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Staff:	Randall Stemler
Staff Report:	September 30, 2004
Hearing Date:	October 14, 2004
Commission Action:	

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE & DE NOVO**

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	A-1-MEN-04-030
APPLICANT:	Thomas P. Bangs
PROJECT LOCATION:	37100 North Highway One, Westport, Mendocino County (APN 013-280-03).
PROJECT DESCRIPTION:	Construction of a 1,762-square-foot, 3-story, 2-bedroom, 1½-bath residence with a maximum height of 35 feet above finished grade, with a 1-car garage, exterior lighting, driveway, LPG tank, and connections to utilities. Also, variances to setbacks along Highway One would allow 45 feet instead of the required 60 feet, and along Omega Drive would allow 18 feet instead of 45.
APPELLANT:	Rob Millberry
SUBSTANTIVE FILE: DOCUMENTS	1) Mendocino County CDP No. 89-03, CDV 17-03, and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

1. Summary of Staff Recommendation: Substantial Issue

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

The project site is located within the rural village of Westport, about 15 ½ miles north of Fort Bragg, Mendocino County. The property is located on a corner lot west of Highway One between the highway and the ocean, and on the north side of Omega Drive, the first public road inland from the sea. This property is a coastal blufftop parcel, but is not in an area designated as highly scenic. The approximately 6,004-square-foot property is situated on a narrow approximately 38-foot-wide lot that is approximately 177 feet long on the south boundary along Omega Drive and approximately 139 feet long on the north property boundary adjacent to a neighboring, two-story, single-family residence. The majority of houses in Westport are two-story structures.

The development, as approved by the County, would involve construction of a 1,762-square-foot, 2-bedroom, 1½-bathroom, single-family residence built no higher than 35 feet above finished grade, with an attached 1-car garage, driveway, exterior lighting, LPG tank, and connections to utilities. Also, variances to setbacks along Highway One would allow 45 feet instead of the required 60 feet, and along Omega Drive would allow 18 feet instead of 45. The building footprint of the house is only 52 feet long by 24 feet wide. The narrowness of the lot, blufftop constraints, and yard setbacks limit the developable portion of the property. Thus the owner has designed a house with two stories plus a small room and observation deck on the third level. The house would have two conical roof elements, with lower gable roofs over the majority of the residence.

An appeal has been filed by Thomas P. Bangs alleging that the County's approval of the development is inconsistent with provisions of Mendocino County's certified LCP. Specifically, the appellant alleges that the project as approved would: (1) contribute to geologic instability; (2) not employ erosion, runoff and sedimentation control measures as required; (3) not provide for sufficient off-street parking; (4) be inconsistent with the scope and visual character of the town of Westport; (5) be inconsistent with view protection requirements; (6) allow for a lot size that is too small; (7) allow inappropriate granting of variances; (8) not conform with building site area requirements; (9) not provide for sufficient public participation; and (10) not protect environmentally sensitive habitat area (ESHA) resources.

Commission staff recommends that the Commission find that the development as approved by the County, raises a substantial issue of conformance with only the certified LCP policies intended to (1) promote geologic stability; (2) provide erosion, runoff and sedimentation control measures; and (3) provide sufficient off-street parking. In regard to promoting geologic stability, the appellant contends that the recommended bluff setback is not supported by adequate analysis to protect the

approved development from cliff recession. After reviewing the geologic report, staff found that the report did not contain enough information to demonstrate that the proposed house would be protected from bluff retreat over the lifespan of the project and that a more thorough analysis is needed, thus raising a substantial issue of conformance with the certified LCP. In regard to proposed erosion, runoff and sedimentation measures, the appellant asserted an inconsistency of the certified LCP with the County approval stating that development on the subject parcel would greatly increase the storm water runoff load on Omega Drive and associated drainage systems. Staff is concerned that the proposed drainage system for the new development would overwhelm the existing County road drainage system raising a substantial issue of conformance with the certified LCP. Finally, in regard to sufficient off-street parking, the appellant contends that inadequate space is provided. Staff believes that the project as approved by the County would clearly not provide adequate off-street parking as required, raising a substantial issue of conformance with the certified LCP. Staff further recommends that the Commission find that no substantial issue is raised with respect to all of the other contentions presented including scope and visual character, view protection, size of lot, inappropriate granting of variances, conformance with building site area requirements, public participation, and ESHA protection.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 6.

2. Summary of Staff Recommendation *De Novo*: Approval with Conditions

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

For purposes of *de novo* review by the Commission, the applicant has submitted additional information since the time the County originally approved the project prior to the appeal to the Commission, that answers questions previously raised regarding the geotechnical analysis and justifies proposed geologic setbacks. Additionally, the applicant has revised the project description to include a drainage runoff control plan that eliminates the original proposal to route drainage to Omega Drive, which has insufficient drainage capacity, and instead routes the drainage to bedrock on the subject property in a manner consistent with the recommendations of the Commission Staff Geologist and with the LCP. The applicant has also provided a revised parking plan that details the locations for two parking spaces of adequate size to provide sufficient off-street parking to meet the requirements of the certified Coastal Zoning Code (CZC). As currently proposed and with certain conditions, the revised project can be found to be consistent with the County's certified LCP and with the public access and recreation policies of the Coastal Act. Staff is recommending that the Commission attach the following special conditions:

Special Condition No. 1 requires a deed restriction be recorded against the subject parcel indicating that the Commission has authorized development subject to specific terms and conditions and notifying any future owners that these special conditions are imposed as covenants, conditions and restrictions on the use and enjoyment of the property.

Special Condition No. 2 requires the applicant prior to issuance of the permit to submit to the Executive Director for review and approval a revised Erosion and Runoff Control Plan that incorporates design elements and/or Best Management Practices, which will serve to minimize the velocity and improve the quality of storm water runoff leaving the developed site during and immediately after construction, and over the long term for the life of the project.

Special Condition No. 3 requires the applicant prior to issuance of the permit to submit to the Executive Director for review and approval evidence demonstrating that the applicant has been granted any required use permit from the County of Mendocino for development of the storm water runoff drainage control system, or evidence that no use permit is legally required.

Special Condition No. 4 requires the applicant prior to issuance of the permit to submit to the Executive Director for review and approval evidence of an exemption or an encroachment permit from Mendocino County authorizing the applicant to develop a driveway entrance from Omega Drive to serve the subject property.

Special Condition No. 5 prohibits bluff or shoreline protective devices from ever being constructed to protect the development approved by this permit and to require removal of the residential development if the structures cannot be occupied due to geologic hazards.

Special Condition No. 6 requires the applicant (1) acknowledges and agrees that the site may be subject to geologic hazards, (2) assumes the risks of injury and damage from such hazards, and (3) waives any claim of damage or liability against the Commission, officers, agents, and employees for injury or damage from such hazards.

Special Condition No. 7 requires an amendment or additional coastal development permit for any future improvements to the permitted structures to ensure the Commission will be able to review future additions or modification for conformance with the certified LCP.

Special Condition No. 8 requires that all exterior lighting be the minimum necessary, be low-wattage, non-reflective, shielded, and have a directional cast downward.

Special Condition No. 9 states that this action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

As conditioned, staff recommends that the Commission find that the project is consistent with the County's certified LCP and with the public access and recreation policies of the Coastal Act.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on Page 43.

STAFF NOTES:

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

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

The subject development is appealable to the Commission because the proposed house is located (1) between the sea and the first public road paralleling the sea; (2) within 300 feet of the mean high tide line; (3) within 300 feet of the top of the seaward face of a coastal bluff; and (4) within a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "*those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,*" including, among other categories, "*Special communities or neighborhoods which are significant visitor destination areas.*" The approved development is located within the rural village of Westport, which is an area designated in the LCP as a "*special neighborhood*" and, as such, is appealable to the Commission.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

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.

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

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

2. Filing of Appeal

An appeal was filed by Rob Millberry (Exhibit No. 5). The appeal was filed with the Commission in a timely manner on May 26, 2004 within 10 working days of receipt of the County's Notice of Final Action (Exhibit No. 6) by the Commission on May 12, 2004.

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 June 23, 2004, prior to the 49th day after the filing of the appeal, the applicants submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49 days from the date the appeal had been filed.

PART ONE—SUBSTANTIAL ISSUE

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-04-030 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 finds that Appeal No. A-1-MEN-04-030 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 Program and/or the public access and recreation policies of the Coastal Act.

I. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS:

The Commission received one appeal from Rob Millberry of the County of Mendocino's decision to approve the development.

The project as approved by the County consists of construction of a 1,762-square-foot, 3-story, 2-bedroom, 1½-bathroom, residence with a maximum height of 35 feet above finished grade, with an attached 1-car garage, driveway, exterior lighting, LPG tank, and connections to utilities. The County also approved variances to setbacks along Highway One (60 feet from the centerline to 45 feet) and Omega Drive (45 feet from the centerline to 18 feet). Westport County Water District would provide water and sewer services. The project site is located along the Mendocino County coastline, in the rural village of Westport, on the west side of the road at 37100 North Highway One (APN 013-280-03).

The appeal raises ten (10) contentions involving alleged inconsistencies with the County's LCP policies and standards related to (1) geologic stability (2) erosion, runoff and sedimentation control, (3) off-street parking, (4) scope and visual character, (5) view protection, (6) size of lot, (7) inappropriate granting of variances, (8) conformance with building site area requirements, (9) public participation, and (10) ESHA protection.

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

1. Geologic Stability

The appellant contends that the project as approved, is inconsistent with the provisions of several Mendocino County Local Coastal Program (LCP) policies and standards concerning geologic

stability, including LUP Policy 3.4-7 and CZC Section 20.500.020(B)(1), which require new structures to be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks must be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances are to be determined from information derived from the required geologic investigation that takes into account the retreat rate determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation. The appellant contends that the recommended bluff setback is not supported by adequate analysis to protect the approved development from cliff recession.

2. Erosion, Runoff and Sedimentation Control

The appellant contends that the approved development is inconsistent with (1) LUP Policy 3.4-9 that surface and subsurface drainage not contribute to the erosion of the bluff face or to the instability of the bluff itself, (2) provisions of CZC Section 20.492.010 that require adjoining property be protected from potential soil erosion, and erosion and sediment control measures to be installed, and (3) CZC Section 20.492.020(A) that requires sediment catchment measures be employed to remove sediment from runoff wastes that may drain to environmentally sensitive areas from land undergoing development. The appellant believes that the increase in runoff from the subject property directed to the County road might exacerbate off-site bluff erosion or cause instability of the bluff itself without any mitigation provided to protect water quality.

3. Off-Street Parking

The appellant contends there is an inconsistency of the County approval with CZC Chapter 20.472 requiring sufficient off-street parking. In particular, the appellant contends that the project as approved does not provide two off-street spaces as required by CZC Section 20.472.015(A) and the project as approved is inconsistent with CZC Section 20.472.010 (J) regulating the size required for off-street parking spaces. The appellant contends that the failure to comply with the policy requirements will lead to hazardous traffic conditions at the intersection of Highway One and Omega Drive.

4. Scope and Visual Character

The appellant maintains that the approved structure would be "inappropriate in proportion to the character of the rural atmosphere and visual quality of the village of Westport." The appellant asserts that the approved house would "appear as a cereal box (albeit a peaked one) with a maximum height of 35 feet on a footprint much narrower than the height. The proportions (not the design) are those of a row house, which is inappropriate to the Rural Village zone. The structure is 45% higher than it is wide, viewed from Highway 1 or the ocean. The proposal is simply inappropriate for a structure of this size because the lot is too small." The appellant contends that the project as approved is inconsistent with LUP Policy 3.5-1 requiring that the scenic and visual qualities of Mendocino County coastal areas to be considered and protected as a resource of public importance, development be visually compatible with the character of surrounding areas, and that new development in highly scenic areas designated by the County of Mendocino Coastal Element

be subordinate to the character of its setting. Additionally, the appellant contends there is an inconsistency of the County approval with (1) LUP Policy 3.5-2 that Westport have special protection to the extent that new development remains within the scope and character of existing development, (2) with LUP Policy 4.2-4 that requires future development of the rural village of Westport to be compatible with existing development relative to the scope and character, (3) CZC Section 20.504.010, which ensures that development be visually compatible with the character of surrounding areas and (4) CZC Section 20.504.020(B), which designates Westport as a neighborhood entitled to receive special protection as set forth in CZC Section 20.504.020(C) requiring the scale of new development (building height and bulk) to be within the scope and character of existing development in the surrounding neighborhood.

5. View Protection

The appellant believes that the project as approved by the County would block an important view from Highway One through the lot to the ocean and also have an adverse effect on the view from the ocean. The appellant contends there that the project as approved by the County is inconsistent with several provisions of the certified LCP regarding protection of public views. LUP Policy 3.5-1 requires the scenic and visual qualities of Mendocino County coastal areas be considered and protected as a resource of public importance, and that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. CZC Section 20.504.010 ensures that development be sited and designed to protect views to and along the ocean and scenic coastal areas. CZC Section 20.504.020(C)(2) requires new development be sited such that public coastal views are protected; and CZC Section 20.504.020(C)(4) requires building materials and exterior colors be compatible with those of existing structures. CZC Section 20.504.020(D) also requires that the scenic and visual qualities of Mendocino County Coastal Areas be protected as a resource of public performance, and permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas.

6. Size of Lot

The appellant contends that the project as approved by the County raises is inconsistent with the LUP 2.2 description of Rural Village lot size and permitted use types, and with the use and minimum lot size requirements of CZC Sections 20.388.020 and 20.388.025. The LUP and CZC require a minimum parcel size of 6,000 square feet for property within the RV District that is also within a water and sewer service area, and limit the maximum dwelling density of RV parcels within water and sewer service areas to one single-family residence.

7. Inappropriate Granting of Variances

The appellant contends that the project as approved by the County is inconsistent with the variance provisions of the certified LCP. Variances were granted for reduced setbacks from Highway One and Omega Drive. The appellant asserts that (1) the variances are not "minor" adjustments, (2) that the variances would be detrimental to the public welfare, and (3) that the applicant would receive privileges not afforded to others. As a result, the appellant asserts the variances are inconsistent with the requirements of (1) CZC Section 20.540.005 that the purpose of a variance is to provide an

exception from zoning restrictions in the case of special circumstances applicable to property, when the strict application of the zoning ordinance would deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification, and (2) CZC Section 20.540.020 that such variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of... special circumstances and that the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

8. Conformance with Building Site Area Requirements

The appellant asserts that the approved development is inconsistent with CZC Section 20.304.025. This section is a general section of the zoning ordinance which states that the Zoning Enabling Plan is intended to provide a degree of protection in the unincorporated area of the Coastal Zone of Mendocino County for all uses of land within any particular zoning district by prohibiting all uses of land not allowed by specific provisions of the CZC, including the requirement that no building be erected, nor any existing building be altered, enlarged or rebuilt, nor any open space be encroached upon or reduced in any manner, except in conformity to the yard, building site area and building location regulations designated in the zoning code for the zoning district in which such building or open space is located, except as provided in Chapter 20.480 (the nonconforming uses and structures provision). The appellant contends that the County's approval of the proposed development is inconsistent with CZC Section 20.304.025 because the applicant was granted a variance "so disproportionate" that the resulting structure is not in conformity with the Rural Village zoning.

9. Public Participation

The appellant contends that the project as approved by the County is inconsistent with CZC Section 20.536.010(B) providing for a fair hearing of public concerns. The appellant asserts that the County "discounted opposition to this development," and "[a] fair hearing of public concerns should be conducted."

10. ESHA Protection

The appellant contends that the project as approved by the County is inconsistent with the ESHA protection policies of the certified LCP. The appellant asserts that the "process of building this huge house on such a narrow lot is very likely to cause damage to the flora and fauna of the sea cliff during the construction phase. A thorough analysis should be conducted with appropriate mitigation." The appellant calls for a "more rigorous analysis of the flora and fauna of the sea cliff," and believes that this analysis "should be undertaken to insure that the process of construction of this development does not disrupt either [flora or fauna]." Relevant LCP provisions include: (1) LUP Policy 3.1-2 that development proposals in environmentally sensitive habitat areas such as sensitive plant habitats be subject to special review to determine the current extent of the sensitive resource; (2) LUP Policy 3.1-7 that a buffer area be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the ESHA from significant degradation resulting from future developments; (3) CZC Section 20.496.015(A) that

developments that have the potential to impact an ESHA be subject to a biological survey prepared by a qualified biologist; and (4) CZC Section 20.496.020 that provides the criteria by which buffers are to be established in order to protect ESHA resources.

B. LOCAL GOVERNMENT ACTION:

On April 29, 2004, the Mendocino County Coastal Permit Administrator approved with conditions a Coastal Development Permit for the subject development. The County attached to its coastal development permit five special conditions summarized below and attached in their entirety as Exhibit No. 6.

Special Condition No. 1 requires the building and site development to be designed and maintained in conformance with the recommendations contained in the engineering geologic investigation report prepared by Jim Glomb dated July 28, 2003.

Special Condition No. 2 requires the applicant prior to issuance of the coastal development permit to record a deed restriction indicating: (a) that the landowner understands the site may be subject to extraordinary geologic and erosion hazards and assumes the risks from such hazards; (b) the landowner agrees to indemnify and hold harmless the County of Mendocino against any and all claims arising out of any work performed in connection with the permitted project; (c) that the landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant; (d) the landowner shall not construct any bluff or shoreline protective devices to protect the improvements in the event that these structures are subject to damage or erosion; (e) the landowner shall remove the development when bluff retreat reaches the point at which the structure is threatened. If improvements associated with the development fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with the structure from the beach and ocean and lawfully dispose of the material in an approved disposal site; and (f) the coastal development permit shall run with the land and bind all successors and assignees.

Special Condition No. 3 requires that prior to the issuance of the building permit, design plans shall be submitted for approval of all exterior lighting fixtures to ensure that they are located and/or shielded so that only reflected, non-glaring light is visible from beyond the parcel boundaries.

Special Condition No. 4 requires that prior to the issuance of the building permit, a document shall be recorded granting to the County for roadway purposes, the southerly six feet of the subject property, along with a 15-foot by 15-foot triangular wedge at the intersection of Omega Drive and Highway One.

Special Condition No. 5 requires that prior to the issuance of a building permit, the applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation and construct appropriate improvements to protect the County road during the construction phase of the project.

The decision of the Coastal Permit Administrator was not appealed at the local level to the Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on May 12, 2004, (Exhibit No. 6). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals. The project was appealed to the Coastal Commission in a timely manner on May 26, 2004, within 10 working days after receipt by the Commission of the Notice of Final Action.

C. PROJECT LOCATION AND SITE DESCRIPTION:

The project site is located within the rural village of Westport, about 15 ½ miles north of Fort Bragg, in Mendocino County. The property is located on a corner lot west of Highway One between the highway and the ocean, and on the north side of Omega Drive (Exhibit Nos. 1, 2, and page 1 of Exhibit No. 10). This property is a coastal blufftop parcel, situated on a sloping marine terrace about 35 feet above a broad sandy beach located at the toe that is accessible by the public from the westernmost corner of Omega Drive. The bluff face is somewhat irregular. The lower bedrock bluffs are mostly bare rock with slope gradients generally of 45 degrees to nearly vertical in some spots, and are reached by the ocean waves during high tides and storms. The upper bluffs are heavily vegetated with brush and berry vines. The subject property is currently a vacant lot that affords views of the ocean from Highway One and Omega Drive, but is not in an area designated as highly scenic. The approximately 6,004-square-foot property is situated on a narrow approximately 38-foot-wide lot that is approximately 177 feet long on the south boundary along the Omega Drive-side of the property and approximately 139 feet long on the north property boundary adjacent to a neighboring, two-story, single-family residence. The subject property is within and surrounded by the Rural Village zoning designation, with residential land use as a principal permitted use occurring to the south and north of the property along Highway One. The majority of houses in Westport are two-story structures. No environmentally sensitive habitat is known to exist on the property.

D. PROJECT DESCRIPTION

Approval has been granted by the County for the proposed development, which would consist of construction of a 1,762-square-foot, partial 3-story, 2-bedroom, 1½-bath residence with a maximum height of 35 feet above finished grade, with a 1-car garage, exterior lighting, driveway, LPG tank, and connections to utilities, including municipal water and sewer services. Also, variances to setbacks along Highway One would allow 45 feet instead of the required 60 feet, and along Omega Drive would allow 18 feet instead of 45. The house would be built about 80 feet back from the top of the sea cliff bluff. The architectural style of the residence would be Victorian with a few nautical accents. The house is essentially a two-story design with a "crow's nest" enclosed deck within the confines of the roof's attic space intended to create a "lighthouse" look. The exterior colors and materials would be white wooden-appearing siding and trim, brick chimney base and white chimney stack, red or gray composition-shingled roof, with white vinyl window frames, and red wooden doors.

E. 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.

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

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

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

All ten (10) of the contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines with respect to the contentions concerning the consistency of the project as approved with the provisions of the LCP regarding (1) geologic stability, (2) erosion, runoff and sedimentation, and (3) off-street parking, the appeal raises a substantial issue of conformity of the approved project with the certified Mendocino County LCP.

Contentions Raising Substantial Issue:

1. Geologic Stability

The appellant contests the County approval of the project on the grounds that the approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to minimize geologic hazards.

LCP Policies and Standards:

LUP Section 3.4-7 states:

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

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

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

All grading specifications cited in the Uniform Building Code or the engineering geologists report.

Zoning Code Section 20.500.010(A) states that development shall:

- (1) *Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) *Assure structural integrity and stability; and*
- (3) *Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Zoning Code Section 20.500.015(A) states, in applicable part:

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

- (2) *Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required...*

Coastal Zoning Code Section 20.500.020 dealing with geologic hazards, siting, and land use restrictions states in applicable part:

...

(B) Bluffs.

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

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

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

- (2) *Drought tolerant vegetation shall be required within the blufftop setback.*
- (3) *Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*
- (4) *No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase access ways to beaches and pipelines to serve coastal-dependent industry. These developments shall only be allowed as conditional uses, following a full environmental, geologic and engineering review and upon a finding that no feasible, less environmentally damaging alternative is available. Mitigation measures shall be required to minimize all adverse environmental effects.*

...

(E) Erosion.

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. ...

Discussion:

CZC Section 20.500.015 requires that the approving authority review all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff top lots to ensure that new development will be safe from bluff erosion and cliff retreat. To this end,

LUP Policy No. 3.4-7 and Coastal Zoning Code Sections 20.500.010 and 20.500.020 direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas over a full 75-year economic lifespan for the development.

The subject property is a small trapezoidal blufftop parcel situated on a stepped coastal terrace. The lot measures approximately 38 feet along the east side, 177 feet along the south side, and 139 feet along the north side. The shoreline bluff runs for approximately 54 feet along the west side of the property. Topographically, the eastern portion of the property is gently to moderately sloped west toward the upper terrace edge (that runs approximately 54 lineal feet north to south) before dropping about 35 feet at an average inclination of approximately 43 degrees to a rock and sand shoreline and the ocean. The property is thickly vegetated with brush. Geologic materials exposed at the site consist of terrace deposits overlying sedimentary bedrock. The estimated 15 to 20-foot-thick terrace deposits consist of unconsolidated gravelly sand prone to erosion and sloughing. A 3 to 6-foot-deep gully exists within the terrace deposits in the center near the western edge of the parcel that runs west toward the sea cliff. Underlying the terrace soils, and exposed in the sea cliff profile is a hard, gray, sandstone. CZC Section 20.500.015(A)(2), requires that a geologic investigation be prepared for development of the bluff edge lot.

The Engineering Geologic Evaluation dated July 28, 2003, and submitted with the project application was prepared by certified Engineering Geologist Jim Glomb (Exhibit No. 8). The report contains the following conclusions with respect to the rate of bluff retreat and site stability:

Based on analysis of stereo pairs of air photos, no appreciable seacliff retreat was detected. However, it would be prudent to assume a minimal retreat rate of 1/2 foot per year. Over a 75 year life expectancy, if conditions remain the same, the estimated maximum accumulated retreat at the site would be about 27.5 feet. From a seacliff stability viewpoint it is considered feasible to construct a residence at least 37.5 feet from the top of seacliff.

The appellant contends that the recommended bluff setback is not supported by adequate analysis to protect the approved development from cliff recession. The appellant states:

The geotechnical work done for this development is inadequate... Their geostudy establishes an artificial "projected bluff terminal point" in midair as the edge from which to measure setback. This makes no sense. The setback should be measured from the actual edge of the bluff lot. Air photos from 1972 and 1981 were used to estimate "no appreciable retreat." The author used 0.5 feet/year. However air photos are not accurate. The two parcels of land adjacent to this lot have seen much higher rates of retreat in recent years. The back yard (over 100 sq feet) at 37110 washed away in one rainstorm in the 1960s. The edge of Omega Drive has changed from a slope to near vertical, on the way to becoming undercut... A much more thorough and accurate geologic investigation should be conducted...

