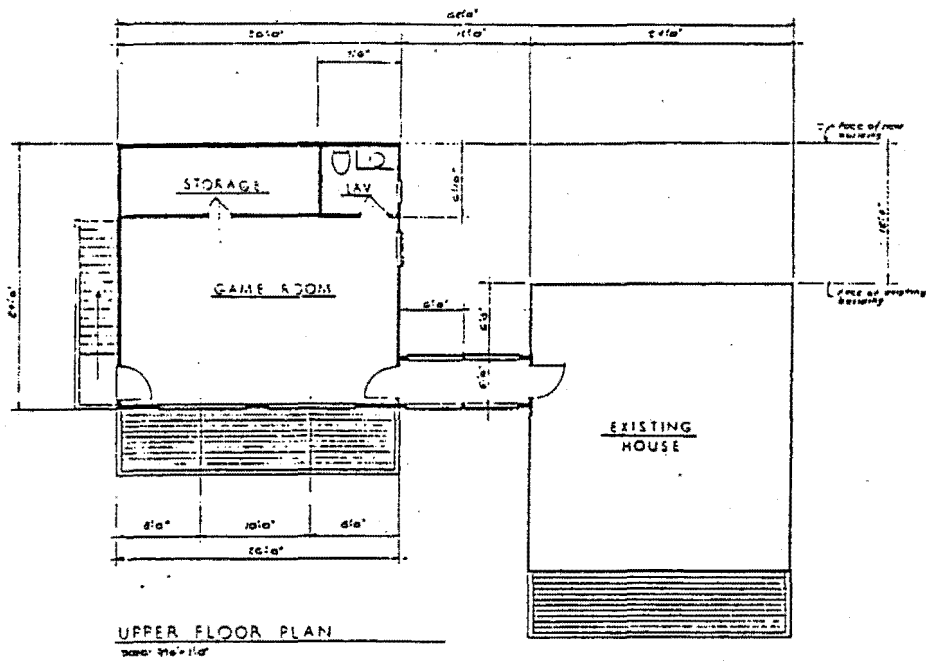
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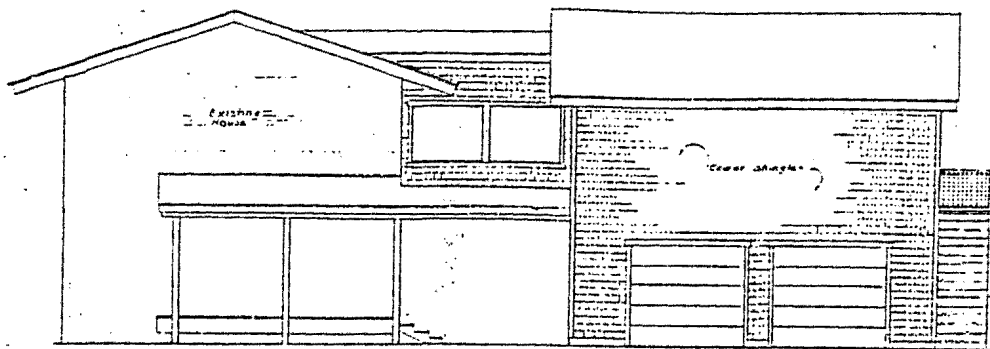
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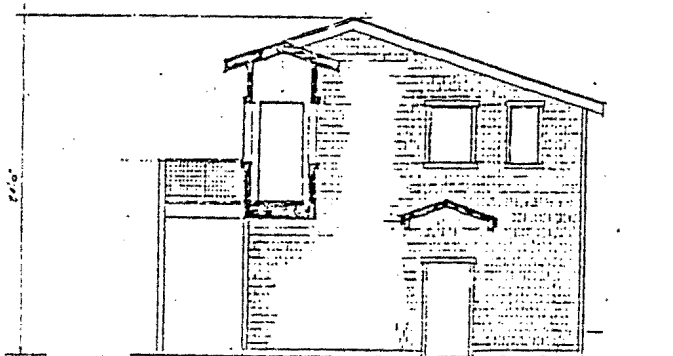
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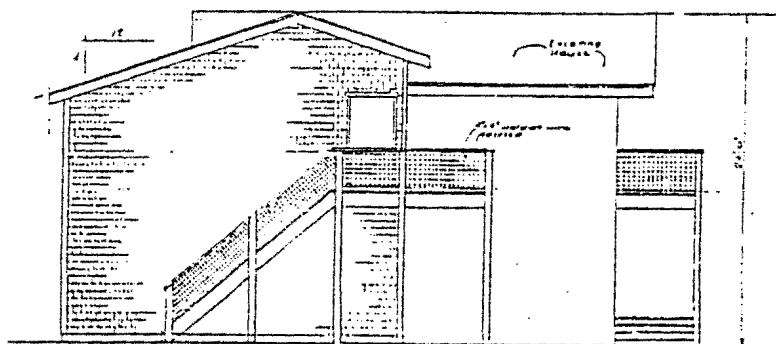
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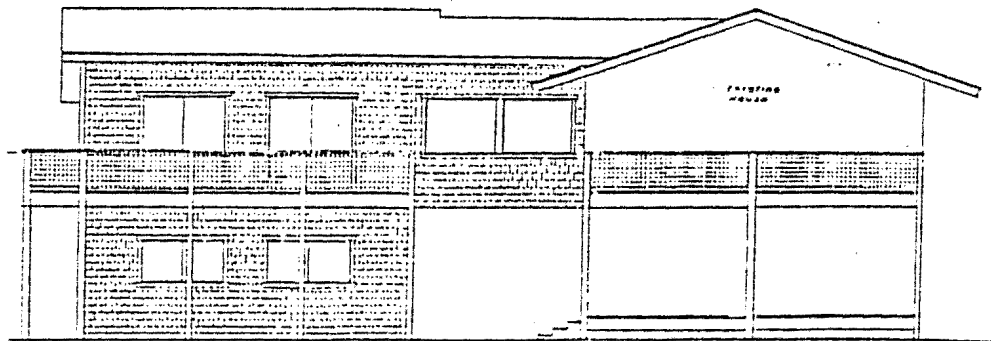
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SOUTH ELEV.
Scale: 1/4" = 1'-0"



