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Filed: May 9, 2003
49th Day: Waived
Staff: Jim Baskin
Staff Report: June 26, 2003
Hearing Date: July 10, 2003
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-03-029

APPLICANT: Deirdra Claiborne and Noren Schmitt

PROJECT LOCATION: 36951 Road 526 (former Highway 1), approximately 2½ miles north of the town of Gualala, Mendocino County, APN 144-140-07.

PROJECT DESCRIPTION: Construction of a 2,574-square-foot, 20-foot-high, single-family residence on a 1.1-acre parcel with an attached 460-square-foot garage, driveway, onsite sewage disposal system and extension of utilities to the new structures.

APPELLANTS: Susie and Fred Sedlacek

SUBSTANTIVE FILE: 1) Mendocino County CDP No. 19-02; and
DOCUMENTS 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. These grounds include alleged project inconsistencies with Mendocino County's certified Local Coastal Program (LCP) policies pertaining to the protection of environmentally sensitive habitat areas and visual resources.

The project as approved by the County of Mendocino consists of the development of a single-family residence with an attached garage, septic system, and utility improvements on an approximately one-acre lot located on the east side of County Road No. 526 (former route of Highway One), approximately 2½ miles north of the town of Gualala. The site development would result in the construction of a 2,574-square-foot, 20-foot-average-height-above-natural-grade, one-story residence, with a 460-square-foot attached garage, installation of an onsite sewage disposal system, driveway, and extension of utilities to serve the new structures. Temporary onsite owner-occupation in a travel trailer during the construction season was also authorized as part of the permit.

The project was approved by the County's Coastal Permit Administrator on February 29, 2003. The permit included conditions limiting the development to the size, scope, location, and selection of building materials and lighting fixtures identified within permit application materials, requiring the securing of building permits, setting contingencies for the discovery of archaeological resources during construction, requiring the submittal and approval of final landscape plans prior to issuance of the coastal development and building permits, mandating that all trees outside of the authorized building envelope be retained and setting provisions for their replacement should they become perish during the lifespan of the project, and requiring the applicants to enter into a rare plant mitigation program agreement with the California Department of Fish and Game regarding the protection of coastal bluff morning-glory (Calystegia purpurata ssp. saxicola) at the project site. The Coastal Permit Administrator's decision was subsequently appealed to the Board of Supervisors, who at a hearing on April 22, 2003 unanimously denied the appeal. A timely appeal was filed with the Commission on May 9, 2003, within ten working days of receipt by the Commission of the County's notice of final action on the project.

In their filed appeal, the appellants state that the County's conditional approval of the project was inconsistent with the policies and standards of the certified LCP regarding the protection of environmentally sensitive habitat areas in two ways. First, the appellants observe that the County's approval of the project authorized construction of the residential structures in a location that would be less than fifty feet from an environmentally sensitive habitat area (ESHA) as required by the Land Use Plan. Contrary to the ESHA provisions of the certified LCP, the appellants assert that the site improvements were authorized to be undertaken within the ESHA buffer contingent upon participation in a rare plant mitigation program. The appellants raise concerns about the

satisfactory implementation of the mitigation program given the small size of the parcel and the area needed to construct the lot improvements. The appellants contend that significant impacts will undoubtedly result to the rare plant ESHAs during and after construction.

Secondly, the appellant contends that the development could be further scaled-down in size and relocated to an alternative building site further to the south than that approved by the County where a more compact development could be pursued involving less disruption of the ESHA.

The botanical study prepared for the project site found the majority of the project parcel to be cover in varying densities of two rare plants, coastal bluff morning-glory and Point Reyes ceanothus (Ceanothus gloriosus ssp. gloriosus). As a result, the entire parcel would be considered comprising environmentally sensitive habitat area and/or buffer thereto. Given this situation, the County made use of a provision within its certified LCP that allows for certain qualified development to be permitted either within an ESHA or ESHA buffer if the development is found to be compatible with continuance of the ESHA's functional capacity, self-sustenance, and species diversity, no other feasible sites are available on the parcel, the development is sited to avoid ESHA impacts and all feasible mitigation measures are included, and the adverse effects of impervious surfaces, removal of vegetation, noise, dust, artificial light, nutrient runoff, air pollution, human intrusion, and alteration of natural landforms are minimized.

Working with their botanist, and based upon consultation and concurrence from the California Department of Fish and Game (CDFG), the applicants developed a mitigation program to site and design the residential improvements so as to minimize their impact to the rare plants on the property. These measures included scaling down the size of the project, re-locating the building site to a portion of the parcel deemed to have the least viable rare plant habitat potential, fencing off areas where coastal bluff morning-glory are in substantial abundance, instructing construction contractors to avoid disturbing the fenced-off areas, providing for stabilizing and replanting habitat areas disturbed by construction activities with local genetic seed stock, participating in a CDFG-certified rare plant seed-banking program, and contributing research funding to study the morning-glory's ecology, demographics, distribution, and habitat characteristics. Participation in the mitigation program was made a condition of permit approval by the County to allow the County to annually monitor the progress of the program over its first five years so that its successful implementation could be ensured.

Notwithstanding these efforts, the local record does not clearly document that the County fully considered whether additional design changes to the project would provide further protection for the ESHAs or ascertained whether there were any other feasible locations on the parcel for placing the structures such that the development might have less impacts to the rare plant ESHA. Instead, following from review comments by a County special community advisory committee recommending denial of the original project unless the

development were down-scaled and located further to the east to avoid visual resource impacts, the County limited its consideration of alternative sites solely to the revised down-scaled building envelope it ultimately approved. No other alternative locations for the structure were specifically reviewed based on the County's conclusory findings that no such optional sites existed. Accordingly, staff recommends that the Commission find that the appeal raises a substantial issue with respect to the approved project's consistency with the policies and standards of the LCP regarding protection of ESHAs.

The appellants also contend that the approved project raises substantial issues of conformance with the County's LCP policies pertaining to visual resource protection. The appellants contend that the project would not be subordinate to the character of its setting for a variety of reasons. The appellants note that the building site authorized by the County would entail grading of a driveway and removal of numerous trees that could be avoided if the residence were located further south on the parcel. In addition, removal of the trees would remove the vegetation backdrop for the appellants' adjoining residence, making that structure more visible from the Cook's Beach area as well.

The appellants further raise an issue as to the approved project's conformance with standards within the County's certified coastal zoning regulations regarding whether the color and appearance of the residence's exterior building materials would blend in hue and brightness with their surroundings. The appellants assert that the approved gray/black roofing and gray stonework are not "dark earthtones."

The appellants also argue that light passing through three small windows in the approved residence will effectively function as unshielded exterior lighting that would shine light and/or cause glare beyond the bounds of the project parcel.

The appellants also contend that since the approved height and location of the home would make it visible from an access road and trails leading to Cooks Beach, public views along the ocean would be adversely affected. The appellants observe that although additional mitigation to view impacts might have been achieved by further restricting the height or the location of the residence's building site, the County instead chose to lessen the visual expression of the structure only through requiring that trees be planted to screen the development.

The site was permitted after having first rejected a previous proposal that would have resulted in a larger structure being developed in significantly more visually-prominent western portions of the lot. In addition, the authorized location for the residence avoided areas on the parcel where habitat for the rare coastal bluff morning-glory plants, one of two rare plants on the site, is the most viable. However, staff believes that regardless of the more landward location and reduced size, the degree to which the approved residence would affect the along-shore views from public vantage points along the coast would remain substantial, and a substantial issue is raised as to whether the development would be subordinate to its setting. By authorizing the building site along the upper northern

portions of the parcel rather than further down the slope to the south, when viewed from the Redwood Coast Land Trust's coastal viewing easement at the southern blufftop above Cooks Beach, the new residence will visually add significantly to the bulk of the scattered existing residential development in the area. Therefore staff believes the contention raises a substantial issue of conformance of the project as approved with the certified LCP.

Further, staff does not believe the remaining contentions of the appeal pose substantial issues of conformance with the LCP. The appellants assert that the approved development is inconsistent with standards within the Coastal Zoning Code that limit the height of new development to 18 feet, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The appellants observe that with a 24-foot height at one end of the approved residence, the structure would be visible from the access road to Cook's Beach. However, although the development would be visible from public vantage points it would not affect views to the ocean. In addition, other development in the area is as tall as the approved structure.

Finally, the appellants assert that conflicting information within the project application regarding the size of the subject property led to the project being insufficiently reviewed with respect to compliance with zoning minimum yard standards and the establishment of buffers around environmentally sensitive areas. Although the property is formally listed as comprising 43,560 square feet, or one acre, the appellants note that the archaeological study prepared for the project indicated a lot size of "less than 1 acre," and cite a conversation with an unnamed long-term resident who indicated the lot size to be .7-acre. The appellants claim that this inconsistency may call into question whether the location of property lines, setbacks and ESHA buffers to be erroneously delineated.

While differing statements regarding the size of the subject property may be found among the various technical studies in the project record, the presence of these varying statements did not by themselves compromise the approved project's consistency with the County's certified LCP. Regardless of the parcel size stated, the County reviewed the project in a number of contexts independent of size. Moreover, the LCP contains no policy or standard which requires absolute numerical consistency in all statements regarding parcel size within coastal development permit application materials. Therefore, staff believes the contention does not raise valid grounds for appeal or a substantial issue of conformance of the project with the certified LCP.

Because the development as approved by the County: (1) did not establish that there are no other feasible less environmentally damaging alternatives to allow siting the development at its proposed location within an ESHA; and (2) would not be subordinate to the character of its setting, staff recommends the Commission find that the appeal raises a substantial issue of consistency with the certified LCP. The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 7.

STAFF NOTES:

1. Appeal Process.

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

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

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

The subject development is appealable to the Commission pursuant to Coastal Act Section 30603(a)(3) because it is located in a sensitive coastal resource area: the highly scenic area designated in the certified LCP as comprising lands west of Highway One between the south boundary of the City of Point Arena and the Gualala River.

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

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

2. **Filing of Appeal.**

The appellants filed an appeal (see Exhibit No. 7) to the Commission in a timely manner on May 9, 2003, within 10 working days of receipt by the Commission on April 28, 2003 of the County's Notice of Final Local Action.

3. **49-Day Waiver.**

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On May 19, 2003, the applicants submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49-days from the date of the appeal.

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

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-03-029 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-03-029 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to conditionally approve the development. The appeal was received from Susie and Fred Sedlacek. The project as approved by the County consists of the construction of a 2,574-square-foot, 20-foot-average-height residence with a 460-square-foot attached garage, installation of an onsite sewage disposal system, and extension of utilities to serve the new structures. The appellants' contentions are summarized below, and the full text of the contentions are included as Exhibit No. 7.

The appeal raises contentions regarding consistency with the policies and standards of the Local Coastal Program (LCP) regarding the protection of environmentally sensitive areas, namely rare plant habitat. The appellants observe that a buffer of less than 50 feet width was provided between the plants and the development. Further, the appellants argue that the project site is too small to allow the rare plant mitigation program to be successfully implemented, given the approved scope and location of the development. The appellants assert that there are alternative building sites on the property where a shorter driveway would be needed and tree removal could be avoided, resulting in less overall ESHA disruption.

The appeal raises contentions involving inconsistency with the County's LCP policies regarding visual resources from four perspectives: (1) the authorized structural height above 18 feet will affect public views along the coast; (2) the approved development will not be subordinate to the character of its setting because of its dominant visibility due to its size and location on the highest point of the property; (3) in highly scenic areas, building materials including siding and roof materials must blend in hue and brightness with their surroundings; and (4) interior lights shining through three small windows in the residence will function as unshielded exterior lighting that will shine light beyond the bounds of the property and/or cause glare that will adversely affect coastal views from Cooks Beach.

The appellants further take note of inconsistencies within the project application materials regarding the stated size of the property on which the development is proposed. According to the appellants, this conflicting information within the application may have led to a misrepresentation of the size of the parcel and the accuracy of delineated ESHA buffers. The appeal can be structured in terms of three issues or points, as follows:

1. Protection of Environmentally Sensitive Areas

The appeal raises a contention involving inconsistency of the approved project with the County's LCP policies regarding protection of environmentally sensitive habitat areas. Buffers of sufficient size are required by LCP policies and standards to protect Environmentally Sensitive Habitat Areas from potential impacts resulting from future development. A minimum width of 100 feet is required unless the applicant can demonstrate that a narrower width is adequate to protect ESHA resources, and that the California Department of Fish and Game (CDFG) concurs that the narrower buffer is appropriate. The appellants contend that the project is inconsistent with these LCP buffer width standards as a buffer of less than 50 feet from rare plants on the site would be provided. The appellants allege that the project parcel is too small to accommodate the successful implementation of the approved rare plants mitigation program, given the location of the approved building site and the scope of the proposed development. Further, the appellants argue that if the development were to be relocated to alternative building sites exist further downslope toward the southern side of the parcel, the proposed site development could be accommodated with a shorter driveway that would involve less ESHA disruption, and avoid the need to remove five full-grown beach pine trees compared to constructing the residence in its approved location. The appellants cite the following LUP policies and Coastal Zoning Code (CZC) Sections as the basis for the approved project being inconsistent with the environmentally sensitive resources provisions of the certified LCP: CZC Section 20.496.020.

2. Visual Resources.

a. Subordination to Character of Setting

The appellants assert that the project as approved is inconsistent with LCP policies requiring that the authorized new development will not be subordinate to the natural setting given its height and location in a highly visible ridgetop location that would also require the removal of trees that would screen both existing and new development in the area. Further, the appellants argue that the approved colors for the structures, shades of dark gray will not blend in hue and brightness with their surroundings. In addition, the appellants contend that lighting from the interior of the residence through three windows in the structure will act as unshielded exterior lighting that will shine beyond the bounds of the property and/or cause glare, and will be visible from public vantage points. The appellants cite the following LUP policies and Coastal Zoning Code (CZC) Sections as the basis for the approved project being inconsistent with the visual resources provisions of the certified LCP: LUP Policies 3.5-1 and 3.5-3, and CZC Sections 20.504.015(C)(2) & (3) and 20.504.035.

b. Building Heights Above 18 Feet in Highly Scenic Areas

Furthermore, the appellants contend that the project as approved by the County will negatively impact the designated highly scenic area in which it is located. The appellants assert that the project as approved with a 24-foot height at one end of the residence is inconsistent with the requirement that new development be limited to eighteen (18) feet above natural grade, unless such an authorized increase in height can be shown not to affect public views to the ocean or be out of character with surrounding structures. The appellants contend that public views to the ocean will be affected by the 24-foot height at one end of the building. The appellants cite Coastal Zoning Code Section 20.504.015(C)(2) as the basis for the approved project being inconsistent with the visual resources provisions of the certified LCP.

3. Inconsistencies in Statements Regarding Parcel Size.

The appellants also note that the archaeological report submitted with the application stated the subject parcel size as being "less than one acre," while other documents refer to the property as comprising 1.1 acre. In addition, the appellants cite an unnamed long-term resident as having informed them that the property is classified as .7-acre at one time. Without clarification of the precise size of the property, the appellants contend that the project as approved may be inconsistent with development standards regarding the location of boundary lines, setbacks and buffers from ESHAs. No specific LCP policy, stand, or zoning regulation accompanies this point of the appeal.

B. LOCAL GOVERNMENT ACTION

On February 4, 2002, Noren Schmitt on behalf of himself and Deirdra Claiborne submitted Coastal Development Permit Application No. 19-02 (CDP #19-02) to the Mendocino County Planning and Building Services Department for a coastal development permit seeking authorization to construct an approximately 2,100- to 2,200-square-foot, 26.5-foot-high single-family residence, 400-square foot detached garage, and 640-square-foot guest studio cottage, onsite sewage disposal system, and extension of utilities on a parcel of land north of the unincorporated town of Gualala in southern Mendocino County (see Section II.C.2, below, for a more detailed project description). Following requests for additional information to complete the filing, the application was subsequently accepted by the County and on March 26, 2003 copies of the application materials were referred to various review agencies requesting comments on the project. Among the review bodies that received a copy of the referral packet containing the conflicting building height information was the Gualala Municipal Advisory Council (GMAC).

Section 31010 of the California Government Code provides that the board of supervisors of any county may, by resolution with certain specified contents, establish and provide funds for the operation of a municipal advisory council for any unincorporated area in the county to advise the board on such matters which relate to that area as may be designated by the board concerning services which are or may be provided to the area by the county or other local governmental agencies, including but not limited to advice on matters of public health, safety, welfare, public works, and planning.

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

At its regular meeting on June 10, 2002, the GMAC subsequently reviewed and took testimony pertaining to the Claiborne-Schmitt application, voting unanimously to recommend that the Coastal Permit Administrator deny the development, finding that the development as proposed, "...created a broad visual mass that would dominate rather than be subordinate to the setting, and ... failed to satisfy requirements of the subdivision architectural review committee." (see Exhibit No. 8) The original project proposal was also rejected because plans for the studio cottage included a kitchen, effectively making it a secondary dwelling unit. As a result of the review, the applicants informed the County that they would be revising the project to respond to the concerns identified by the GMAC and County Planning & Building Division staff.

On October 29, 2002, County Planning staff reissued the project referrals with a cover memo explaining to the reviewing agencies that the changes had been affected to the project in response to the earlier GMAC and County staff review. In its revised form, the development would forego development of the studio cottage and detached garage and instead would entail the construction of a 20-foot-average height, 2,574-square-foot single-family residence with an attached 640-square-foot garage to be developed further east and north from the previously-proposed building site. The memo also included a copy of the draft botanical report prepared for the site.

In its new location with a 20-foot-average-height, the residence and garage clustered, and with no studio cottage, the County found that the development's effects on views along the coast from Cook's Beach would be less than what would have resulted from the originally proposed 26.5-foot residence in the location closer to the lot's County road frontage. In the staff report prepared for the modified project, County planning division staff observed that, "While the residence is proposed at the highest elevation on the

property, it is in line with the siting of the adjacent residence to the north, therefore the prominence of the structure as seen from Cooks Beach is minimized." Planning staff also noted that further mitigation to screen the residence from public vantage points could be achieved by the planting of six shore pines around the buildings.

Following from an August 15, 2002 field consultation with Gene Cooley, associate botanist with the CDFG, a mitigation and monitoring program was developed for protecting the coastal bluff morning-glory on the project site. Although identified in the Thompson botanical survey as lying within an area with the highest concentration of these rare plants, Mr. Cooley concluded that the relocated structures on the upper slope of the parcel in proximity to the trees on the northern property line and avoiding development on the more sunnier and gently sloped southwestern portions would be more in keeping with protecting the species by preserving the areas of prime potential habitat for their growth. The mitigation program provided for: (1) fencing off particularly diverse and rich morning-glory habitat areas on the western half and in southeastern corner of the property from disturbance from both construction phase and ongoing residential activities; (2) replanting all ground-disturbed areas on the parcel with noninvasive, native plants obtained from local genetic stock; (3) limit garden landscaping plants to noninvasive species; (4) participate in a seed collection program for two growing seasons; and (5) contribute funding toward research for further understanding the plant's demographics, distribution, and ecology.

On February 27, 2003, the Coastal Permit Administrator (CPA) for the County of Mendocino approved Coastal Development Permit No. #19-02 (CDP #19-02) for the subject development. The Coastal Permit Administrator attached a number of special conditions, including requirements that: (1) the temporary occupancy travel trailer be removed upon completion of the primary dwelling; (2) all exterior building materials and finishes match those specified in the permit application, all glass be non-reflective, and changes in building materials be subject to CPA review for the life of the project; (3) a final landscape plan for complete screening of site improvements from Highway One views be submitted, reviewed and approved by the Coastal Permit Administrator prior to issuance of the coastal development permit; and (4) the existing trees surrounding the proposed residence building site be retained and no tree removal or limbing of existing trees whose trunks are greater than 15 feet from the building site be undertaken.

The decision of the Coastal Permit Administrator was appealed at the local level to the County Board of Supervisors. On April 22, 2003, the Board of Supervisors denied the appeal, effectively upholding the Planning Commission's actions on the project, including its previously-adopted findings and conditions of approval. The County then issued a Notice of Final Local Action on April 24, 2003, which was received by Commission staff on April 28, 2003 (see Exhibit No. 6).