In reviewing the appeal, the Commission's North Coast District staff consulted with the Commission's staff geologist, Dr. Mark Johnsson, and provided him with a copy of the original

engineering geologic report dated July 28, 2003 for his review. After reviewing the report, Dr. Johnsson indicated that the geologic report did not contain enough information to demonstrate that the proposed house would be protected from bluff retreat over the lifespan of the project and a more thorough analysis was needed. Dr. Johnsson indicated that the use of only two aerial photos representing a span of nine years is not sufficient to forecast the average rate of bluff retreat for the 75-year economic lifespan of the residential development. In addition, the methodology for determining the "top of bluff" may have led to results that are not necessarily accurate. Furthermore, no particular setback was well justified by the results of the study performed. LUP Policy 3.4-7 requires new structures to be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks must be of sufficient distance to eliminate the need for shoreline protective works to be consistent with the requirements of CZC Section 20.500.010(A)(3), which states that new development shall not in any way require the construction of shoreline protective devices. Adequate setback distances are to be determined from information derived from the required geologic investigation that takes into account the retreat rate determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation. Because the geotechnical evaluation only used two aerial photographs, representing a mere 9-year time span, the lack of adequate historical evidence for determining the average rate of bluff retreat for the subject property raises a substantial issue of conformance of the project as approved with the requirements of LUP Policy 3.4-7 that "adequate setback distances will be determined from information derived from the required geologic investigation." Without historical evidence of the bluff retreat rate, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP provisions that new structures be setback a sufficient distance from the bluff edge.

Therefore, the Commission finds that the project as approved raises a substantial issue of conformance of the local approval with the requirements of LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B)(1) that new structures shall be setback a sufficient distance from the edge of bluffs to ensure their safety from bluff retreat during their economic life spans.

2. Erosion, Runoff and Sedimentation Control

The appellant contends that the County approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to minimize erosion and protect water quality.

LCP Policies and Standards:

LUP Policy 3.4-9 states:

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

CZC Standard 20.492.010 in applicable part states:

...

- (F) *Adjoining property shall be protected from excavation and filling operations and potential soil erosion.*
- (G) *The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.*

CZC Standard 20.492.020(A) dealing with sedimentation standards states:

Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.

CZC Section 20.492.025(A) dealing with runoff standards states:

Water flows in excess of natural flows resulting from project development shall be mitigated.

Discussion:

LUP Policy 3.4-9 requires that development landward of the blufftop setback be constructed to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself. Provisions of CZC Section 20.492.010 require adjoining property to be protected from potential soil erosion, and erosion and sediment control measures to be installed. CZC Section 20.492.020(A) requires that sediment catchment measures be employed to remove sediment from runoff wastes that may drain to environmentally sensitive areas from land undergoing development.

The appellant contends that the project as approved by the County raises a substantial issue of conformance of the approved project with several provisions of the certified LCP regarding erosion, runoff, and sedimentation control. The appellant believes that the drainage plan as approved by the County is inadequate for providing runoff control. The appellant states:

Construction of a house this large on a lot this small will drastically alter the runoff characteristics in this area. ... Water flow beneath Omega Drive has seriously weakened the soil beneath, as evidence by the seaward bluff changing from a slanted cliff face to a nearly vertical drop in the last few years. ... Erosion and runoff have accelerated as the climate has changed, as Westport becomes more populous, and as traffic (and therefore maintenance) on Highway 1 have increased. Omega Drive does not handle the present runoff adequately.

Sinkholes appear in Omega Drive frequently. Filling this narrow lot as proposed from side to side and taking 17 feet from Omega Drive in variance, will greatly increase the runoff load on Omega Drive and associate drainage systems. ...The proposed development will replace a very effective natural runoff control mechanism (the lot was thick with brush which allowed runoff to absorb into the soil rather than run over the cliff to the sea) with a structure that will divert runoff to either side, seriously stressing drainage systems that are already at their limit. ...A new geostudy should be conducted with a much more detailed plan for runoff control that includes adjacent property to the north and south (Omega Drive).

The County's approval of the subject development includes a special condition to require the building and site development be designed and maintained in conformance with the recommendations contained in the engineering geologic investigation report prepared by Jim Glomb dated July 28, 2003. This report contained a drainage plan recommending diversion of impervious surfaces, including roof water, to a collector pipe to convey runoff from the subject property to an existing crossing under Omega Drive. From the culvert, water would run west along the south side of Omega Drive to another existing culvert that crosses under Omega Drive and discharges over the bluff. The drainage plan also shows that the site would be graded to collect surface runoff and direct it into the same existing drainage facilities along Omega Drive. Additionally, a foundation sub-drain would also capture sub-surface water and direct it into the existing drainage system.

The County staff report contains information provided from adjacent neighbors that in the mid-1970s there was an instance of flooding at which time water crossed over Highway 1 and flowed across the neighbor's parcel and the applicant's parcel causing erosion of the bluff. The applicant submitted a letter to the County from the Caltrans Hydraulics Engineer, stating that three culverts in the vicinity have been upgraded since 1970, and that Caltrans performs periodic maintenance of the eastern ditch along Highway 1. However, as the appellant asserts, the project as approved would require drainage from the subject property to be concentrated and directed into Omega Drive's drainage system, which is not maintained by Caltrans, and ultimately down over the bluff from the County culvert outfall. Upon reviewing the drainage plan, Dr. Johnsson, the Commission's staff geologist expressed concern that the increase in runoff from the subject property directed to the County road might exacerbate off-site bluff erosion off of Omega Drive. This increase of eroding runoff from the development raises a substantial issue of conformance of the project as approved with the provisions of LUP Policy 3.4-9 requiring development landward of the blufftop setback not contribute to the erosion of the bluff face or to the instability of the bluff itself. Furthermore, the County did not require that any erosion, runoff or sediment control measures be utilized during construction to protect water quality. This lack of erosion and sedimentation control raises a substantial issue of conformance of the project as approved with the requirements of CZC Standard 20.492.010(G) that erosion and sediment control measures be installed. Without mitigation provided for runoff from impervious surfaces, such as erosion and sediment control measures during construction, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP policies designed to provide protection of water quality and reduce erosion.

Therefore, the Commission finds that the approved project raises a substantial issue of conformance of the local approval with the requirements of LUP Policy 3.4-9 that surface and subsurface drainage not contribute to the erosion of the bluff face or to the instability of the bluff itself, provisions of CZC Section 20.492.010 that require adjoining property be protected from potential soil erosion, and erosion and sediment control measures to be installed, and CZC Section 20.492.020(A) that requires sediment catchment measures be employed to remove sediment from runoff wastes that may drain to environmentally sensitive areas from land undergoing development.

3. Off-Street Parking

The appellant contends that the County approved the project inconsistent with Mendocino County's LCP policies and standards requiring sufficient off-street parking.

LCP Policies:

CZC Chapter 20.472—Off-street Parking—in applicable part states:

CZC Section 20.472.005

The purpose of this Chapter is to require off-street parking spaces for all land uses in sufficient numbers to accommodate vehicles which will be congregated at a given location to minimize on-street parking, increase traffic and pedestrian safety and promote the general welfare.

CZC Section 20.472.010

- (A) *Accessible off-street parking areas shall be provided and maintained as set forth in this Chapter to provide minimum parking and maneuvering room for motor vehicles and for pedestrian safety based on the anticipated occupancy of a given building, structure or area of land or water...*

...

- (C) *In any SR, RV, or RR Residential District, no motor vehicle over three-quarter (3/4) ton, boat, or recreational vehicle shall be stored or parked in any front yard setback nor any side or rear yard setback facing a street for a continuous period exceeding seventy-two hours.*

...

- (H) *One of the required parking spaces for any parcel may be located in the front or side yard setback area.*

...

- (J) *All required parking spaces shall be at least nine (9) by twenty (20) feet, unless otherwise provided for under this section.*

CZC Section 20.472.015 Residential

(A) *Single-family detached dwelling or mobile home: two (2) parking spaces.*

Discussion:

The Mendocino County CZC Section 20.492.015 requires that a minimum of two off-street parking spaces be provided for building a single-family residence on property located in the Rural Village zoning district. Pursuant to CZC Section 20.472.010(J), each parking space must be at least 9 by 20 feet in size. One of the required parking spaces may be located in a front or side yard setback area. However, no motor vehicle over three-quarter ($\frac{3}{4}$) ton, boat, or recreational vehicle may be stored or parked in any front yard setback nor any side or rear yard setback facing a street for a continuous period exceeding seventy-two hours. The appellant contends that the County-approved permit for the proposed development of the applicant's single-family residence does not conform to the requirement for off-street parking. The applicant states that the single-car garage provides the only off-street parking on the property, because there would not be enough room in the driveway to park a second vehicle.

In describing the proposed project, the coastal development permit application states that two (2) off-street parking spaces would be provided. One of the two would be within the 12-foot by 24-foot garage, and the other would be provided by an 8-foot by 22-foot uncovered space. The County staff report does not discuss the adequacy of the parking accommodations as proposed. CZC Section 20.472.010 (J) requires off-street parking spaces to be a minimum size of 9 feet by 20 feet, and yet the project as proposed and approved by the County provides for a shorter length than required. In fact, on closer review, the County-approved development as conditioned would not even provide a width of 8 feet as proposed for locating a parking space on the applicant's property. Special Condition No. 4 imposed by the County required, as a prior to issuance condition, that the applicant grant to the County for roadway purposes, the southerly six feet of the subject property, along with a 15-foot triangular wedge of ground at the intersection of Omega Drive and Highway One. This dedication of property to the County would reduce the area available for off-street parking on the subject parcel driveway to a length of about 2 feet rather than the 20 feet as required, inconsistent with CZC Section 20.472.010 (J) that all necessary parking spaces be at least nine (9) by twenty (20) feet in size.

Because the County made its determination to approve the proposed development without any findings adequately discussing off-street parking provisions as proposed, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP. Thus, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding off-street parking.

Allegations Raising No Substantial Issue

As discussed below, the Commission finds that with respect to the appellant's allegations regarding 1) scope and visual character, 2) view protection, 3) size of lot, 4) inappropriate granting of variance, 5) conformance with building site area requirements, 6) public participation, and 7) ESHA protection, the project as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

1. Scope and Visual Character

The appellant contests the County approval of the project on the grounds that the approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to protect the scope and character of the specially designated rural neighborhood of the community of Westport.

LCP Policies and Standards

LUP Policy 2.2 - Description of Land Use Plan Map Designations – in applicable part states:

RURAL VILLAGE - COASTAL

Map Code: RV

Intent: To preserve and maintain the character of the rural atmosphere and visual quality of the following villages: Westport, Cleone, Caspar, Little River, Albion, Elk and Manchester; and to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities.

Principal Permitted Use: One dwelling unit per existing parcel and associated utilities and light agriculture.

Conditional Uses: Cottage industry, neighborhood commercial, visitor accommodations, public and semi-public facilities and utilities, increased intensity of existing use, laundromat, electrical transmission and distribution lines (see Policy 3.11-9), natural gas pipeline (see Policy 3.11-5).

LUP Policy 3.5-1 in applicable part states:

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

LUP Policy 3.5-2 states:

The Town of Mendocino is designated as a "special community." Development in the Mendocino Town shall maintain and enhance community character, as defined in the Mendocino Town Plan.

Other communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances.

LUP Policy 4.2-4 states:

Future development of Westport as a Rural Village shall require that new development be compatible with existing development relative to scope and character [emphasis added].

Coastal Zoning Code Section 20.504.005 – Applicability- states:

This section shall apply to those areas identified as highly scenic areas, special communities and special treatment areas as defined by the Mendocino Coastal Element and identified on the Coastal Land Use Maps. All development proposals shall be reviewed by the Coastal Zone Permit Administrator to determine if the standards set forth in this section shall apply. Application of standards in this Chapter shall not preclude the development of a legally established parcel.

Coastal Zoning Code Section 20.504.010 – Purpose – states:

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas [emphasis added].

Coastal Zoning Code Section 20.504.020 in applicable part states:

(B) *The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C) ...*

(C) *Development Criteria.*

(1) *The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.*

(2) New development shall be sited such that public coastal views are protected.

...

(4) Building materials and exterior colors shall be compatible with those of existing structures.

Discussion:

The appellant contends that the project as approved by the County raises a substantial issue of conformance with several provisions of the certified LCP regarding protecting the scope and visual character of the rural village of Westport. LUP Policy 2.2 states the intent of the certified LCP to preserve and maintain the character of the rural atmosphere and visual quality of Westport. LUP Policy 3.5-1 requires the scenic and visual qualities of Mendocino County coastal areas be considered and protected as a resource of public importance, and that permitted development be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. LUP Policy 3.5-2 states that Westport shall have special protection to the extent that new development remains within the scope and character of existing development. LUP Policy 4.2-4 requires future development of the rural village of Westport to be compatible with existing development relative to the scope and character. CZC Section 20.504.010 ensures that development be sited and designed to be visually compatible with the character of surrounding areas. CZC Section 20.504.020(B) designates Westport as a neighborhood entitled to receive special protection as set forth in CZC Section 20.504.020(C) requiring the scale of new development (building height and bulk) to be within the scope and character of existing development in the surrounding neighborhood. Also, under these provisions new development must be sited to protect public coastal views; and building materials and exterior colors shall be compatible with those of existing structures.

The appellant maintains that the approved structure would be "inappropriate in proportion to the character of the rural atmosphere and visual quality of the village of Westport." The appellant asserts that the approved house would "appear as a cereal box (albeit a peaked one) with a maximum height of 35 feet on a footprint much narrower than the height. The proportions (not the design) are those of a row house, which is inappropriate to the Rural Village zone. The structure is 45% higher than it is wide, viewed from Highway 1 or the ocean. The proposal is simply inappropriate for a structure of this size because the lot is too small." The appellant believes that the project as approved by the County is not consistent with the above provisions of the certified LCP because the project would be out of character with the visual quality of Westport. The appellant states that the "'bulkiness' of the development comes not from its volume alone but its volume in proportion to the narrow lot, and from the height in proportion to its base..." The appellant recognizes that there are other tall structures in the village of Westport, but feels that the approved house is "far too large and tall in proportion to its width..." and that the "owner should be required to submit a proposal for a structure that is proportionally sized for the lot..." Further, the appellant contends that if constructed as approved, the house would be visually incompatible with the other modest homes in town, thereby setting a dangerous long-term precedent for future development that would be out of character with the rural atmosphere and visual quality of the Rural Village of Westport. Finally, the appellant contends that the subject property is located in an area designated highly scenic requiring that new development be subordinate to the character of its

setting. On this point, it should be noted that the certified Mendocino County Land Use Plan Map No. 8, which includes the Town of Westport within which the subject property is located, contains a note that says: "AREA WITHIN THE WESTPORT URBAN/RURAL BOUNDARY IS EXCLUDED FROM THE HIGHLY SCENIC AREA." Therefore, the LCP provisions related to areas designated as highly scenic do not apply to the subject property.

Defining the "character" of an area can become rather subjective when deciding if a particular structure is consistent or not. Some elements to consider include the location of the proposed structure, and the distance from where it is being viewed. The siting of the structure, visible rooflines, materials proposed for use, height and size should all be evaluated. Of primary concern should be the plan orientation and topography of the surrounding area that takes into consideration natural vegetative cover and sight lines of the proposed development. Section 4.2 of the Mendocino County certified Coastal Element contains a description of Westport referring to its cluster of buildings "huddled against the elements," and the "clearly defined town edges almost unknown in California" as primary expressions of the town's character. The discussion goes on to state: "Westport's spectacular setting and its compact form contribute more to its character than does the architecture of individual buildings."

The appellant maintains that the scale of the approved development (building height and bulk) is not within the scope and character of the Rural Village of Westport. Some information is available in the County staff report and local record that reflects the character of the town by describing the size and height of various buildings in Westport. The Town of Westport exhibits a very diverse variety of building types, sizes, styles, architecture, colors, and materials. The existing houses range from modest one-bedroom cabins to 34 to 35-foot-high structures, the maximum height allowed in the Rural Village Zoning District. Two lots north of the applicant's parcel is a three-story structure (with an observation deck on top) designed to resemble the water towers common along the Mendocino Coast. The residence immediately north of the applicant's property is the appellant's two-story structure. To the south are six lots along the west side of Highway One, and ten additional lots served by Omega Drive. Most are developed with residences; several of which are two stories in height. Two lots south of the applicant's parcel, on the east side of Omega Drive, is a partial three-story Victorian residence, white with a red roof, with a three-story octagonal tower capped by a conical roof and dormers. This house is 35 feet tall at its highest point, and occupies approximately 2,806-square-feet, including the garage, with an additional 466-square-feet of porch area. A second lower conical roof covers another semi-octagonal bay. This wide variety of shapes, sizes, and styles in Westport is an attribute of the character of the community.

Construction of a house on the subject lot would be considered in-fill, rather than expanding development at the town edge, because there are existing houses already located to the north and south of the property. As described above, the subject property is a very narrow corner lot, and this presents a special challenge for siting and design. The applicant explains that the approved residence utilizes design elements borrowed largely from existing houses in Westport, notably the "Switzer-Fee" home on the south end of town, built around 1884, and the Victorian residence described above, along with a few nautical accents. The applicant believes that the approved design with the narrowness and height, with two turrets, lap siding, painted siding and trims, high ceilings, and spiral staircase lends itself to a Victorian architecture that would not be inconsistent with the

appearance of other houses in the area. The applicant maintains that the house is essentially a two-story design, with a "crow's nest" enclosed deck within the confines of the roof's attic space intended to create a "lighthouse" look. The crow's nest deck would not extend upward beyond the roof-line, but would mostly be hidden within the roof structure itself. The total square-footage for the approved development would be only 1,762 square feet, which is well within the norm for the area. The approved design height at the east end of the structure would be 22 feet above finished grade to closely match the approximately 25-foot height of the adjacent house to the north. This roof level would step up to a ridge height of approximately 30 feet over the central portion of the house. The maximum height at the top of the conical roof over the crow's nest would be 35 feet above finished grade. The apparent height of the house from Highway One would be somewhat reduced by the fact that the grade slopes down to the west from the highway, and that the taller elements of the house are at the midpoint and west end, away from the highway. The house would be sited on the property with a reduced front yard setback to line up consistent with the other houses along Highway One, particularly to the north.

In terms of structural height, even within a few houses north and south of the applicant's property, structures exist that are as tall, or about as tall as the proposed structure would be. Other homes in Westport are also located close to their property lines presenting a "bulky" appearance. Therefore, the applicant's approved house does not present an appearance that would raise a substantial issue of consistency in terms of height or bulk with other structures in the immediate neighborhood or within the larger Westport community.

As noted above, Section 4.2 of the Mendocino County certified Coastal Element states: "Westport's spectacular setting and its compact form contribute more to its character than does the architecture of individual buildings." There is no particular housing style or architectural design that characterizes Westport. The town exhibits a very diverse variety of building types, sizes, styles, architecture, colors, and materials. The existing structures range from quite modest historic one-bedroom cabins, to a coastal development permit-approved Victorian-style, multi-level residence with a 35-foot-tall tower. The variety itself contributes to the character of the community. Thus, there is no basis for attributing Westport's visual character to one particular building type, size, style, architectural design, color, or use of materials. Therefore, the contention that the approved house would not conform to the character of the town of Westport does not raise a substantial issue.

There is a high degree of factual and legal support for the local government's decision that the development is consistent with the range of sizes including (heights and widths), and structural appearances found within the scope and character of Westport. The County staff report and local record includes information indicating the size of various homes in the community, including those in the immediate neighborhood of the approved development, which indicates that the approved house is not out of scale with other existing houses in the community. Furthermore, as the certified LCP cites that the character of Westport is more dependent on its spectacular setting and compact form, more than the architecture of individual buildings, the contentions about the size of the approved house being out of visual character of Westport raise local issues rather than issues of regional or statewide significance. Therefore, the Commission finds that the County's approval does not raise a substantial issue of conformance with the visual resource provisions of the LCP

pertaining to the protection of the visual character of Westport, including LUP policies 2.2, 3.5-1, 3.5-2, 4.2-4, and CZC Sections 20.504.005, 20.504.010, 20.510.020.

2. View Protection

The appellant contends that the County approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to protect public views.

LCP Policies and Standards

LUP Policy 3.5-1 in applicable part states:

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

Coastal Zoning Code Section 20.504.010 – Purpose – states:

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas [emphasis added].

Coastal Zoning Code Section 20.504.020 in applicable part states:

- (A) *The Town of Mendocino...*
- (B) *The communities and service centers...of Westport...shall have special protection as set forth in Section 20.504.020(C):*
- (C) *Development Criteria.*
 - (1) *The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.*
 - (2) *New development shall be sited such that public coastal views are protected.*
 - (3) *The location and scale of a proposed structure will not have an adverse effect on nearby historic structures...*

(4) Building materials and exterior colors shall be compatible with those of existing structures.

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be protected as a resource of public performance. 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. ...[emphasis added]

Discussion:

The appellant contends that the project as approved by the County raises a substantial issue of conformance with several provisions of the certified LCP regarding protection of public views. LUP Policy 3.5-1 requires the scenic and visual qualities of Mendocino County coastal areas be considered and protected as a resource of public importance, and that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. CZC Section 20.504.010 ensures that development be sited and designed to protect views to and along the ocean and scenic coastal areas and CZC Section 20.504.020(C)(2) requires new development be sited such that public coastal views are protected. CZC Section 20.504.020(D) also requires that the scenic and visual qualities of Mendocino County Coastal Areas be protected as a resource of public performance, and permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas.

The appellant asserts that the project as approved by the County is not consistent with the above provisions of the certified LCP because the development would have significant adverse impacts to public visual resources as stated below:

The proposed structure will have a disproportionately deleterious effect on the public view from Route 1. As Highway 1 goes through the Rural Village of Westport, a breathtaking view of the Pacific Ocean comes into view as a driver, bicyclist, or pedestrian approaches the north loop of Omega Drive. The magic of this view is that it is a combination of the rural village buildings, a gap that opens onto the rural drive of Omega Drive, dense growth on the bluff, and some of the most astounding breakers along the Mendocino coast. Once the view is noticed, a person can pull off of Highway 1 safely and drink in the view. A particular characteristic of this view is that the gap between buildings (north and south of Omega Drive) is great enough so that one realizes the quality of the view in time to pull over safely, as hundreds have done and continue to do. This is unlike the narrow view of the ocean usually seen between buildings. The rest of the view to the West from Highway 1 when in Westport is either of buildings, of the narrow gap between buildings, or over a broad bluff top field. The view at Omega south is blocked by buildings. The view from Omega north is unique and astounding... This development does not meet the requirement to protect views to or along the ocean. The development should be resubmitted with adjustments to protect the public view from Highway 1 to the ocean, AND from the ocean to

the land... In addition to commercial fishing vessels, numerous tourist seagoing vessels leave Fort Bragg and cruise north to view whales, breakers, and the Cape of Mendocino. The height of this development on such a narrow footprint will have an adverse effect on the view from the ocean because it places a disproportionally [sic] tall structure (35 feet) very close to the bluff edge, unlike other structures in Westport. Additionally, the overly large structure interrupts a remarkable view 'crescent' created by Omega Drive and the surrounding structures, 23 feet high on the north and a one story house on the south. This "crescent" allows a panoramic view of the bluff and breakers from landside and a sweep of open space lading [sic] up to the wooded ridge line from Oceanside.

As discussed above, the project site is not located within a designated highly scenic area in which new development must be subordinate to the character of its setting. The subject property is, however, located within the community of Westport, which is designated in the certified LUP as an area of special consideration subject to CZC Section 20.504.020(C).

As described in the previous analysis above, the project is consistent with the applicable provisions of CZC Section 20.504.020(C) related to scope and character of existing development in the surrounding neighborhood. While it is true that the project as approved would block off a portion of an existing public view between Highway One and the ocean, there is a view window from Highway One to the ocean down Omega Drive and across the two vacant lots on either side. To the north and south of this window, views to the ocean are obstructed by residences along the west side of the highway. Approximately 600 feet to the south, and approximately 275 feet to the north at the town's edge beyond the developed lots, there are unobstructed views of the ocean. The applicant's house would partially block the present view window, and development on the vacant lot south of Omega Drive at some time in the future would reduce the window even more. Nevertheless, there would remain a public view of the coast and ocean from Highway One down Omega Drive, and by proceeding down Omega Drive to the turn, just west of the applicant's house site, the full view of the ocean and shoreline can be enjoyed.