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



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

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CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
710 E STREET - SUITE 200 P. O. BOX 4908
EUREKA, CA 95501-1865 EUREKA, CA 95502-4908
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

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NOV 05 2001



CALIFORNIA COASTAL COMMISSION
APPEAL FROM COASTAL PERMIT COASTAL COMMISSION
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

FRIENDS OF SCHOONER GULLCH
BOX 4
POINT ARENA CA 95468 (707) 882-2001
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MENDOLINO CO.

2. Brief description of development being appealed: single family dwelling

3. Development's location (street address, assessor's parcel no., cross street, etc.): 27700 S. HWY ONE, AP 27-421-11 approx. 1200 feet south of Ross Creek.

4. Description of decision being appealed:

- a. Approval; no special conditions:
b. Approval with special conditions: [checkmark]
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-01-063

DATE FILED: 11/9/01

DISTRICT: North Coast

HS: 4/88

EXHIBIT NO. 7
APPLICATION NO.
A-1-MEN-01-063
KENNEDY
APPEAL (1 of 17)

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

See letter herewith.

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

SECTION V. Certification

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

- Additional Appellants:
- Roxanne Weisner
Merdo - Fake Group
Sierra Club
Box 340 Albion
CA 95445
 - Jocanne Withers
Box 198 Ft Bragg
Ca 95437

Peter Permmuller
Signature of Appellant(s) or
Authorized Agent

Date November 2, 2001

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

Section VI. Agent Authorization

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

- Tollie Verran
Box 382
Albion
95445

Friends of Sierran Club
Signature of Appellant(s)

Date Nov. 2, 2001

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Friends of Schooner Gulch

A Watershed Organization

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

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Executive Committee:

CALIFORNIA
COASTAL COMMISSION

Lucie Marshall
Charles Peterson
Peter Reimuller

November 2, 2001

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

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

Dear Mr. Stemler:

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

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

Incomplete Application

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

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

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

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

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

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

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

Landscaping

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

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

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

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

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

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

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

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

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

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landscaping to protect visual resources has become more complicated.