C. SITE AND PROJECT DESCRIPTION

The project site for the approved single-family residential development comprises Parcel 2 of the Rhodes Subdivision, created by parcel map in 1962. The site is one of the series of double-frontage lots located between Highway One on the east and County Road No. 526 (former alignment of Highway 1) on the west, approximately 2½ miles north of the unincorporated town of Gualala (see Exhibit No. 2). This roughly rhomboidal-shaped property is approximately one acre in size and consists of a moderately sloped brushy lot with scattered tree cover along its northern and eastern sides. Plant cover includes upland grasses, forbs, and shrubs, including coyotebrush (Baccharis pilularis), bush lupine (Lupinus sp.), and blueblossom (Ceanothus thyrsiflorus). Several patches shore pine (Pinus contorta ssp. contorta) lies across the northern and eastern sides of the parcel. The site contains known environmentally sensitive habitat areas in the form of rare plants, namely coastal bluff morning-glory (Calystegia purpurata ssp. saxicola) and Point Reyes ceanothus (Ceanothus gloriosus ssp. gloriosus), species that appear on the California Native Plants Society's List 1B and List 4, respectively. Adjacent to the site on the west lies the coastal terrace headland known as Bourns Landing, the former site of the Mar-Lyn Planing Mill. Across Highway One to the east lies the Glennen Glen residential subdivision. To the south of the site, the coastline continues on as the rocky cliffs off of Wilson Field, a former airfield.

The project site lies within the LCP's Iversen Road to Sonoma County Line Planning Area. The parcel is a currently designated in the Land Use Plan and on the Coastal Zoning Map as Rural Residential – 5-acre Minimum Lot Area (RR:L-5). The subject property is within a highly scenic area as designated on the Land Use Map (see Exhibit No. 4). With the exception of the utility poles and vaults along the county road frontage and access driveways extending along the lot's southern and eastern sides, the site is largely undeveloped. Views to and along the ocean across the site are limited to lateral site lines to the north and south from the lot's western county road frontage. Due to the terrain, no views are afforded across the lot from Highway One to the east.

The approved development would result in the construction of a 2,574-square-foot, 20-foot-average-height, one-story residence with a 640-square-foot attached garage on the site (see Exhibit Nos. 3 & 5). The structures would be situated on the parcel in a manner such that the house would be visible from County Road 526 looking northerly. In addition, the upper portion of the house would be visible from the County road, the Redwood Coast Land Trust coastal viewing area on the southern blufftop above Cook's Beach and from portions of the beach proper. In addition, removal of the five shore pines at the proposed building site would take away some of the backdrop screening provided to the residence on the adjoining parcel to the north.

D. SUBSTANTIAL ISSUE ANALYSIS

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

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

1. Appellants' Contentions That Are Valid Grounds for Appeal.

Some of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises substantial issues related to LCP provisions regarding: (1) the protection of environmentally sensitive areas; (2) the protection of visual resources; and (3) that accurate and complete information on the project be provided to allow for adequate review by referral agencies and the public. The Commission finds that the first two of these contentions raise a substantial issue, for the reasons discussed below.

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County raises a substantial issue.

Appellants' Contentions That Raise a Substantial Issue.

a. Protection of Environmentally Sensitive Rare Areas

The appellants assert that the project as approved by the County is inconsistent with Mendocino County Coastal Zoning Code (CZC) Section 20.496.020 regarding the protection of environmentally sensitive habitat areas (ESHAs), namely rare plant habitat. The appellants maintain that the success of the rare plant mitigation and monitoring program approved for the project is in doubt given the size of the parcel relative to the area of the site needed to provide a staging area for building activities coupled with provisions for onsite owner-occupation in a travel trailer during construction.

Summary of LCP Provisions:

Policy 3.1-7 of the Mendocino County General Plan Coastal Element states:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*

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

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

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

Section 20.496.020 of the Mendocino County Coastal Zoning Code (CZC) states, in applicable part:

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

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the

same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

CZC Section 20.523.100(A)(1) establishes the supplemental resource protection impact findings that must be made to allow development to be undertaken within an ESHA:

No development shall be allowed in an ESHA unless the following findings are made:

(a) The resource as identified will not be significantly degraded by the proposed development.

(b) There is no feasible less environmentally damaging alternative.

(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. [emphasis added]

Discussion:

The applicants' botanist, Jon Thompson, conducted a botanical survey of the subject parcel and submitted an initial report dated October 21, 2002 with several subsequent finalized and addendum reports submitted to the County during its review of the project. The initial report identified the presence of coastal bluff morning glory (Calystegia purpurata ssp. saxicola) and Point Arena ceanothus (Ceanothus gloriosus ssp. gloriosus), listed California Native Plant Society (CNPS) Class 1B and 4 rare plant species, respectively. All plants appearing on the CNPS List 1B meet the definitions within the Native Plant Protection Act and the California Endangered Species Act as species eligible for state listing as a rare, threatened, or endangered plant. Pursuant to the California Environmental Quality Act guidelines, it is mandated that the effects of a development project on the species be fully considered during project environmental review. The plant species appearing on the CNPS List 4 cannot be characterized as rare, threatened or endangered at this time; however, due to their relatively infrequent distribution List 4 plants should be periodically monitored for potential endangerment or increased rarity that might lead to their status being reconsidered for a more protective listing.

The Thompson botanical study found the coastal bluff morning-glory habitat occurring throughout the majority of the project parcel. At the time of the field surveys in May, June, and July, 2002, the subspecies covered more than two-thirds of the property. Approximately 30 individual plants were observed within the bounds of the proposed building envelope for the house, garage, and driveway, with upwards of an additional 70 individuals being potentially impacted by construction activities. An estimated 200-300 individual plants were found to exist throughout the remainder of the lot.

A map prepared as part of the botanical survey illustrated the relative concentrations of the coastal bluff morning-glory plants on the site (see Exhibit No. ____). Plant occurrence within the areas along the northeastern fringe and within the southeastern corner of the parcel were characterized as being "very low to absent." With the exception of a roughly

30-foot-diameter dense patch within the southwestern corner, the plant was found to be in the "low" concentrations within the approximately 100-foot-wide westerly half of the property. The highest concentration of individual coastal bluff morning-glory plants were found to lie in the middle eastern portions of the lot. The approved proposed house, garage, driveway, and landscape gardens would be developed partially within the middle eastern portion of the lot.

The wide pattern of occurrence of the plant across the majority of the parcel effectively rendered the whole of the parcel as ESHA. As a result, no portion of the site could be found to lie outside of the buffer area required by the LCP, even with a reduction in buffer width to fifty feet. In approving the project, the County found the project consistent with provisions of Coastal Zoning Code Section 20.532.100(A)(1) that allow development within an ESHA if it can be demonstrated that: (a) the resource as identified will not be significantly degraded by the proposed development; (b) there is no feasible less environmentally damaging alternative; and (c) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

The County approval, however, does not include any evaluation of what, if any, feasible less environmentally damaging alternatives existed with regard to locations for siting the proposed development. Several statements within the correspondence between the applicants' botanist, CDFG staff, and the County, as reflected in the project staff report, indicate that the need for a mitigation program for protecting the rare plant on the site was discussed, but consideration of the presence of other less environmentally damaging locations for the site improvements was largely dismissed.

Within the botanical survey, Mr. Thompson states with regard to alternatives to the proposed building site location:

According to Robert Dostalek, Mendocino County Planner and the owners of this lot, constraints proposed upon this project by the Gualala Municipal Advisory Committee (GMAC), Mendocino County regulations and a local neighborhood coalition have left no less impacting alternatives available. Therefore the owners wish to abide by a series of mitigation and compensatory measures to help make up for the adverse effects to the coastal bluff morning-glory and it's (*sic*) habitat.

Detailed minutes of the GMAC deliberations regarding the approved development were not available as part of the public record for the project. Accordingly, there is no indication within the project file that other alternative locations for the site improvements beside that proposed by the applicants were reviewed by the GMAC. The letter to County staff from the GMAC president only indicated the committee's support for the revised project in the more easterly location proposed by the applicants, acknowledging their willingness to participate in a rare plant mitigation program.

Representatives of the California Department of Fish and Game involved in reviewing the project also did not engage in an analysis of alternative locations. In telephone communications with Commission staff, Gene Cooley, associate botanist with the California Department of Fish and Game, Mr. Cooley stated that with respect to examining alternative building sites that the project improvements were presented to him as already being sited in the least environmentally damaging location given other preclusions applied by the GMAC and the County for protecting visual and other coastal resources.¹

Furthermore, there is no discussion in the County staff report that shows that County staff independently reviewed the project site for the presence of feasible less environmentally damaging alternative sites or project designs. Aside from citing the requisite supplementary findings called for by CZC Section 20.523.100(A)(1), the staff report contained no analysis or discussion with regard to the required sub-section (b) finding regarding a determination of the development comprising the least damaging feasible alternative.

Accordingly, the Commission finds that the degree of factual and legal support for the County's action is low, given that the required information necessary to justify development within a ESHA has not been presented, namely that no feasible less environmentally damaging locations has been factually ascertained. In addition, the Commission finds that the precedential value of the County's action in regard to future interpretations of the LCP is relatively high given that there are a number of vacant lots in the immediate area where these same rare plants could be affected by future development.

Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Sections 20.496.020 and 20.532.100 concerning permissible development within ESHAs.

b. Visual Resources

The appellants also contend that the approved project is out of conformance with Mendocino County LUP Policies 3.5-1 and Coastal Zoning Code (CZC) Sections 20.504.015.C.(2) & (3) and 20.504.035 requiring that new development be visually compatible with its surroundings and protect views to and along the ocean. Specifically, the appellants contend that any blockage of a public view to the ocean from the highway would render approval of a height greater than 18 feet inconsistent with the LCP. Furthermore, the appellants assert that the approved house colors will not blend into the surrounds in terms of hue and brightness as they are not "dark earthtones." The appellants state that it has been the practice of the County to only approve color choices

¹ Gene Cooley, Associate Botanist, California Department of Fish and Game, pers. comm., 6/17/03

matching this category as being compatible with the LCP regulation. In addition, the appellants argue that light from interior lighting fixtures passing through three small windows in the approved dwelling will function much the same as unshielded exterior lights, illuminating areas off of the parcel and/or causing glare that would impact coastal visual resources.

Summary of LCP Provisions:

LUP Policy 3.5-1 states in applicable part:

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

LUP Policy 3.5-4 states, in applicable part:

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

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

LUP Policy 3.5-5 states:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be

required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

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

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

- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*
- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials shall be selected to blend in hue and brightness with their surroundings ...*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area.*
- (6) *Minimize visual impact of development on hillsides by the following criteria:*
 - (a) *Requiring grading or construction to follow the natural contours;*
 - (b) *Resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms;*
 - (c) *Designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites... [emphases added]*

Coastal Zoning Ordinance Section 20.504.035, entitled "Exterior Lighting Regulations, states, in applicable part:

- A) *Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone...*
- (2) *Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.*

Discussion:

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

Coastal Zoning Ordinance Section 20.504.015(C) further provides that new development in highly scenic areas: (1) be subordinate to the natural setting and minimize reflective surfaces; (2) that building materials be selected to blend in hue and brightness with their surroundings; and (3) in specified areas require that tree thinning or removal be made a condition of permit approval. As to this last criterion, LUP Policy 3.5-5 sets forth guidance for administering tree removal requirements, directing that considerations be made of circumstances where the beneficial use of tree planting (i.e., to screen structures) should be pursued, even in areas designated for tree removal.

The development is located within a designated highly scenic area along the western side of Highway One. The subject property is located in a rural residential area north of the Town of Gualala on a roughly 225-ft.-long x 225-ft.-wide trapezoidal parcel of land situated between Highway 1 to the east and County Road No. 526 (former alignment of Highway 1) to the west. The lot slopes moderately from the highway down to the

county road and is vegetated with a variety of brushy plant species and scattered tree cover. Due to the location of the highway grade within an incised full-bench road cut to the east of the property, the site affords no coastal views to motorists traveling on Highway One. Views across the property from along County Road 526 or from public recreational areas around Cook's Beach are limited to lateral views of the scattered tree- and brush-covered coastal hillsides along the inland side of the county road.

The approved project entails the construction of a single-family residence with an attached garage, associated sewage disposal system, and utility extensions. Of these developments, the residence is approved for a location and at a height greater than 18 feet that in whole or part would be visible from the county road and nearby publicly-accessible beach and blufftop areas. In addition, a grayish color scheme was approved by the County for the exterior paint color, as well as roofing and rock façade building materials. As illustrated on the building plan elevation view C-C', the house design approved by the County included three small windows on the north-facing wall (see Exhibit No. ___).

The appellants contend in the location approved by the County that the development would not be subordinate to the character of its setting for a variety of reasons. First, the development would result in avoidable alteration of area landforms associated with grading for the structures and driveway and removal of five mature trees to clear the building site. Secondly, the appellants also maintain that the 24-foot-height at one end of the approved residence would be visible from Cook's Beach, its accessways, and from the route of the blufftop trail identified in the County's Land Use Plan (see Exhibit No. ___). Thirdly, the appellants maintain that the approved removal of five of the eight mature trees along the subject parcel's northern side cause a "visual scar" by removing the treeline backdrop that serves to screen both the existing structure on the adjoining lot to the north as well as the new residence, provided it were to be situated further downslope towards the south side of the project parcel. As a fourth point, the appellants note that due to its location on the steeper upper hillside, the house and garage design will result in a 24-foot-height at the one end of the building that could be avoided if constructed on the more gently sloped portions of the lot closer to its southern side.

The appellants also allege that the approved house colors will not blend into the surrounds in terms of hue and brightness as the gray/black roofing materials and gray stonework are not "dark earthtones." The appellants imply that it has been the practice of the County to only approve color choices matching this category as being compatible with the applicable LCP regulation.

Finally, the appellants assert that the approved design of the house would be inconsistent with the LCP standards regarding exterior lighting. They reason that interior light passing through three small windows on the north side of the approved residence would have the same effects as an unshielded exterior lighting fixture that would shine light beyond the boundaries of the property and/or cause glare that would be visible from

Cook's Beach and its surroundings, adversely affecting visual resources in the public-accessible recreational area.

As noted previously, the parcel involved in the approved development is within a highly scenic area and as such is subject to the LCP policies and standards cited above. With respect to compliance with these policies and standards, under the approved permit, the house and garage would be located near the top of the slope of a ridge-like medial undulation in a coastal hillside. As a result, the house would be very prominent from public view points. This housing location differs from most other homesites within the Rhodes Subdivision that are situated generally on the flat areas within the hillside or closer to the toe of the slope.

Furthermore, though the house would arguably be clustered near existing vegetation, much of that vegetation, five trees out of a stand of eight, would be removed in the course of clearing the building site. As described further in Findings Section II.C, the Rhodes Subdivision area is located on a moderately steep forested hillside between the relatively flat Bourns Landing and Glen Glenden ocean terraces. The tree cover on this hillside serves as a major element of the character of the area. Many of the home sites in the Rhodes and Glen Glenden subdivisions have been developed in sited where tree removal has been avoided or minimized. Thus, it is questionable whether a development that entails further removal of trees in this area, especially if appropriate alternative sites exist where tree removal would not be needed, would be subordinate to the character of the setting.

Slopes in proximity to the building site approved by the County are roughly 12 to 13%. Construction of the residence, garage, and attending driveway may involve significant grading that would conflict with natural contours, alter or destroy the appearance of natural landforms, or force accommodation of a specific building design. As proposed, the house and garage would be a split-level attached structure, with the floor elevation of the garage situated approximately eight feet below that of the house floor height. Based upon the building plan elevation views, development of the building pad for the house and garage may involve excavating into the hillside to a depths ranging from four to ten feet. Depending upon the type and design of building foundation needed these depths may extend two or more feet deeper. To the southeast of the proposed building site slopes on the parcel are approximately 9% and would require corresponding less grading to form a building pad and allow the garage to be set closer to the grade of the house, reducing the overall maximum height of the structure.

The Commission finds that the significance of the coastal resource affected by the decision is great, given that the development is located within a designated highly scenic area. Therefore, the Commission finds that the project as approved raises a substantial issue with regard to conformance with the requirements of LUP Policies 3.5-1, 3.5-3, and 3.5-4, and Coastal Zoning Code Sections 20.504.015(C)(5) & (6) that development: (a) be designed and sited to protecting views along the coast and scenic areas; (b) be

subordinate to the natural setting; protect the visual resources associated with hillsides within designated highly scenic areas by siting development near the toe of a slope rather than near a ridgeline; and (c) be re-sited or prohibited when it would require grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms.

Appellants' Contentions That Do Not Raise a Substantial Issue.

c. Building Heights Above 18 Feet in Highly Scenic Areas

The appellants also contend that the approved project is out of conformance with Mendocino County LUP Policy 3.5-3 and Coastal Zoning Code (CZC) Section 20.504.015.C.(2) requiring that the specific design of new development be visually compatible with its surroundings and protect views to and along the ocean. Specifically, the appellants contend that any blockage of a public view to the ocean from the highway would render approval of a height greater than 18 feet inconsistent with the LCP. Furthermore, the appellants assert that the approved house colors will not blend into the surrounds in terms of hue and brightness as they are not "dark earthtones." The appellants state that it has been the practice of the County to only approve color choices matching this category as being compatible with the LCP regulation. In addition, the appellants argue that light from interior lighting fixtures passing through three small windows in the approved dwelling will function much the same as unshielded exterior lights, illuminating areas off of the parcel and/or causing glare that would impact coastal visual resources.

Summary of LCP Provisions:

LUP Policy 3.5-3 states, in applicable part:

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

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

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

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

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

Coastal Zoning Ordinance Section 20.504.015(C)(2) states:

In highly scenic areas west of Highway 1, as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

Discussion:

Coastal Zoning Ordinance Section 20.504.015(C)(2) provides that new development in highly scenic areas be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

With respect to the approved building height exceeding 18 feet, no blockage of views to the ocean would result from the approved building and screening as viewing opportunities from public vantage points are limited to lateral views along rather than to the coast. Because Highway One east of the site lies within a roadcut, no views to the ocean are affected through the property from the highway. All public views of the site are oriented away from the ocean. Moreover, with regard to the increased height being in character with surrounding structures, there are numerous one- to two-story single-family dwelling along Road 526 and within the Glen Glenn Subdivision to the east across Highway One similar to that proposed by the applicants. Therefore, the Commission finds that the project as approved does not raise a substantial issue with regard to conformance with the requirements of LUP Policy 3.5-3, and Coastal Zoning Code

Sections 20.376.045 and 20.504.015(C)(2) that permitted development be sited and designed to protect views along the ocean and scenic coastal areas.

2. Appellants' Contentions That Are Not Valid Grounds for Appeal.

a. Inconsistencies in Statements Regarding Parcel Size

The appellants contend that errors in the characterization of the lot size of the property may have jeopardized the integrity of the County's review of the project. The appellants note that the application materials contain an assortment of differing statements with regard to the size of the parcel on which the development would occur. Accordingly, the appellants are apparently asserting that the application either purposely or inadvertently contained erroneous information with regard to lot size.

According to the most current tax rolls within the Mendocino County Assessors Office, the subject property identified as Assessor's Parcel No. (APN) 144-140-07, comprises 43,560 square feet or one acre in size.² However, the archaeological report prepared for the project (Thad M. Van Bueren, ROPA, June 1, 2002), indicated the property as comprising "slightly less than an acre." Furthermore, in the subject line for the botanical survey prepared for the project, the property is referenced as a "1.1 acre lot." Other than taking note of the differing lot size statements and questioning whether these inconsistencies may have somehow compromised the County's review in terms of boundary, setback, and buffer locations, the appellants do not relate this contention to any particular LCP policy or standard. Accordingly, this point of the appeal is based on invalid grounds.

Furthermore, even if the appellants had raised a valid grounds for appeal, the conflicting statements regarding the size of the parcel in the project description, site plans, and technical reports did not compromise the approved project's consistency with the County's certified LCP and do not raise a substantial issue of conformity of the approved project with the certified LCP. Notwithstanding the particular deficits in documentation regarding analysis of less environmentally damaging feasible alternative project designs or locations for affording greater protection to environmentally sensitive areas or coastal visual resources address elsewhere in this report, County staff reviewed the project in a number of contexts independent of the precise size of the parcel. Furthermore, the County staff report contains findings addressing the conformity of the project with the lot size, setback, and buffer policies of the requirements of the LCP.

3. Conclusion.

² Mendocino County California Plat and Tax Map Data, First American Real Estate Solutions, July 2003 edition.

The Commission finds that, for the reasons stated above, that the appeal raises a substantial issue with respect to conformance of the approved project with the certified LCP.

E. INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

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

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

Building Site Alternatives Analysis

As discussed above, authorization of the proposed placement of structures within an ESHA is contingent upon affirmative findings being made that: (a) the resource as identified will not be significantly degraded by the proposed development; (b) there is no feasible less environmentally damaging alternative; and (c) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Because there is no site available on the property where the site improvements could be constructed outside of the rare plant habitat areas, analysis of the presence of feasible less environmentally damaging alternative designs or locations is needed as prescribed in Coastal Zoning Code 20.523.100(A)(1). This analysis should encompass, at a minimum, a review of: (1) the originally proposed building site and design; (2) the current proposed building site and design under appeal; (3) relocation and/or redesign of the residential structures, access driveway, sewage disposal system and utilities to a mid-slope location near the center of the property; and (4) relocation and/or redesign of the site improvements to a location to the near the southeast corner of the property. The analysis should quantify the square footage of coverage and ground disturbance associated with each alternative and include a biological assessment of the potential direct and indirect impacts to the rare plants habitat in each location, detailing the number and/or relative density of plants that would be

displaced and the relative compatibility of development in each location with the continuance of such habitat areas by maintaining their functional capacity, their ability to be self-sustaining, and to maintain natural species diversity. The analysis should also discuss all other applicable limitations and restrictions on development that may affect the feasibility of development in the specified locations (i.e., required setbacks from property lines and access drives, the presence of problematic soils and/or geologic instability, preclusions within deed CC&Rs, etc.)

Information Needed to Evaluate Project Consistency With Coastal Act Section 30010

As discussed above, the entire site has been determined to either contain or have the potential to provide habitat for rare plants ESHA. In such instances, application of the ESHA and ESHA buffer policies of the certified LCP by themselves to the project may require denial of the project as proposed. However, the Commission must also consider Section 30010, and the United States Supreme Court decision in Lucas v. South Carolina Coastal Council (1992) 505 U.S., 112 S.Ct. 2886.

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in Lucas v. South Carolina Coastal Council (1992). In Lucas, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the Lucas decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, the ESHA and ESHA buffer policies of the certified Mendocino Local Coastal Program cannot be read to deny all economically beneficial or productive use of land because these

policies cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, the Commission may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

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

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the

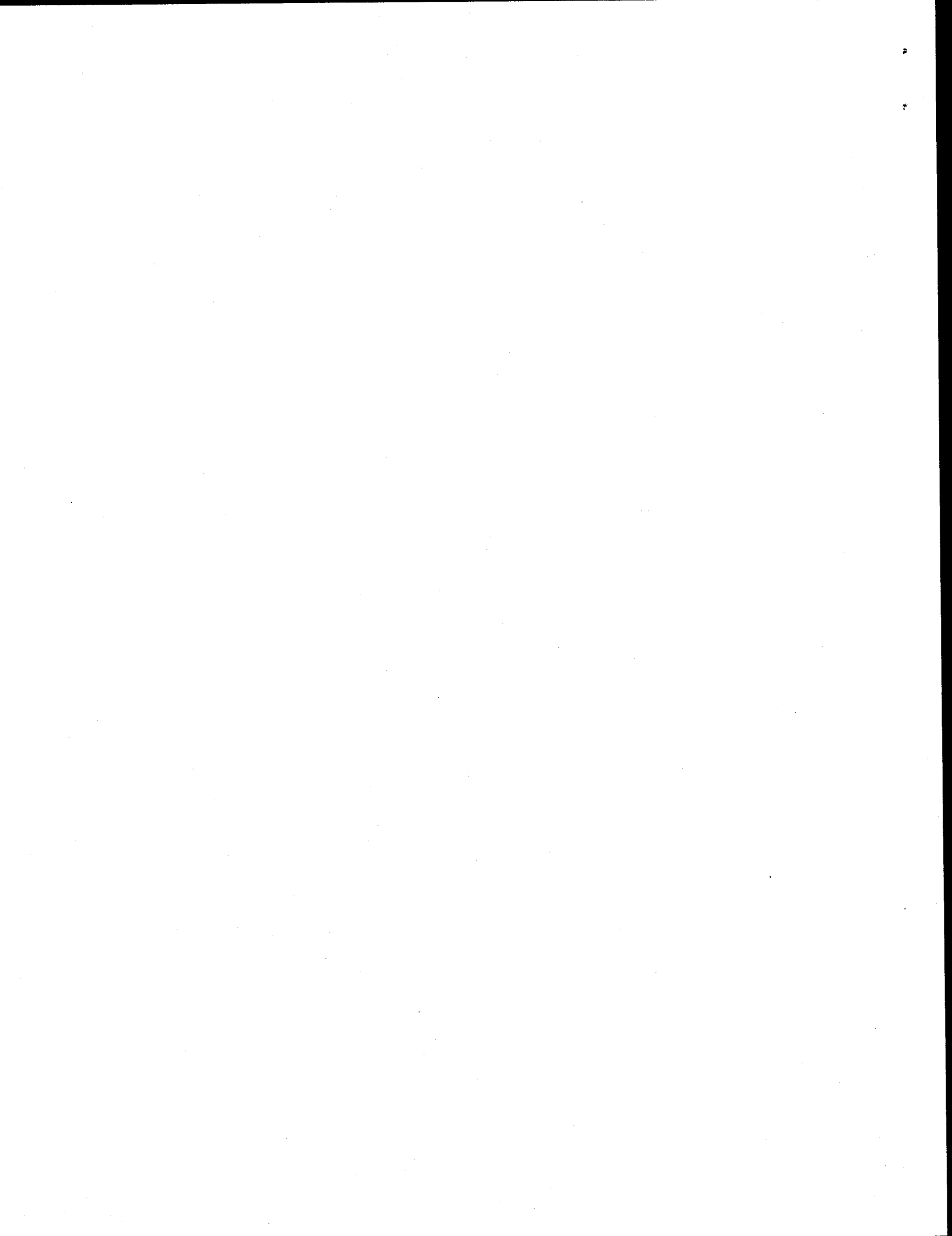
property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);

9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
 - property taxes
 - property assessments
 - debt service, including mortgage and interest costs; and
 - operation and management costs; and
11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

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

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Portion, Land Use Plan Map No. 31 - *Gualala*
5. House and Garage Elevation and Floor Plans
6. Notice of Final Action
7. Appeal, filed May 9, 2003 (Sedlacek)
8. Correspondence



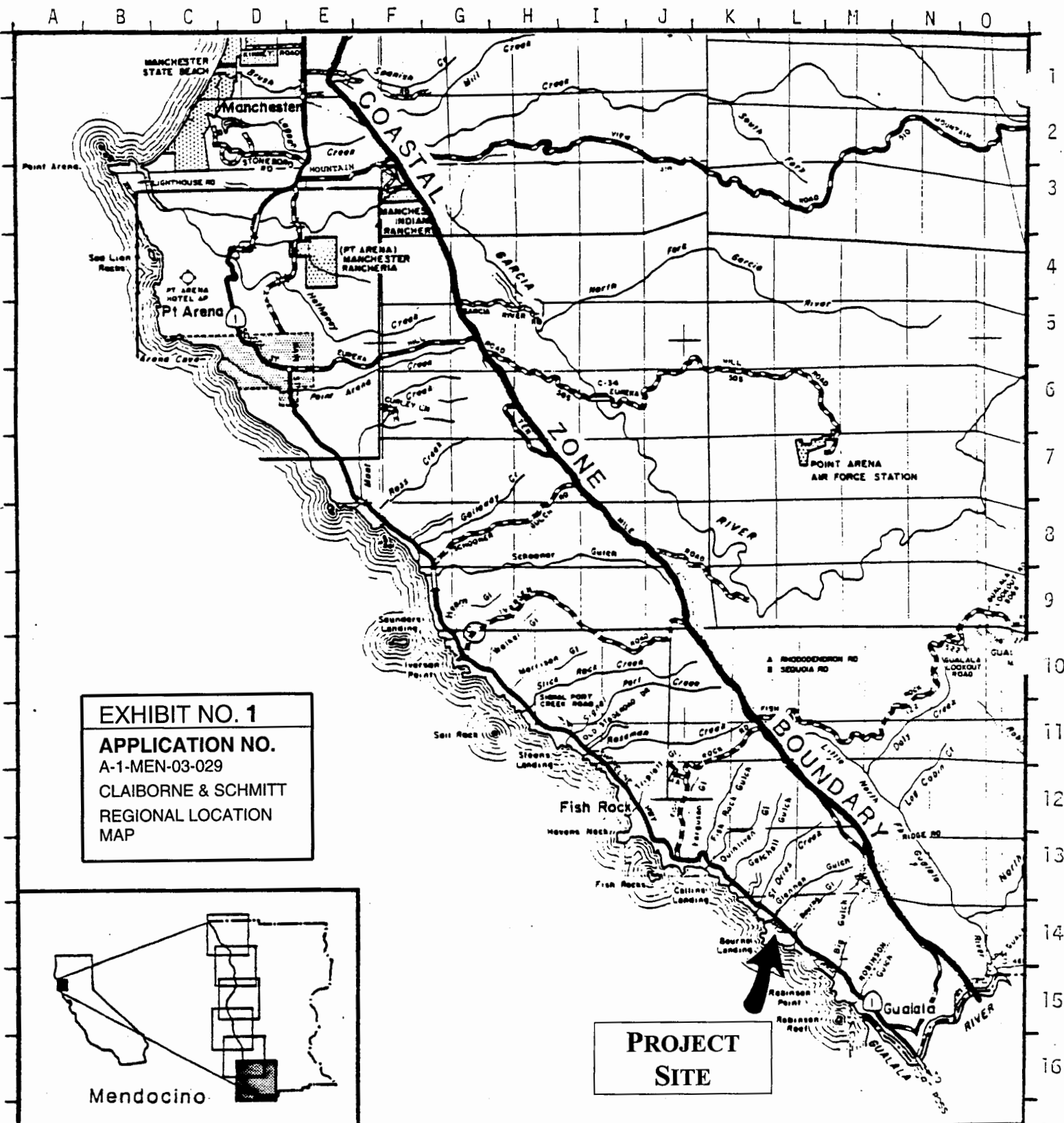
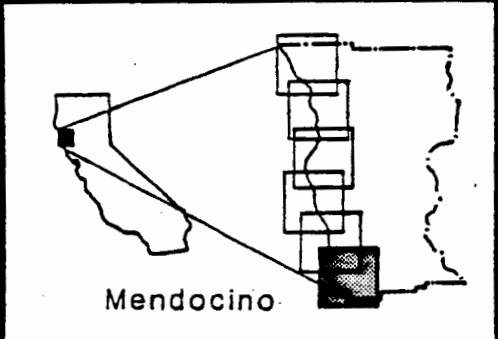


EXHIBIT NO. 1
APPLICATION NO.
 A-1-MEN-03-029
 CLAIBORNE & SCHMITT
 REGIONAL LOCATION
 MAP



PROJECT SITE



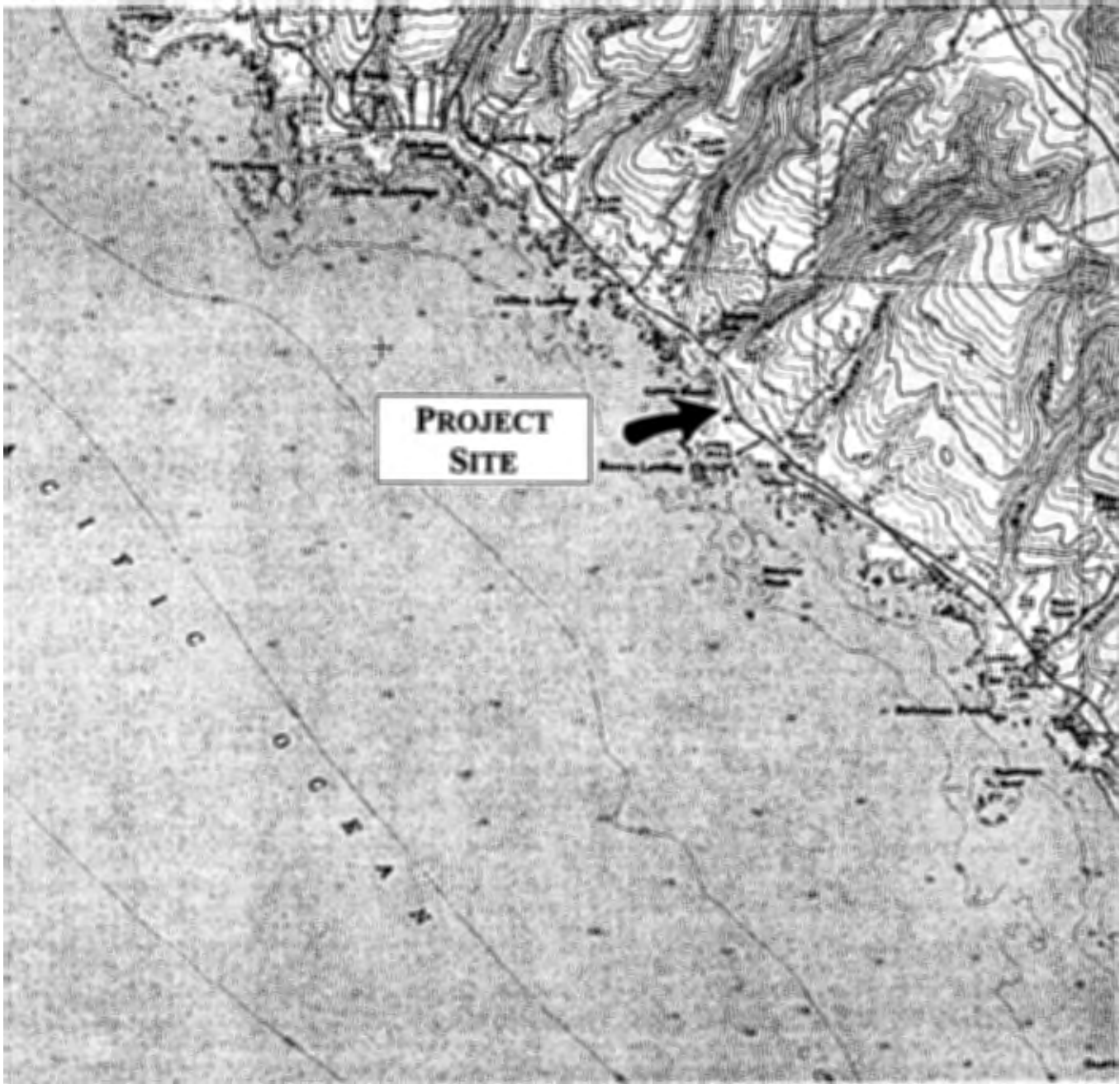


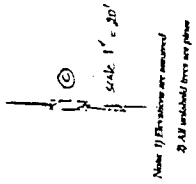
EXHIBIT NO. 2

APPLICATION NO.

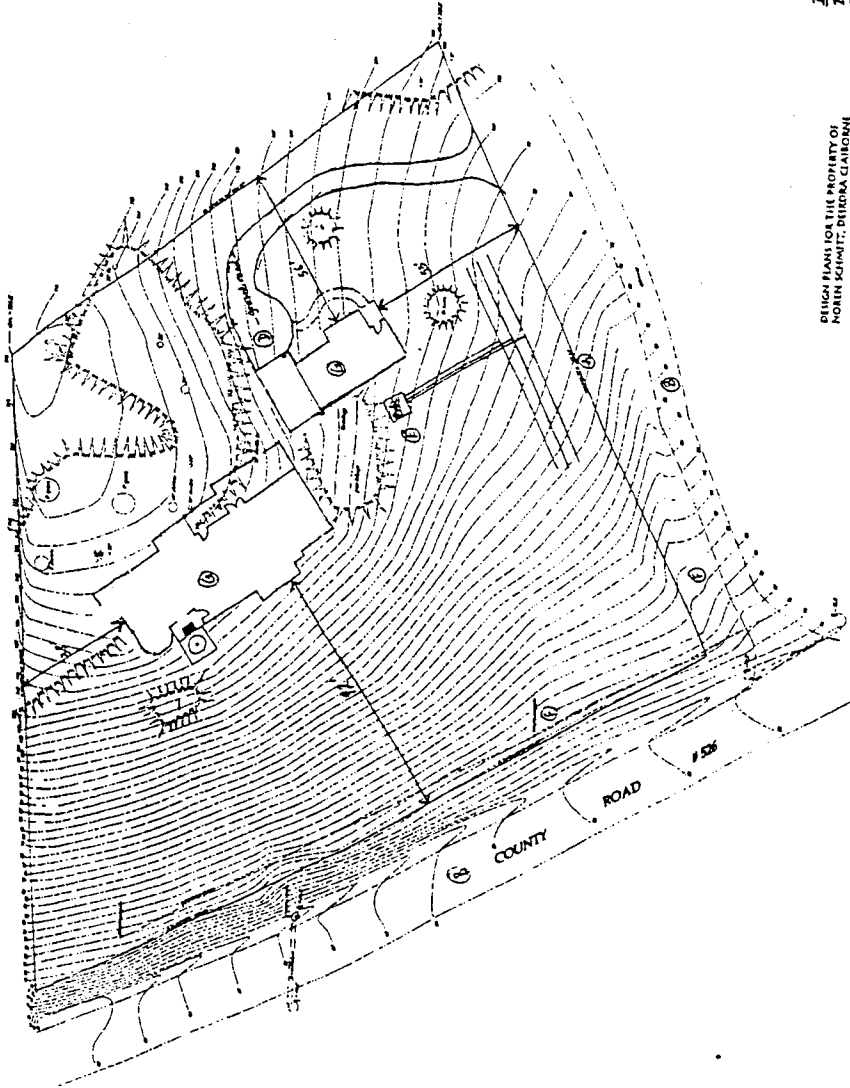
A-1-MEN-03-029

CLAIBORNE & SCHMITT

VICINITY MAP



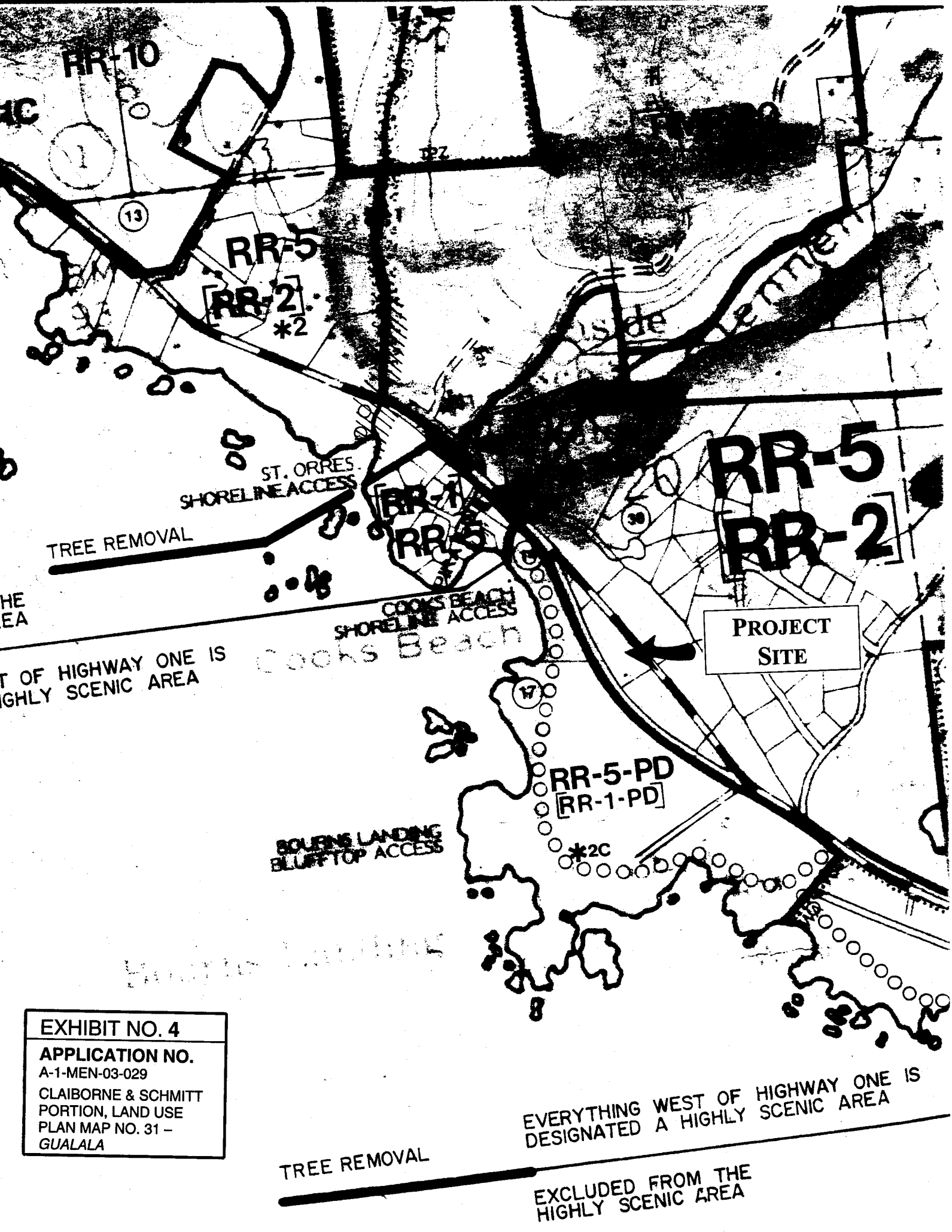
- ① Proposed Structure
- ② Proposed Slope and Direction
- ③ Adjacent Slope
- ④ Mark Area and Stake
- ⑤ New Driveway and Parking
- ⑥ Proposed Septic System
- ⑦ Existing and Utility Lines/Power, Water, Sewer, etc.
- ⑧ Proposed Structure