Given the very small buildable area on the applicant's lot, there is little opportunity to move the house to a different position that would block less view than already proposed and approved. The applicant has already revised plans from those first submitted, to site the house more easterly on the lot toward the highway to minimize obstruction of the view down Omega Drive from Highway One. It should be pointed out that the height of the approved residence is not a factor in blocking public view of the ocean or coastline from the highway, since even a low, single-story building would extend above eyelevel and effectively block the view from the highway, as is true with the single-story homes a few lots to the north of the subject property. Reducing the width of the house would only marginally reduce the obstruction of the view, and at 24 feet in width as approved, there is not much leeway for any further reduction. The only way to avoid any blockage of the view would be to build the house below ground (requiring extensive ground alteration), or deny the construction of any building on the site.

Therefore, the appellant's contention that any blockage of public views would be inconsistent with visual protection provisions of the certified LCP for highly scenic areas is not correct. In Westport, when houses are constructed on legal lots as approved in this case, some view blockage would

occur that would be allowed as consistent with the LCP. The Commission notes that the view protection provisions of LUP Policy 3.5-1 and CZC Sections 20.504.010, 20.504.020(C)(2), and 20.504.020(D) do not preclude blockage of all views. Rather, the policies and standards require that views to and along the ocean and scenic coastal areas be protected. As discussed above, there is no practical alternative to reducing the view blockage of the development to any significantly greater degree. Although the development will block some views, views to and along the ocean and scenic coastal areas will be protected since views from Highway One to the ocean down Omega Drive and across two vacant lots on either side will remain, as will ocean views from Highway One in the vicinity several hundred feet to the north and south. As explained above, the approved residence would not be sprawl or expansion of construction at the edges of the town, but would be in-fill. Moreover, there are exquisite public coastal views and public access within a very short distance of the subject property across fields of open space directly west of the center of town. Westport is a small community and there are expansive views of the ocean and coastline both north and south of town. From certain locations on the beach or out at sea, the approved development may reduce the backdrop view of wooded slopes, but not in a significant way, because there are many opportunities for experiencing verdant hillsides north and south of town. Views of the Town of Westport from the ocean or beach already include numerous houses clustered together on the bluff top, and, as the contained in the certified LUP, characterizes the community as a village of "buildings huddled against the elements." Therefore, the approval of the house does not raise a substantial issue of conformance with LCP provisions requiring the protection of views to and along the coast and scenic coastal areas.

There is a high degree of factual and legal support for the local government's decision that the development is consistent with visual protection provisions of the LCP. The County staff report and local record includes information indicating siting and design of the approved residence would minimize obstruction of the view down Omega Drive from Highway One and at the same time ensure compatibility with the character of other houses in the neighborhood by placing the house more easterly on the lot toward the highway to make a consistent setback for all of the houses along the highway. Therefore, the Commission finds that the County's approval does not raise a substantial issue of conformance with the visual resource provisions of the LCP pertaining to view protection, including LUP Policy 3.5-1, and CZC Sections 20.504.010 and 20.504.020.

3. Size of Lot

The appellant asserts an inconsistency of the local approval with the LCP provisions for lot size requirements for Rural Village Districts.

LCP Policies and Standards

LUP Policy 2.2—Land Use Classifications—contains language defining the intent, principal permitted uses, conditional uses, minimum parcel sizes, and maximum dwelling density limits for the Rural Village District as follows:

Intent: To preserve and maintain the character of the rural atmosphere and visual quality of the following villages: Westport, Cleone, Caspar, Little River, Albion, Elk and

Manchester; and to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities.

Principal Permitted Use: One dwelling unit per existing parcel and associated utilities and light agriculture.

Conditional Uses: Cottage industry, neighborhood commercial, visitor accommodations, public and semi-public facilities and utilities, increased intensity of existing use, Laundromat, electrical transmission and distribution lines (see Policy 3.11-9), natural gas pipeline (see Policy 3.11-5).

Minimum Parcel Size:

<i>Within water and sewer service areas:</i>	<i>6,000 square feet</i>
<i>Within water or sewer service areas:</i>	<i>12,000 square feet</i>
<i>Not in a water or sewer service area:</i>	<i>40,000 square feet</i>

Maximum Dwelling Density:

Within water and sewer service areas

1 single family dwelling per 6,000 square feet

Within water or sewer service areas

1 single family dwelling per 12,000 square feet

Not in a water or sewer service area

1 single family dwelling per 40,000 square feet

CZC Section 20.388.020, setting minimum lot sizes for parcels located within RV Districts, in applicable part states:

(A) Within water and sewer service areas: Six thousand (6,000) square feet.

CZC Section 20.388.025, setting maximum dwelling density limits for RV Districts, in applicable part states:

(A) Within water and sewer service areas: One (1) single-family dwelling per six thousand (6,000) square feet.

Discussion:

The certified LUP states that the intent of establishing the Rural Village (RV) District is to preserve and maintain the character of the rural atmosphere and visual quality of villages such as Westport, to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities. The LUP also defines the principal permitted use for property within RV District as one dwelling unit per existing parcel, and associated utilities and light agriculture. The LUP and CZC require a minimum parcel size of 6,000 square feet for property within the RV District that is also within a water and sewer service area such as the subject property. The LUP and CZC limit the maximum dwelling density of RV parcels within water and sewer service areas to one single-family residence.

The applicant's parcel is located in the Westport RV District, and is served by municipal water and sewer facilities. The minimum parcel sizes establish the minimum size parcels that may be created through land divisions. The approved property does not involve a land division. Nonetheless, the lot size of the subject parcel is 6,004 square feet as described by the metes and bounds survey on the deed for the property, and the approved project would construct a single-family residence on the subject property. Therefore, the development approved by the County is consistent with the Rural Village lot size and permitted use types.

The appellant believes there "is a reason why this lot has not had a structure on it for over a century. It is too small. No previous owner has tried to build even the tiniest cottage here, much less a structure as large as proposed." The appellant suggests that even if the lot was once a minimum of 6,000 square feet, due to erosion of the bluff edge, it is smaller now and should be re-surveyed to adjust for the change in the sea edge boundary. As discussed above, the deed for the property conveys 6,004 square feet of property to the owner. The LCP does not state that all 6,000 feet of the minimum size lot in an RV District must be flat, buildable land, but only that the lot must be a minimum of 6,000 square feet. No matter how much land area erodes, the size of the lot itself will not change.

There is a high degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP because the approved project does not involve a land division creating parcels that must comply with the minimum lot size requirements. Even if the minimum lot size requirements did apply to the approved project, the parcel is larger than that required by LUP Policy 2.2 and CZC Sections 20.388.020 and 20.388.025. Therefore, the Commission finds that the County's approval of the proposed project does not raise a substantial issue of conformance with the LCP.

4. Inappropriate Granting of Variances

The appellant contends that the approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to provide exceptions to zoning restrictions through granting of variances.

LCP Policies and Standards

CZC Section 20.540.005 states:

A variance is an exception from zone restrictions granted by the Coastal Permit Administrator upon application when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Variances shall not be granted to authorize uses or activities which are not otherwise expressly authorized by the regulations of this Division.

CZC Section 20.540.020 states:

Before any variance may be granted or modified it shall be shown:

- (A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surroundings; and*
- (B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in this Division and applicable policies of the Coastal Element; and*
- (C) That such variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of the special circumstances identified in Subsection (A); and*
- (D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and*
- (E) That the variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning provisions governing the parcel; and*
- (F) That the granting of such variance is in conformity with all other provisions of this Division and the Mendocino Coastal Element and applicable plans and policies of the Coastal Act.*

Discussion:

CZC Section 20.540.005 states that the purpose of a variance is to provide an exception from zoning restrictions in the case of special circumstances applicable to property, including size, shape, topography, location, or surroundings, when the strict application of the zoning ordinance would deprive the property of privileges enjoyed by other property in the vicinity and under identical

zoning classification. CZC Section 20.540.005 further states that variances shall not be granted to authorize uses or activities, which are not otherwise expressly authorized by the CZC regulations. CZC Section 20.540.020 requires certain findings to be made before any variance may be granted, including all of the following: (1) that there are special circumstances applicable to the property involved, including size, shape, topography, location, or surroundings; (2) that such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning code regulations and applicable policies of the certified LUP; (3) that such variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of the special circumstances identified in (1) above; (4) that the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; (5) that the variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning provisions governing the parcel; and (6) that the granting of such variance is in conformity with all other provisions of the certified LCP, and applicable plans and policies of the Coastal Act.

The County granted two variances to the applicant, one for a reduction in the setback requirements along Highway One, and the other for a setback reduction from Omega Drive. The variance along Highway One was requested to modify the required 60-foot combined front yard setback and corridor preservation setback to a 45-foot combined setback from the centerline of the highway. This adjustment allows the proposed house to be moved forward on the property, thereby matching up the line-of-sight highway setback of the building with the other existing residences to the north. This variance also allows more room in the back yard to increase the distance of the house from the edge of the coastal bluff, which also provides the extra benefit of reducing blockage of coastal views from Highway One. The variance along Omega Drive was requested, because without a reduction, the various setbacks applying to the parcel exceed the width of the lot, effectively prohibiting any construction on the parcel. Because the property is a corner lot, a front yard setback from Omega Drive also applies, which together with the corridor preservation setback, produces a total combined setback of 45 feet from the centerline of Omega Drive. The County granted this second variance to reduce the required 45 feet to an 18-foot combined setback.

The appellant asserts three basic points in the contention that approval by the County of these two variances for the subject project was inappropriate.

- The appellant asserts that the variances are not "minor" adjustments.
- The appellant asserts that the variances would be detrimental to the public welfare.
- The appellant asserts that the applicant would receive privileges not afforded to others.

Not a Minor Adjustment

The appellant states: "Mendocino County has inappropriately permitted more than half of the width of the building footprint to be obtained through variance. This is an inappropriate use of variance. A variance is commonly understood to be a minor adjustment to allow normal use of property." It

should be pointed out that the CZC does not define a variance as a "minor" change in the zoning code. It simply is not true that variances must only be minor adjustments. Rather there are very specific findings that must be made by the County to grant a variance, and nowhere in the certified CZC are there any requirements that variances be limited to minor adjustments. Therefore, no substantial issue is raised in this regard.

Detrimental to the Public Welfare

The appellant states: "[t]he owner should be required to submit a proposal for a structure that is proportionately sized for the lot, does not require such a huge variance, and has much less impact on the public view from Highway 1 and the ocean." The appellant goes on to say: "[a]lthough there are other tall structures in the village of Westport, all of them on the ocean side of Highway 1 are on full-sized lots and are wider than they are tall. None of the other tall buildings restrict the public view as this proposed structure does. This proposed structure is on a very narrow lot and most of the building footprint is on property gained through variance. ...Doubling the buildable size of a lot through a variance is an inappropriate giving of a public right to a private party. With a more appropriate (and lesser) variance, this lot could support a small low structure but the proposed structure is far too large and tall in proportion to its width (north to south)."

As discussed above in detail within the visual character and view protection findings, no substantial issue is raised with regard to protection of public visual resources. The variance would make possible the construction of a residence on the parcel, which would obstruct some view from Highway One to the ocean. However, the view window between the highway and the ocean would not be substantially closed off, and opportunities to view the ocean would remain in the immediate area, either by looking or traveling west on Omega Drive, or by going north or south a short distance to get past the neighboring residences. Also, as explained above, the variances would allow the residence to be sited farther from the bluff, for increased safety, and would provide more visual resource protection by allowing increased views of the ocean and scenic coastal area from Omega Drive and Highway One. Additionally, the variances would allow siting of the proposed building in a way that would obstruct less of the northerly neighbor's view to the southwest. Therefore, the County's granting of the two above-described variances raises no substantial issue of conformance with requirements of CZC Section 20.540.020(D) that the granting of variances not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and RV zone.

Applicant Would Receive Privileges Not Afforded to Others

The appellant states: "[t]his builder proposes to build a house that is considerably larger than the average house in the village of Westport, on a lot that is far smaller than any other lot on the seaward side of Highway 1. The builder asserts that the requested variances are necessary in order to allow him privileges possessed by other property in the same vicinity and zone. While the lot in question does share the RV zoning characteristic, it is a far smaller lot than others. Granting of the variances allows a much higher density of structure in proportion to the lot size... If such over-reaching variances are permitted as this owner requests, then the precedent will be set that extensive variances can and should be granted." In actuality, the applicant receives no special privileges by

the County's granting of the variances. The subject parcel is zoned RV the same as the other residences in the town, allowing the construction of one single-family residence on the legal lot. The variances that the County granted would allow the applicant's residence to be lined-up along Highway One with the other residences to the north of the subject property. There are four other small lots between Highway One and the ocean to the north of the applicant's parcel, each developed with a residence, and none of which comply with current setback requirements from the highway. On the second parcel north of the applicant's lot, a variance was granted to allow the residence to encroach approximately 8 feet into the corridor preservation setback. In the absence of approval of a variance from Omega Drive, the applicant would be precluded from placing any residence at all on his parcel, thereby denying the property owner privileges enjoyed by his neighbors. Therefore, the County's granting of the two above-described variances raises no substantial issue of conformance with the requirements of CZC Section 20.540.020(C) that variances be necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone, and denied to the property in question because of special circumstances related to the subject property, including size, shape, topography, location, or surroundings.

Therefore, in consideration of the foregoing discussion, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved development with the certified Local Coastal Program and the public access policies of the Coastal Act.

5. Conformance with Building Site Area Requirements

The appellant asserts that the local government approved the proposed development inconsistent with the provisions of CZC Section 20.304.025(C) that provides zoning conformance for the unincorporated area of the Coastal Zone of Mendocino County.

LCP Policies and Standards

CZC Section 20.304.025(C) states:

No building shall be erected, nor shall any existing building be altered, enlarged or rebuilt, nor shall any open space be encroached upon or reduced in any manner, except in conformity to the yard, building site area and building location regulations designated in this Division for the zoning district in which such building or open space is located except as provided in Chapter 20.480 of this Division.

Discussion:

CZC Section 20.304.025 prohibits all uses of land unless allowed by specific provisions of the CZC. As stated above, CZC Section 20.304.025(C) requires that no building be erected, nor any existing building be altered, enlarged or rebuilt, nor any open space be encroached upon or reduced in any manner, except in conformity to the yard, building site area and building location regulations designated in this Division for the zoning district in which such building or open space is located.

except as provided in Chapter 20.480 (the nonconforming uses and structures provision) of this Division. It should be noted that consistent with Section 20.304.025(C), Section 20.540.005 and 20.504.020 of the CZC (see Finding 4, Inappropriate Granting of Variances above) allow for variances from the code, and are contained in Chapter 20.540 of the CZC.

The appellant contends that the County's approval of the proposed development is inconsistent with CZC Section 20.304.025 because the "builder of the lot has been granted a variance so disproportionate that the resulting structure is not in conformity with the Rural Village zoning. None of the exceptions described in Chapter 20.480 of this Division apply to this structure." While it may be true that the provisions of CZC Chapter 20.480 dealing with nonconforming uses and structures may not apply to the proposed project, the provisions of CZC Section 20.540, which provide for the granting of variances, do apply. The proposed project as approved by the County would allow residential use on a legal parcel that is zoned for residential use. As discussed above in Finding 4, "Inappropriate Granting of Variances", the setback variances that were requested and approved do not raise a substantial issue of conformance with Section 20.540 of the CZC.

The contention that the County's approval is inconsistent with its CZC provisions of Zoning Ordinance Section 20.304.025(C) raises a local issue rather than an issue of regional or statewide significance. Additionally, there is a high degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP because the proper variances were processed in conformance with the provisions of Chapter 20.304.025. Therefore, the Commission finds that the County's approval of the proposed project does not raise a substantial issue of conformance with CZC Section 20.304.025(C) of the certified LCP.

6. Public Participation

The appellant contends that the approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to provide opportunity for public comment. The appellant contends that the procedure resulting in local approval of the proposed project did not allow for a fair hearing of public concerns.

LCP Policies and Standards

Coastal Zoning Code Section 20.536.010 in applicable part states:

(B) *Hearing*

The approving authority shall hold at least one public hearing on each coastal development application for an appealable development or for a non-appealable development which requires a public hearing pursuant to other provisions of this Division. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing. ...

Discussion:

CZC Section 20.536.010(B) specifies that the approving authority hold at least one public hearing on each coastal development application for an appealable development, and that the public hearing be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing. The appellant asserts that the County "discounted opposition to this development," and "[a] fair hearing of public concerns should be conducted." The appellant takes issue that "two petitions signed by Westport residents and visitors (approximately 30 signatures) were submitted in opposition but not presented at the hearing." Additionally, the appellant claims that a number of letters were received after the County staff report was prepared (but before the hearing) and were not included in the hearing.

The County did include in its staff report a summary of public comments, and in making its findings, did take into consideration points raised in letters received. The County conducted a public hearing on April 29, 2004, for the proposed project. At the public meeting, the County took additional testimony regarding the subject development. The fact that the County may have omitted from discussion at the public hearing letters or petitions previously received does not raise a substantial issue with the requirement that a public hearing be held to provide an opportunity for public input.

The appellant's contention that public opposition was discounted deals with the process and procedure leading up to the County action. The contention therefore raises a procedural inconsistency and not a substantial or substantive inconsistency of the approved project with the certified LCP. The contention thus raises a local issue relevant to internal procedures and not an issue of regional significance since the County has public hearing policies in place and the County's decision to approve the permit would not influence the existing LCP standards that include public hearing provisions. Furthermore, the Commission notes that it's own hearing on this appeal has provided further opportunities for interested parties to provide comments on the project.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved development with the certified Local Coastal Program and the public access policies of the Coastal Act.

7. ESHA Protection

The appellant asserts that the County's approval occurred without adequate review to ensure protection of ESHA resources.

LCP Policies and Standards

LUP Policy 3.1-2 in applicable part states:

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer

zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. ...

LUP Policy 3.1-7 states:

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

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

CZC Section 20.496.015 (A) – Determining Extent of ESHA – in applicable part states:

The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:

- (1) The development is proposed to be located on a parcel or proximate to a parcel identified on the land use plan map with a rare and/or endangered species symbol;*
- (2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information;*

- (3) *The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.*

Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or which have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. ...

CZC Section 20.496.020 in applicable part states:

ESHA- Development Criteria

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

(1) Width.

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

(a) Biological Significance of Adjacent Lands.

...

(b) Sensitivity of Species to Disturbance.

...

(c) Susceptibility of Parcel to Erosion.

...

(d) Use of Natural Topographic Features to Locate Development.

...

(e) Use of Existing Cultural Features to Locate Buffer Zones.

...

(f) Lot Configuration and Location of Existing Development.

...

(g) Type and Scale of Development Proposed.

(2) *Configuration.*

The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

Discussion:

As set forth above, LUP Policy 3.1-2 states that development proposals in environmentally sensitive habitat areas such as sensitive plant habitats shall be subject to special review to determine the current extent of the sensitive resource. LUP Policy 3.1-7 states in applicable part, that a buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. CZC Section 20.496.015(A) provides that developments that have the potential to impact an ESHA be subject to a biological survey prepared by a qualified biologist. CZC Section 20.496.020 provides the criteria by which buffers are to be established in order to protect ESHA resources.

No botanical survey was required by the County prior to approval of the proposed project. The appellant contends that the "process of building this huge house on such a narrow lot is very likely to cause damage to the flora and fauna of the sea cliff during the construction phase. A thorough analysis should be conducted with appropriate mitigation..." The appellant calls for a "more rigorous analysis of the flora and fauna of the sea cliff," and believes that this analysis "should be undertaken to insure that the process of construction of this development does not disrupt either [flora or fauna]."

It should be pointed out that not all flora and fauna comprise ESHA, and there is no indication by anyone that any plants or animals that may occupy habitat at the project site actually do constitute ESHA. The appellant has not provided any biological information or other documentation verifying information or other documentation verifying that any ESHA actually exists at or near the site. The County did not identify any ESHA on the subject property that would lead them to require that a botanical or wildlife study be performed. The County staff report states that the "California Natural Diversity Database map for the Westport area does not show any rare or endangered plant or animal species located on or in the vicinity of the project site. There are no environmentally sensitive habitat areas located within 100 feet of the proposed building site. The project will not have any natural resource impacts." Commission staff conducted a site visit to the subject property on June 16, 2004, and did not observe any indication that ESHA is located within 100 feet of the approved building site.

As cited above, the provisions of LUP Policy 3.1-2 require development proposals in environmentally sensitive habitat areas such as sensitive plant habitats to undergo special review to determine the current extent of the sensitive resource. Also, CZC Section 20.496.015 requires that developments having the potential to impact an ESHA be subject to a biological survey prepared by a qualified biologist. However, since there is no indication that the project as proposed would conduct development in an ESHA, and there is no indication that the proposed development would

have the potential to impact an ESHA, no special review or biological survey was required. The provisions of LUP Policy 3.1-7 require that a buffer area be established adjacent to all environmentally sensitive habitat areas, and CZC Section 20.496.020 provides the criteria by which buffers are to be established in order to protect ESHA resources. As described above, the purpose of establishing a buffer area would be to provide sufficient area to protect environmentally sensitive habitat from significant degradation resulting from future developments. However, as no ESHA has been identified that would necessitate creation of a buffer to protect it, the provisions of LUP Policy 3.1-7 and CZC Section 20.496.020 are not applicable to the applicant's proposed project.

There is a high degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP regarding protection of ESHA resources, as described above, including the fact that no biological review was required, because there was no indication that ESHA resources might exist at the subject site requiring a biological survey to be performed. Therefore, the Commission finds that the County's approval of the proposed project does not raise a substantial issue of conformance with the ESHA protection policies of the Mendocino County certified LCP including provisions contained in LUP Policy 3.1-2, LUP Policy 3.1-7, CZC Section 20.496.015(A), and CZC Section 20.496.020.

Conclusion of Part One: Substantial Issue

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to contentions raised concerning (1) geologic stability, (2) erosion, runoff and sedimentation control, and (3) off-street parking.

PART TWO-DE NOVO ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference into its findings on the *de novo* review of the project the Substantial Issue Findings above.

3. Submittal of Additional Information by the Applicant

For purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information including a revised project description and revised project plans. The supplemental information provides clarification of the proposed project and additional information regarding issues raised by the appeal that was not part of the record when the County originally acted to approve the coastal development permit. The applicant submitted (1) new geotechnical information and analysis of the bluff retreat rate; (2) a revised site drainage plan; and (3) an off-street parking plan that provides for two adequately-sized parking spaces on the subject property.

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

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that as conditioned, the development conforms to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act and approves the proposed development with conditions. The proper motion is:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-04-030 pursuant to the staff recommendation.

Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attachment

III. SPECIAL CONDITIONS:

1. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

2. Revised Erosion and Runoff Control Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised drainage control plan for the review and approval of the Executive Director. The Revised Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs), which will serve to minimize the velocity and improve the quality of storm water runoff leaving the developed site during and immediately after construction, and over the long term for the life of the project. The plan shall substantially conform with the "Site Drainage Plan" and "Revised Drainage Plan" submitted as part of the "Revised Bluff Retreat Evaluation" dated July 19, 2004 received by the Commission July 22, 2004, except that the plan shall also provide for the following changes to the project.

- (a) Straw bales, coir rolls, or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants into coastal or marine waters. These structures shall be placed between any construction on the project site and 5-10 feet inland of the top of the sea cliff bluff;
- (b) On-site vegetation shall be maintained to the maximum extent possible during construction activities;

- (c) Any disturbed areas shall be replanted or seeded with native vegetation following project completion;
 - (d) All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff;
 - (e) Runoff from the roof, driveway, and other impervious surfaces of the development shall be collected, contained and directed to a French drain system installed around the perimeter of the house. The French drain trench shall be a minimum of 2 feet wide by 2 feet deep, graded to drain west toward the back of the property, fitted in the bottom with 4-inch-diameter perforated pipe (SDR-35), and backfilled with one to three-inch clean cobble. Filter fabric (Mirafi 140N or equivalent) shall be placed in the trench wrapping approximately two-thirds of the cobble covering the pipe. The remaining depth of the trench shall be backfilled with additional cobble of the same size. The perimeter French drain shall feed into a solid 6-inch diameter (SDR-35) discharge line directed to an outfall located near stable bedrock, and provided with energy dissipation cobble at the terminus;
 - (f) Perimeter foundation sub-drainage shall be collected, contained, and directed to the perimeter French drain system as described in (e) above;
 - (g) A curtain drain shall be installed across the width of the property approximately 25 feet downslope from the residence to collect, contain, and direct surface and sub-surface drainage to the 6-inch solid discharge line as described in (e) above.
 - (h) The storm water drainage system shall be maintained fully functional as designed for the life of the project.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Use Permit for Development of Drainage Improvements

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director evidence demonstrating that the applicant has been granted any required use permit from the County of Mendocino for development of the storm water runoff drainage control system, or evidence that no use permit is legally required.