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

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

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

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

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

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

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

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

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

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

Subordination to Landscape

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

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

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

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

Lighting

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

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

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

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

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

Septic System

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

Visibility

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

Visual Bulk

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

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

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

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

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

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

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

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

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

Drainage and Cliff Recession

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

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

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

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

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

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

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

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

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

Visual Blight

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

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

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

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

Summary

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

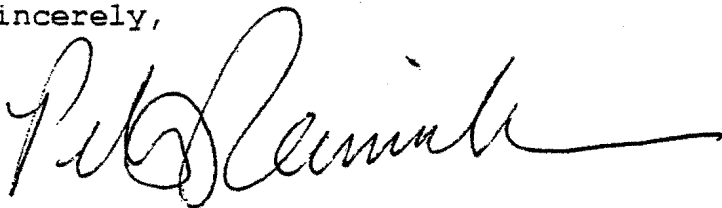
Too much house is proposed in this sensitive location. A single storey addition to the house would fit the lot and meet the requirements of the LCP.

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

The geotechnical report is incomplete.

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

Sincerely,



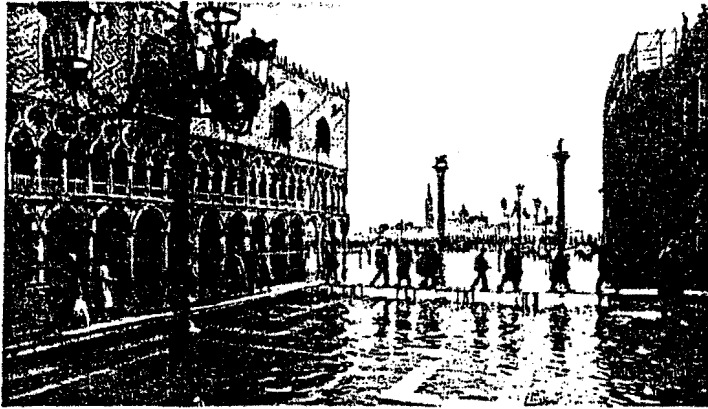
Peter Reimuller
Secretary

encl: page from September, 2001, National Geographic

ENGINEERING

Canaletto to the Rescue

Looking to art for clues to save a soggy Venice



ART RESOURCE (ABOVE), MICHAEL YAMAGUCHI

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

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

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

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

CONSERVATION

Snakes Feel the Bite on Cambodian Lake

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



DEVAN CITTARE

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*

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NOV 03 2001

November 3, 2001

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

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

Dear Mr. Stemler:

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

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

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

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

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

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

Sincerely,



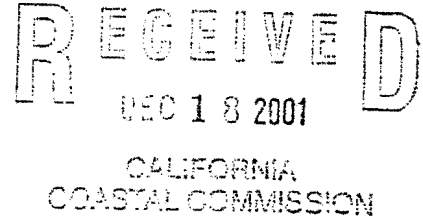
Peter Reimuller
Secretary

16 OF 17

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

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

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



Via FAX, Hard copy to follow.

Dear Members of the Commission and Mr. Merrill,

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

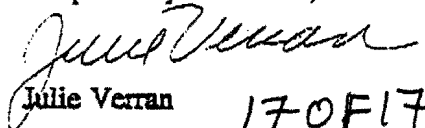
The applicant seeks to move the home to regain blufftop setback lost to coastal retreat. In my opinion, he has an absolute right to do so, but not to make the house larger, as proposed. He also has a reasonable expectation to be able to build an enclosed garage, but not to have two stories. If the house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

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

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

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

Respectfully submitted,


Julie Verran 170F17