TOPOGRAPHIC MAP
 The Lands of Norman Schmitt & Deirdra Claiborne
 Being a portion of Section 20, Township 11 North,
 Range 15 West, Mount Diablo Base & Meridian,
 Mendocino County, California
 Scale 1" = 20'
 sheet one of one
 Map prepared by Richard A. Seale, L.S. #455

DESIGN PLANS FOR THE PROPERTY OF
 NORMAN SCHMITT, DEIRDRA CLAIBORNE
 3871 ROAD 37A
 GUAYALA, CA 95415
 APP: 144180 07
 10/11/10 PETER REINHOLD 10/12/2000
 DESIGNER: MAGGALIA BISHOP,
 NORMAN SCHMITT, DEIRDRA CLAIBORNE
 43 FOREST HILL, SAN RAFAEL, CA 94901
 415 453 8023

EXHIBIT NO. 3
APPLICATION NO.
 A-1-MEN-03-029
 CLAIBORNE & SCHMITT
 SITE PLAN



RR-10

RR-5

RR-2

*2

ST. ORRES.
SHORELINE ACCESS

TREE REMOVAL

RR-5

RR-2

PROJECT
SITE

COOKS BEACH
SHORELINE ACCESS

EVERYTHING WEST OF HIGHWAY ONE IS
DESIGNATED A HIGHLY SCENIC AREA

BOUENS LANDING
BLUFF TOP ACCESS

RR-5-PD
[RR-1-PD]

*2C

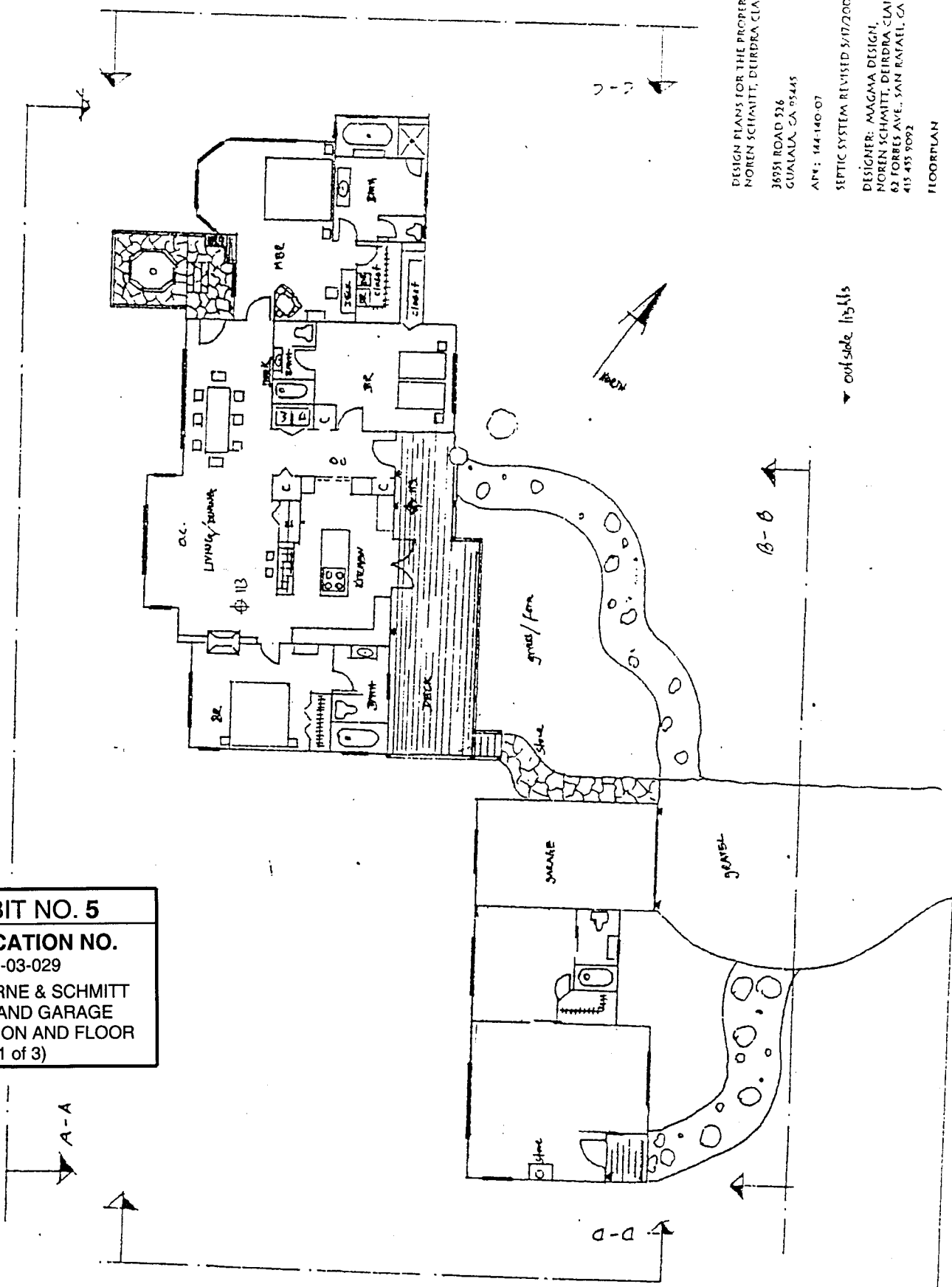
TREE REMOVAL

EVERYTHING WEST OF HIGHWAY ONE IS
DESIGNATED A HIGHLY SCENIC AREA

EXCLUDED FROM THE
HIGHLY SCENIC AREA

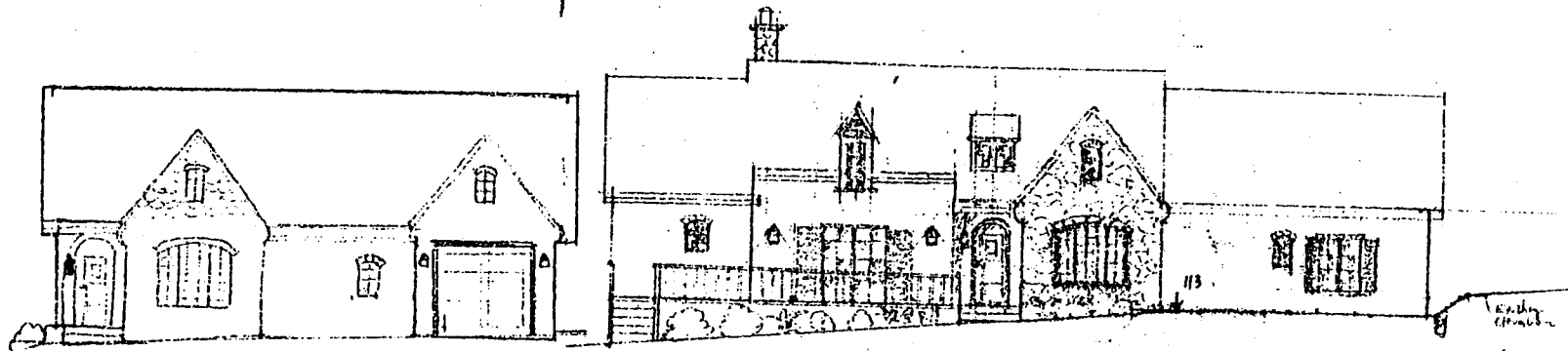
EXHIBIT NO. 4
APPLICATION NO.
 A-1-MEN-03-029
 CLAIBORNE & SCHMITT
 PORTION, LAND USE
 PLAN MAP NO. 31 -
 GUALALA

EXHIBIT NO. 5
APPLICATION NO.
 A-1-MEN-03-029
 CLAIBORNE & SCHMITT
 HOUSE AND GARAGE
 ELEVATION AND FLOOR
 PLANS (1 of 3)



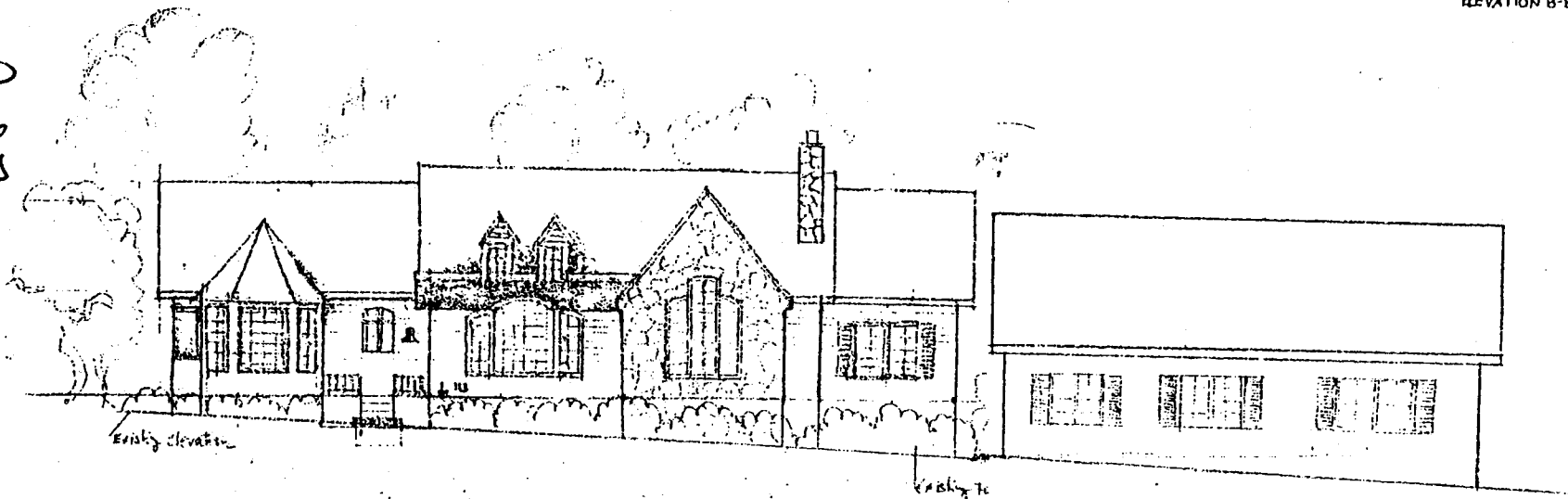
DESIGN PLANS FOR THE PROPERTY OF
 NOREN SCHMITT, DEIRDRA CLAIBORNE
 36951 ROAD 326
 CUKALALA, CA 95445
 APN: 144-140-07
 SEPTIC SYSTEM REVISED 3/17/2000
 DESIGNER: MAGMA DESIGN,
 NOREN SCHMITT, DEIRDRA CLAIBORNE
 62 FORBES AVE., SAN RAFAEL, CA 94901
 415 455 9092
 FLOORPLAN

outside lights



ELEVATION B-B

2002



ELEVATION A

DESIGN PLANS FOR THE PROPERTY OF
NOREN SCHAMITT, DEIRDRA CLAIBORNE

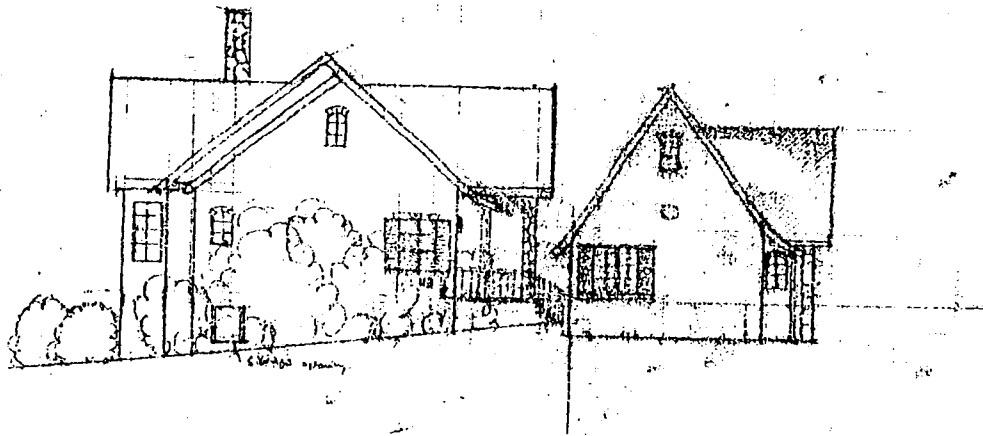
36951 ROAD 526
GUALALA, CA 95445

APR: 144-140-07

SEPTIC SYSTEM REVISED 5/17/2000

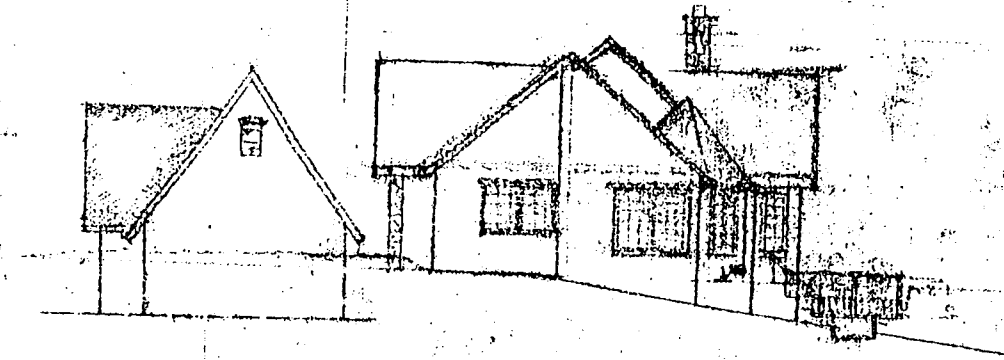
DESIGNER: MAGMA DESIGN,
NOREN SCHAMITT, DEIRDRA CLAIBORNE
62 FORBES AVE., SAN RAFAEL, CA 94901
415 455 9092

ELEVATION A-A



ELEVATION D-D

3 of 3



ELEVATION C-C

DESIGN PLANS FOR THE PROPERTY OF
NOREN SCHMITT, DEIRDRA CLAIBORNE

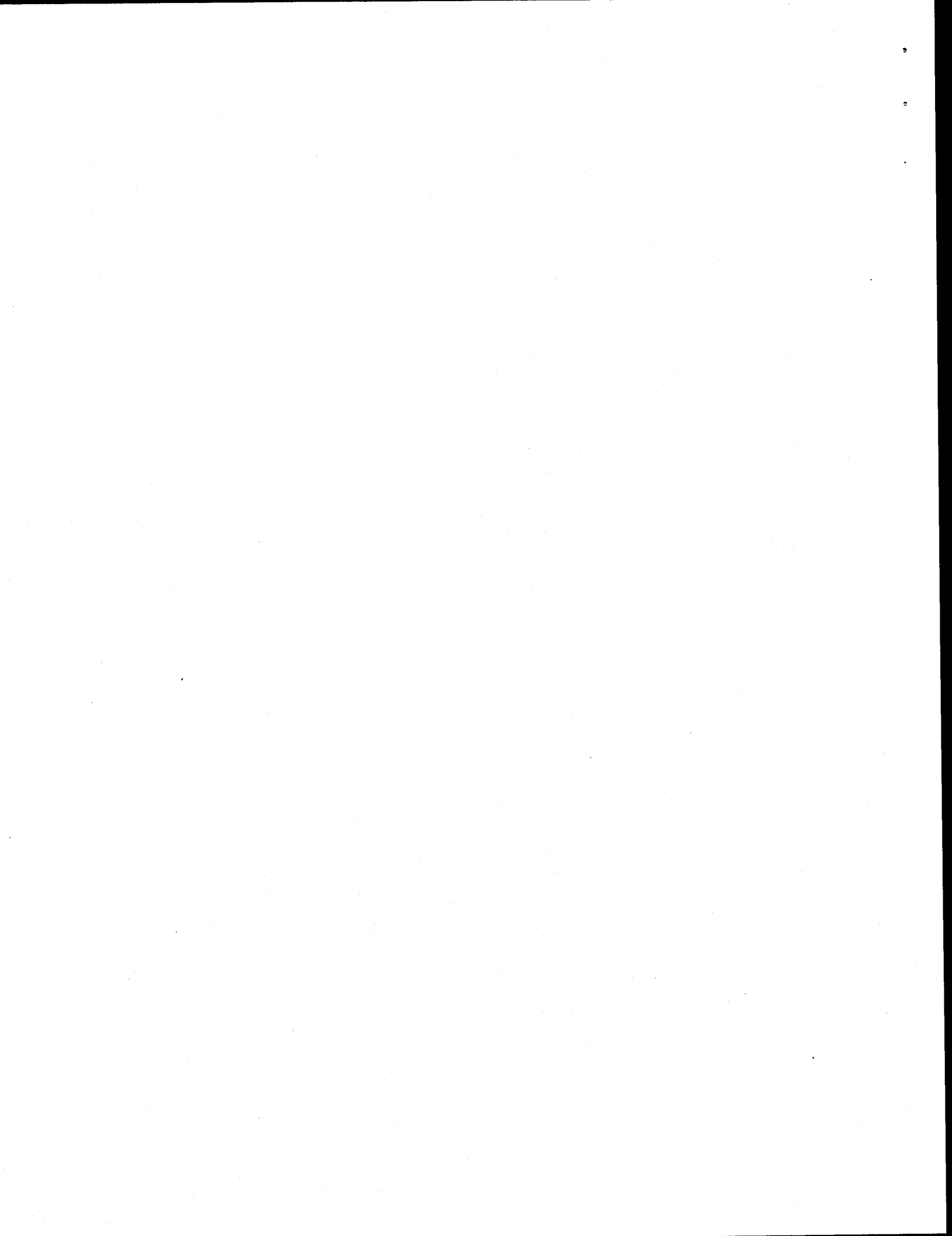
36931 ROAD 526
GUALALA, CA 95445

APR: 144-140-07

SEPTIC SYSTEM REVISED 5/17/2000

DESIGNER: MAGMA DESIGN,
NOREN SCHMITT, DEIRDRA CLAIBORNE
62 FORBES AVE., SAN RAFAEL, CA 94901
415 455 9092

ELEVATION C-C





RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

TELEPHONE
(707) 964-5379

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

RECEIVED

April 24, 2003

APR 28 2003

CALIFORNIA
COASTAL COMMISSION

CORRECTED 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 #09-02

OWNER: Deirdra Claiborne & Noren Schmitt

REQUEST: Construction of a 2,574 square foot single-family residence with an attached 460 square foot garage. Structure to have a 20-foot average height as measured from natural grade. Installation of a driveway and septic system; connection to North Gualala Water Company and on-site utilities; temporary occupancy of travel trailer during construction; implementation of a rare plant mitigation program to offset potential impacts to rare plants.

LOCATION: East of Bourns Landing, on the east side of County Road 526, approximately 1/8 mile north of its southern intersection with South Highway One at 36951 Road 526 (APN 144-140-07).

PROJECT COORDINATOR: Doug Zanini

HEARING DATE: February 27, 2003

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was appealed at the local level. The Mendocino County Board of Supervisors heard this appeal on April 22, 2003. The appeal was **denied** on a vote of 5-0 and the Coastal Permit Administrator's approval was upheld.

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-03-029

CLAIBORNE & SCHMITT

NOTICE OF FINAL ACTION

(1 of 19)

OWNER: Deirdra Claiborne
Noren Schmitt
62 Forbes Ave.
San Rafael, CA 94901

REQUEST: Construction of a 2,574 square foot single-family residence with an attached 460 square foot garage. Structure to have a 20-foot average height as measured from natural grade. Installation of a driveway and septic system; connection to North Gualala Water Company and on-site utilities; temporary occupancy of travel trailer during construction; implementation of a rare plant mitigation program to offset potential impacts to rare plants.

LOCATION: East of Bourns Landing, on the east side of County Road 526, approximately 1/8 mile north of its southern intersection with South Highway One at 36951 Road 526. APN 144-140-07.