4. Encroachment Permit

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-04-030, the applicant shall submit to the Executive Director for review and written approval, evidence of an encroachment permit or exemption from Mendocino County. The encroachment permit or exemption shall evidence the ability of the applicant to develop a driveway entrance to the parcel along Omega Drive, as conditioned herein.

5. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-04-030, including, but not limited to, the residence with the attached garage, foundations, septic system, and driveway in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code No 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence with the attached garage, foundations, septic system, and driveway if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

6. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-04-030. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. A-1-MEN-04-030.

Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to CDP Permit No. A-1-MEN-04-030 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government

8. Exterior Lighting

All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

9. Conditions Imposed By Local Government.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. Location, Site and Project Description

1. Location and Site Description

Finding D of the Substantial Issue portion of this report regarding the site description is hereby incorporated by reference.

2. Project Description

The proposed development is the construction of a 1,762-square-foot, partial 3-story, 2-bedroom, 1½-bath residence with a maximum height of 35 feet above finished grade, including a 1-car garage, exterior lighting, driveway, LPG tank, and connections to utilities. Also, variances to setbacks along Highway One would allow 45 feet instead of the required 60 feet, and along Omega Drive would allow 18 feet instead of 45. The house would be built about 80 feet back from the top of the sea cliff bluff. The architectural style of the residence would be Victorian with a few nautical accents. The house is essentially a two-story design with a "crow's nest" enclosed deck within the confines of the roof's attic space intended to create a "lighthouse" look. The exterior colors and materials would be white wooden-appearing siding and trim, brick chimney base and white chimney stack, red or gray composition-shingled roof, with white vinyl window frames, and red wooden doors.

For purposes of *de novo* review by the Commission, the applicant has submitted a revised project description and revised project plans that (1) revise off-street parking areas to serve the proposed residence; and (2) revise the drainage plan to provide erosion and sedimentation control for storm water runoff from impervious surfaces of the proposed project. The new parking plan would provide for two parking spaces, a minimum of 10 feet by 22 feet each, to be located on the subject property. One of the spaces would be in the attached garage, and the other would be on driveway located at the front of the house. Both parking spaces would be accessed from Omega Drive along the south side of the property. The revised drainage plan would provide for storm water runoff to be collected, contained and directed to an outfall near stable bedrock on the property, rather than direct runoff generated from the subject lot to the public drainage system on Omega Drive.

B. Planning and Locating New Development

LCP Provisions

LUP Policy 3.9-1 of the Mendocino County Land Use Plan (LUP) states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal system and other know planning factors shall be considered when considering applications for development permits.

The subject property is classified on the Coastal Plan Map of the certified LUP and zoned in the County's certified Local Coastal Program (LCP) as Rural Village (RV). Section 20.388.005 of the Coastal Zoning Code (CZC) states that the intent of the RV District is to:

...preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages; to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities.

CZC Chapter 20.388.010 states that single-family residences and vacation home rentals are principally permitted uses in the RV zoning district. CZC Section 20.388.020 requires at least a minimum lot size of 6,000 square feet for property located within water and sewer service areas. CZC Section 20.388.025 specifies the maximum dwelling density for the RV zoning district for property located within water and sewer service areas as one single-family dwelling per 6,000 square feet. Setbacks for the subject parcel are twenty feet for the front and rear yards, and six feet for the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. CZC Section 20.388.040 sets the maximum building height for the RV zoning district at 35 feet above natural grade. CZC Section 20.388.045 sets a maximum of 50% structural coverage on RV lots. Pursuant to CZC Section 20.388.050, the minimum lot width for the RV zoning district must be a minimum of 60 feet. CZC Section 20.388.005 sets the maximum lot depth at no more than 3 times the lot width for property located within the RV zone. Finally, Section 20.388.060 specifies that development in Westport be subject to the visual resource protection provisions of CZC Section 20.504.020 designed for special communities and neighborhoods.

Discussion

The proposed single-family residence would be constructed in the rural village of Westport, and the residence as proposed is consistent with the uses allowed in the applicable Rural Village (RV) use classification.

The applicant proposes to construct a house occupying a footprint of approximately 1,160 square feet, with a total lot coverage for the proposed development of approximately 1,660 square feet, or about 28% of the lot area, well within the maximum 50% required by the RV zoning designation. The proposed maximum building height would be 35 feet above finish grade consistent with the height requirements of CZC Section 20.388.040. The proposed lot coverage and building height are consistent with LUP Policy 3.9-1.

Municipal water and sewage facilities would serve the proposed development consistent with LUP Policy 3.8-1. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots recognized in the certified LCP were addressed at the time the LCP was certified. Therefore, as conditioned, the proposed development is located in an area able to accommodate the proposed development, consistent with the applicable provisions of LUP Policy 3.9-1.

As amended for the purposes of the Commission's *de novo* review, the applicant's revised off-street parking plan provides approximately 500 square feet of driveway and off-street parking area. This parking area is sufficient to accommodate two off-street parking spaces consistent with CZC Sections 20.472.010 and 20.472.015.

Setbacks for the subject parcel were not consistent with the zoning standards, however, the applicant has obtained variances from the County, and with the approved variances, the project is consistent with the zoning requirements because the setbacks have been adjusted by variance to provide 45 feet instead of the required 60 feet along Highway One, and 18 feet instead of 45 feet along Omega Drive.

As described in the visual resource finding below, the proposed project is consistent with Section 20.388.060, which specifies that development in Westport be subject to the visual resource protection provisions of CZC Section 20.504.020 designed for special communities and neighborhoods. Also as discussed below, the proposed development has been conditioned to include mitigation measures which will minimize all adverse environmental impacts.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.8-1, 3.9-1, and with CZC Chapters 20.376 and 20.388 as the development will be located in a developed area, there will be adequate services on the site to serve the proposed development, meets height and setback requirements, and the project will not contribute to adverse cumulative impacts on highway capacity, scenic values, or other coastal resources.

C. Geologic Hazards

LCP Policies:

LUP Policy 3.4-1 states:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami run-up, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

[Emphasis added.]

LUP Policy 3.4-7 states that:

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

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

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

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.¹ [Emphases added.]

LUP Section 3.4-8 states that:

¹ This language is reiterated in Coastal Zoning Code Sections 20.500.020(B)(1) and 20.500.020(E)(3).

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

LUP Policy 3.4-10 states:

No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.

Coastal Zoning Code Section 20.500.005 states with regard to the scope of applicability of the County's hazards chapter:

This Chapter shall apply to all development proposed in the Coastal Zone unless and until it is determined by the County Coastal Permit Administrator that the project is not subject to threats from geologic, fire, flood or other hazards.
[Emphasis added.]

Zoning Code Section 20.500.010(A) states that development in Mendocino County's Coastal Zone shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Zoning Code Section 20.500.015 states, in applicable part:

(A) Determination of Hazard Areas.

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

- (2) *Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*
[Emphasis added.]

CZC Section 20.500.020, entitled "Geologic Hazards – Siting and Land Use Restrictions," states in applicable part:

(B) *Bluffs. ...*

- (2) *Drought tolerant vegetation shall be required within the blufftop setback.*
- (3) *Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

...

(E) *Erosion.*

- (1) *Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses...* [Emphasis added.]

Discussion:

CZC Section 20.500.015(A) requires all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff top lots be reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and Coastal Zoning Code Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed "in any way" over a full 75-year economic lifespan for the development. A sole exception to this prohibition on the construction of shoreline protective devices is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal dependent uses.

As discussed above, the subject property is a small trapezoidal blufftop parcel situated on a stepped coastal terrace located at the northern end of the town of Westport, Mendocino County. The lot measures approximately 38 feet along the east side, 177 feet along the south side, and 139 feet along the north side. The shoreline bluff runs for approximately 54

feet along the west side of the property. Topographically, the eastern portion of the property is gently to moderately sloped west toward the upper terrace edge (that runs approximately 54 lineal feet north to south) before dropping about 35 feet at an average inclination of approximately 43 degrees to a rock and sand shoreline and the ocean. The property is thickly vegetated with brush. Geologic materials exposed at the site consist of terrace deposits overlying sedimentary bedrock. The estimated 15 to 20-foot-thick terrace deposits consist of unconsolidated gravelly sand prone to erosion and sloughing. A 3 to 6-foot-deep gully exists within the terrace deposits in the center near the western edge of the parcel that runs west toward the sea cliff. Underlying the terrace soils, and exposed in the sea cliff profile is hard, gray, sandstone.

The Engineering Geologic Evaluation dated July 28, 2003, and submitted with the project application was prepared by certified Engineering Geologist Jim Glomb. The report contains the following conclusions with respect to the rate of bluff retreat and site stability:

Based on analysis of stereo pairs of air photos, no appreciable seacliff retreat was detected. However, it would be prudent to assume a minimal retreat rate of ½ foot per year. Over a 75 year life expectancy, if conditions remain the same, the estimated maximum accumulated retreat at the site would be about 37.5 feet. From a seacliff stability viewpoint it is considered feasible to construct a residence at least 37.5 feet from the top of seacliff.

It should be noted that the applicant is proposing to construct the house approximately 80 feet from the seacliff bluff edge, well back from the recommended 37½-foot minimum distance from the bluff edge. The appeal raised concerns about the justification of the bluff setback recommendation and the need for a slope stability analysis. In response to the Commission staff's request for additional geologic information, the applicant submitted a supplemental report also authored by engineering geologist Jim Glomb dated July 19, 2004, entitled "Revised Bluff Retreat Evaluation". The revised report augmented the previous analysis of the bluff retreat rate for the subject property, as supported by a study of aerial photographs of the property for the years 1972 and 1981, by reviewing two additional aerial photo stereo pairs for the years 1964 and 2001, representing a more than four-fold increase in the span of time from the original 9 years, to 37 years. What is more, the 2001 photo indicated bluff conditions similar to those identified on-the-ground during the consultant's site visit in February, 2004, further extending the span of time for the bluff retreat rate analysis to about 40 years. Review of the 1964 photos showed no appreciable bluff retreat when the distance from the centerline of the highway to the top of bluff at the bedrock were compared. In summary, the applicant's geologic consultant reiterated the validity of his original retreat rate estimate of ½-foot per year, resulting in a maximum accumulated retreat at the site of about 37½ feet over a 75-year life expectancy for a residential structure.

A quantitative slope stability analysis was not performed on the bedrock portion of the bluff because of the well-demonstrated negligible retreat rate over the past years, and because of the favorable dip slope bedding condition. According to the applicant's consultant, the bedrock exposed in the bluff consists of hard sandstone with an average seaward dip slope

of about 45 degrees. The bedrock, with its steep and blocky fractures, and average fracture spacing of several feet, indicates that the retreat of the bluff is chiefly controlled by the bedding plane, with a secondary mode of bluff retreat due to block toppling along steep fractures. The bluff face has conformed to the bedding plane of this underlying bedrock strata.

A slope stability analysis was also not performed on the terrace because the mode of failure is not considered to be from landsliding. The colluvial terrace soils (soils formed from upslope areas, rather than formed in-place) are composed of erodible gravelly sand. Because of the coarse-grained makeup of these colluvial soils, the estimated friction angle and expected slip surface is greater than 30 degrees, which exceeds the current 17 degree average angle of repose for the terrace bluff surface making them subject to erosion. Past erosion of the terrace soils has been from surface drainage, probably diverted from the adjacent highway during peak storm events.

To protect the terrace from erosion, the applicant has revised the project description for purposes of the Commission's *de novo* review to include new recommendations for addressing storm water runoff related to the subject property. The applicant has submitted a new drainage control plan that provides runoff from impervious surfaces such as the driveway and roofs, as well as surface drainage originating between the proposed residence and the top of the coastal bluff, to be captured, contained and delivered by buried pipeline to a point of discharge near stable bedrock. The geologist estimates that the revised drainage control plan would reduce the retreat rate expected from surface erosion of the colluvial soils making up the terrace to less than 0.1 foot/year, or a total of less than 7.5 feet/75 years.

Dr. Mark Johnsson, the Commission's staff geologist, has reviewed the applicant's geotechnical reports. Dr. Johnsson reviewed the newly submitted two additional aerial photo stereo pairs, and Mr. Glomb's discussion justifying the reported 0.5-foot per year retreat rate of the coastal bluff for the subject property, along with the previously recommended setback from the sea cliff bluff of 37 ½ feet, and concluded that the new information and analysis provided is adequate to support the bluff setback recommendation of 37.5 feet, and to demonstrate that the proposed house would be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during its 75-year economic life span. Additionally, Dr. Johnsson concurred with Mr. Glomb's assessment that the performance of a quantitative slope stability analysis would not be necessary because of the presence of dense bedrock at the site that doesn't tend to fail by rotational landslides, and because of the geologically favorable bedding plane angle of the underlying bedrock.

Mendocino County LUP Policy 3.4-7 and CZC Section 20.500.020(B) require that new structures be set back a sufficient distance from the edge of the bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years) and the setback be of sufficient distance to eliminate the need for shoreline protection devices. The setback recommended by the applicant's geologist is 37½ feet from the bluff edge. As proposed, the applicant would construct the residence about 80 feet from the bluff edge. Therefore, the proposed development as conditioned will be set back a sufficient distance from the bluff edge

to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. In his investigation of the site, engineering geologist Jim Glomb advised that site drainage from impervious surfaces such as roofs and driveways, and surficial drainage between the proposed residence and the top of the bluff, should be collected conveyed to an outlet 5 to 10 feet back from the top of the bluff near the bedrock surface, and be provided with rock energy dissipation. To ensure that the applicant adheres to the recommendations suggested in the consultant's geotechnical report, and that the development does not contribute significantly to geologic hazards, the Commission attaches Special Condition No. 2. The special condition requires that drainage plans provide for such a system as discussed further below. As conditioned, the development will include the measures determined by the geologic investigation to be necessary to stabilize the site consistent with LUP Policy 3.4-1.

Notwithstanding the relative degree of insulation of the proposed project improvements in their proposed locations from geologic hazards, the applicant is proposing to construct a new residence that would be located on a high uplifted marine terrace blufftop that is actively eroding. Consequently, the house would be located in an area of high geologic hazard. However, new development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicant has submitted information from a registered engineering geologist which states that if the new house is set back at least thirty-seven and a half (37½) feet from the bluff edge, it will be safe from erosion and will not require any devices to protect the it during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant blufftop parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the blufftop parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.

- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant blufftop lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a blufftop project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot blufftop setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize blufftop protective works.

The Commission emphasizes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form it's opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The geotechnical evaluation and report prepared by Jim Glomb states the following:

Our services consist of professional opinions and conclusions developed by a certified engineering geologist in accordance with generally accepted engineering geologic principles and practices. This warranty is in lieu of all other warranties, either express or implied. We judge that construction in accordance with these recommendations will be stable, and that the risk of future instabilities are within the range generally associated with construction on seacliffs in the area. However, there is an inherent risk of instability with all seacliff construction...

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective

device, inconsistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020(B). The Commission finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicant's geologist and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized if the residence is set back at least 37 ½ feet or more from the bluff edge as proposed. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed development is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 5 to ensure that no future shoreline protective device will be constructed.

Special Condition No. 5 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the residential development if bluff retreat reaches the point where the residential development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with Coastal Zoning Code Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with Coastal Zoning Code Section 20.500.010 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 6 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 1 that a deed restriction be recorded, will ensure that future owners of

the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 6 requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 5 is also required to ensure that the proposed development is consistent with the LCP, and Special Condition No. 1 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

As conditioned, the proposed development would not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or cause erosion. However, the Commission notes that future minor incidental development normally associated with single family residences such as additions to the residence, construction of outbuildings, decks and patios, or installation of additional landscaped areas could be sited and designed in a manner that could compromise geologic stability leading to significant adverse impacts to the site and surrounding area. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. Thus, the Commission would not normally be able to review such development to ensure that geologic hazards are avoided.

The Commission further notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing homes, Section 30610(a) requires the Commission to specify by regulation those classes of development that involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, siting and development of certain additions or improvements to the approved residence could involve a risk of initiating significant adverse geologic hazards. Therefore, in accordance with provisions of Section 13250(b)(6) of Title 14 of the California Code of Regulations, the Commission attaches Special Condition No. 7, which requires a coastal development permit or a permit amendment for all additions and improvements to the residence on the subject parcel that might otherwise be exempt from coastal permit requirements. This condition will allow future development to be reviewed by the Commission to ensure that future improvements will not be sited or designed in a manner that would result in significant adverse geologic consequences. As discussed above, Special Condition No. 1 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 1 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

As proposed, the revised drainage plan would pipe storm water runoff to an outlet located 5 to 10 feet inland from the top of bluff, but near the bedrock surface. Portions of the drainage control system, about 40 lineal feet of piping and the outfall energy dissipation structure, would be constructed within the 37½-foot geologic setback. LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4) prohibit new development constructed on the bluff face unless approved by a conditional use permit through a finding that no feasible less environmentally damaging alternative is available. The lower portion of the drainage system would be constructed below the upper terrace, but above the hard sandstone bedrock bluff face. Staff geologist Dr. Mark Johnsson opines that "the upper terrace is not steep enough to consider it the top of bluff," and that "in this instance it is not critical to locate the exact top of bluff." Dr. Johnsson goes on to say that "it would be a hard argument to apply the stepped terrace definition to this property for determining the edge of the bluff." Even if the area where the lower portion of the drainage system would be constructed is considered to be the bluff face, the facility can be justified for placement in this location because the purpose is to provide the least damaging feasible alternative for addressing storm water runoff from the subject property. The structure has been designed to mitigate potential adverse impacts associated with delivery of the property's storm water to other locations where County drainage culverts could be overwhelmed by additional water. Commission staff has reviewed the two geologic studies provided by the applicant, visited the site, and is of the opinion that the revised drainage control plan devised to deliver runoff water from the applicant's property to stable bedrock on the property is the least environmentally damaging alternative. Thus, staff does not consider the proposed project as conditioned inconsistent with LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4) prohibiting

new development from being constructed on the bluff face. However, if the County considers portions of the proposed storm water drainage control system to be located on the bluff face, then a conditional use permit would be necessary pursuant to LUP Policy 3.4-10 and CZC Section 20.500.020(B)(4). Therefore, the Commission attaches Special Condition No. 3 requiring that prior to issuance of the permit, the applicant provide evidence that the applicant has obtained from Mendocino County a conditional use permit to construct the storm drainage control system, or verification that no use permit is required.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12, and Coastal Zoning Code Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, will not require the construction of shoreline protective works, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

D. Visual Resources

LCP Provisions

LUP Policy 2.2 - Description Of Land Use Plan Map Designations – in applicable part states:

RURAL VILLAGE - COASTAL

Map Code: RV

Intent: To preserve and maintain the character of the rural atmosphere and visual quality of the following villages: Westport, Cleone, Caspar, Little River, Albion, Elk and Manchester; and to provide a variety of community- oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities.

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...

LUP Policy 3.5-2 states:

The Town of Mendocino is designated as a "special community." Development in the Mendocino Town shall maintain and enhance community character, as defined in the Mendocino Town Plan.

Other communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances (emphasis added).

LUP Policy 4.2-4 states:

Future development of Westport as a Rural Village shall require that new development be compatible with existing development relative to scope and character.

Coastal Zoning Code Section 20.504.005 – Applicability- states:

This section shall apply to those areas identified as highly scenic areas, special communities and special treatment areas as defined by the Mendocino Coastal Element and identified on the Coastal Land Use Maps. All development proposals shall be reviewed by the Coastal Zone Permit Administrator to determine if the standards set forth in this section shall apply. Application of standards in this Chapter shall not preclude the development of a legally established parcel.

Coastal Zoning Code Section 20.504.010 states:

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

Coastal Zoning Code Section 20.504.020 in applicable part states:

(B) The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C):

(C) Development Criteria.

(1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.

(2) New development shall be sited such that public coastal views are protected.

- ...
- (4) *Building materials and exterior colors shall be compatible with those of existing structures* (emphasis added).

Discussion

As described above, the proposed single-family residence would be built on a narrow blufftop lot located within the Rural Village land use designation at the corner of Highway One and Omega Drive at the northern end of the village of Westport. The property is not in an area designated as highly scenic. The parcel is a very small approximately 6,004-square-foot lot that is approximately 38-feet-wide, 177 feet long on the south boundary along the Omega Drive-side of the property, and approximately 139 feet long on the north property boundary adjacent to a neighboring, two-story, single-family residence. The majority of the other houses in Westport are two-story structures, some large, some small, and of varying architectural style. The applicant proposes to build a 1,762-square-foot, partial 3-story, "Victorian" designed residence with a maximum height of 35 feet above finished grade.

LUP Policy 2.2 sets forth County intent to preserve and maintain the character of the rural atmosphere and visual quality of Westport. LUP Policy 3.5-2 states that Westport shall have special protection to the extent that new development remains within the scope and character of existing development. LUP Policy 4.2-4 requires future development of the rural village of Westport to be compatible with existing development relative to the scope and character. LUP Policy 3.5-1 and CZC Section 20.504.010 ensure that development be sited and designed to protect views to and along the ocean and scenic coastal areas, and be visually compatible with the character of surrounding areas. CZC Section 20.504.020(B) designates Westport as a neighborhood entitled to receive special protection as set forth in CZC Section 20.504.020(C) requiring the scale of new development (building height and bulk) to be within the scope and character of existing development in the surrounding neighborhood. Also, under these certified policies new development must be sited to protect public coastal views; and building materials and exterior colors must be compatible with those of existing structures.

Consistent with LUP Policy 2.2 designating Westport as a Rural Village, and as described above, the proposed residential development would conform with the requirements to construct a maximum of one dwelling unit on the existing 6,004-square-foot parcel that is within both a municipal water and sewer service area. The proposed development would also conform to the provisions of LUP Policy 2.2 to preserve and maintain the character of the rural atmosphere and visual quality of Westport. Defining the "character" of an area can be rather subjective when deciding if a particular structure is in character or not. Some elements to consider include the location of the proposed structure in relation to other existing structures, and the angle or way it would be viewed from public vantage points, including the distance. The siting of the structure, visible rooflines, materials proposed for use, height and size should all be evaluated. Of primary concern should be the plan orientation and topography of the surrounding area that takes into consideration natural vegetative cover and sight lines of the proposed development. Section 4.2 of the Mendocino

County certified Coastal Element contains a description of Westport referring to its cluster of buildings "huddled against the elements," and the "clearly defined town edges almost unknown in California" as primary expressions of the town's character. The discussion goes on to state: "Westport's spectacular setting and its compact form contribute more to its character than does the architecture of individual buildings." The Town of Westport exhibits a very diverse variety of building types, sizes, styles, architecture, colors, and materials. The existing houses range from modest one-bedroom cabins to 34 to 35-foot-high structures, the maximum height allowed in the Rural Village Zoning District. Two lots north of the applicant's parcel is a three-story structure (with an observation deck on top) designed to resemble the water towers common along the Mendocino Coast. The residence immediately north of the applicant's property is a two-story structure. To the south are six lots along the west side of Highway One, and ten additional lots served by Omega Drive. Most are developed with residences; several of which are two stories in height. Two lots south of the applicant's parcel, on the east side of Omega Drive, is a partial three-story Victorian residence, white with a red roof, with a three-story octagonal tower capped by a conical roof and dormers. This house is 35 feet tall at its highest point, and occupies approximately 2,806-square-feet, including the garage, with an additional 466-square-feet of porch area. A second lower conical roof covers another semi-octagonal bay. This wide variety of shapes, sizes, and styles in Westport is an attribute of the character of the community (see page 1 of Exhibit No. 10).

As proposed, the construction of a house on the subject lot would be considered in-fill, rather than expanding development at the town edge, because there are existing houses already located to the north and south of the property. As described above, the subject property is a very narrow corner lot, and this presents a special challenge for siting and design. The applicant explains that the approved residence utilizes design elements borrowed largely from existing houses in Westport, notably the "Switzer-Fee" home on the south end of town, built around 1884, and the Victorian residence described above, along with a few nautical accents. The applicant believes that the approved design with the narrowness and height, with two turrets, lap siding, painted siding and trims, high ceilings, and spiral staircase lends itself to a Victorian architecture that would not be inconsistent with the appearance of other houses in the area. The applicant maintains that the house is essentially a two-story design, with a "crow's nest" enclosed deck within the confines of the roof's attic space intended to create a "lighthouse" look. The crow's nest deck would not extend upward beyond the roof-line, but would mostly be hidden within the roof structure itself. The total square-footage for the approved development would be only 1,762 square feet, which is well within the norm for the area. The approved design height at the east end of the structure would be 22 feet above finished grade to closely match the approximately 25-foot height of the adjacent house to the north. This roof level would step up to a ridge height of approximately 30 feet over the central portion of the house. The maximum height at the top of the conical roof over the crow's nest would be 35 feet above finished grade. The apparent height of the house from Highway One would be somewhat reduced by the fact that the grade slopes down to the west from the highway, and that the taller elements of the house are at the midpoint and west end, away from the highway. The house would be

sited on the property with a reduced front yard setback to line up consistent with the other houses along Highway One, particularly to the north.

In terms of structural height, even within a few houses north and south of the applicant's property, structures exist that are as tall, or about as tall as the proposed structure would be. Other homes in Westport are also located close to their property lines presenting a "bulky" appearance. However, the applicant's approved house does not present an appearance that would be out of character in terms of height or bulk with other structures in the immediate neighborhood or within the larger Westport community.

As noted above, there is no particular housing style or architectural design that characterizes Westport. The town exhibits a very diverse variety of building types, sizes, styles, architecture, colors, and materials. The existing structures range from quite modest historic one-bedroom cabins, to a nearby coastal development permit-approved Victorian-style, multi-level residence with a 35-foot-tall tower. The variety itself contributes to the character of the community, and the proposed residential development is compatible with the range of sizes including heights, widths, and structural appearances found within the scope and character of Westport. Furthermore, as the certified LCP cites that the character of Westport is dependent on its spectacular setting and compact form, more than the architecture or size of the houses, the proposed house would be in conformance with the visual resource provisions of the LCP pertaining to the protection of the visual character of Westport, including LUP policies 2.2, 3.5-1, 3.5-2, 4.2-4, and CZC Sections 20.504.005, 20.504.010, 20.510.020.

LUP Policy 3.5-1 and CZC Section 20.504.010 require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas, and to minimize the alteration of natural land forms. While the proposed development on the applicant's small lot would block a narrow view to the ocean from Highway One, there are other views to the ocean available in the immediate vicinity. The view to the ocean from Highway One down Omega Drive along the south boundary of the subject parcel would still be preserved, and by actually driving, biking or walking down Omega Drive toward the ocean, a full view of the ocean and shoreline can be enjoyed (Exhibit No. 10). A little farther to the south near the center of town, the view west from Highway One is across preserved open space offering wide and unobstructed views of the ocean, as well as the opportunity to park and walk along the coastal bluff and look down at the local beach, which sports a colorful history as a lumber ship anchorage. To the north of the subject property, expansive views of the ocean and shoreline are available from Highway One as one leaves the city limits of Westport. So, even though a narrow margin of the view corridor would be blocked by allowing the applicant to build the proposed residential development on his parcel, other spectacular views in the nearby vicinity would be protected to and along the ocean and scenic coastal areas consistent with LUP Policy 3.5-1 and CZC Section 20.504.010. In addition, although the development would include minor grading for the establishment of building foundations on the subject parcel, the development would not require significant landform alteration and a change in the natural topography, consistent

with LUP Policy 3.5-1 and CZC Section 20.504.010, thus helping to keep it compatible with the character of the area.

Therefore, the Commission finds that the proposed development as conditioned will protect public views to and along the ocean and scenic coastal areas consistent with visual resource protection provisions LUP Policy 3.5-1 and CZC Section 20.504.010 of the certified LCP.

Character compatibility of the proposed development with existing development is dependent on the development being built and maintained as proposed and conditioned. As proposed, exterior lighting would be provided by seven low-wattage "downlight" lanterns. If the exterior lights were installed in a manner allowing unshielded light to shine from the property, the development would no longer be compatible with other residential development in the vicinity designed to protect visual resources inconsistent with CZC Sections 20.504.010 and 20.504.035 requiring protection of views to and along the ocean and scenic coastal areas, and exterior lighting to be shielded or 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. Accordingly, Special Condition No. 8 is imposed to require exterior lighting to have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel. To ensure that any future buyers of the property will be aware of the limitations of Special Condition No. 8, to maintain a certain kind and array of exterior lighting fixtures, the Commission imposes Special Condition No. 1. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

As conditioned, the Commission finds that the proposed development will be compatible with the character of existing structures, will protect views to and along the coast, and will minimize alteration of landforms consistent with LUP Policies 3.5-1 and CZC Section 20.504.010 of the certified LCP.

Therefore, for all of the above reasons, the Commission finds that the proposed development as conditioned will protect public views to and along the ocean and scenic coastal areas, be compatible with the character of the surrounding area, and will minimize alteration of land forms consistent with the visual resource protection provisions of the certified LCP.

E. Public Access

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative

authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

LCP Provisions

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

LUP Policy 3.6-27 states:

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

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

Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject site is located on a narrow coastal bluff lot at the corner of Highway One and Omega Drive near the northern end of the rural village of Westport. According to the

appellant and a few supporters of the appeal opposed to the project, there is an assertion of a trail on the applicant's property leading to a rock viewpoint, and/or down to the beach. The County's land use maps do not designate the subject parcel for public access, and there does not appear to be any safe vertical access down the steep bluffs from the applicant's property to the beach. The location of the proposed house and related development would not block or otherwise prevent the neighbors from attempting to establish a legal right of access to the trail should they wish to pursue a prescriptive easement. Commission staff visited the site on June 16, 2004, scrambled down the bluff face of the subject property, and would not characterize the route as a trail, but more like an unsafe climb. It certainly is not a well-used route for gaining access to the beach. However, staff did locate a heavily traveled route to the beach 100 feet or so to the south of the applicant's property extending from the westernmost corner of Omega Drive down the bluff face to the sandy beach below. The trail was equipped with a rope to assist in safer negotiation of the steep sections. Since there is (1) no indication of substantial use of a trail on the applicant's property to access the beach, (2) a well-used trail located very near to the subject property that currently provides access from Omega Drive down to the beach, 3) no evidence that the proposed development would block access to the beach, and (4) since the proposed development would not increase significantly the demand for public access to the shoreline and would have no other impacts on existing or potential public access, the Commission finds that the proposed project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP. Furthermore, since the Commission is imposing Special Condition No. 7 that would allow a review of new development, the Commission would have the opportunity to review new projects for consistency with public access requirements of the certified LCP and the Coastal Act.

F. Storm Water Runoff and Water Quality

LCP Provisions

LUP Policy 3.1-25 states:

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

CZC Section 20.492.015 sets erosion control standards and states in part:

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

(B) *Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*

- (C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...
- (D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.
- (E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur...
[Emphases added.]

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

- (A) Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.
- (B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.
- (C) Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.
- (D) Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection [emphasis added.]

CZC Section 20.492.025 sets runoff standards and states in applicable part:

- (A) Water flows in excess of natural flows resulting from project development shall be mitigated...
- ...
- (C) The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy dissipators [sic].

(D) *Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.*

(E) Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes... [Emphasis added]

Discussion

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Sections 20.492.015 and 20.492.020 of the Mendocino County Coastal Zoning Code set forth erosion control and sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.015 and 20.492.020(B) require that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation. Furthermore, CZC Section 20.492.025 requires that provisions shall be made to infiltrate and/or safely conduct surface water to suitable watercourses.

As discussed above, the subject parcel is located on a coastal terrace atop a steep coastal bluff. In the past, storm runoff probably diverted from Highway One, flowed over the property and down the coastal bluff initiating bluff erosion and forming a gully that cut down to bedrock. Since that time, Caltrans has upgraded three culverts in the vicinity to provide drainage improvements necessary to handle Highway One storm water runoff so that it is no longer directed over the subject property. As mentioned above, colluvial soils overlay stable bedrock at the site, and result in an upper terrace that is highly erodible. Due to the erodible nature of the soil, runoff originating from the development site that is allowed to drain uncontrolled over the bluff edge would form gullies that would erode the coastal bluff and destabilize the upper terrace. Additionally, sedimentation impacts from runoff would also be of great concern during and immediately after construction when entrained sediment and other pollutants in the runoff would contribute to degradation of the quality of marine waters.

The applicant previously proposed to collect storm water runoff from the property and direct it to the County road drainage along Omega Drive. This procedure raised concerns about overwhelming the County culverts with additional volumes of water originating impervious surfaces of the new development. Staff geologist Dr. Mark Johnsson discussed with the applicant's geologist the alternative of capturing storm water runoff originating from the subject development and directing it to stable bedrock located on the property as an acceptable procedure.

As discussed previously, the applicant has submitted a revised site drainage plan, dated July 19, 2004, that proposes to control runoff from the roof and driveway of the completed development, as well as surface runoff on the property, by capturing, containing, and diverting the water to an outlet near the stable bedrock surface on the property. In this revised site drainage plan, the applicant would provide 4-inch diameter drainpipes designed to service all roof downspouts from gutters or roof drains. Water originating from the impervious surfaces of the driveway, water captured in the perimeter foundation sub-drain system, and other surface runoff from the property between the highway and the upper terrace would be delivered to stable bedrock to minimize erosion.

The proposed use of pressure treated Douglas-fir planking to build the diversion structure raises concerns in at least two ways. First, the use of materials that are chemically treated and could leach chromate copper arsenate (CCA) or other dangerous preservatives into coastal marine waters is problematic. Second, the reliance on wooden structural materials for the surface water drainage diversion would result in the high likelihood that this important component of the proposed drainage facility would rot before the 75-year economic lifespan of the house lapses. In addition, the use of two drop inlets for collecting surface runoff would allow sediment-laden water to enter the storm drainage system and be directly piped down to the bluff top without any filtration to remove pollutants. To address these concerns, use of alternate materials and/or an alternate design needs to be considered before issuance of the permit. To ensure that runoff from the completed development is controlled consistent with the certified LCP, the Commission attaches Special Condition No. 2 to minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 2 requires a new revised runoff and erosion control plan that addresses the concerns discussed above. The condition requires that the revised plan eliminate the wooden runoff diversion wall and replace it with a curtain drain for collecting, containing, and directing surface and subsurface runoff into a discharge pipe that would deliver the runoff water to a stable location near bedrock. The curtain drain would also serve to filter out pollutants contained in the site runoff before discharge to the bedrock area. The condition requires that the discharge pipe also provide for the flow of runoff water captured from a perimeter French designed to collect water from perimeter foundation sub-drainage, the roof surfaces of the house, and the impervious surfaces of the driveway. The two (2) drop inlets are also required to be eliminated.

The project as proposed would also have temporary runoff impacts from construction related activities, that Special Condition No. 2 addresses, including storm water runoff from disturbed areas, and contamination of runoff water from construction debris. The imposition of Special Condition No. 2 requires that prior to issuance of the permit the applicant submits for the review and approval of the Executive Director an Erosion and Runoff Control Plan that would also provide that (1) straw bales, coir rolls or silt fencing be installed to contain runoff from construction areas; (2) on-site vegetation be maintained to the maximum extent possible during construction, (3) any disturbed areas be replanted or seeded with native vegetation following project completion, and (4) all on-site stockpiles of construction debris be covered and contained to prevent polluted water runoff.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by the runoff control measures required by Special Condition No. 2 as discussed above. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be directed to a drainage system, which will serve to filter pollutants from the runoff and minimize erosion and sedimentation.

G. Legal Entitlement to Improve Entry Driveway

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the Commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interest of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Section 30601.5 of the Coastal Act requires applicants to demonstrate their legal ability to develop the project as conditioned and approved by the Commission prior to issuance of a coastal development permit. The proposed project includes construction of a driveway to the attached garage and development of an additional parking area. Both of these improvements would cross County property located between the current location of Omega Drive and the subject property to access the applicant's parcel. To ensure that the applicant obtains from Mendocino County the legal ability to construct the driveway and parking improvements proposed across and within the County's road right-of-way, the Commission attaches Special Condition No. 4. The special condition requires the applicant to submit, prior to issuance of the permit, evidence of an encroachment permit or exemption from Mendocino County. As conditioned, the Commission finds that the project is consistent with Section 30601.5 of the Coastal Act as the applicant must demonstrate his legal ability to construct driveway access improvements within the County road right-of-way prior to issuance of the coastal development permit.

H. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there

are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be found consistent with the policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.

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

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Coastal Zoning Map
4. Site Plan and Elevations
5. Appeal
6. Notice of Final Action
7. Amended Project Description
8. Excerpts of Geologic Reports
9. Correspondence Opposing Project
10. Site Photos

ATTACHMENT A

Standard Conditions:

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

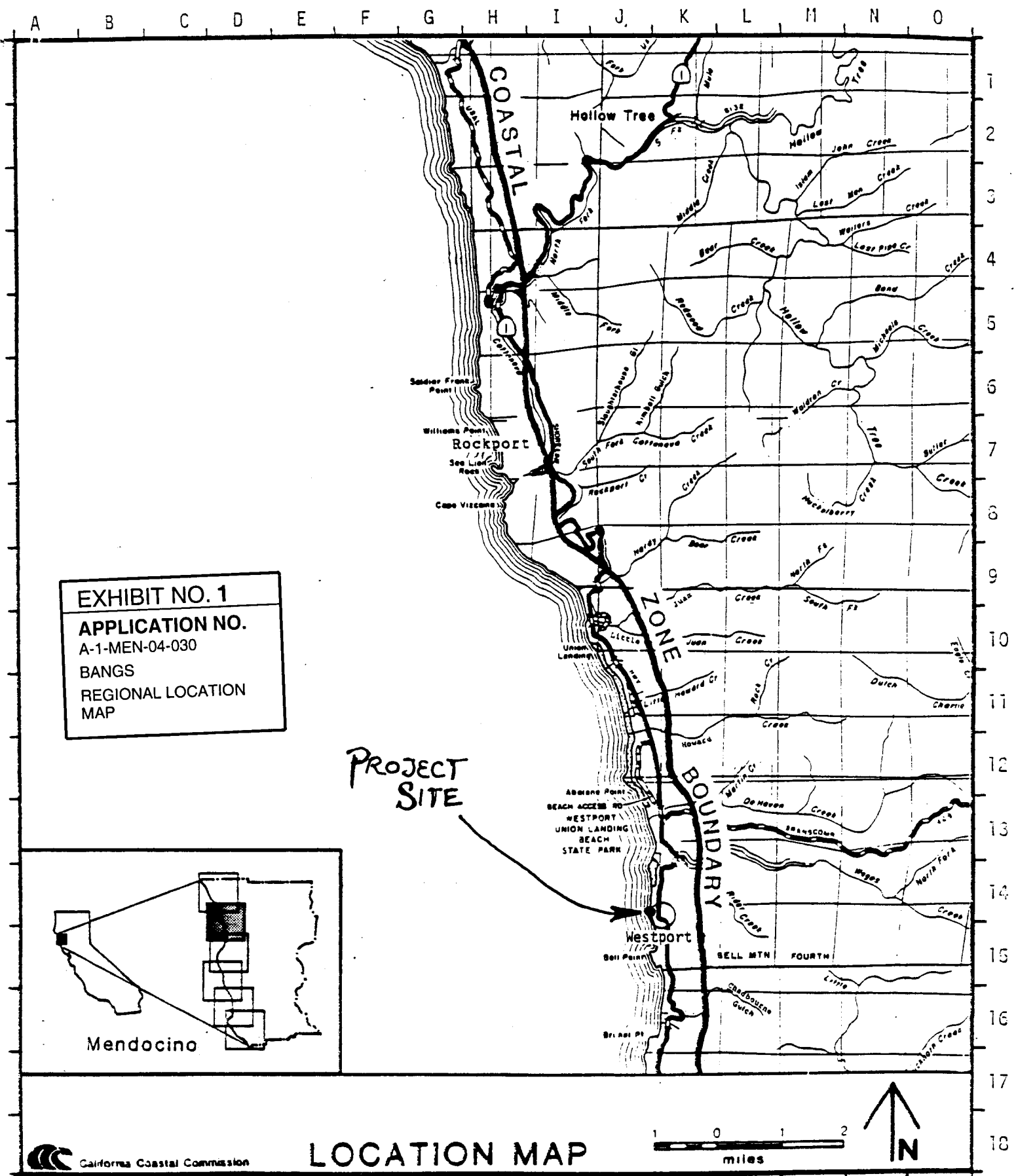
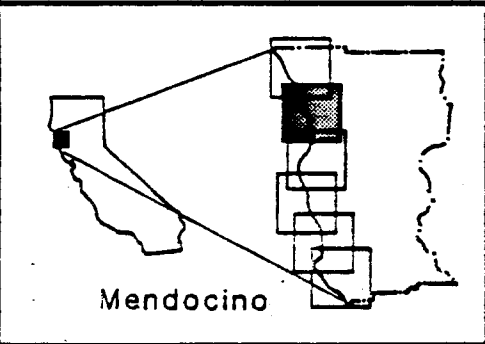
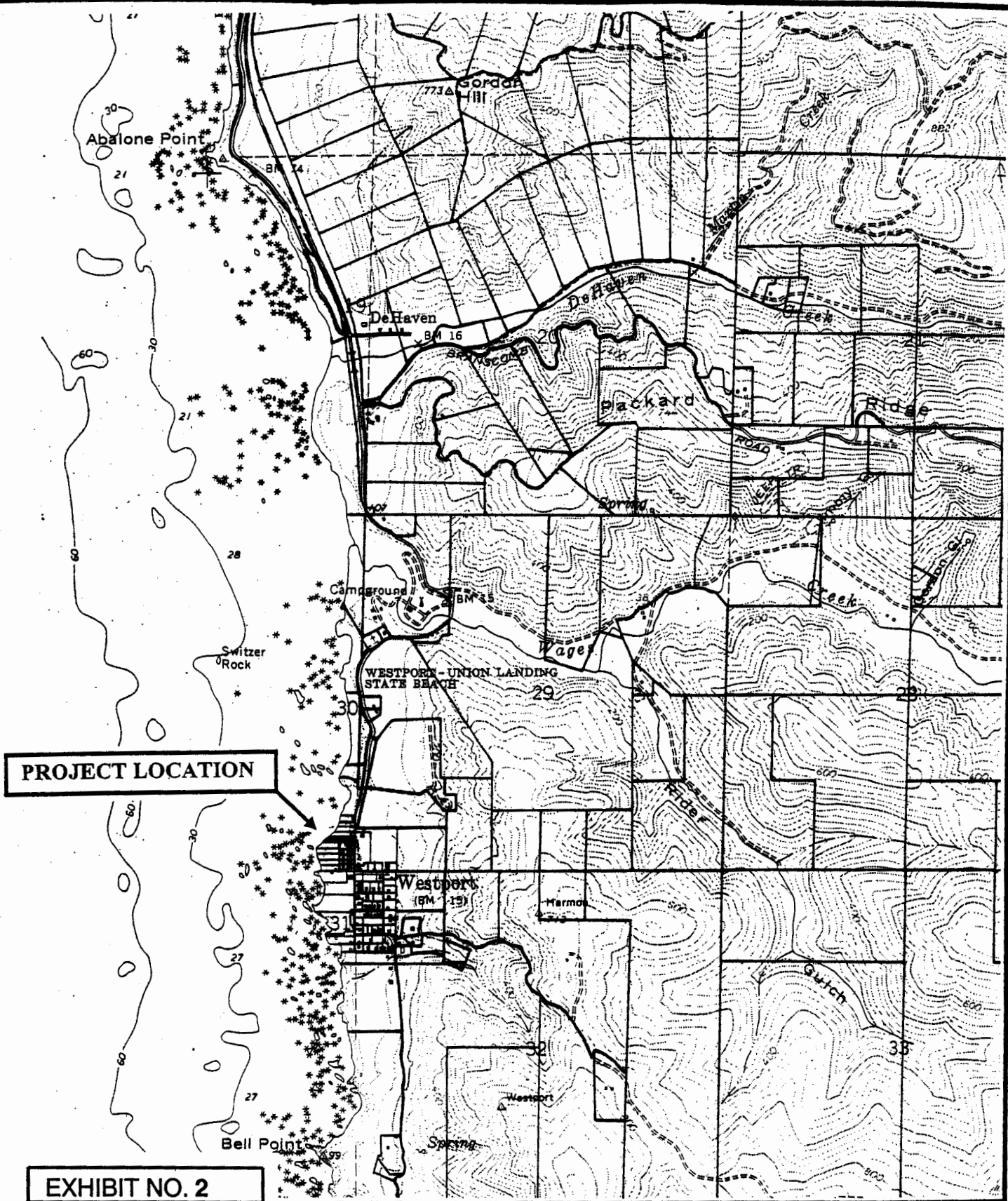