APPEALABLE AREA: Yes, Highly Scenic Area, within 100 feet of an ESHA

PERMIT TYPE: Standard

TOTAL ACREAGE: 1.1 acre

ZONING: RR:L-5 [RR:L-2]

GENERAL PLAN: RR-5 [RR-2]

EXISTING USES: Vacant

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 3 (a)

OTHER RELATED APPLICATIONS: Septic permit 5800 (denied)

PROJECT DESCRIPTION: The applicant proposes to construct a 2,574 square foot single-family residence with an attached 460 square foot garage. The structure is proposed to have a 20-foot average height as measured from natural grade. The project includes the installation of a driveway, septic system and connection to North Gualala Water Company and on-site utilities.

This project was revised from a previous design. The project as originally designed was a taller structure located further to the west, which included a guest cottage. This project was redesigned from the original project description to address the location of rare plants and to address the concerns of the Gualala Municipal Advisory Council (GMAC). GMAC originally recommended denial of the project based on the fact that project exceeded the 18-foot height limit (originally 28 feet) and because the project created a "broad visual mass that would dominate rather than be subordinate to the setting and that it failed to satisfy requirements of the subdivision architectural review committee." The project was also rejected by the GMAC because a kitchen was proposed in the guest cottage.

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GMAC recommended approval of the revised project on November 11, 2002. (Note: the building height as measured as an average from natural grade using the County procedures is actually 20 feet not 18 as indicated when the GMAC reviewed the project. The additional height is due to the topography of the site and the location of the garage below the residence. However, the design of the building is exactly as reviewed and recommended for approval by GMAC.)

The project site contains two species of rare plants, coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) and Point Reyes ceanothus (*Ceanothus gloriosus* ssp. *gloriosus*). Approximately 300 to 400 plants of coastal bluff morning-glory are reported on the lot and more than 100 plants of Point Reyes ceanothus are reported. Additional plants of these species occur outside of the lot. On the lot, approximately 40 to 70 plants of coastal bluff morning-glory are expected to be directly impacted by construction activities and approximately 100 additional plants are expected to be impacted by future human activities. An extensive mitigation program is recommended by the botanist to offset the impacts to the rare plants. The mitigation program described below is incorporated into the project description to ensure that negative impacts to the rare plants are offset and so that the project can be found to be exempt from CEQA requirements.

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 proposed residence is compatible with the zoning district and is designated as a principal permitted use.

Section 20.460.035 of the Coastal Zoning Code allows for the limited use of a trailer coach while constructing a residence. It states:

The temporary use of a trailer coach for the following purposes may be permitted upon issuance of a Coastal Development Administrative Permit (Chapter 20.532):

(C) Occupancy While Constructing a Dwelling. The installation, use and occupancy of a trailer coach as a temporary dwelling by the owner of a lot or contiguous lot on which a dwelling is under construction or for which a building permit has been issued. Such administrative permit may be issued for the period required to complete construction of the facility, but not to exceed two (2) years unless renewed.

Special Condition #1 ensures that the use of the trailer coach as a residence will cease upon completion of the new residence and ensures that the use of the trailer does not exceed the prescribed time limits.

The maximum permitted building height in the RR zoning district is required by Section 20.376.045 of the Coastal Zoning Code. It states:

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

The project site is in a designated Highly Scenic Area west of Highway One. Therefore, the building height maximum is 18 feet as measured from average natural grade. The height of the structure as an average of the high side and the low side equals 20 feet as measured by staff. The additional two feet of

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building height would only be perceived by looking at the residence from the south. The additional height is required since the residence and garage are proposed on a knoll, which places the garage below the floor of the residence thereby creating additional height. The residence has been sited to minimize the visual impact from Cook's Beach to the north and would not be visible from Highway One. At least two structures located on CR #526 to the south of the proposed structure are taller than the 20-foot proposed height. The additional two feet of building height would not affect public views to the ocean or be out of character with surrounding structures. Therefore, the proposal is consistent with the requirements of Section 20.376.045 of the Coastal Zoning Code. See the Visual Resources section below for additional discussion.

Public Access

- The project site is located west of Highway 1, but is not a blufftop site and is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site.

Hazards

- The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF. A preliminary fire clearance form (#75-02) has been submitted by the applicant.
- There are no known faults, landslides or other geologic hazards in close proximity to the proposed development.

Visual Resources

The subject parcel is within a designated highly scenic area and is subject to the visual policies within the Mendocino County Coastal Element in Chapter 3.5 and the visual regulations within Chapter 20.504 of the Coastal 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 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. Variances from this standard may be allowed for planned unit development(s) that provides clustering and other forms of meaningful mitigation."

4 of 19

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..."

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

Roof: Composition shingles – gray/black

Siding: Natural cedar shingles stained with transparent valley color stain and a hoplan gray stone wainscot

Trim: Dark brown with black or dark green window trim.

Sec. 20.504.015 (C) of the Coastal Zoning Code states:

1. *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
2. *In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
3. *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

Discussion: Originally the residence was proposed further to the west, which would increase its visibility from Cook's Beach, a public access point to the north. While the residence is proposed at the highest elevation on the property, it is in line with the siting of the adjacent residence to the north, therefore the prominence of the structure as seen from Cook's Beach is minimized. It does not appear that the structure would be visible from Highway One, as the elevated topography and the existing trees between the Highway and the proposed structure screen the building site. The residence and garage are designed to minimize the alteration of the natural topography. The garage is proposed to be constructed on the lower portion of the site while the residence is proposed on the relatively flat portion of the site. The design of the residence is one-story and is of minimal height given the change in topography, which requires the garage to be placed below the residence. The selected materials are all brown and grey earthtones with varied textures, which will help to diffuse reflected light and blend the structure with the natural surroundings. Special Condition #2 ensures that the colors and materials proposed do not change without further review by the Coastal Permit Administrator.

A preliminary landscape plan (Exhibit E) indicates the planting of six coastal pines (shore pines) to the west and south of the proposed residence and four shore pines to the north of the proposed residence to further screen the development from Cook's Beach. The plantings help to blend the structure within its surroundings. The design of the structure with the proposed plantings would bring the project into compliance with the visual resource policies of the Coastal Element and requirements of Section 20.504.015 of the Coastal Zoning Code. Staff recommends Special Condition # 3 to require the submittal

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of a final landscape plan. Specifications shall be included to indicate species, size, and establishment techniques, (e.g. irrigation, fertilization, etc.). All required landscaping shall be established prior to the final inspection of the dwelling, or occupancy, whichever occurs first, and shall be maintained in perpetuity.

Approximately five pine trees would be removed to implement the project. The remaining mature pines surrounding the proposed residence provide screening of the project and help minimize the dominance of the structure within its surroundings. Special Condition #4 is recommended ensuring that the existing trees surrounding the proposed residence are protected, replaced and are not removed or limbed without approval by the Coastal Permit Administrator.

Section 20.504.035 (Exterior Lighting Regulations) of the Coastal Zoning Code states:

(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.

(1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser. 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 submitted elevations indicate six exterior lighting fixtures. The applicant proposes two choices of exterior light fixtures. Choice "A" has an exposed bulb and does not comply with the shielding requirements of the Coastal Zoning Code. Choice "B" is Kichler model # 9044OB, which is a downcast and shielded light fixture in compliance with the code. Therefore, Special Condition #5 has been added to ensure that Choice "B" or other acceptable fixture is specified to comply with the exterior lighting regulations of Section 20.504.035 of the Zoning Code.

Natural Resources

Two uncommon plants occur on the property, coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) and Point Reyes ceanothus (*Ceanothus gloriosus* ssp. *gloriosus*). The Coastal Zoning Code Section 20.308.040 (F) defines Environmentally Sensitive Habitat Areas as:

"Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals."

Section 20.496.020 A-1 of the Coastal Zoning Code regulates development criteria in or near ESHA's requiring a minimum of 50' wide buffer area. However, Section 20.496.020 A-4 addresses permitted development within the buffer area. Nearly the entire project site contains rare plants. Therefore, Section 20.496.020 (4) (a-f) would be the applicable code section where there are no alternatives to developing within the buffer area. The standards are as follows:

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- (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
- (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
- (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
- (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
- (e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
- (f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural land forms.*

Coastal Zoning Code section 20.532.100 (A) (1) states that no development shall be allowed in Environmentally Sensitive Habitat Areas (ESHA's) unless the following findings are made:

1. *The resource as identified will not be significantly degraded by the proposed development.*
2. *There is no feasible less environmentally damaging alternative.*
3. *All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

On August 15, 2002, Mr. Gene Cooley, Associate Botanist with the Department of Fish and Game (DFG) conducted a site visit with Mr. Robert Dostalek of the Mendocino County Department of Planning and Building Services, Mr. Jon Thompson, and the landowners. An undated draft Botanical Survey prepared by Mr. Thompson was submitted to the Planning Division on October 21, 2002. Dean Schlichting, Consulting Botanist, prepared a review letter indicating concurrence with Mr. Thompson's draft on September 27, 2002 and Jon Thompson prepared a revised Botanical Survey on November 4, 2002 and submitted an addendum dated November 20, 2002.

Planning staff and DFG personnel reviewed the botanical reports. Mr. Thompson provided for extensive mitigation measures to offset impacts to two identified rare plants on the project site. Based on observed site conditions and the proposed mitigation measures the DFG recommends that the applicant enter into a Section 1802 agreement with DFG to implement the mitigations as recommended by Mr. Thompson (personal communication between Doug Zanini and Gene Cooley, January 10, 2003). The mitigation

7419

program contained within the CDP file provided by Mr. Thompson is incorporated into the project description to ensure no unmitigated negative impacts to botanical resource occur as a result of this project. DFG summarizes the site conditions and mitigation program as follows:

"...Coastal bluff morning-glory was only recently recognized to be an uncommon plant with the January 2001 printing of DFG's California Natural Diversity Database (CNDDDB) Special Vascular Plants, Bryophytes, and Lichens List and the August 2001 publication of the sixth edition of the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Plants of California. Coastal bluff morning-glory is ranked by CNPS as 1B and Point Reyes ceanothus is ranked as 4. It is generally recognized that plants ranked 1B can be shown to meet the criteria for official State or Federal listing as endangered, threatened, or rare. The California Environmental Quality Act (CEQA) Guidelines Section 15380 provide that taxa that can be shown to meet the criteria for listing as endangered, threatened, or rare, will receive the consideration during CEQA review that they would receive if they were actually listed. Impacts to plants ranked 4 should be minimized when feasible. According to CNDDDB, coastal bluff morning-glory is known from approximately 13 occurrences in Mendocino, Sonoma, and Marin counties. According to CNPS, Point Reyes ceanothus is also known from Mendocino, Sonoma, and Marin counties.

Approximately 300 to 400 plants of coastal bluff morning-glory are reported from the lot and more than 100 plants of Point Reyes ceanothus are reported. Additional plants of these species occur outside of the lot. On the lot, approximately 40 to 70 plants of coastal bluff morning-glory are expected to be directly impacted by construction activities and approximately 100 additional plants are expected to be impacted by future human activities.

Providing adequate protection and mitigation for uncommon plants and their habitat on small lots is difficult. The botanical survey report proposes a variety of measures to mitigate for impacts to coastal bluff morning-glory:

- Avoidance and minimization of impacts. The project has been redesigned to minimize impacts.*
- On-site protection. Two portions of the lot will be preserved in natural habitat. These two areas will protect a substantial portion of the coastal bluff morning-glory and Point Reyes ceanothus and their habitat on the lot. DFG prefers that conservation easements be used to protect areas as mitigation for permanent impacts to uncommon plants and their habitat. However, conservation easements are generally not feasible on small lots. DFG recommends that the two areas proposed for protection be protected with a deed restriction. The areas should be maintained in natural vegetation and the perimeter should be marked to prevent inadvertent disturbance. During construction, these protected areas and other natural habitat should be protected with high visibility boundary fencing. Contractors should be informed of the importance of preventing disturbance to these areas, and their actions should be monitored. Areas of natural habitat disturbed during construction should be stabilized with structural erosion control measures such as jute netting, coir logs, and certified weed-free straw, and revegetated with appropriate native plants propagated from local genetic stock.*
- Seed banking. Coastal bluff morning-glory seeds will be collected and deposited for long-term conservation storage at Rancho Santa Ana Botanic Garden seed bank or another seed bank certified by the Center for Plant Conservation. Funding for the long-term seed storage will be provided. In consultation with DFG, the guidelines of the seed bank for seed collection methodology and amount of seeds collected will be followed. In order to obtain a sufficient conservation collection, seeds may have to be collected in more than one year.*

8919

Habitat data will be recorded and a voucher specimen for the seed collection will be collected and deposited at Rancho Santa Ana or another appropriate herbarium, in consultation with DFG.

- *Research funding. Funding of research into the ecology, demographics, or distribution and habitat characterization of coastal bluff morning-glory will be provided in consultation with DFG. Increasing the knowledge of the species' basic biology and ecology such as habitat requirements, conditions for population establishment, population dynamics, and response to habitat succession will benefit the species by providing information necessary to develop species and habitat management guidelines and to formulate more effective mitigation strategies. Improving and documenting knowledge of the species' distribution will increase awareness of the species and its distribution. Refining the characterization of its habitat and microhabitat will improve the ability to successfully survey for the species. This knowledge will benefit the species by increasing the likelihood that the species will be detected during plant surveys, thus increasing the likelihood that impacts will be mitigated through the permitting process and that populations can be protected through proactive means. Population locations will be documented and submitted to CNDDDB. DFG will assist in facilitating this research."*

DFG has determined that if the mitigation measures outlined in the botanical survey report and as above are implemented, impacts to coastal bluff morning-glory will be adequately mitigated and the 100-foot buffer of the Environmentally Sensitive Habitat Area triggered by the presence of this species can be reduced to allow construction of the project as proposed. Special Condition # 6 requires that the Section 1802 agreement based on the mitigations recommended by Mr. Thompson be implemented prior to issuance of the Coastal Development Permit. This will ensure that the DFG has the ability to enforce and monitor the mitigation while allowing the CDP to be issued before the seed banking, research funding, etc. has been accomplished.

Archaeological/Cultural Resources

This project was referred to the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University (SSU) for an archaeological records search. SSU responded that the site has a possibility of containing archaeological resources and further investigation was recommended. The recommendation was referred to the Mendocino County Archaeological Commission on May 8, 2002. The Commission required that a survey be prepared. Thad Van Buren, ROPA, performed an Archaeological Survey on June 1, 2002. No archaeological or cultural resources were discovered. The Mendocino Archaeological Commission accepted the survey on November 13, 2002. 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 North Gualala Water Company, Inc. (NGWC) would serve the proposed development. NGWC stated that the property is within their service area and that water is available to serve the proposed project. Therefore, the project would not adversely affect groundwater resources.

- The proposed development would be served by a proposed septic system and would not adversely affect groundwater resources.

9/19

Transportation/Circulation

- The project would contribute incrementally to traffic on local and regional roadways. The cumulative effects of traffic due to development on this site were considered when the Coastal Element land use designations were assigned. The Mendocino County Department of Transportation commented as follows:

"Access to the subject property is from County Road 526. As determined from our site review, the existing driveway approach at County Road 526 appears to be adequate, and we have no recommended conditions... However, the applicant should note that any improvements to the existing driveway approach onto the County road, or other work within the County right-of-way, will require an encroachment permit from the Department of Transportation..."

Zoning Requirements

- As discussed above, 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 approve the proposed project, and adopt the following findings and conditions.

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development; and
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.
8. The resource as identified will not be significantly degraded by the proposed development.
9. There is no feasible less environmentally damaging alternative.

10 of 19

10. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

STANDARD CONDITIONS:

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

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

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

11 of 19

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:

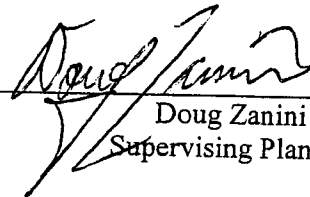
1. A permit is hereby granted for temporary occupancy of the travel trailer while constructing the single family residence, subject to the following conditions of approval:
 - (a) The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed.
 - (b) The administrative permit shall be effective on the effective date of CDP #09-02 and shall expire two years henceforth.
 - (c) A valid building permit for a permanent dwelling on the premises must be in effect.
 - (d) Building and Health permits must be obtained prior to the set up and occupancy of the travel trailer.
 - (e) All utility connections to the travel trailer shall be disconnected and the trailer shall be removed from the property or placed in storage per Section 20.456.015(J) of the Code prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first.
2. 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.
3. 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 E of this report. Specifications shall be included to indicate species, size, and establishment techniques, (e.g. irrigation, fertilization, etc.). All required landscaping shall be established prior to the final inspection of the dwelling, or occupancy, whichever occurs first and shall be maintained in perpetuity.
4. The existing evergreen trees surrounding the proposed residence that are not removed for construction of the residence provide a significant visual buffer from Highway One and Cook's Beach and shall be retained. No tree removal or limbing of the existing trees whose trunks are more than 15 feet from the footprint of the proposed residence shall occur without prior review and approval by the Coastal Permit Administrator. 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.

12/19

5. The exterior light fixtures shall be Kichler model # 9044OB. Any change to the exterior light specifications is subject to the review and approval of the Coastal Permit Administrator.
6. Prior to issuance of the Coastal Development Permit, the applicant shall enter into a Section 1802 agreement with the Department of Fish and Game to implement DFG's accepted mitigation program as recommended by Mr. Jon Thompson's botanical survey dated November 4, 2002 including the November 20, 2002 addendum. A signed copy of said agreement shall be submitted to the Planning Division.

Staff Report Prepared By:

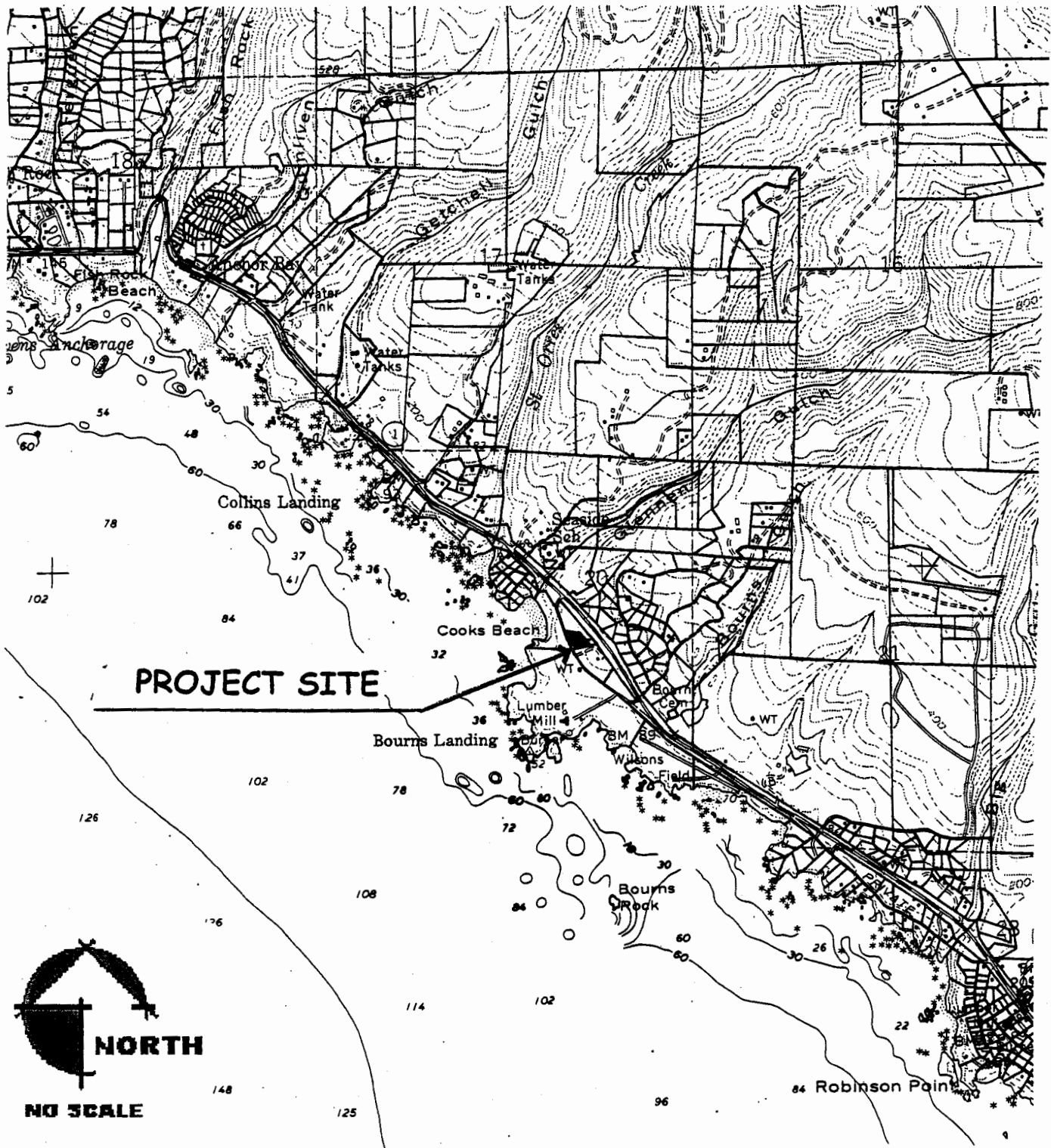
2/14/03
Date


Doug Zanini
Supervising Planner

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Floor Plan
Exhibit D: Elevations
Exhibit E: Landscape Plan
Exhibit F: Lighting Fixtures