EXHIBIT NO. 1
APPLICATION NO.
A-1-MEN-04-030
BANGS
REGIONAL LOCATION
MAP



Mendocino



PROJECT LOCATION

EXHIBIT NO. 2
APPLICATION NO.
A-1-MEN-04-030
BANGS
VICINITY MAP

THOMAS P. BANGS
VICINITY
LOCATION MAP
1 INCH = 2000 FEET



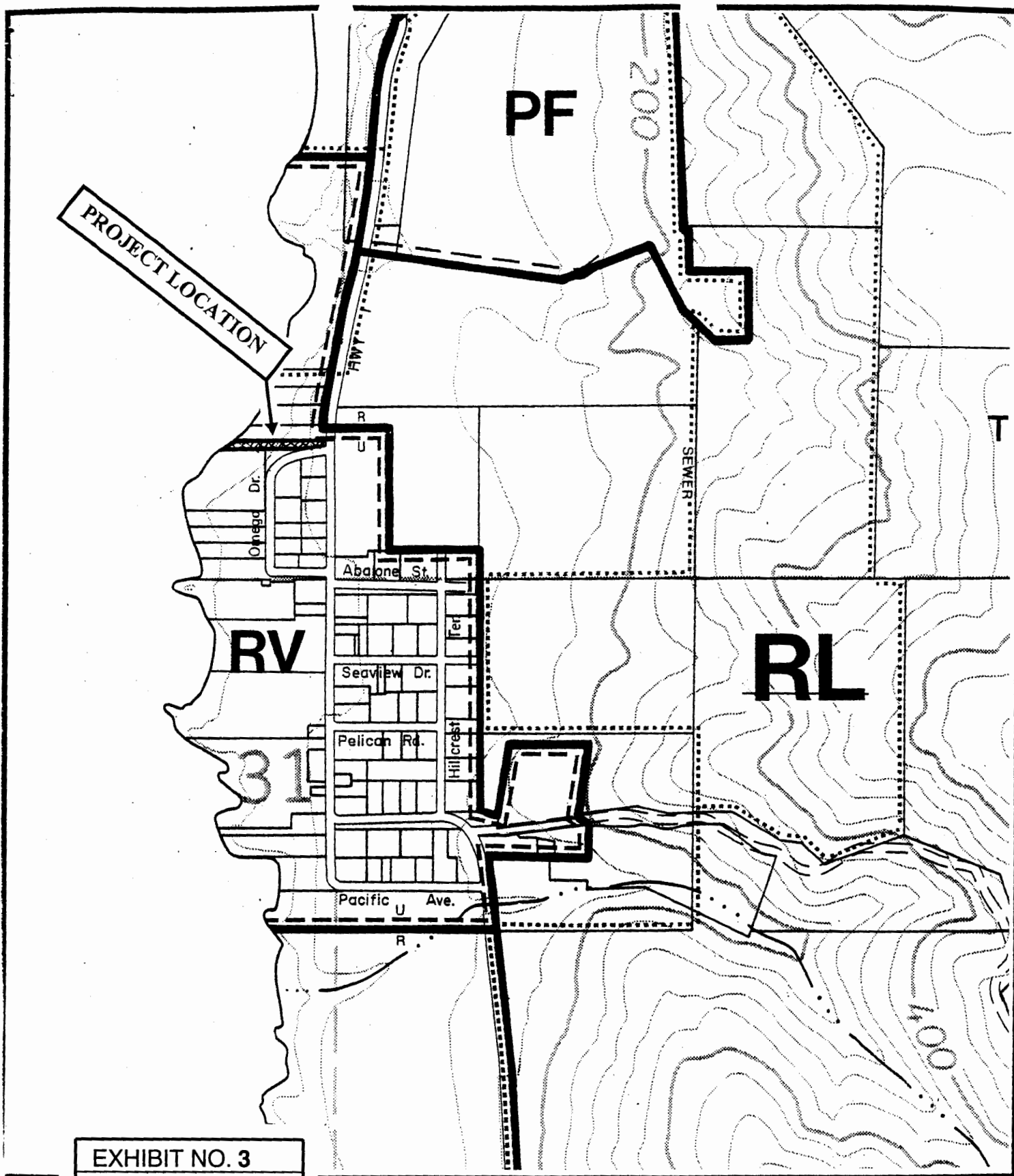


EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-04-030

BANGS

COASTAL ZONING MAP

THOMAS P. BANGS

COASTAL ZONING MAP

SCALE: 1 INCH = 500 FEET



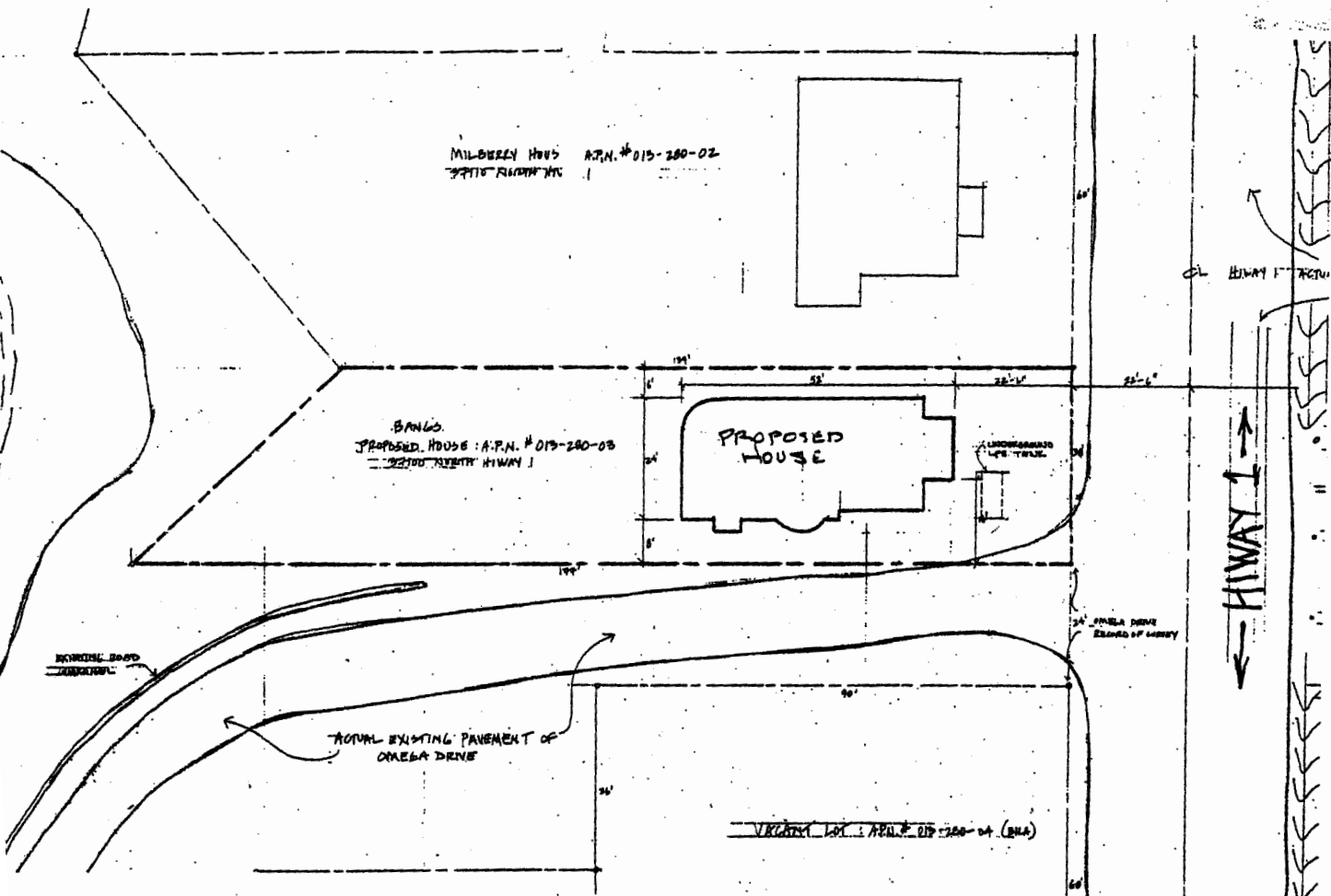
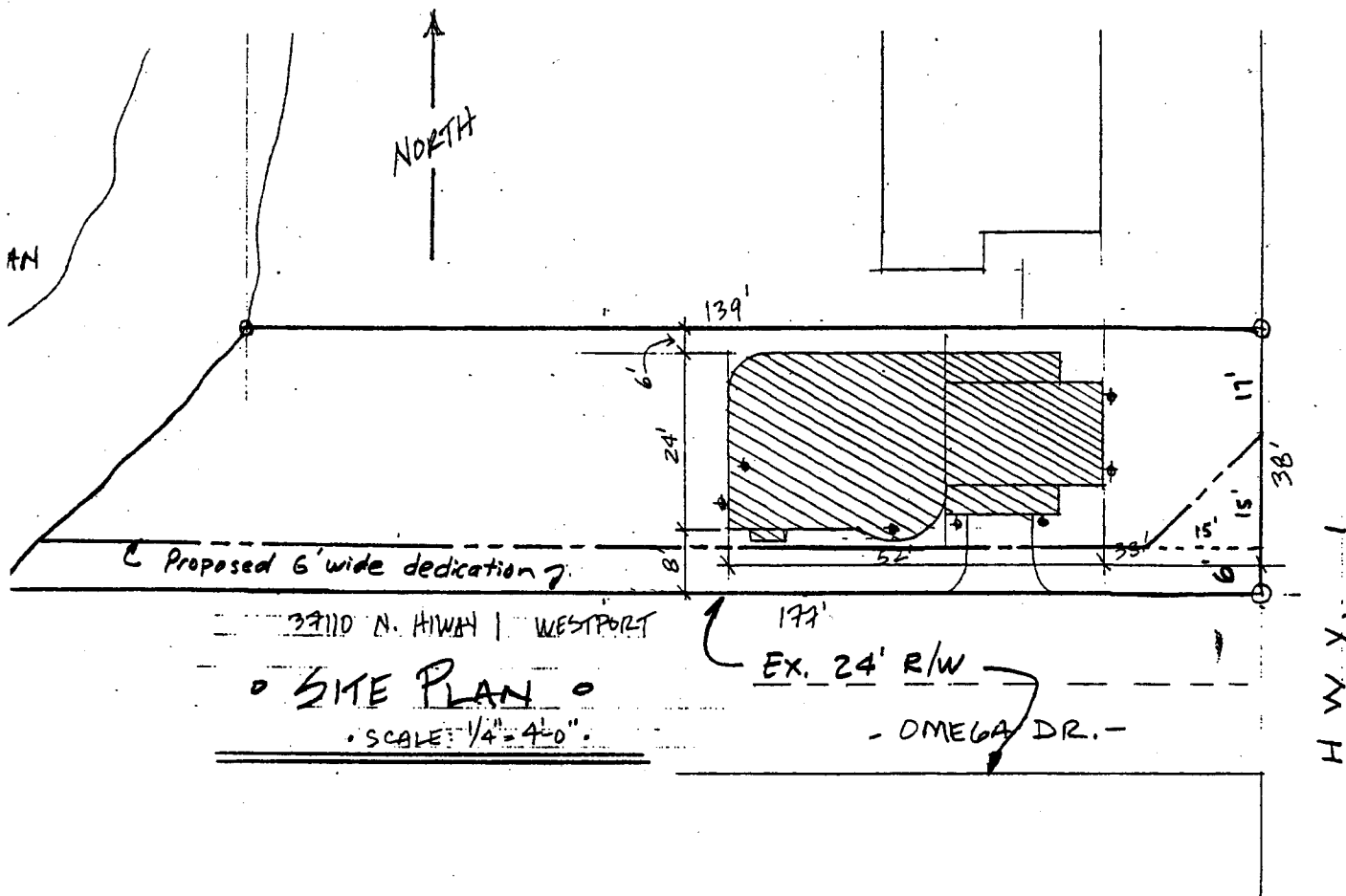


EXHIBIT NO. 4
APPLICATION NO.
A-1-MEN-04-030
BANGS
SITE PLAN AND
ELEVATIONS (1 of 5)

THOMAS P. BANGS

SITE PLAN
NO SCALE





THOMAS P. BANGS

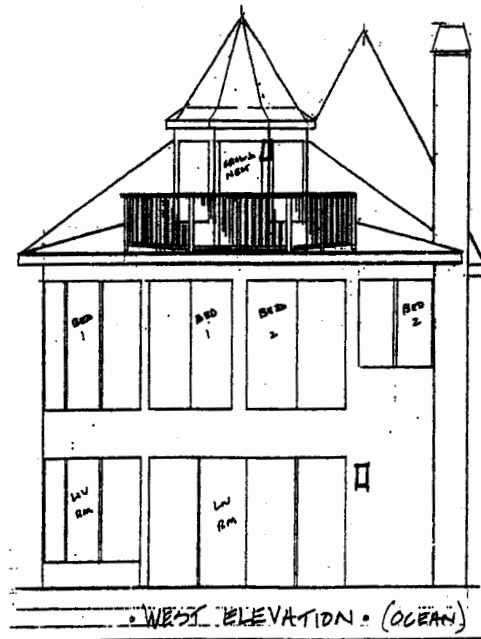
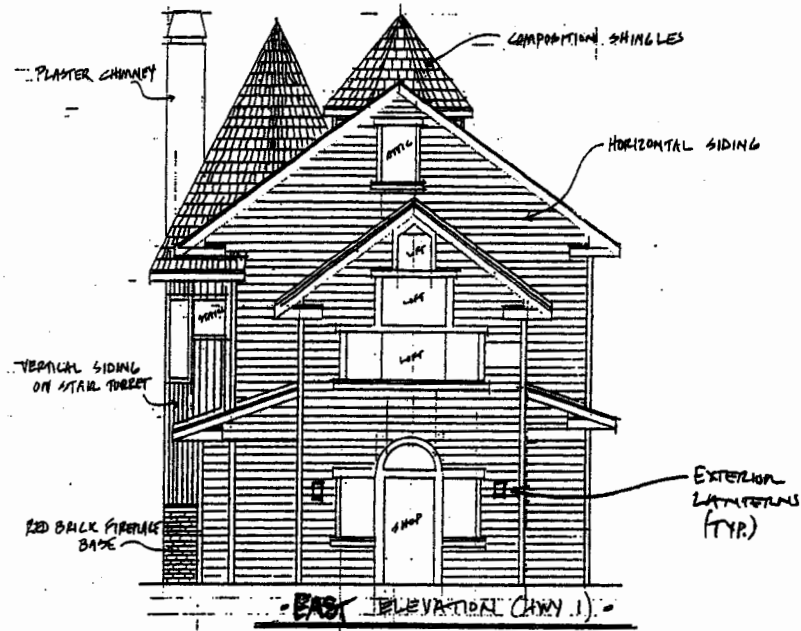
RECOMMENDED DEDICATION

NO SCALE



NORTH

2 of 5

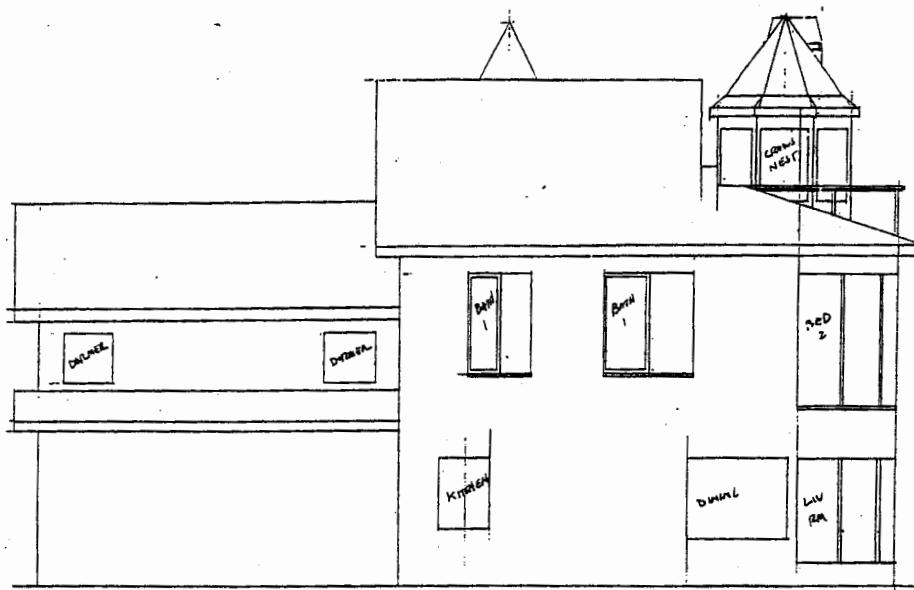


THOMAS P. BANGS

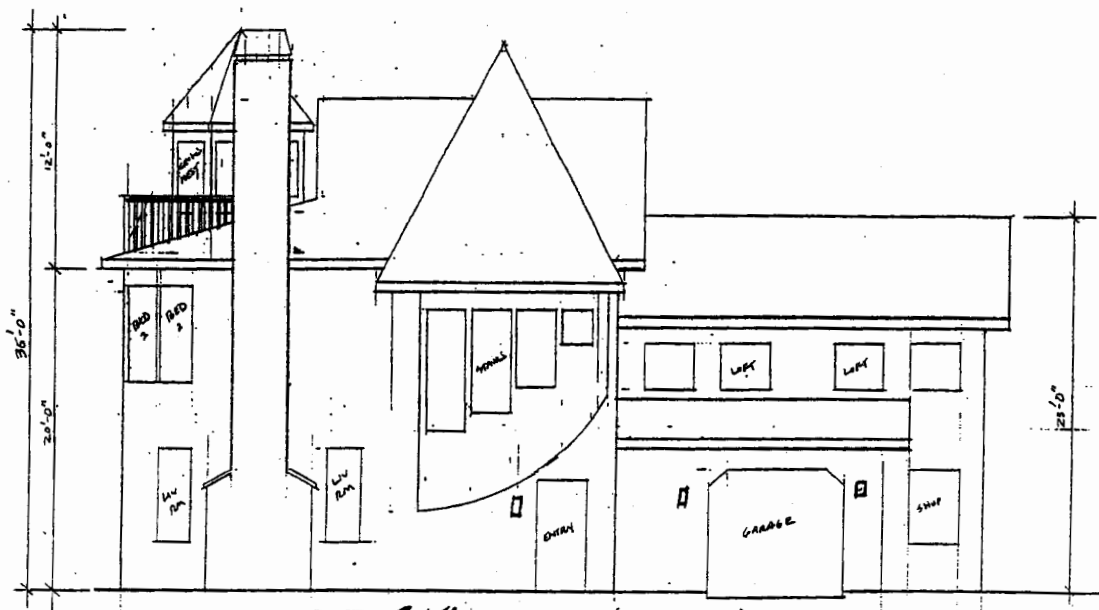
ELEVATIONS

NO SCALE

345



• NORTH ELEVATION •
• SCALE: 1/4" = 1'-0" •



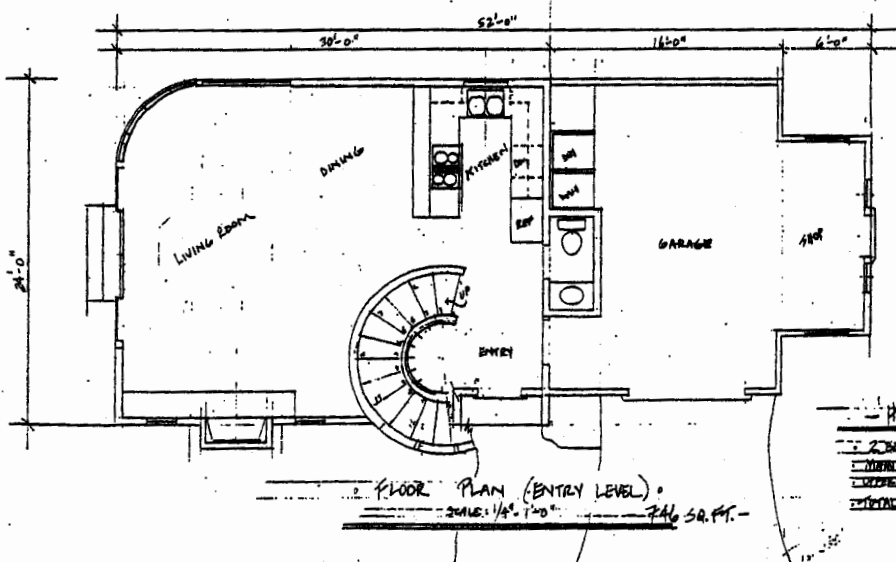
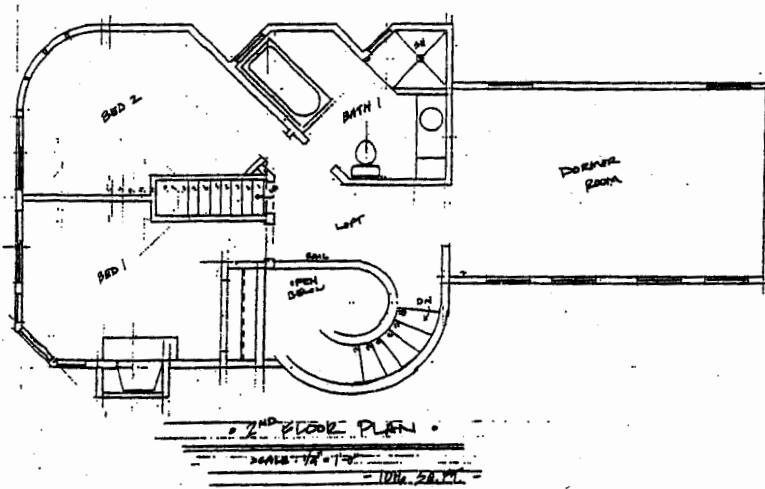
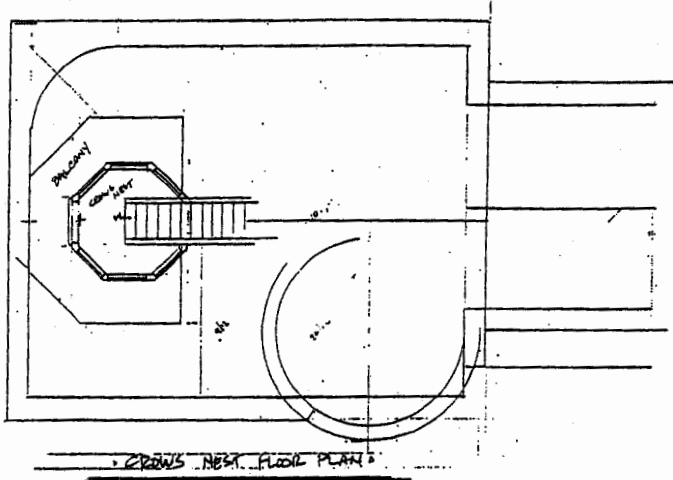
• SOUTH ELEVATION (OMEGA DR.) •
• FRONT •

THOMAS P. BANGS

ELEVATIONS

NO SCALE

4 of 5



HOUSE SUMMARY

2 BDRM 1 1/2 BATH	
TOTAL LIVING	246 S.F.
TOTAL BATH	121 S.F.
TOTAL TOTAL	367 S.F.

THOMAS P. BANGS

FLOOR PLANS
NO SCALE



5 of 5

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

700 E STREET, SUITE 200

EL REKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

RECEIVED

MAY 26 2004

CALIFORNIA
COASTAL COMMISSION**SECTION I. Appellant(s)**

Name: Rob Millberry

Mailing Address: 8737 Barracuda Way

City: Sacramento

Zip Code: 95826-1801

Phone: (916) 366-9571

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Construction of a 1,762 sq. ft., 3 story residence with height of 35 feet and attached garage on a blufftop lot approximately 38' X 100' (on bluff top - nominal parcel runs West to ocean edge).

3. Development's location (street address, assessor's parcel no., cross street, etc.):

37100 North Highway 1 @ north loop of Omega Drive in rural village of Westport, CA.
AP#013-280-03

4. Description of decision being appealed (check one.):

- ☐
- Approval; no special conditions
-
- ☒
- Approval with special conditions:
-
- ☐
- Denial

EXHIBIT NO. 5**APPLICATION NO.**

A-1-MEN-04-030

BANGS

APPEAL (1 of 18)

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

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

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

- ☒ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: 29 April 2004

7. Local government's file number (if any): unk(? CDP#89-03/CDV#17-03/CPA#16)

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:

Thomas P. Bangs
POBox 569
Placerville, CA 95667

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)

R. I. Millberry
780 4th Street
Lakeport, CA 95453

(2)

Nancy & Ken Millberry-Davis
516 Laurel Ave
Modesto, CA 95351-1824

(3)

Patrick Millberry
2563 East 23rd St.
Tulsa, OK 74114-3101

(4) See attached page

2 of 18

SECTION III. Identification of Other Interested Persons [continued]

NOTE: Staff Report prepared for 29 April 2004 hearing listed 38 parties (name only) under SUMMARY OF PUBLIC COMMENTS. The Planning and Building Department has provided me with no other information so I cannot provide addresses for those unfamiliar to me.

Additional interested parties:

(4)

Susan Lange
243 Carina Drive
Santa Rosa, CA 95401-5815

(5)

Dennis Parham
8512 Banner Court
Antelope, CA 95843

(6)

Paul Merrill
9154 Rothsay Way
Sacramento, CA 95829

(7) Otto & Thelma Marsh

37040 North Hwy 1
Westport, CA 95488

(8)

Kenny Rogers
37120 Main St
Westport, CA 95488

3418

Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

**SUBJECT: CONFORMITY TO THE ... BUILDING SITE AREA ... REGULATIONS
GIVING OF PUBLIC RIGHT TO PRIVATE PARTY**

REFERENCE:

Sec. 20.304.025 Effect of Zoning Enabling Plan.

ISSUE:

The Zoning Enabling Plan establishes the principle that "No building shall be erected ...except in conformity to the ... building site area ... regulations." The builder of this lot has been granted a variance so disproportionate that the resulting structure is not in conformity with the Rural Village zoning. None of the exceptions described in Chapter 20.480 of this Division apply to this structure.

DISCUSSION:

This proposed structure is on a very narrow lot and **most of the building footprint is on property gained through variance**. The full width (North to South) of the lot is nominally 38 feet but the lot faces two roads (Highway 1 and Omega Drive). In order to build this structure, the owner has been granted an **outside variance of 27 feet from Omega Drive. Mendocino County has inappropriately permitted more than half of the width of the building footprint (17 of 32 feet = 53%) to be obtained through variance.** This is an inappropriate use of variance. A variance is commonly understood to be a minor adjustment to allow normal use of property. Doubling the buildable size of a lot through a variance is an inappropriate giving of a public right to a private party.

According to Sec. 20.308.125 Definitions (V).

(B) "Variance" means a departure from the specific requirements, excluding uses, of the Zoning Code which may be granted by the appropriate Mendocino County authority when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the requirements of this Division deprives such property of privileges enjoyed by other property owners in the vicinity under identical zoning classification. **Any variance granted shall be subject to such conditions as will assure that the authorized adjustment shall not constitute a grant of special privileges** inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

The owner has argued that other structures are as close to Omega Drive as he proposes to build. That is true of some houses on the non-coastal side of Omega drive where there is no impact on the public view or on a major highway (Highway 1). None of these houses doubled the buildable footprint for their structure through variance. None of these properties placed a full-size house on an almost half-size lot. This proposed structure, however appropriate in design and fashion, is inappropriate in proportion and size. The proportions (not the design) are those of a townhouse which is inappropriate to the Rural Village zone. The proposal is simply inappropriate for a structure of this size because the lot is too small. The owner should be required to submit a proposal for a structure that is proportionately sized for the lot, does not require a huge variance, and has much less impact on the public view from Highway 1.

DANGEROUS LONG-TERM PRECEDENT:

Permitting a structure as large as this (in proportion to the lot) and as tall as this (in proportion to the width) begins a very slippery slope. The height is 1.45 times the width as viewed from Highway 1). If this house is approved (at this size), then a line is crossed. On this side of the line is the Rural Village of Westport. On the other side of the line is "Malibu-zation" where huge variances are granted so that structures can be built much more densely. We already have Malibu. Let us preserve Westport as best we can.

4218

Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

**SUBJECT: VISUAL QUALITY OF WESTPORT-FOOTPRINT
PROXIMITY TO OMEGA DRIVE**

REFERENCE:

CHAPTER 20.388 RV -- RURAL VILLAGE DISTRICT
Sec. 20.388.005 Intent.

This district is intended to **preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages**; to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities. (Ord. No. 3785 (part), adopted 1991)

ISSUE:

This structure is inappropriate in proportion to the character of the rural atmosphere and visual quality of the village of Westport. The county allowed an inappropriate variance.

DISCUSSION:

Although there are other tall structures in the village of Westport, all of them on the ocean side of Highway 1 are on **full-sized lots** and are wider than they are tall. None of the other tall buildings restrict the public view as this proposed structure does. This proposed structure is on a **very narrow lot and most of the building footprint is on property gained through variance**. The buildable area (that is, the parcel minus the bluff, cliff, and beach is less than 100 feet East to West. The full width (North to South) of the lot is nominally 38 feet but the lot faces two roads (Highway 1 and Omega Drive). In order to build this structure, the owner was granted an **outsize variance of 27 feet from Omega Drive**. The Mendocino staff report (page 2) correctly reports that "the total setbacks required exceed the width of the lot" and that "there is no buildable area on the lot that meets setback requirements." The Planning Department then inappropriately decided that the County has the obligation to make the lot buildable by giving away a public right (27 feet of corridor preservation setback). **Mendocino County has inappropriately permitted more than half of the width of the building footprint to be obtained through variance.** This is an inappropriate use of variance. A variance is commonly understood to be a minor adjustment to allow normal use of property. Doubling the buildable size of a lot through a variance is an inappropriate giving of a public right to a private party. With a more appropriate (and lesser) variance, this lot could support a small low structure but the proposed structure is far too large and tall in proportion to its width (north to south). The owner has argued that other structures are as close to Omega Drive as he proposes to build. That is true of some houses on the non-coastal side of Omega drive where there is no impact on the public view. None of these houses doubled the buildable footprint for their structure through variance. None of these properties placed a full-size house on a half-size lot. None of these properties affect the public view from Highway 1. This proposed structure, however appropriate in design and fashion, is inappropriate in proportion and size. It will appear as a cereal box (albeit a peaked one) with a maximum height of 35 feet on a footprint much narrower than the height. The proportions (not the design) are those of a row house, which is inappropriate to the Rural Village zone. **The structure is 45% higher than it is wide, viewed from Highway 1 or the ocean. The proposal is simply inappropriate for a structure of this size because the lot is too small.** The owner should be required to submit a proposal for a structure that is proportionately sized for the lot, does not require a such a huge variance, and has much less impact on the public view from Highway 1 and the ocean.

5 of 18

Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: SIZE OF LOT

REFERENCE:

Sec. 20.388.025 Maximum Dwelling Density for RV Districts.

(A) Within water and sewer service areas: One (1) single-family dwelling per six thousand (6,000) square feet.

(B) Within water or sewer service areas: One (1) single-family dwelling per twelve thousand (12,000) square feet.

ISSUE:

The Mendocino Land Use Plan states that a lot must be 6,000 square feet in order to construct a single family dwelling. This lot is no longer that large. The lot should be re-surveyed to adjust for the change in the sea edge boundary.

DISCUSSION:

There is a reason why this lot has not had a structure on it for over a century. It is too small. No previous owner has tried to build even the tiniest cottage here, much less a structure as large as proposed. The county has made no attempt to confirm the new owner's claim that the lot size is 6004 square feet. It should be surveyed by a neutral party.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: PARKING

REFERENCE: Division II of Title 20--Coastal Zoning Code
CHAPTER 20.472 OFF-STREET PARKING

Sec. 20.472.005 Declaration.

The purpose of this Chapter is to require off-street parking spaces for all land uses in sufficient numbers to accommodate vehicles which will be congregated at a given location to minimize on-street parking, increase traffic and pedestrian safety and promote the general welfare.

Sec. 20.472.010 General.

(A) Accessible off-street parking areas shall be provided and maintained as set forth in this Chapter to provide minimum parking and maneuvering room for motor vehicles and for pedestrian safety based on the anticipated occupancy of a given building, structure ...

(C) In any SR, RV, or RR Residential District, no motor vehicle over three-quarter (3/4) ton, boat, or recreational vehicle shall be stored or parked in any front yard setback nor any side or rear yard setback facing a street for a continuous period exceeding seventy-two (72) hours.

(E) Where there is a question of primary use of any given site the use requiring the most parking spaces shall be used.

(J) All required parking spaces shall be at least nine (9) by twenty (20) feet, unless otherwise provided for under this section.

Sec. 20.472.015 Residential.

(A) Single-family detached dwelling or mobile home: two (2) parking spaces.

ISSUE:

This development plan does not conform to the requirement for off-street parking. When the structure is used as a vacation rental, it will be even further out of compliance.

DISCUSSION:

A single car garage provides the only off-street parking. Because of the extremely large variance taken from Omega Drive, there will not be enough space in the driveway to park a second vehicle. For the same reason (the variance, which puts the house almost on top of Omega Drive), there is no room for parking on Omega Drive.

Parking on Highway 1 next to an intersection (with Omega Drive), will block the vision of turning traffic on and off of a major highway which creates a hazard.

If the property is used as a vacation rental, then the problem with parking will be even greater and may include oversize vehicles.

The only close parking spaces (all on-road) to this house will:

1. Choke the eastward portion of Omega Drive creating a hazardous situation at the intersection with Highway 1.
2. Congest the westward portion (of this loop) on a turn that not only restricts traffic but prevents bikers and pedestrians from enjoying the magnificent view.
3. Block the vision of motorists, bicyclists, and pedestrians who are on Highway 1 driving south. They will not be able to see traffic entering Highway 1 from Omega Drive.
4. Create a horrific hazard for vehicles trying to enter Highway 1 from Omega Drive. If a vehicle is parked on this lot on the shoulder of Highway 1, motorists and bicyclists trying to turn onto Highway 1 will simply have to take a chance and dash out into traffic.
5. Take spaces from other houses in the vicinity.

If this development is approved in any form, it should be with restrictions on parking that allow traffic on Highway 1 and Omega Drive to operate safely, and that does not burden traffic and neighbors.

SECTION IV. Reasons Supporting This Appeal

SUBJECT: GRADING AND EXCAVATION

REFERENCE: Division II of Title 20--Coastal Zoning Code

CHAPTER 20.492

GRADING, EROSION AND RUNOFF

Sec. 20.492.010 Grading Standards.

(F) Adjoining property shall be protected from excavation and filling operations ...

(G) The area of soil to be disturbed at any one time and the duration of its exposure shall be limited.

Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans.

ISSUE 1:

This proposed development does not adequately protect adjoining property (private property to the North and Omega Drive to the South) from excavation operations.

ISSUE 2:

Because this lot is so narrow, construction equipment (pile drivers, concrete trucks, lift equipment, etc.) must be sited on Omega Drive while construction work is done. This would be in violation of (G) above.

DISCUSSION:

Because this lot is so narrow and the proposed building footprint fills the available bluff top lot so completely, access for construction must be from one from three locations: the neighbor at 37110 (to the North), Omega Drive (to the South), or Highway 1.

1. The neighbor at 37110 will not allow the existing vegetation and fence to be destroyed, so that option is not available.
2. Accessing the lot from Highway 1 would create an extreme traffic hazard.
3. Omega Drive is the only choice. Water flow beneath Omega Drive has seriously weakened the soil beneath, as evidenced by the seaward bluff changing from a slanted cliff face to a nearly vertical drop in the last few years. The first construction equipment on Omega Drive is very likely to be the first construction equipment on the beach below, with enormous environmental damage.

The only way that the bluff top at 37100 and Omega Drive can be protected, is if the size of the proposed structure is reduced to a reasonable and proportional size. Construction equipment can then work from within the lot instead of beside it.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: EROSION

REFERENCE:

Sec. 20.492.015 Erosion Standards.

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

ISSUE:

Construction of a house this large on a lot this small will drastically alter the erosion characteristics in this area. The geotechnical work done for this development is inadequate.

DISCUSSION:

The town of Westport is subject to occasional heavy rains. We at 37110 Highway 1, have seen 100 square feet of our back (seaward) yard wash away in a single rainstorm. Describing the rate of erosion as an average over 75 years (as in the geo study), is very misleading. Erosion and runoff have accelerated as the climate has changed, as Westport becomes more populous, and as traffic (and therefore maintenance) on Highway 1 have increased. Omega Drive does not handle the present runoff adequately. Sinkholes appear in Omega Drive frequently. Filling this narrow lot as proposed from side to side and taking 17 feet from Omega Drive in variance, will greatly increase the runoff load on Omega Drive and associate drainage systems.

The bluff edge is difficult to determine because of heavy brush. Because the cliff appears to be only soil and vegetation (no significant rock outcroppings), a detailed and comprehensive plan to counter erosion is necessary. The geotechnical work done so far has not accomplished that.

An example of the problems with the geotechnical study can be seen from the letter and diagram from Jim Glomb Geotechnical and Environmental Consulting dated April 27, 2004 (part of the application). Looking at the diagram and reading the elevations from left to right, they add up to $35' + 17' + 6' = 58'$ at the east property line. The town sign that gives the elevation as 120 feet is actually slightly downhill from the East property line. This means that the geo study is off on a very basic issue (elevation) by a factor of 200%.

A new geostudy should be conducted with a much more detailed plan for erosion control.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: RUNOFF

REFERENCE: Division II of Title 20--Coastal Zoning Code
Sec. 20.492.025 Runoff Standards.

(A) Water flows in excess of natural flows resulting from project development shall be mitigated.

(D) Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.

(G) Subsurface drainage devices shall be provided in areas having a high water table and to intercept seepage that would adversely affect slope stability, building foundations, or create undesirable wetness.

ISSUE:

Construction of a house this large on a lot this small will drastically alter the runoff characteristics in this area. The geotechnical work done for this development is inadequate as is the runoff plan.

DISCUSSION:

Omega Drive does not handle the present runoff pattern adequately. Sinkholes appear in Omega Drive frequently indicating a high water table. Filling this narrow lot as proposed from side to side and taking 17 feet from Omega Drive in variance will greatly increase the runoff load on Omega Drive, associated drainage systems, and the neighbor to the North. The proposed development will replace a very effective natural runoff control mechanism (the lot was thick with brush which allowed runoff to absorb into the soil rather than run over the cliff to the sea) with a structure that will divert runoff to either side, seriously stressing drainage systems that are already at their limit. The builder has agreed to keep approximately 30 feet seaward to the bluff top edge in vegetation as well as the slope to a midcliff crest and down to the base. However this does not actually provide the required 37.5 feet setback. Their geostudy establishes an artificial "projected bluff terminal point" in midair as the edge from which to measure setback. This makes no sense. The setback should be measured from the actual edge of the bluff top lot. This would result in a smaller house which would be in better proportion to the lot and the town. The problem with gaining over 50% of the width of the building footprint through variance is discussed elsewhere, but that outsize width contributes to the runoff problem by forcing water around the narrow lot.

An example of the problems with the geotechnical study can be seen from the letter and diagram from Jim Glomb Geotechnical and Environmental Consulting dated April 27, 2004 (part of the application). Looking at the diagram and reading the elevations from left to right they add up to $35' + 17' + 6' = 58'$ at the east property line. The town elevation is 120'. This means that the geo study is off on a very basic issue (elevation) by a factor of over 200%.

A new geostudy should be conducted with a much more detailed plan for runoff control that includes adjacent property to the north and south (Omega Drive).

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: BLUFFTOP LOT, BLUFF RETREAT AND GEOLOGIC INVESTIGATION

REFERENCE:

Sec. 20.500.015 (A) Determination of Hazard Areas (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required.

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

Policy 3.4-9 of the Mendocino County Coastal Element states: Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

ISSUE:

The geologic study of the blufftop is inadequate. The estimation of bluff erosion understates the problem. Ground water pressure has not been measured or accommodated. The impact of the construction process has not been properly estimated.

DISCUSSION:

The Geologic Evaluation (Jim Glomb dated July 28, 2003 [Project 778]) describes the materials at the site as terrace deposits, gravely sand, and sandstone that is poorly bedded and blocky fractured. Air photos from 1972 and 1981 were used to estimate "no appreciable retreat." The author used 0.5 feet/year. However air photos are not accurate. The two parcels of land adjacent to this lot have seen much higher rates of retreat in recent years. The back yard (over 100 sq feet) at 37110 washed away in one rainstorm in the 1960s. The edge of Omega Drive has changed from a slope to near vertical, on the way to becoming undercut. The problem is the extremely heavy foliage on the lot, uncut for decades, if not a century. The profile of the land below cannot be seen from the air. The rate of retreat should have been calculated from lots similar to what this one will be like after development. The study says there is no evidence of groundwater, yet sinkholes appear in Omega Drive during heavy rain. This study describes a descent of 35 feet from the sea cliff. A later "cross section" of the lot (Jim Glomb dated April 27, 2004 [Project 839]) gives the lot elevation as 52 feet (35'+17' on diagram). The elevation of Westport is 120 feet, making the profile incorrect by 230%. The saturated soil makes the process of construction problematical.

RECOMMENDATION:

A much more thorough and accurate geologic investigation should be conducted by a neutral geologist. A more comprehensive plan for prevention of bluff instability should be required, to include a requirement to keep heavy vegetation between the building and the bluff edge.

Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: HIGHLY SCENIC AREAS - DEVELOPMENT SHALL BE SUBORDINATE

REFERENCES:

Sec. 20.504.005 Applicability.

This section shall apply to those areas identified as highly scenic areas, special communities and special treatment areas as defined by the Mendocino Coastal Element and identified on the Coastal Land Use Maps. All development proposals shall be reviewed by the Coastal Zone Permit Administrator to determine if the standards set forth in this section shall apply. Application of standards in this Chapter shall not preclude the development of a legally established parcel. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.504.010 Purpose.

The purpose of this section is to insure that **permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas**, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.504.015 Highly Scenic Areas.

(A) The visual resource areas listed below are those which have been designated highly scenic and in which **development shall be subordinate to the character of its setting**: (1) The entire Coastal Zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision.

ISSUE:

This development does not meet the requirement to protect views to or along the ocean. The development should be resubmitted with adjustments to protect the public view from Highway 1 to the ocean, AND from the ocean to the land.

DISCUSSION:

As Highway 1 goes through the Rural Village of Westport, a breathtaking view of the Pacific Ocean comes into view as a driver, bicyclist, or pedestrian approaches the north loop of Omega Drive. The magic of this view is that it is a combination of the rural village buildings, a gap that opens onto the rural drive of Omega Drive, dense growth on the bluff, and some of the most astounding breakers along the Mendocino coast. Once the view is noticed, a person can pull off of Highway 1 safely and drink in the view. A particular characteristic of this view is that the gap between buildings (north and south of Omega Drive) is great enough so that one realizes the quality of the view in time to pull over safely, as hundreds have done and continue to do. The rest of the view to the West from Highway 1 when in Westport, is either of buildings, of the narrow gap between buildings, or over a broad bluff top field. The view at Omega south is blocked by buildings. The view from Omega north (the view in question here) is unique and astounding. The Coastal Commission cannot appreciate this view unless they experience it for themselves. Upon request, a photographic depiction of this view will be provided.

In addition to commercial fishing vessels, numerous tourist seagoing vessels leave Fort Bragg and cruise north to view whales, breakers, and the Cape of Mendocino. The height of this development on such a narrow footprint will have an adverse effect on the view from the ocean because it places a disproportionately tall structure (35 feet) very close to the bluff edge, unlike other structures in Westport. Additionally, the overly large structure interrupts a remarkable view "crescent" created by Omega Drive and the surrounding structures, 23 feet high on the north and a one story house on the south. This "crescent" allows a panoramic view of the bluff and breakers from landside and a sweep of open space lading up to the wooded ridge line from oceanside.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: SPECIAL VISUAL CONSIDERATION

REFERENCE:

Sec. 20.504.020 Special Communities and Neighborhoods. (B) The communities and service centers, designated as CRV or CFV, of **Westport**, Caspar, Albion, Elk and Manchester, and ... shall have special protection as set forth in Section 20.504.020(C): Development Criteria. (1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood. (2) New development shall be sited such that **public coastal views are protected**. (D) The **scenic and visual qualities** of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to **protect views to and along the ocean and scenic coastal areas**, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. **New development** in highly scenic areas designated by the County of Mendocino Coastal Element shall be **subordinate to the character of its setting**.

ISSUE:

The scale and bulk are not within the scope and character of Westport. Public coastal views are not protected. In this proposal, the setting is subordinate to the development. It should be the reverse. The large amount of glass area, particularly toward the ocean will reflect inordinate amounts of glare viewable from public access areas.

DISCUSSION:

The county planning study describes the view window at Omega Drive and says that is still available by driving down Omega. This reasoning ignores the fact that this new structure will prevent drivers and bicyclists from even realizing that the view exists as they travel up or down Highway 1. The public coastal view from Highway 1 is virtually eliminated. The "bulkiness" of the development comes not from its volume alone but its volume in proportion to the narrow lot, and from the height in proportion to its base (a ratio of 1.45 [height to base] from Highway 1). The planning study (page 5) incorrectly surmises that the height "is not a factor" in blocking the view. The disproportionate height will overwhelm the viewer from Highway 1. If height did not matter then zoning rules would allow any height. A lower and smaller structure would be much less obtrusive. No objection is made to the style or design of the structure (except for large glass area), **ONLY** the proportions (height to width and building to lot).

The county also says that denial of this construction would be challenged as an "illegal taking of private property." The owner recently bought this property. As a professional developer, he knew full well the challenges of this lot. A smaller structure with appropriate proportions would not meet such objections. It is not the responsibility of the state to find a way to allow a land owner to build a structure bigger than most of his neighbors on a lot that is considerably smaller and has serious problems regarding public view, drainage, and bluff top erosion. The county provided no instances where failure to provide outsize variances (27 feet of variance on a 38 foot wide lot) were challenged as an illegal taking of property. The neighbors at 37110 had tried for decades to purchase the lot from the Spanglers (the previous owners) in order to insure bluff protection. A handwritten letter from the Spanglers promised the neighbor first refusal if the lot were ever sold.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: VARIANCE FOR UNDERSIZED LOT

REFERENCE: Division II of Title 20--Coastal Zoning Code

CHAPTER 20.540 VARIANCES

Sec. 20.540.010 Original Jurisdiction.

Sec. 20.540.020 Findings.

Before any variance may be granted or modified it shall be shown:

(C) That such variance is necessary for the preservation and enjoyment of **privileges possessed by other property in the same vicinity and zone** and denied to the property in question because of the special circumstances identified in Subsection (A); and

(D) That the granting of such variance will **not be materially detrimental to the public welfare** or injurious to the property or improvements in such vicinity and zone in which the property is located.

ISSUE:

This builder proposes to build a house that is considerably larger than the average house in the village of Westport, on a lot that is far smaller than any other lot on the seaward side of Highway 1.

DISCUSSION:

The builder asserts that the requested variances are necessary in order to allow him privileges possessed by other property in the same vicinity and zone. While the lot in question does share the RV zoning characteristic, it is a far smaller lot than others. Granting of the variances allows a much higher density of structure in proportion to the lot size. Since approximately half of the lot is past the cliff edge and on the beach, discussing a ratio of structure footprint to nominal lot size is misleading. If such logic is allowed, then a lot that has only one fourth of its lot square footage on the bluff would have to be allowed to build a structure that filled every square footage of the bluff top lot, and variances that allowed that would have to be granted. Such an extreme example is given only to illustrate the absurdity of using variances to fill a lot disproportionately.

DANGEROUS LONG-TERM PRECEDENT:

If such density is allowed in a Rural Village zone, then existing property owners (or subsequent owners) will feel great economic pressure to divide existing lots into the minimum allowable lot size and build "town-house" type structures as this owner proposes to do, since this would instantly bring a profit of perhaps a million dollars to every owner of a large enough oceanward lot. Over time, the "Rural Village" flavor of Westport will become "Malibu-ized" with tall, side to side structures filling the lots next to Highway 1, blocking not only the seaward view but changing the entire nature of Westport to just another dense housing community for the financially privileged. Enjoyment of the coast will be restricted to those who occupy the seaside houses. While some communities have chosen this high-density route of development, one of the few remaining Rural Villages should remain exactly that. If such over-reaching variances are permitted as this owner requests, then the precedent will be set that extensive variances can and should be granted. On what grounds could a future request for variance be denied after a builder was allowed to double his buildable lot through variance?

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: PLANTS & WILDLIFE

REFERENCE:

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

Definitions:

Environmentally Sensitive Habitat Areas. Any areas 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 be easily disturbed or degraded by human activities and developments.

ISSUE:

A more rigorous analysis of the flora and fauna of the sea cliff should be undertaken to insure that the process of construction of this development does disrupt either.

DISCUSSION:

The bluff at this location is densely populated by a variety of plants which, in turn, provide the environment for a wide variety of creatures. The birds are most visible soaring along the sea cliff edge, but the brush is thickly populated with other creatures as well, mostly detectable by hearing. The proposed structure, with sufficient strictures against removal of vegetation and construction up to and over the sea cliff, may not be a problem. The process of building this huge house on such a narrow lot is very likely to cause damage to the flora and fauna of the sea cliff during the construction phase. A thorough analysis should be conducted with appropriate mitigation. The primary corrective is to build a house in scale with the lot so that construction equipment will not damage Omega Drive and/or the bluff top near the sea cliff.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by
Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: DELETERIOUS EFFECT ON THE PUBLIC VIEW FROM ROUTE 1

REFERENCE:

Mendocino County General Plan

Section VII. Open Space and Conservation Element Page VIII-72

"The Master Plan of State Highways ... designates two potential scenic highway routes within
Mendocino County."

"1. State Route 1 from the Sonoma-Mendocino County Line to the junction with U.S. 101

..."

ISSUE:

State Route 1 is a designated as a potential scenic highway. The proposed structure will have a
disproportionately deleterious effect on the public view from Route 1.

DISCUSSION:

As Highway 1 goes through the Rural Village of Westport, a breathtaking view of the Pacific Ocean
comes into view as a driver, bicyclist, or pedestrian approaches the north loop of Omega Drive. The
magic of this view is that it is a combination of the rural village buildings, a gap that opens onto the
rural drive of Omega Drive, dense growth on the bluff, and some of the most astounding breakers
along the Mendocino coast. Once the view is noticed, a person can pull off of Highway 1 safely and
drink in the view. A particular characteristic of this view is that the gap between buildings (north
and south of Omega Drive) is great enough so that one realizes the quality of the view in time to
pull over safely, as hundreds have done and continue to do. This is unlike the narrow view of the
ocean usually seen between buildings. The rest of the view to the West from Highway 1 when in
Westport is either of buildings, of the narrow gap between buildings, or over a broad bluff top field.
The view at Omega south is blocked by buildings. The view from Omega north is unique and
astounding. The Coastal Commission cannot appreciate this view unless they experience it for
themselves.

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Case of: Proposed Development at 37100 North Highway 1 (Bangs), Westport approved by Mendocino County

SECTION IV. Reasons Supporting This Appeal

SUBJECT: PUBLIC PARTICIPATION

REFERENCE:

THE COASTAL ACT: Section 30006 Legislative findings and declarations; public participation

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

ISSUE:

The county discounted opposition to this development. Public concerns to this project should be given a fair hearing.

DISCUSSION:

The county staff report prepared for the April 29, 2004 hearing listed 38 parties (name only, no addresses) under "SUMMARY OF PUBLIC COMMENTS." 12 were opposed; 3 were concerned; and 23 were listed as in favor. Three (including counsel) testified against the approval at the hearing. None (except the applicant and the county planner) testified in favor. A number of additional letters were received after the staff report was prepared (but before the hearing) but were not included in the hearing.

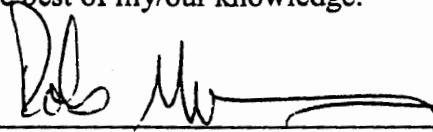
Note that the staff summary said that "nearly all of the letters in opposition" were from owners, family, or friends of the neighbor to the north, who had "enjoyed" an "undeveloped parcel" next door for years. In actual fact, the fifteen letters listed by the staff report provided 51 reasons (as listed by the Planning staff) for their concern and opposition. None of these were about losing the undeveloped lot, only nine were about the view effect from the neighbor house. The vast majority of the reasons were about public right issues. No generalizations were made about the writers supporting the development even though many of those are from outside Westport and many appear to be from the survey used by the applicant to gather input about trim color and other minor issues. Additionally, two petitions signed by Westport residents and visitors (approximately 30 signatures) were submitted in opposition but not presented at the hearing. An objective observer could only conclude that opinions in opposition were discounted. A fair hearing of public concerns should be conducted.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

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: 26 April 2004

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

18418



1-MEN-03-373

RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

TELEPHONE
(707) 964-5379

RECEIVED

MAY 12 2004

CALIFORNIA
COASTAL COMMISSION

May 10, 2004

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 #89-03/CDV #17-03

OWNER: Thomas P. Bangs

REQUEST: Construction of a 1,762 sq. ft., 3 story, 2 bdrm. 1½ bath, residence with a maximum height of 35 feet above finish grade, with an attached 1 car garage, exterior lighting, driveway, LPG tank, and connections to utilities. Also, variances to setbacks along Highway 1 and Omega Drive are requested: Highway 1 – 60 feet from centerline required, 45 feet requested. Omega Drive – 45 feet from centerline required, 18 feet requested.