Appeal Period: 10 days
Appeal Fee: \$645

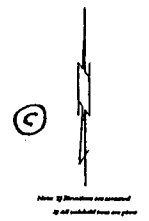
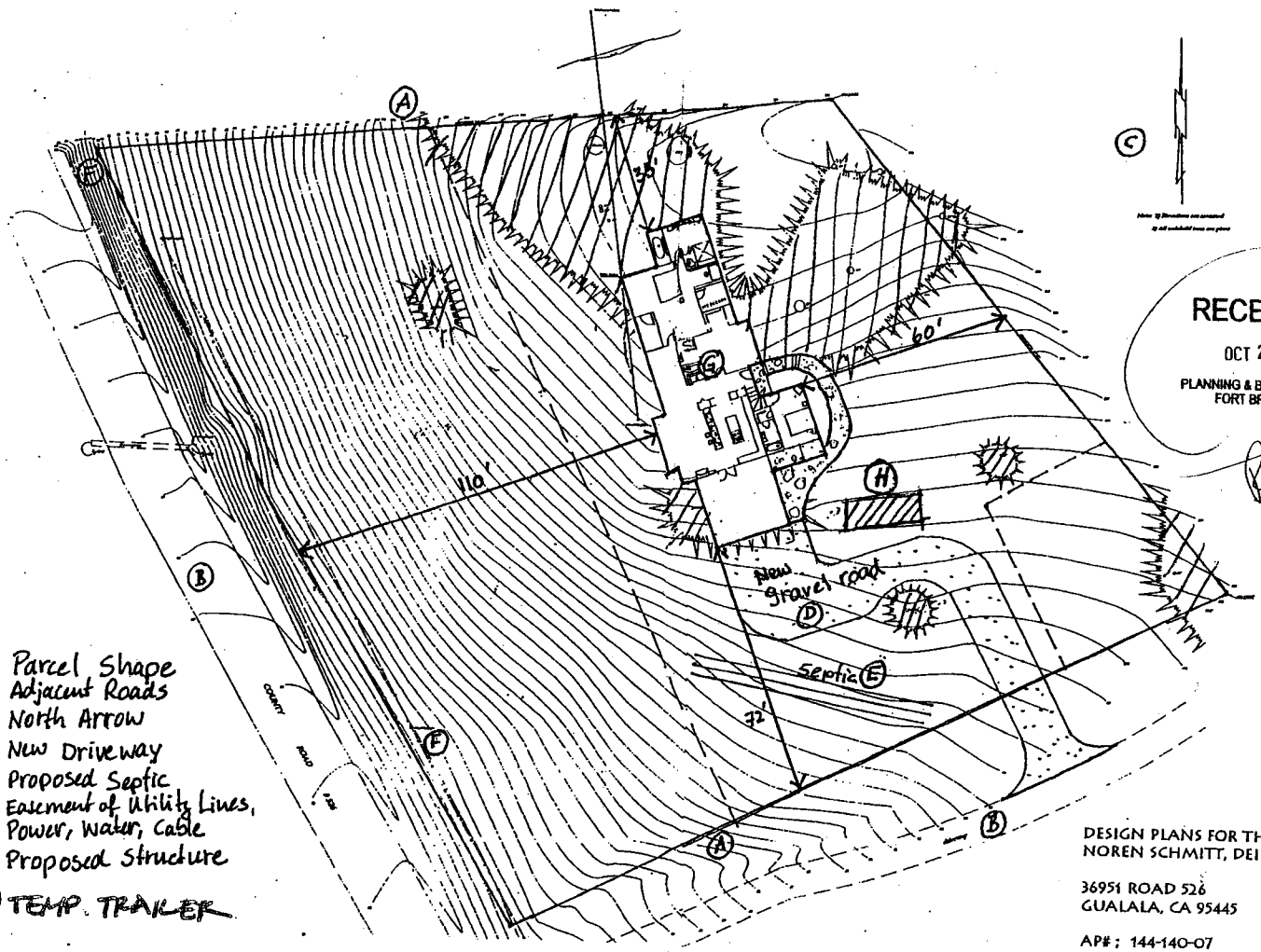
13419



14 of 19

15819

- (A) Parcel Shape
- (B) Adjacent Roads
- (C) North Arrow
- (D) New Driveway
- (E) Proposed Septic
- (F) Easement of Utility Lines, Power, Water, Cable
- (G) Proposed Structure
- (H) TEMP. TRAILER



RECEIVED
 OCT 21 2002
 PLANNING & BUILDING SERV
 FORT BRAGG CA

Revised

DESIGN PLANS FOR THE PROPERTY OF
 NOREN SCHMITT, DEIRDRA CLAIBORNE

36951 ROAD 526
 GUALALA, CA 95445

AP#: 144-140-07

CDP # 19-02
 February 27, 2003

DESIGN PLANS FOR THE PROPERTY OF
NOREN SCHMITT, DEIRDRA CLAIBORNE
38991 ROAD 21A
GUALALA, CA 95445
AP# : 144-140-07
SEPTIC SYSTEM REVISED.
DESIGNER: MARGA MA DESIGN,
NOREN SCHMITT, DEIRDRA CLAIBORNE
63 FORBES AVE., SAN RAFAEL, CA 94901
415 435 9092

FLOORPLAN

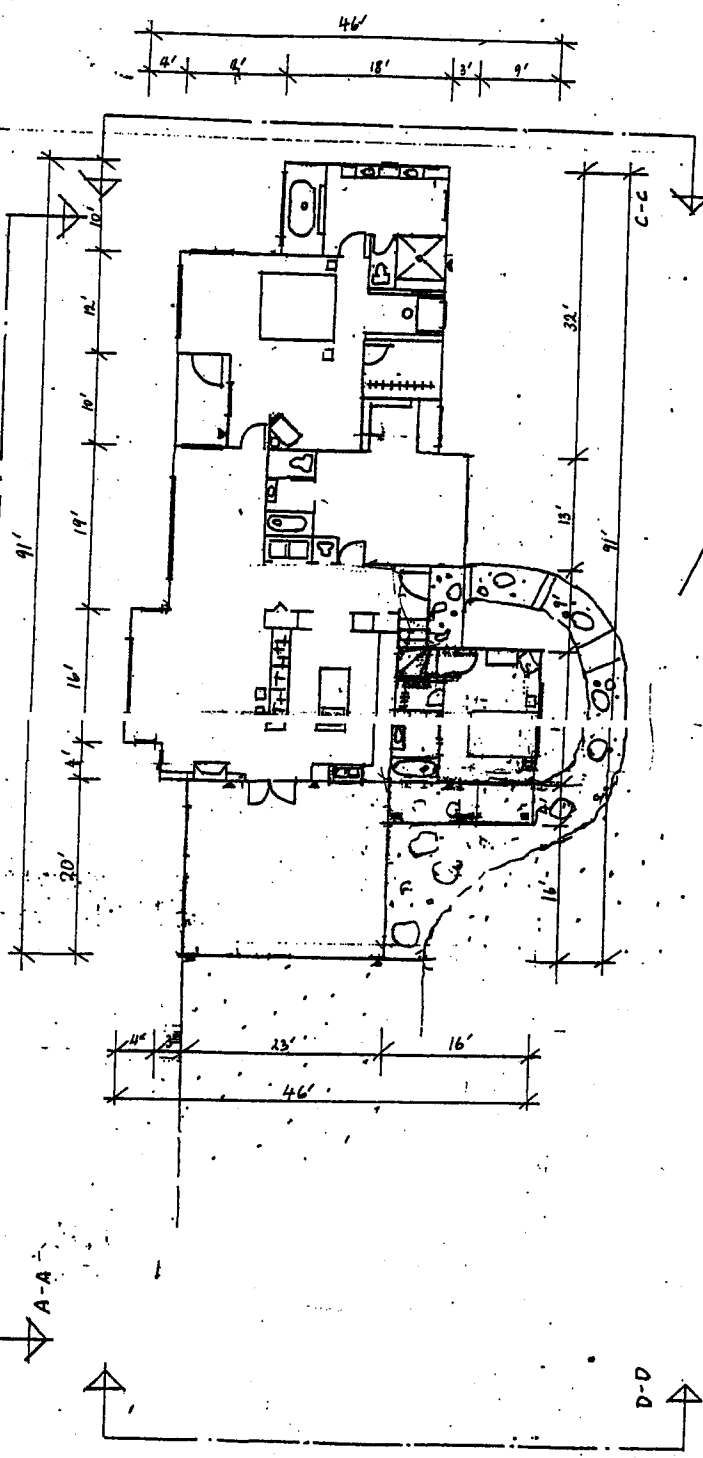
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OCT 23 2002
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PORT BRADDOCK, VA

Revised

North

B-B

D-D



16 of 19

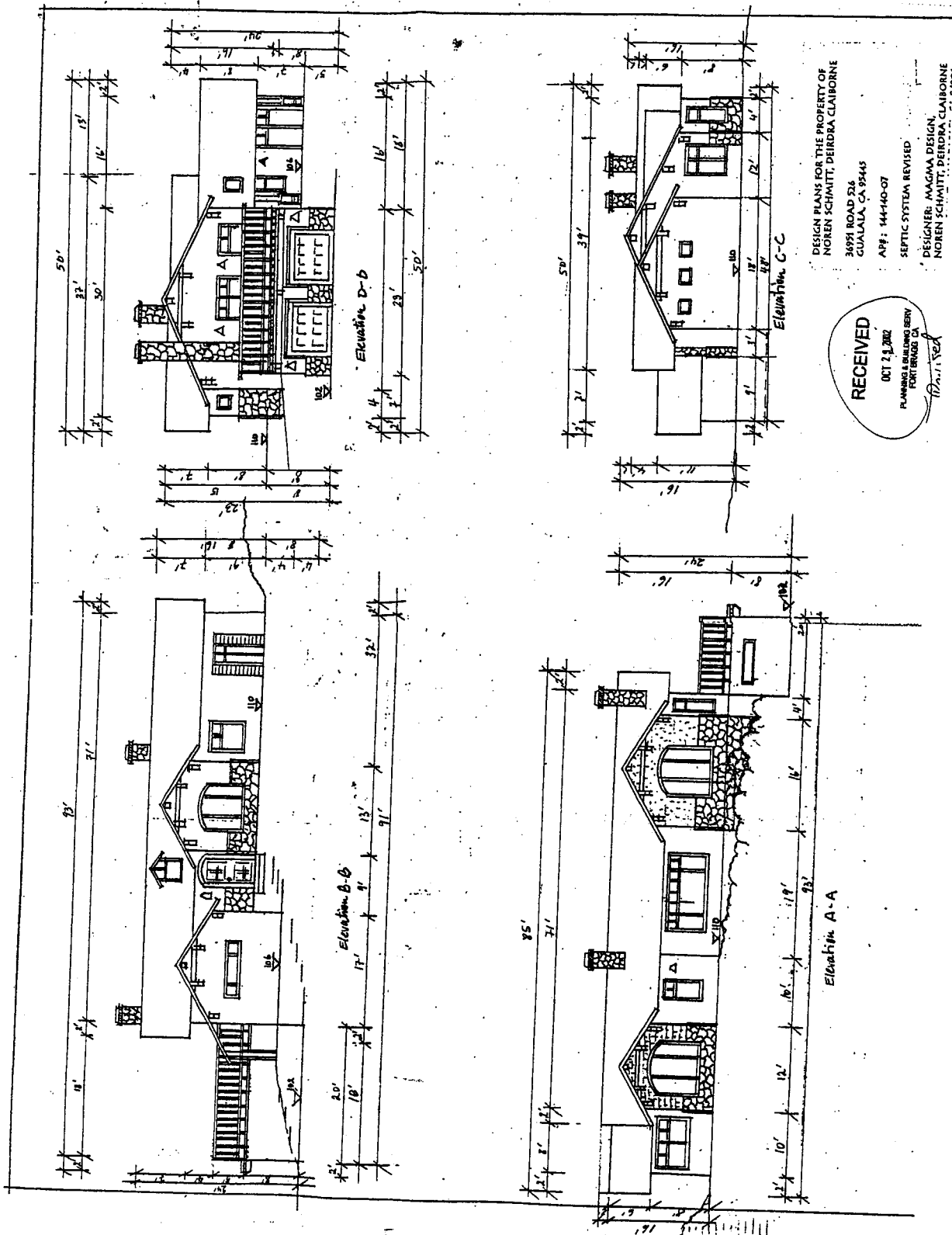
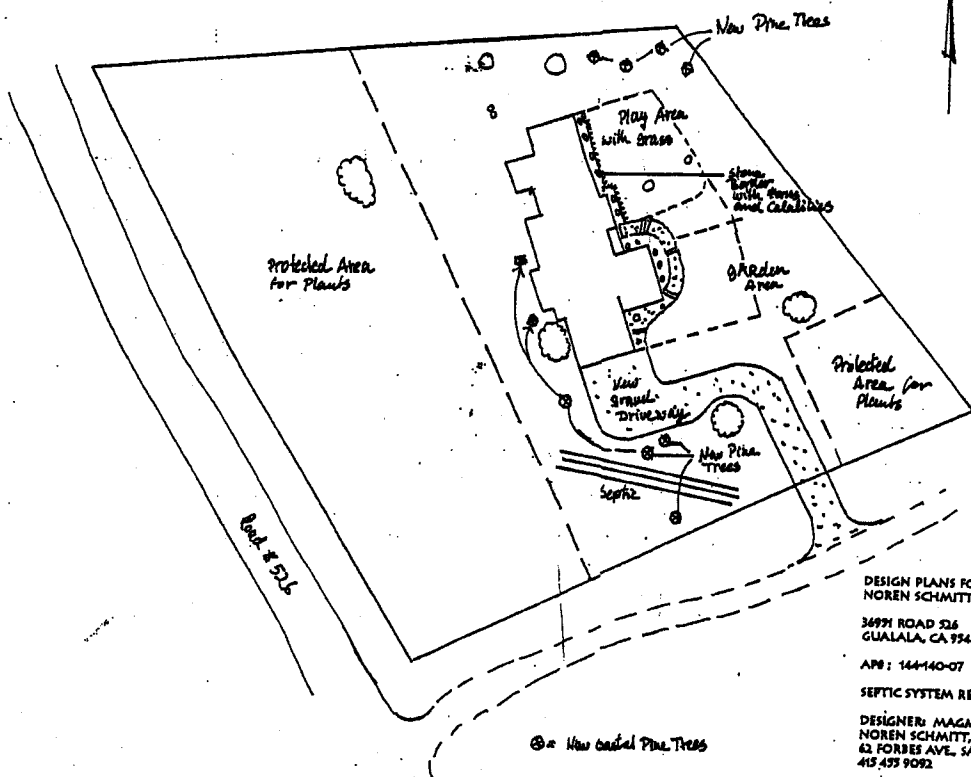


EXHIBIT D

ELEVATIONS

17919



Revised
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PLANNING & BUILDING DEPT
PORT BRAGG, CA

DESIGN PLANS FOR THE PROPERTY OF
NOREN SCHMITT, DEIRDRA CLAIBORNE
34991 ROAD 526
GUALALA, CA 95443
AP# : 144-140-07
SEPTIC SYSTEM REVISED 9/17/2000
DESIGNER: MAGMA DESIGN,
NOREN SCHMITT, DEIRDRA CLAIBORNE
62 FORBES AVE. SAN RAFAEL, CA 94901
415 453 9092
LANDSCAPE PLAN
Revised. 10/24/02

18419

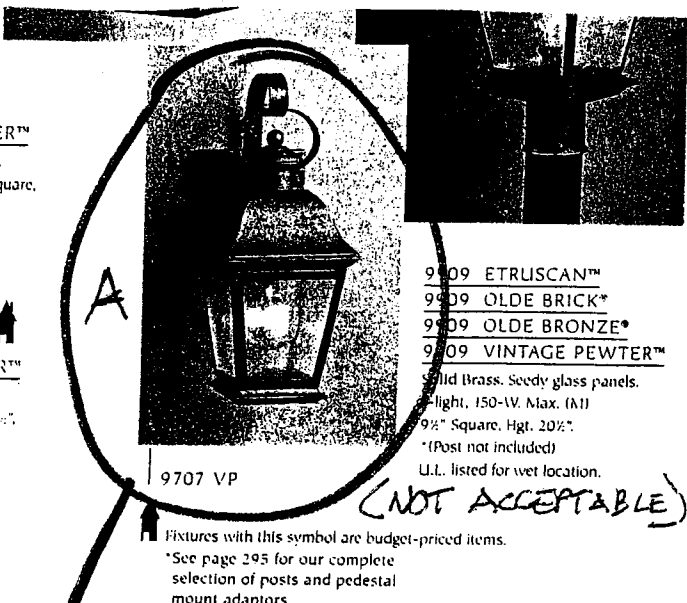
damp location.

- 9809 ETRUSCAN™
- 9809 OLDE BRICK®
- 9809 OLDE BRONZE®
- 9809 VINTAGE PEWTER™

Solid Brass. Seedy glass panels.
1-light. 150-W. Max. (M) 9 1/2" Square.
Body Hgt. 18". Overall 56".
Extra lead wire 98".
U.L. listed for damp location.

- 9707 ETRUSCAN™
- 9707 OLDE BRICK®
- 9707 OLDE BRONZE®
- 9707 VINTAGE PEWTER™

Solid Brass. Seedy glass panels.
1-light. 100-W. Max. (M) Hgt. 12".
Width 5". Extension 6". Hgt.
from center of wall opening 4".
U.L. listed for wet location.

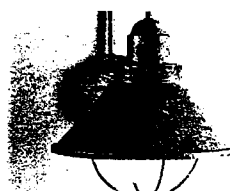


9707 VP

(NOT ACCEPTABLE)

280 KICHLER®

Fixtures with this symbol are budget-priced items.
*See page 295 for our complete selection of posts and pedestal mount adaptors.



- 9023 BRUSHED NICKEL
- 9023 OLDE BRICK®
- 9023 TUSCAN GOLD®
- 9023 WHITE

Aluminum or brass and stainless steel construction. 1-light, 150-W. Max. (M) (G-40 lamp rec.) Hgt. 14". Width 10 1/2". Extension 11 1/2". Hgt. from center of wall opening 7".
U.L. listed for wet location.
U.S. Patent No. Des. 383,239
Canada Patent No. 78917
Taiwan Patent No. ND-053495

- 9044 BRUSHED NICKEL
- 9044 OLDE BRICK®

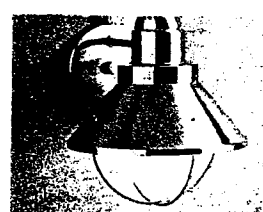
Aluminum construction. 1-light, 150-W. Max. (M) (G-40 lamp rec.) Hgt. 8". Width 11". Extension 11 1/2". Hgt. from center of wall opening 2 1/2". Can also be used indoors as a wall sconce. U.L. listed for wet location with shade/bulb in downward direction only.

- 2621 BRUSHED NICKEL
- 2621 OLDE BRICK®

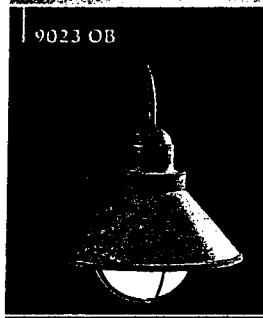
Stem mounted mini-pendant. Aluminum and stainless steel construction. 1-light, 100-W. Max. (M) (G-40 lamp rec.) Dia. 8". Body Hgt. 9". Overall 47". Extra lead wire 105". 45" (12:12) Max. stem tilt.
U.L. listed for damp location.

288 KICHLER®

All fixtures shown on this page are budget-priced items.



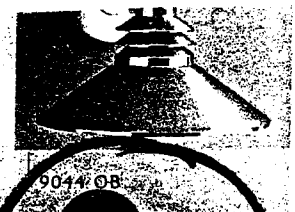
9023 OB



15038 OB

- 15038 OLDE BRICK®
- 15038 VERDIGRIS

See page 298 for complete information.
U.S. Patent No. Des. 383,237



9923 OB

9923 OLDE BRICK®
Aluminum and stainless steel construction.
White. 1-light. 100-W. Max. (M) (G-40 lamp rec.) Dia. 10 1/2". Hgt. 14". * (Post not included)
U.L. listed for wet location.
Canada Patent No. 78917

choice (B)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



RECEIVED

MAY 09 2003

CALIFORNIA COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

SUSIE & FRED SEDLACEK
151 EAST CREEK DRIVE, MENLO PARK, CA
94025 650 743 5620
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: COUNTY OF MENDOCINO

2. Brief description of development being appealed: CONSTRUCTION OF 2,574 SQ FT SINGLE FAMILY HOME WITH ATTACHED 460 SQ FT GARAGE WITH 20-FOOT AVERAGE HEIGHT FROM NATURAL GRADE

3. Development's location (street address, assessor's parcel no., cross-street, etc.): EAST OF BOURNS LANDING, ON THE EAST SIDE OF COUNTY ROAD 526, APPROXIMATELY 1/8 MILE NORTH OF ITS SOUTHERN INTERSECTION WITH SOUTH HIGHWAY ONE AT 36951 ROAD 526, APN 144-140-07

4. Description of decision being appealed

- a. Approval; no special conditions:
b. Approval with special conditions: IMPLEMENTATION OF RARE PLANT MITIGATION PROGRAM
c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-03-029

DATE FILED: 5/9/03

DISTRICT: North Coast

EXHIBIT NO. 7
APPLICATION NO.
A-1-MEN-03-029
CLAIBORNE & SCHMITT
APPEAL, FILED MAY 9,
2003 (SEDLACEK) (1 of 8)

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

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

6. Date of local government's decision: _____

7. Local government's file number (if any): _____

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

DIERDRA CLAIBORNE & NOREN SCHMITT
62 FORBES AVENUE
SAN RAFAEL, CA 94901

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

- (1) _____
- (2) _____
- (3) _____
- (4) _____

SECTION IV. Reasons Supporting This Appeal

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

2 of 8

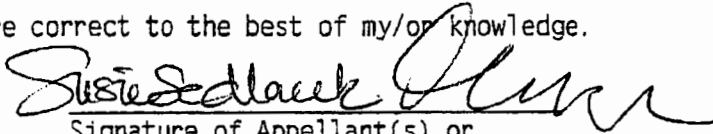
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PLEASE SEE ATTACHMENT FOR DETAILS, PROJECT IN VIOLATION OF:
SEC 20.496.020 ESHA
POLICY 3.5-1 MENDOCINO COUNTY COASTAL ELEMENT
POLICY 3.5-3 " "
SEC 20.504.015 HIGHLY SCENIC AREAS(C) DEVELOPMENT CRITERIA
SEC 20.504.035 EXTERIOR LIGHTING REGULATIONS

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.


Signature of Appellant(s) or
Authorized Agent

Date MAY 9, 2003

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

SECTION VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

3 of 8

Attachment to Appeal Form (California Coastal Commission)

RE: CDP 19-02 Application for Coastal Development Permit

We are requesting the denial of this permit as currently submitted by the applicants. Our request is based on the following criteria and violations of the Coastal Zoning Code and LCP.

Sec. 20.496.020 ESHA -- Development Criteria.	Criteria for Requesting Denial
<p><i>(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.</i></p>	
<p><i>(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.</i></p>	<p>The current plan provides for less than the 50' required buffer from an ESHA. While mitigation plans have been agreed to, it is our sincere belief that the lot is not large enough to accommodate the successful implementation of the mitigation plans together with the current building site, 20' trailer, building material supplies, etc. without significant impact to the ESHA during building and after.</p> <p>We request that the structure be reduced and the location be moved South and closer to the access road to reduce the disruption of the ESHA during and after building and that the 50' buffer be adhered to as required by the Coastal Zoning Code.</p>

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Policy 3.5-1 Mendocino County Coastal Element	Criteria for Requesting Denial
<p><i>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.</i></p>	<p>The current proposed building site will require the unnecessary disruption of the land (and ESHA) in order to put in a driveway leading to the northern most point of the lot.</p> <p>The current proposed site also calls for the removal of 5 fully grown trees (30' plus in height).</p> <p>Moving the building site to the south will reduce the disruption to the land requiring less driveway, less disruption to ESHA and the need for removing any of the trees.</p> <p>We request that the structure be moved to the south of the lot and reduced in size if necessary.</p>

Policy 3.5-3 Mendocino County Coastal Element	Criteria for Requesting Denial
<p><i>The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.</i></p>	<p>The current plans provide for a 24' high south side of the home with an average height of 20' in an area requiring a maximum height of 18'. The 24' high side of the home will be visible from the south access road to Cook's beach and from the proposed coastal bluff trail – public areas used for recreational purposes.</p> <p>The plan also calls for the removal of 5 fully grown trees on the building site. Today, these trees form a backdrop for our current home as viewed from Cook's beach. This backdrop reduces the visibility of our home and will also reduce the visibility of the new home if not removed. These 5 trees are 5 of 8</p>

May 9, 2003

5 of 8

2 of 5

	<p>fully grown trees. Removal of 5 will expose both our home and the new building site to the public on and around Cook's beach and will be a visual scar from Cooks beach and the access roads to the South and North of the beach.</p> <p>We request that the building site be moved away from the trees to the flat area that is also closer to the access road. This will provide for more coverage from Cook's beach and less disturbance to the ESHA and will also reduce the need for the 24' high building.</p>
--	---

<p>Sec. 20.504.015 Highly Scenic Areas (C) Development Criteria.</p>	
<p><i>(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.</i></p>	
<p><i>(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.</i></p>	<p>The current plans provide for a 24' high south side of the home with an average height of 20' in an area requiring a maximum height of 18'. The 24' high side of the home will be visible from the south access road to Cook's beach and from the proposed coastal bluff trail – public areas used for recreational purposes.</p> <p>We request the building site be moved to the South reducing the need for a 24' high side. Moving the site will allow for an overall 18' high home consistent with Coastal Zoning requirements.</p>

6 of 8

<i>Sec. 20.504.015 Highly Scenic Areas (C) Development Criteria.</i>	Criteria for Requesting Denial
(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.	<u>Color of Roofing and Exterior Stonework</u> - Gray roofing and graystone have been highlighted on the application – considering that gray is not an earthtone and therefore not in compliance of the coastal zoning requirements of dark earthtones, we would request the roofing be changed to black and the graystone (which is not particularly blending with the natural landscaping or topography) to be eliminated. This elimination will also ensure the new structure will match the exterior character of the community.

Sec. 20.504.035 of the Coastal Zoning Code - Exterior Lighting Regulations.	
(2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.	Elevation C-C shows 3 small windows that could act like 3 unshaded external lights violating the coastal zoning code (Section 20.504.035 Exterior Lighting Regulations). We request that these windows be eliminated from the plans or changed to be shielded or positioned so that light or light glare will not exceed its boundaries to be visible from Cook's beach (public area) or our property.

Other	Criteria for Requesting Denial
Questionable lot size	The archaeological survey of the applicants' lot by Thad Van Bueren, included in the staff file, indicates the lot size as "less than 1 acre." We have also been informed by another long-time resident of the subdivision that the lot had been

Submitted by: Susie & Fred Sedlacek

	<p>classified as .7 acres at one time. If the lot size is indeed different than the 1.1 acre indicated on all other documents, then many items become questionable, such as:</p> <ul style="list-style-type: none">• Boundary lines and setbacks• 50' buffer for ESHA <p>We are requesting clarification on the lot size to ensure setback requirements are within requirements.</p>
--	---

Submitted by:

Susie & Fred Sedlacek
151 East Creek Drive
Menlo Park, CA 94025

36901 Road 526
Gualala, CA

8 of 8

May 9, 2003

5 of 5

FAX

4 # pages including cover sheet

June 22, 2003

To:

California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 955501
Attn.: Jim Basken

Re: CDP 19-02 Application for Coastal Development Permit

Application # 1-MEN-02-089

Please place our letter on top of our information send via FedEx for the Coastal Commission hearing.

Thank You

Noren Schmitt

From:

Noren Schmitt
Deirdra Claiborne
62 Forbes Ave.
San Rafael, CA 94901
415 455 9092

RECEIVED

JUN 24 2003

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-03-029

CLAIBORNE & SCHMITT

CORRESPONDENCE

(1 of 25)

RECEIVED

JUN 24 2003

CALIFORNIA
COASTAL COMMISSION

To Whom It May Concern:

I have been good friends with Deirdra Claiborne and Noren Schmidt for many years and would like to submit this letter as a reference to their character.

Deirdra and Noren are both exceptionally conscientious individuals who have strong sense of responsibility to the environment and to mankind. They are people of very high integrity who completely honor their commitments. I have spoken to them on numerous occasions regarding their property in Gualala. From all the careful considerations they have expressed, I have no doubt that they are very committed to minimizing and mitigating any potential environmental impact in building their home there.

Deirdra and Noren are very sensitive to environmental and aesthetic conditions and have devoted much of their lives to natural healing and artistic creativity. As a person who has devoted most of my career to environmental work, I can state with certainty that this couple will treat this land and its surrounding environment with greater care than the vast majority of other potential property owners. It is fortunate that they have acquired this land and will be its stewards.

Sincerely,



Tom Flynn

2 of 25

RECEIVED

JUN 24 2003

CALIFORNIA
COASTAL COMMISSION**Thomas S. Flynn**10 Willow Ave.
Larkspur, CA 94939
(415) 924-8250**Qualifications Summary**

Environmental Management Professional with over 20 years successful experience in management and development of environmental services. Additional qualifications and achievements in the following areas:

- Launched and expanded environmental services business for two very successful startup enterprises.
- Technical proficiency and expertise in project development, energy efficiency, alternative energy, and environmental cleanup technology.
- Represented City of San Francisco at national-level think tank sponsored by Dept. of Energy and H.U.D. to develop strategies for energy conservation in multi-family housing.
- Management of all aspects of environmental contracting business including planning, business development, auditing, estimating and bidding, contracts and legal documents, employee management, project supervision, materials acquisition and inventory, subcontracting, safety, payroll, cost control and accounting, and quality control.
- Implemented research projects and water treatment system improvements for water quality protection.

Experience

1994-Present Independent Consultant providing environmental project development and project management services- Tom Flynn and Associates. Developed and implemented water quality and energy efficiency projects . 1995,1996 Consultant to Sustainable Conservation in developing environmental remediation and redevelopment program. 2001, 2002 Project Coordinator for septic upgrade program Tomales Bay, California, instrumental in raising over \$800,000 in grants for water quality protection.

1992-1994 **PROVEN ALTERNATIVES**, San Francisco, California
Business Development, Quality Assurance Manager

Developed majority of energy efficiency projects for Proven Alternatives corporate office including PG&E pilot Demand Side Management Project. Development work included marketing, initial assessment, auditing, contract negotiations, and customer services. Clients included Ford Motor Co., Kaiser Hospitals, Androniccos Supermarkets, Marin County, San Francisco School District, Santa Rosa and Mendocino Community Colleges as well as other commercial and public entities. Also as Quality Assurance manager developed and implemented company warranty and customer services program.

1987-1991 **EXCEL ENVIRONMENTAL**, Berkeley, California
Business Development, Project Management

Played key role in developing Excel from a small company to the Number 1 provider of environmental abatement services in Northern California including generating and managing over \$2 million per year in abatement and building renovation projects. Established and managed projects for key accounts such as Kaiser Hospitals, Serramonte Shopping Center, JMB Properties, Heitman Properties, and University of California.

Created and patented an advanced, cost effective asbestos removal technology and licensed this technology to Critical Industries.

3 of 25

1983-1986 ENVIRONMENTAL CONTROL INDUSTRIES (ECI)
Business Development, Project Management

Developed strategic plans, procedure manual, and launched asbestos abatement marketing program. Secured initial abatement contracts and played essential role in developing ECI into the Number 1 abatement services provider in Northern California. Developed and managed projects for key accounts such as University of California, Serramonte Shopping Center, California Academy of Sciences, and Sears. Established and ran Las Vegas office for ECI while managing major projects (100 plus employees) at Las Vegas' McCarren International Airport and at the Clark County Courthouse.

Previous Related Experience

- 1982 MARIN COUNTY PLANNING DEPARTMENT
Developed innovative residential energy conservation program that was determined by the California Energy Commission to be exceptionally cost effective.
- 1981 SAN FRANCISCO COMMUNITY ENERGY COALITION
Designed and directed an energy conservation public information program with funding from Pacific Gas and Electric and California Energy Commission.
- 1980 CITY OF SAN FRANCISCO- Energy Conservation Consultant

Special Credentials

California "A" General Engineering Contractor's License (#633223)
California Division of Occupational Safety & Health Contractor's Registration #410
California State Certified Energy Auditor

Education

- 1984 Master of Science- University of California Berkeley
Directed three year study on potential environmental effects of geothermal energy development on water resources, funded by U.S. Department of Interior. Reported results of findings at national meetings of the American Society of Civil Engineers and in a number of scientific journals.
- 1975 Bachelor of Science- Zoology, University of California Berkeley

Innovative Projects/Community Leadership/Speaking Ability

Awarded a Ford Foundation Grant and with it produced public information film on on national energy issues.

Director of Report, Resource Recovery Potential of Municipal and Agricultural Wastes in Sonoma County, produced for Sonoma County Board of Supervisors.

Founding Director, King Mountain Open Space Association. Successfully raised \$3.2 million to purchase 220 acres of prime scenic land in Marin County for conversion to permanent public open space.

Developed an annotated bibliography on energy conservation and alternative energy literature with the Scientists Institute for Public Information.

Chairman of Steering Committee, San Francisco Bay Area Business for Social Responsibility.

Served as instructor with the University of California Berkeley Extension Programs in Environmental Management

4 of 25

FAX

7 pages including cover sheet

June 22, 2003

To:

California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 955501
Attn.: Jim Basken

RECEIVED

JUN 24 2003

CALIFORNIA
COASTAL COMMISSION

Re: CDP 19-02 Application for Coastal Development Permit

Application # 1-MEN-02-089

Please place our letter on top of our information send via FedEx for the Coastal Commission hearing.

Thank You

Noren Schmitt

From:

Noren Schmitt
Deirdra Claiborne
62 Forbes Ave.
San Rafael, CA 94901
415 455 9092

5 of 25

June 21, 2003

California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 955501
Attn.: Jim Baskin, Bob Merrill and Mike Riley

RECEIVED

JUN 24 2003

CALIFORNIA
COASTAL COMMISSION

Re: CDP 19-02 Application for Coastal Development Permit

Application # 1-MEN-02-089

We are requesting that the Commission determines the appeal raised by Susie and Fred Sedlacek as **no substantial issue** with respect to the grounds on which the appeal has been filed.

We would like to request a public hearing to respond to any recommendations the staff will make. We feel it is important to include our testimony that explains the placement of the proposed structure. The staff did not have all the necessary information to complete the report and render a fair view of our application.

Special care has been given to the exact location by a site visit by Gene Cooley (DFG), Robert Dostalek (Mendocino Planning Department), Jon Thompson (Botanist) and the property owners Noren Schmitt and Deirdra Claiborne. This five hour site visit was to determine the best mitigation plan and the best location considering the rare wild flower and the views from public areas.

Many compromises have been made, the house was moved from a forward, lower elevation site to a southern and eastern location requested by GMAC and the Sedlacek's. The house was completely redesigned, reduced in size and the guest cottage and the freestanding garage were eliminated. We significantly mitigated the rare wild flower and have approval from DFG on our mitigation plans.

We have 2 Issues that need careful consideration for the placement of the structure.

- Rare wildflower- with mitigation plan
- Highly scenic location with trees mostly on the top of knoll

Rare Wildflower

It was registered with the Native Plant Society after we purchased our property. After careful examination of the high concentration of the wildflower, two protected areas were set aside . The southeast area (high concentration) has a minimum buffer of 50 feet from the edge of the building to the protected area. The west side has a very large area selected for protection.

6 of 25

Visual and Scenic Resource Policy

Structure has had a significant redesign, positioning the structure near the tall trees, creating a 120 foot separation between the road 526 and the structure, with tall bishop pine trees serving as a back drop for the structure. The structure subordinates to the neighbor's house to the north with a lower elevation, and is surrounded by trees.

- The view from Cooks Beach is minimized to a very small area (approx. 1/20 of the bulk of the neighbors house), only visible from the most northern part of the beach.

- Views from Road 526: from the southern end, the structure is 120 feet away from the road and is placed just below the ridge top with trees creating an ideal back drop. Additional trees will be planted to screen house from the road. This is in our preliminary landscape plan.

- From the northern part of Road 526: proposed structure has 120 feet distance to Road 526, and is partially screened by existing trees in the front. The large bishop pine trees will provide a backdrop for the structure. Additional new trees will be planted in front of the house to screen the structure even more.

- From the new recorded coastal trail (in effect May 2003):
Similar view as from Road 526, but having more back drop from large bishop pines due to less steep viewing angle.

- From Highway One:
The structure is not visible.

Conclusion: Placement subordinates and is not at the highest point of the ridge and is in and near the edge of a wooded area. (3.5-4) Structure also blends with rural character of the area. The location of the structure is not situated in a large and open space and has been consolidated from a previous design into one structure to fit into elevation. The house also steps down with the contour of the lot (see garage). The southern end of structure will be screened, utilizing native vegetation.

Driveway: The design could be altered, making it straight to the road, reducing the length by approx. 40%. This design was thought to screen the driveway from Road 526 and create an area for the placement of the septic system.

A lot of thought, care, consideration, and redesigns have been put into this project of a modest size home. We sincerely believe that our application should be approved. The appellants appealed our application to the Board of Supervisors and we were approved by a 5-0 vote.

Thank you for your consideration.

Noren Schmitt and Deirdra Claiborne
62 Forbes Avenue, San Rafael, CA. 94901, Tel. 415.455.9092

7 of 25

Response from Noren Schmitt and Deirdra Claiborne

1) Sec. 20.496.020 ESHA

The placement of the proposed structure was recommended at a site visit by Gene Cooley (DFG), Robert Dostalek (Coastal Planner) and Jon Thompson (Botanist). The placement was best suited to protect public views and protect rare plants. An extensive mitigation plan was approved to offset the minimal loss of plants. Two protected areas were set aside with some areas having almost a 100 foot buffer with this particular placement of the structure.

Our mitigation plan has been agreed upon and was also praised at the GMAC meeting by two environmental board members. They stated that this mitigation plan was environmentally thoughtful and well planned out. They were very happy with the mitigation.

2) 3.5-1 Mendocino County Coastal Element

Driveway only goes to 1/3 of the property, leaving 2/3 of northern part undisturbed. Our neighbors denied our request of an easement for driveway access from their existing road. Our proposed driveway is about 1/3 of the length of the Sedlaceks.

The removal of the 5 trees includes one dead tree that poses a danger to anyone walking on the land. Three other trees are exhibiting signs of disease and necrosis. They will be replaced by healthier tree plantings to provide screening of property from Cooks beach as well as the public road. Please review the botanical report for the tree's in question.

We have many healthy, tall trees behind the proposed house that will still give the structure a backdrop, and still will work as a backdrop for the Sedlaceks house from Cooks Beach (see images provided for view from Cooks Beach and side comparison of very large trees that remain on the property).

All trees have been cut around the Sedlaceks house and they have minimal screening from the road, Cooks Beach and other public areas. In fact their house is very visible from Cooks Beach. Our proposed structure is only slightly visible from the far north end of the beach. It will not be visible from the mid section or the south end of Cooks Beach.

The trees in question do not screen the Sedlaceks house from Cooks Beach. (see photo)

It is ironic that she is so concerned about these trees, when she made us move the house to that spot and even wanted us further back and was willing to pay for the removal of our largest and healthiest tree.

Our preliminary landscape plan identifies 10 new coastal pine trees to further help to disguise the structure from any public views.

At this time, many new trees(30-50) are growing on our property that will create a visual buffer zone.

3) 3.5-3 Mendocino County Coastal Element

Average height of 20 feet fits fine into the neighboring houses. In fact most houses are much taller. 20 feet average is only because of attached garage. Overall design of structure adheres to the natural landscape form.

The trees in question do not screen the Sedlaceks house from Cooks Beach. Cooks Beach is to the north

8 of 25

of our land and our trees can't screen her house. These trees do not reduce the visibility of their house from Cooks Beach.

4) Sec. 20.504.015 Highly Scenic Areas (C) Development Criteria

---2. Average building height fits into the neighborhood, bringing the average height only because of an attached garage. Building will be screened with new trees on the southern end of the parcel. (see preliminary landscape plan).

---3. Color of roofing: The proposed color actually is gray-black (sample on file)

Color of stonework: The same or similar colors can be found on and around the site: tree bark, weathered fence, siding of neighbors houses (weathered wood) and so on.

This stone color is not just a flat gray, but has earth tones as well as gray tones.
(sample on file)

Sec.20.504.035 of the coastal zoning code- Exterior Lighting Regulations:

These windows are not exterior lights!

Compared to the Sedlaceks very large windows, these 3 small windows are minimal.

Other Questionable lot size:

Our lot has been identified as + 1.1 acres and has been surveyed twice by us and once by the former owner.

The lot size was confirmed at the coastal administrator hearing in Fort Bragg by the Planning Department.

9 of 25

Jon Thompson
P.O. Box 1554
Gualala, CA
95445

To whom it may concern:

I was asked to look at the trees that lie within the planned foot print of Noren Schmitt's and Deirdra Claiborne's proposed house site located at 36951 Rd. 526; Approximately 1.3 miles south of Anchor Bay, Mendocino County.

I observed that the Bishop pine that stands at the far north boundary of proposed house site is dead. The other pines are showing varying degrees of necrotic branches and all are exhibiting yellow to red unwilted tip needles and globose or pear shaped swellings (galls) on branches; symptomatic of western gall rust. Relatively sudden death can occur when secondary invaders such as fungi or insects infect the already stressed trees.

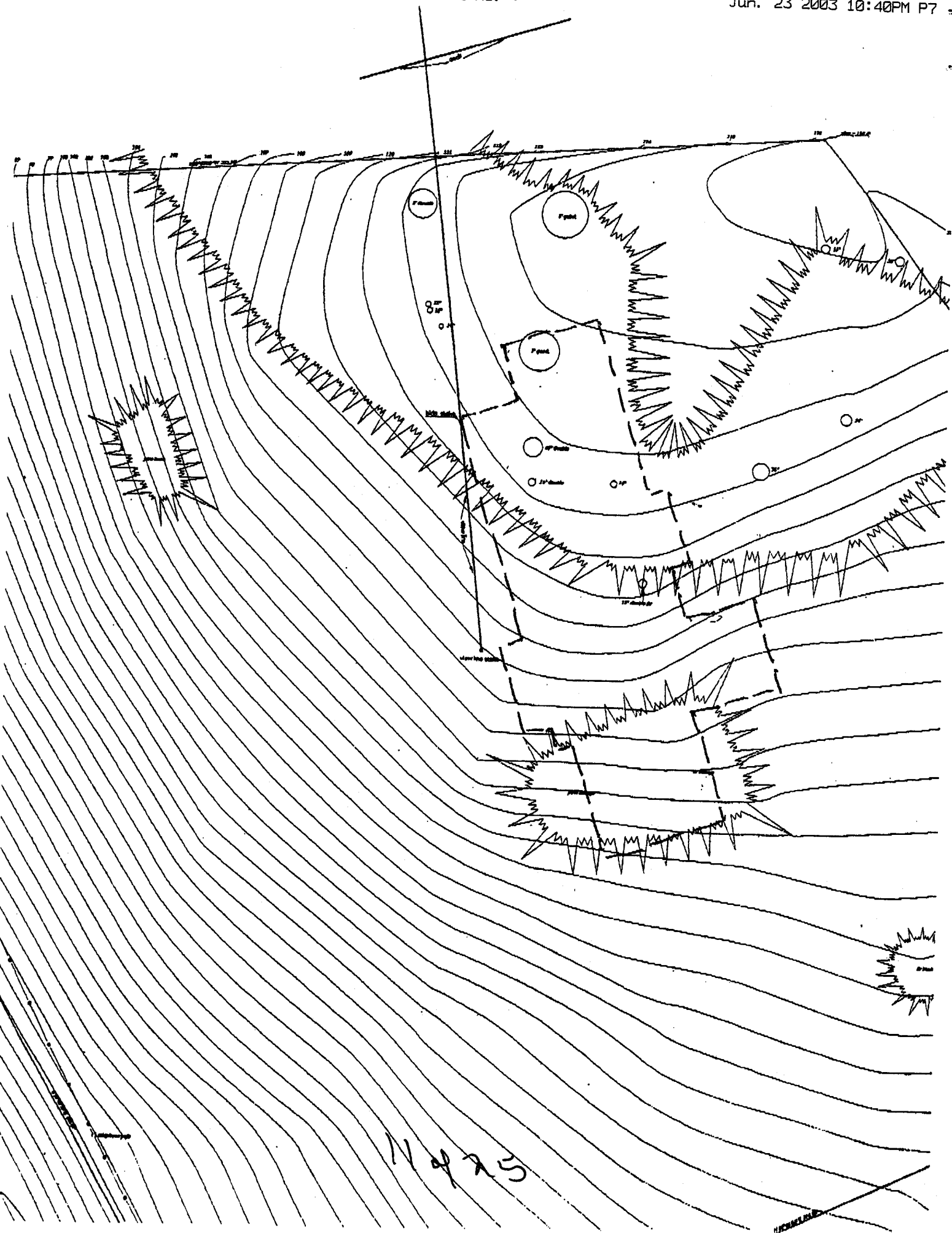
The tree with multiple trunks (south of dead pine) is showing relatively more necrotic branches indicating secondary pathogens are at work. It appears as though these trees may die soon.

The Douglas fir within the house boundary is relatively healthy but showing signs of weathering from the wind.

Sincerely,

Jon Thompson
Botanist

10 of 25



View from north side of Cook's Beach

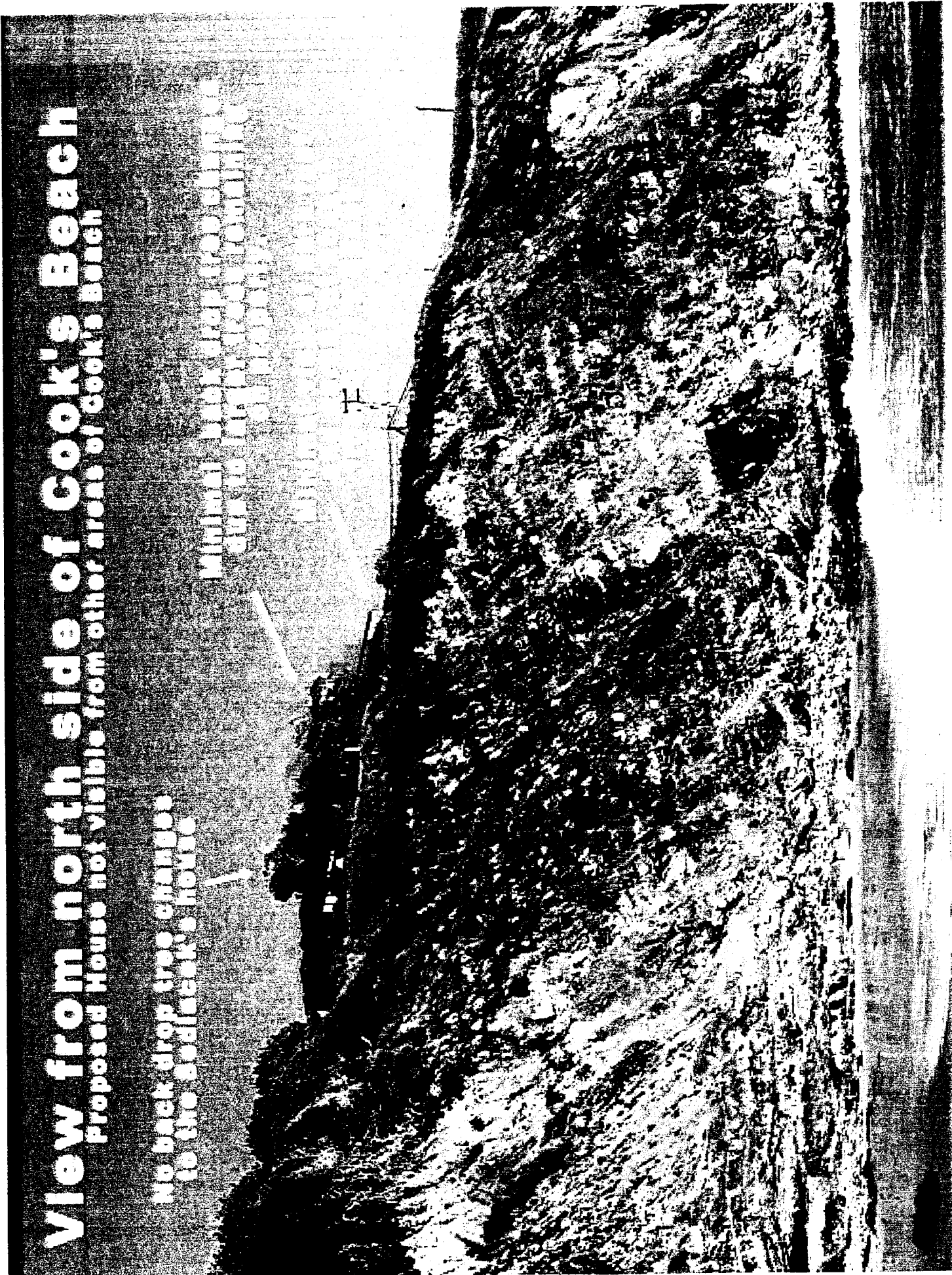
Proposed House not visible from other areas of Cook's Beach

No back drop tree changes
to the Sedmeck's house

Minimal back drop tree changes
due to irregular tree remaining
in property.

Minimal back drop tree changes

17 of 25



View from mid section of Cook's Beach

Story poles are not visible from here, proposed structure has no visual impact Sadecek's house is visible.



13425

**View from southern part of property.
Space between property and Road 526 is 120 feet or more
Structure fits into landscape and will be screened more by
planting new trees in front of structure.**



5 large, healthy bishop pines will remain and provide backdrop from Cooks Beach

1 bishop pine with only one limb to be removed at this height

Roof line

Small's line

3 (b) trees to be removed
brittle and disba

Height comparison of trees

15425



5 very large bishop pines to stay as a back drop for both houses

5

2

4

1

3

Other trees between the 2 properties also remain

16 of 25



to be removed

view of remaining trees
towards south

17925

FAX

7 pages including cover sheet

June 18, 2003

To:

California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 955501
Attn.: Jim Basken

Re: CDP 19-02 Application for Coastal Development Permit

Application # 1-MEN-02-089

From:

Noren Schmitt
Deirdra Claiborne
62 Forbes Ave.
San Rafael, CA 94901
415 455 9092

RECEIVED

JUN 19 2003

CALIFORNIA
COASTAL COMMISSION

18 of 25

June 17, 2003

California Coastal Commission
North Coast District Office
710 E. Street, Suite 200
Eureka, CA 955501
Attn.: Jim Basken

RECEIVED

JUN 19 2003

CALIFORNIA
COASTAL COMMISSION

Re: CDP 19-02 Application for Coastal Development Permit

Application # 1-MEN-02-089

Response to Susie and Fred Sedlacek request for denial

Dear Jim,

I included a response to the request for denial for our application. Please don't hesitate to call me anytime with any questions or clarifications.

We see no substantial issues raised by Susie and Fred Sedlacek and hope you will propose a "no substantial issue" ruling at the hearing. Our documentation will show clearly that the proposed placement is consistent with the surrounding structures, has almost no visible impact from public beaches (Cooks Beach) and fits harmonious into the landscape. The remaining trees create a visual enclosure for both properties. We have contracted a botanist to inspect the trees in question for removal and I have had a conversation last night about his inspection that confirms my findings. He stated that one of the 4 bishop pine trees was dead, two other were close to it. one small bishop pine was in regular health, but showed signs of problems. That tree has 2 healthy limbs. The remaining tree is a small coastal fir tree that is very thin. I will forward the report as soon as possible (Thursday).

Thank you for your consideration.

Noren Schmitt
62 Forbes Ave.
San Rafael, CA 94901
415 455 9092

19 of 25

Response from Noren Schmitt and Deirdra Claiborne

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20 9 25

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Other Questionable lot size:

Our lot has been identified as + 1.1 acres and has been surveyed twice by us and once by the former owner.

The lot size was confirmed at the coastal administrator hearing in Fort Bragg by the Planning Department.

21 of 25

Final Statement

We see no substantial issues raised by Susie and Fred Sedlacek and hope you will propose a "no substantial issue" ruling at the hearing.

We have some additional information we like to share with you.

The only reason we have an appeal on our property is because the Sedlaceks don't want a house next to them. They bought a house that is built almost on the property line and has minimal trees surrounding it. They tried to purchase our land from us at the time they purchased their house. We denied that proposal and made sure they were aware of our plans to build a new house on our land. She was made aware of her southern view limitations by both real estate agents as well as myself and our neighbor and at that time Architectural review committee head Ralph Matheson.

We have a signed agreement from Susie and Fred Sedlacek committing to the position of the house. The house was designed according to the signed agreement between the applicant and the Sedlacek's. We walked the entire house perimeter that was outlined with orange tape.

They are in breach of that contract.

We have a letter, that states that she wanted the house moved to this position, according to her CC&R reference.

In fact, we are in compliance with the CC&R and are backed up by the designer of the house, Ralph Matheson, as well as the original owner of the property, Mr. Vail.

Some information regarding the CC&R:

As stated by the architect of the house, Ralph Matheson, as well as the Vail's, the original owner of the property, and the real estate agents that sold the property to the Sedlacek's, "there was no southern view at the time of construction". The CC&R's refer to the time the building was constructed and the view's that existed at that time. The Sedlacek's only refer to the view they have now, after the applicant did some tree trimming to prepare the site for construction. The views were created at that time and did not exist prior to the trimming of the trees."

CC&R

The CC&R 3.1 states... (4) parcels the view available at the time said residence structure was constructed..."

This view question only arises because the applicant was in the process of cutting trees on his property to prepare for construction when the Sedlacek's entered into the purchase of their home to the north.

The Sedlacek's did agree that it was disclosed to them that the "southern view" (which was created by cutting of the applicant's trees) were not part of their purchase prior to escrow closing.

Comments from Ralph Matheson, at the time Head of the Architectural Review Committee:

22 of 25

"I think that Noren and Deirdra have been most accommodating in compromising from their original design and siting. They have made major concessions in design and relocation. I think it is time to agree that this is the best solution and let them go forward with the project.

Susie, while I realize that this does not give you all the Southern views you would like to have, please recall that on several occasions I, and I believe others, discussed with you that the southern view was not part of your purchase. When I designed this house with the Vail's the southern kitchen and dining views were to the trees with no ocean view southward. I understand that there has been discussion in the past by Noren and yourselves that he would add plantings between the two properties as screening to give both houses privacy. I have also discussed this with you."

I had a phone conversation with the Vail's (original owners of the House) and they told me that there were no southern ocean views from the kitchen and dining room areas at the time of construction. They had fantastic ocean views to the west and north (which the Sedlacek's still have).

We have written approvals from the other two owners (Matheson and McNeely) of the Rhoades 4 parcel subdivision, with both owners welcoming us to the neighborhood and wishing us the best for a speedy approval.

We feel that we have taken the utmost care in designing a modest size house, same size as our neighbors. We have worked hard with the Planning Department, Neighbors, Botanical Specialists, Department of Fish and Game and GMAC to find the best possible solution for the placement and design. Robert Dostalek of the Planning Department as well as Gene Cooley of DFG both found the placement of the house the best possible solution given the restrictions of rare plants, views from public beaches as well as Hyw 1.

We have made major compromises, moving the house 32 feet back to the east and 26.5 feet to the south, that is 7.5 feet more than Sedlacek's requested. Also we reduced the size of the house and removed a guest cottage above the garage to overall minimize the impact of the structure.

**Noren Schmitt
Deirdra Claiborne
62 Forbes Ave
San Rafael
CA 94901
415 455 9092**

Documents in file:

- 1) Written agreement between applicants and appellants**
- 2) Written approval for proposed structure from Barbara and James McNeely
CC&R Neighbors**
- 3) Written approval for proposed structure from Cora and Ralph Matheson
CC&R Neighbors**
- 4) Letter from Michael Combs (Banana Belt Properties Real Estate Agent)**
- 5) Letter from Susie and Fred Sedlacek to Ralph Matheson (Architectural Review
Committee Chair at that time)**

23 of 25

Jon Thompson
P.O. Box 1554
Gualala, CA
95445

To whom it may concern:

I was asked to look at the trees that lie within the planned foot print of Noren Schmitt's and Deirdra Claiborne's proposed house site located at 36951 Rd. 526; Approximately 1.3 miles south of Anchor Bay, Mendocino County.

I observed that the Bishop pine that stands at the far north boundary of proposed house site is dead. The other pines are showing varying degrees of necrotic branches and all are exhibiting yellow to red unwilted tip needles and globose or pear shaped swellings (galls) on branches; symptomatic of western gall rust. Relatively sudden death can occur when secondary invaders such as fungi or insects infect the already stressed trees.

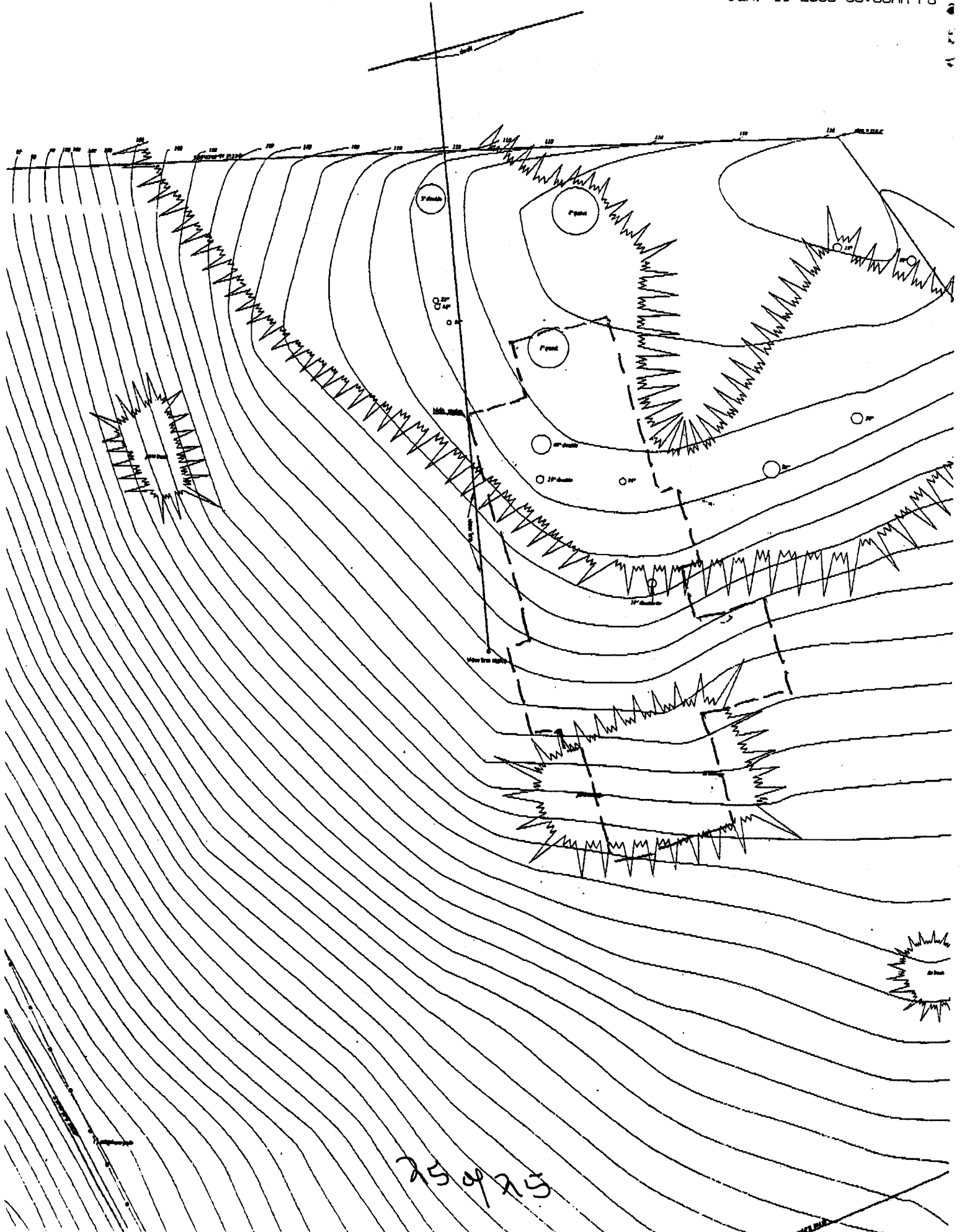
The tree with multiple trunks (south of dead pine) is showing relatively more necrotic branches indicating secondary pathogens are at work. It appears as though these trees may die soon.

The Douglas fir within the house boundary is relatively healthy but showing signs of weathering from the wind.

Sincerely,

Jon Thompson
Botanist

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