LOCATION: In the coastal zone, on a bluff top lot in Westport, on the west side of Highway One, on the north side of Omega Drive CR #428E), at 37100 North Hwy 1; AP# 013-280-03.

PROJECT COORDINATOR: Charles Hudson

HEARING DATE: April 29, 2004

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-04-030

BANGS

NOTICE OF FINAL ACTION
(1 of 12)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 39-03
CDV 17-03 HEARING DATE: 4/29/04

OWNER: Bangs

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt
☐ Negative Declaration
☐ EIR

FINDINGS:

☒ Per staff report
☐ Modifications and/or additions

ACTION:

☒ Approved
☐ Denied
☐ Continued _____

CONDITIONS:

☒ Per staff report
☐ Modifications and/or additions

Raymond Hall

Signed: Coastal Permit Administrator

2418



notice bangs cdp 89-03 cdv 17-03

RAYMOND HALL
DIRECTOR

TELEPHONE
(707) 964-5379

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

RECEIVED

APR 20 2004

CALIFORNIA
COASTAL COMMISSION

April 16, 2004

CORRECTED PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, April 29, 2004 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #: CDP #89-03/CDV #17-03

DATE FILED: April 29, 2003

OWNER: Thomas P. Bangs

REQUEST: Construction of a 1,762 sq. ft., 3 story, 2 bdrm. 1½ bath, residence with a maximum height of 35 feet above finish grade, with an attached 1 car garage, exterior lighting, driveway, LPG tank, and connections to utilities. Also, variances to setbacks along Highway 1 and Omega Drive are requested: Highway 1 – 60 feet from centerline required, 45 feet requested. Omega Drive – 45 feet from centerline required, 18 feet requested.

LOCATION: In the coastal zone, on a bluff top lot in Westport, on the west side of Highway One, on the north side of Omega Drive CR #428E), at 37100 North Hwy 1; AP# 013-280-03.

PROJECT COORDINATOR: Charles Hudson

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Raymond Hall, Coastal Permit Administrator

3 of 12



notice bangs cdp 89-03 cdv 17-03

RAYMOND HALL
DIRECTOR

TELEPHONE
(707) 964-5379

**COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

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

RECEIVED

APR 19 2004

CALIFORNIA
COASTAL COMMISSION

**PUBLIC NOTICE OF PENDING ACTION
STANDARD COASTAL DEVELOPMENT PERMIT**

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, April 29, 2004 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

CASE #: CDP #89-03/CDV #17-03
DATE FILED: April 29, 2003
OWNER: Thomas P. Bangs
REQUEST: Construction of a 1,762 sq.ft., 3 story, 2 bedrm. 1 ½ bath, residence with an attached 1 car garage, exterior lighting, driveway, LPG tank, and connections to utilities. Also, a variance to setbacks along Omega Drive: corridor preservation setback – 25 ft. required, 18 ft. requested; and front yard setback – 20 ft. required, 0 ft. requested.
LOCATION: On a bluff top lot in Westport, on the west side of Highway One, on the north side of Omega Drive, at 37100 North Hwy 1; AP# 013-280-03.
PROJECT COORDINATOR: Charles Hudson

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

Raymond Hall, Coastal Permit Administrator

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STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE

CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-1

OWNER:

Thomas P. Bangs
P. O. Box 569
Placerville, CA 95667

REQUEST:

RECEIVED

APR 20 2004

CALIFORNIA
COASTAL COMMISSION

Construction of a 1,762 sq. ft., 3 story, 2 bdrm. 1½ bath, residence with a maximum height of 35 feet above finish grade, with an attached 1 car garage, exterior lighting, driveway, LPG tank, and connections to utilities.

Also, variances to setbacks along Highway 1 and Omega Drive are requested: Highway 1 – 60 feet from centerline required, 45 feet requested. Omega Drive – 45 feet from centerline required, 18 feet requested.

LOCATION:

In the coastal zone, on a bluff top lot in Westport, on the west side of Highway 1, on the north side of Omega Drive (CR# 428E), at 37100 North Hwy. 1; AP# 013-280-03.

APPEALABLE AREA:

Yes, west of first public road, within 300 feet of bluff, in special community.

PERMIT TYPE:

Standard

TOTAL ACREAGE:

6,000 square feet

GENERAL PLAN:

Rural Village (RV)

ZONING:

Rural Village (RV)

EXISTING USES:

Undeveloped

ADJACENT ZONING:

North, east, south & west: RV

SURROUNDING LAND USES:

North & south: Residential
East: Undeveloped
West: Ocean

SUPERVISORIAL DISTRICT:

4

ENVIRONMENTAL DETERMINATION: Categorically Exempt – Class 3a & 5a.

OTHER RELATED APPLICATIONS: None.

PROJECT DESCRIPTION: The landowner proposes to construct a 1,762 square foot, three-story single family residence with an attached single car garage on a bluff top lot in Westport. A new driveway entrance will be constructed onto Omega Drive. Connections will be made to existing utilities, and a 250 gallon LPG tank will be installed.

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STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE

CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-3

Other public coastal access is also available in the vicinity. Westport-Union Landing State Beach is within one quarter mile to the north of the applicant's parcel, and the Westport Village Society owns a parcel at the south end of Omega Drive on which public access facilities are proposed (CDU 22-03, in process).

Several letters received from opponents of this project state that they have made use of a trail on the applicant's parcel to gain access to a rock viewpoint on their bluff, and that they believe that they may have grounds for a prescriptive easement. The location of the proposed house and related development would not block or otherwise prevent the neighbors from attempting to establish a legal right of access to the trail should they wish to pursue that course of action.

Maximization of public access to and along the coast is one of the primary goals of the Coastal Act. However, given the lack of a designated trail location shown on the Coastal Plan Map, the availability of public access nearby, and the fact that the proposed house does not block any access that may have been used, it is staff's recommendation that the project site is not an appropriate location at which to either attempt to establish the existence of prescriptive rights, or to require recordation of an offer of dedication of an access easement. Staff recommends that the project be found to be consistent with public access policies of the Coastal Act and the Coastal Element of the General Plan without any requirement for an offer of dedication, or attempt to establish the existence of prescriptive rights.

Hazards: The parcel is a blufftop lot. The easterly portion consists of a gently-sloping terrace extending westerly for roughly 100 feet along the northerly side of Omega Drive. At its western boundary, the terrace terminates in a steep bluff descending approximately 35 feet to the beach.

Section 20.500.015 (A) (2) of the Mendocino County Coastal Zoning Code states:

In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.

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

New structures shall be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). New development shall be set back from the edge of bluffs a distance determined from information derived from the required geological investigation...

Policy 3.4-8 of the Mendocino County Coastal Element states:

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

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STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE

CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-5

Correspondence received from the adjacent neighbors to the north states that in the mid-1970s there was an instance of flooding during which water crossed over Highway 1 and flowed across the their parcel and the applicant's parcel, and caused erosion of the bluff. The applicant has submitted a letter from Caltrans Hydraulics Engineer Kristina Walker, which states that three culverts in the vicinity have been upgraded since 1970, and that Caltrans performs periodic maintenance of the eastern ditch along Highway 1. When staff visited the site the ditch and culverts along Highway 1 appeared to be in good condition.

It is the policy of the Coastal Commission and the County to require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. Special Condition Number 2 is recommended.

Visual Resources: The project site is not located within a designated highly scenic area, but is within the community of Westport, which is designated in the Coastal Plan as an area of special visual consideration, subject to the provisions of Section 20.504.020(C) of the Coastal Zoning Code. The project is also subject to Coastal Plan Policy 3.5-1 which applies to all parcels within the Coastal Zone.

Policy 3.5-1 of the Coastal Element of the General Plan states:

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

The proposed building will block off a portion of a view corridor between Highway 1 and the ocean. In the vicinity of Omega Drive's northerly intersection with Highway 1, there is a view window to the ocean down Omega Drive and across the two vacant lots on either side. To the north and south of this window, views to the ocean are obstructed by residences along the west side of the highway. A little farther to the north and south, beyond the developed lots, there are unobstructed views of the ocean. The applicant's house will partially block the present view window, and development on the vacant lot south of Omega Drive at some time in the future will reduce the window more. Nevertheless, there will remain a view from Highway 1 down Omega Drive, and by going down Omega Drive, to the turn west of the applicant's house site, the full view of the ocean and shoreline can be enjoyed. Given the small buildable area on the applicant's lot, there is little opportunity to move the house to a different position that would block less view. The applicant has revised his plans from those first submitted to move the house east on the lot which will slightly reduce the obstruction of the view down Omega Drive from Highway 1. The height of the proposed residence is not a factor in blocking the view from the highway as even a low single story building would have the same effect, as it would extend above one's eye level. This can be seen at the single story homes a few lots to the north. Reducing the width of the house would only marginally reduce the obstruction of the view, and at 24 feet in width, there is not much leeway for width reduction. The only way to avoid blocking the view would be to deny the construction of any building on the site, which would likely be challenged as an illegal taking of private property.

Several letters received from the public objected to the proposed residence on the grounds that it would block views from the neighboring residence. However, the focus of the Coastal Plan with regard to view

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STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE

CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-7

developed. Two lots south of the applicant's parcel, on the east side of Omega Drive, is a two story residence (CDP 48-00, Smith), white with a red roof, with a three story octagonal tower capped by a conical roof and dormers. A second lower conical roof covers another semi-octagonal bay.

As described earlier, the applicant's proposed residence is located on a narrow corner lot between the highway and the ocean, on the north side of Omega Drive, within the developed portion of Westport. The narrow lot and the bluff limit the ability to develop horizontally; consequently the applicant has proposed a two story house with a small room and observation deck on the third level. The building footprint is approximately 1,160 square feet, and at 1,762 square feet of living space plus a single car garage, the house is not overly large. The house is 52 feet long and 24 feet wide, with two small 2 foot protrusions on the south side. The house has two conical roof elements, with lower gable roofs over the majority of the house. The house floor levels are shown to be approximately one foot below the natural grade at the easterly end of the lot, slightly reducing the apparent height of the structure. The maximum height at the top of the conical roof over the crow's nest room will be 35 feet above finish grade. A second conical roof over a spiral stairway will be 34 feet high. Because of the conical shape of these elements, they are not massive at the top, but rather taper to a point at their maximum height. The roof ridge over the central portion of the house will be 30 feet above finish grade, and the ridge over the eastern portion of the house will be 22 feet above finish grade. The apparent height of the house from Highway 1 will be somewhat reduced by the fact that the grade slopes down to the west from the highway, and that the taller elements of the house are at the midpoint and west end, away from the highway.

Exterior materials and colors are proposed as follows:

Siding	White Hardie Board
Trim	White Spruce
Chimney base	Brick
Chimney stack	White stucco
Roofing	Red or gray 40 year dimensional composition
Window frames	White vinyl
Door	Wood, red

The application specifies seven "craftsman" style exterior downlight lanterns with 60 watt maximum bulbs, however descriptive literature or drawings have not been provided.

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

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.

Special Condition Number 3 is recommended to require that manufacturer's specifications or drawings be submitted prior to issuance of the building permit showing that the exterior lights are shielded to prevent light glare beyond the parcel boundaries.

The project is compatible with other residential development in the vicinity, and complies with Coastal Plan Policy 3.5-1 and Code Section 20.504.020(C).

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STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE

CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-9

right-of-way of record, to 18' 6", and a reduction of the building front yard setback from 20' to 2'. However, since the proposed corridor preservation setback would be at the nearest edge of the building, the front yard setback would essentially be reduced to zero feet.

Omega Drive is a looped road, with a length of approximately 800 feet. The right-of-way width for Omega Drive is approximately 43 feet, except along the subject property where the width is 24 feet, and at a portion to the south along Tract 248, Westport Landing, where the right-of-way is widened to 51.5 feet. Along the subject property, the pavement for Omega Drive runs along the right-of-way line, and at the Highway 1 intersection, pavement at the road approach encroaches into the property. While we do not anticipate widening this portion of Omega Drive in the future, it remains important to be able to maintain the existing roadway and shoulder area. Therefore, we would not oppose reduction of the corridor preservation setback and building setback as necessary to allow for lot development as proposed, provided that the applicant dedicates the southerly 6 feet of the property to the County for roadway purposes, plus an additional wedge of right-of-way at the Omega Drive/Highway One intersection which would include the existing pavement flare encroaching into the subject property. This would ensure that the roadway and shoulder are kept clear of fences or other improvements which would obstruct maintenance of the roadway and use of the road shoulder. In this case, the corridor preservation setback would be reduced from 25 feet to 18 feet, to match the new right-of-way line.

DoT also provided a map illustrating the location of the proposed residence in relation to Omega Drive, and showing the locations of the two areas requested to be dedicated to the County for roadway purposes. A copy of the map is attached as Exhibit E. DoT recommended a condition requiring the dedication of land for roadway purposes which is included as Special Condition Number 4.

DoT also recommended that the applicant construct a new encroachment onto Omega Drive in accordance with Department encroachment permit procedures, which is included as Special Condition Number 5.

VARIANCE RECOMMENDATIONS: Chapter 20.540 of the Coastal Zoning Code provides for the granting of variances from Zoning Code restrictions when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Section 20.540.020 of the Coastal Zoning Code requires that the approving authority make all of the following findings prior to granting variances within the coastal zone.

- A. *There are special circumstances applicable to the property involved, including size, shape, topography, location, or surroundings.*

The parcel is a narrow (38 feet wide) corner lot, subject to setbacks along State Highway 1 and Omega Drive (a County road). The combined 25 foot corridor preservation setback and 20 foot front yard setback along Omega Drive, together with the 6 foot side yard setback on the side opposite Omega Drive exceed the width of the lot, leaving no buildable area outside of the required setbacks. The parcel is additionally constrained by a 40 foot corridor preservation setback and 20 foot front yard setback along Highway 1 on the east end of the parcel, and the need to maintain a 37.5 foot blufftop setback from the top of the ocean bluff that forms the topographical western limit of the usable portion of the lot. Without a variance, no structure could be placed on the property. Finding "A" can be made.

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**STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE**

**CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-11**

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.

Coastal Development Variance Findings: Staff recommends that the following findings, required by Section 20.540.020 for approval of a variance, be made based on the supporting facts listed above:

1. There are special circumstances applicable to the property involved, including size, shape, topography, location, or surroundings.
2. The special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the Coastal Zoning Code and applicable policies of the Coastal Element.
3. The variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of the special circumstances identified above.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

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**STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE**

CDP# 89-03 and CDV# 17-03

April 29, 2004

CPA-13

- d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within 100 feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. The building and site development shall be designed and maintained in conformance with the recommendations contained in the engineering geologic investigation report prepared by Jim Glomb dated July 28, 2003.
2. Prior to the issuance of the Coastal Development Permit, the landowner (Thomas P. Bangs), or as otherwise shown on the Official Records found in Mendocino County Recorder's office), shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
 - a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
 - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project, including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
 - c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
 - d. The landowner shall not construct any bluff or shoreline protective devices to protect the improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
 - e. The landowner shall remove the trail and associated developments when bluff retreat reaches the point at which the structure is threatened. In the event that improvements associated with the trail fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris

11912

**STAFF REPORT for
STANDARD COASTAL DEVELOPMENT PERMIT and
COASTAL DEVELOPMENT VARIANCE**

**CDP# 89-03 and CDV# 17-03
April 29, 2004
CPA-15**

Appeal Fee: \$645 (For an appeal to the Mendocino County Board of Supervisors.)

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning – Ukiah	No comment.
Department of Transportation	Omega Drive encroaches onto the Bangs' parcel. DoT recommends that the southerly 6 feet of the parcel and a 15 foot by 15 foot triangle at the intersection with Hwy. 1 be granted to the County for roadway purposes. A standard driveway subject to an encroachment permit is also required.
Environmental Health – Fort Bragg	This house will be connected to Westport sewer and water. DEH can clear this CDP.
Building Inspection – Fort Bragg	No comment.
Assessor	No response.
SSU (cultural resources)	Study recommended.
Caltrans	Highway 1 is a prescriptive right-of-way, approximately 50 feet wide.
Coastal Commission	No response.
Westport Water District	No response.
Westport Fire District	No response.

SUMMARY OF PUBLIC COMMENTS:

Bernard Knoke	Lakeport	Opposed: will disturb existing flora and fauna, will block access to the beach, will block views to the ocean, out of character with Westport.
Sandra Wade	Lower Lake	Opposed: will overshadow neighboring house, may divert runoff onto northern neighbor, lot is subject to bluff retreat, will block views, out of character with Westport.
Jackson Dodge	Goleta	Concerned: consider impact on character of Westport, on views, on the bluff, and on flora.
Robert I. Millberry	Lakeport	Opposed: will block views, style incompatible with Westport, site is hazardous due to bluff erosion.
Claudia Chesterson	Kelseyville	Opposed: Permit should not be issued due to aesthetics, setbacks, erosion, and diversion of runoff.
Larry Desmond	Willits	Opposed: Will block public and neighbor's views to the ocean, threatens wildlife habitat, may damage the bluff and hasten erosion, will block sunlight to northern neighbor.
Charles Eagleton	Middletown	In favor: Looks lovely.
Mathew & Cami Soetaert	?	In favor: Fits right in, supports white house with red roof.
Cole Spohr	Paradise	Opposed: Too tall, out of character.
Charles Spangler	?	In favor: Fits into the community.
Jenny Hale	Westport	In favor: Would like white house with gray roof.
Ginny & C. Wright	Westport	In favor: Likes Victorian look.
Gail Naramore	Sacramento	Opposed: Would block solar access for north neighbor, would damage charm of Westport.

12912

08/09/04

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, Ca. 95501

Re: Bangs Home
37100 North Hiway 1 (A.P.N. # 013-280-03)
Westport Ca.

APPLICATION NO. 1-MEN-03-373

RECEIVED


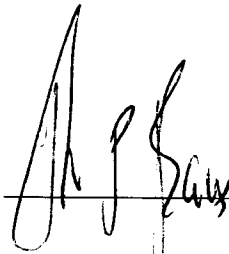
AUG 12 2004

CALIFORNIA
COASTAL COMMISSION

For the purposes of the Commission's "Denovo" review, I would like to amend my project's description to include :

1. "Site Drainage Plan", revised 07/19/04, pg. 1
"Revised Drainage Plan" addendum pg. 2, dated 07/19/04
Both of which are included in the previously submitted "Revised Bluff Retreat Evaluation" by Jim Glomb dated July 19, 2004.
2. "Parking Space Plan", 07/12/04

Thank you,



Thomas P. Bangs, applicant

Date

Sent by fax; 08/09/04

Sent by USPS; 08/10/04

EXHIBIT NO. 7

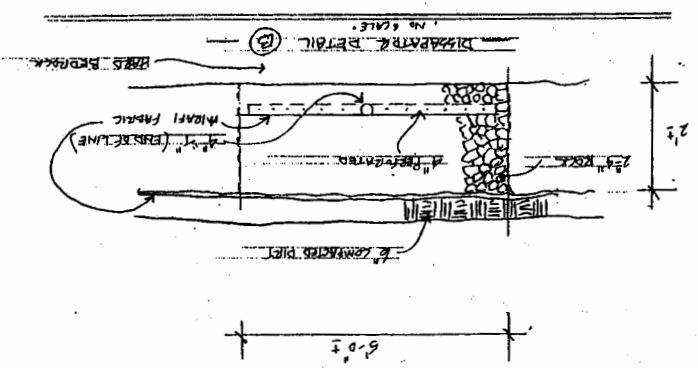
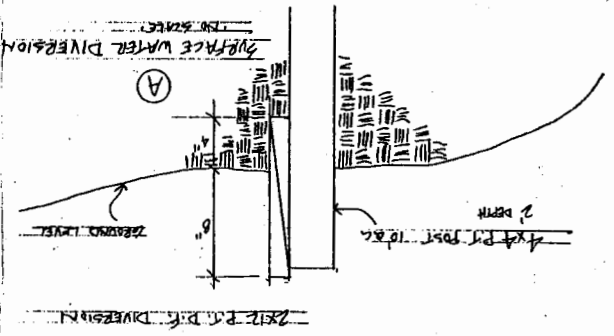
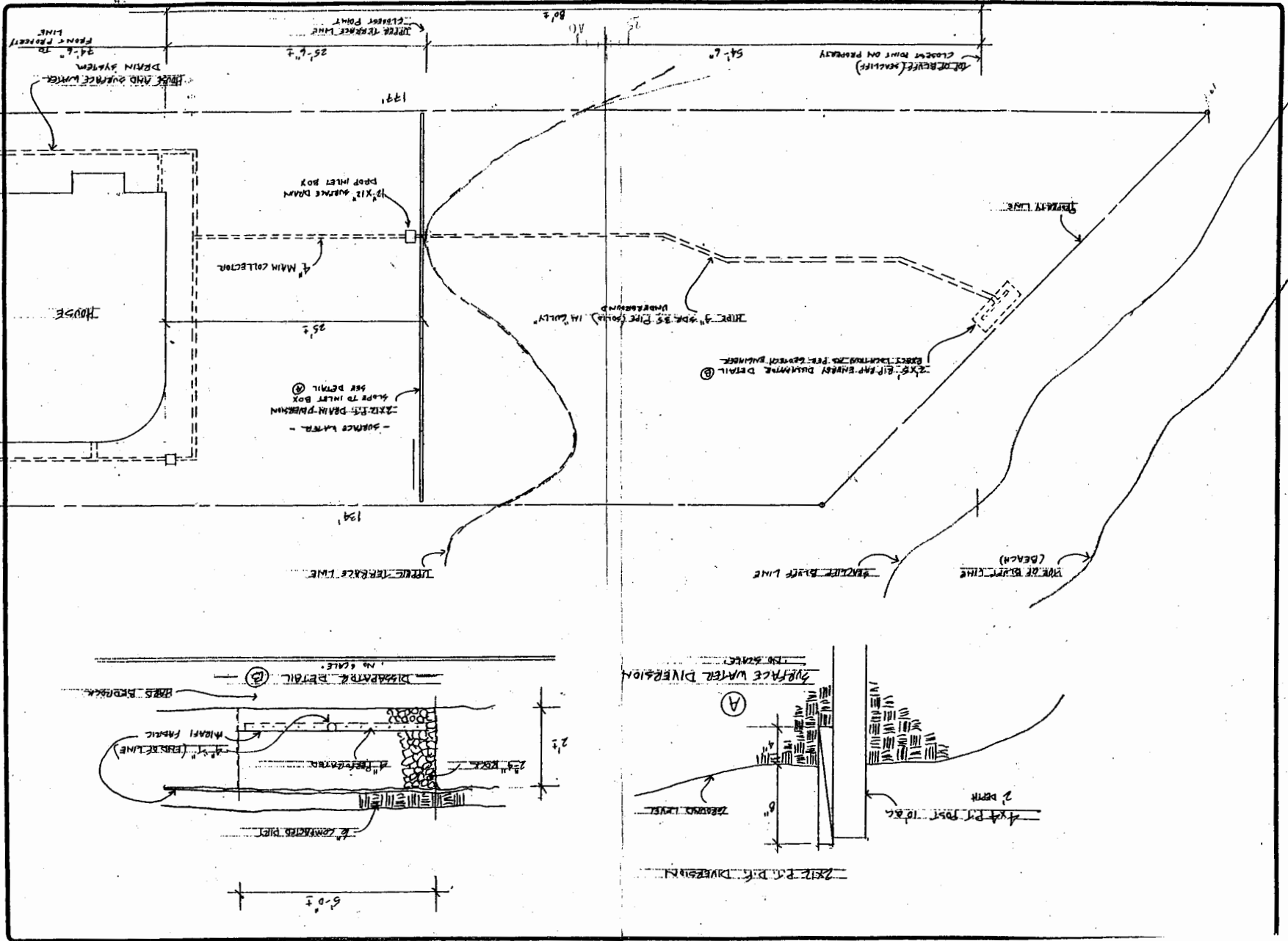
APPLICATION NO.

A-1-MEN-04-030

BANGS

AMENDED PROJECT
DESCRIPTION (1 of 6)

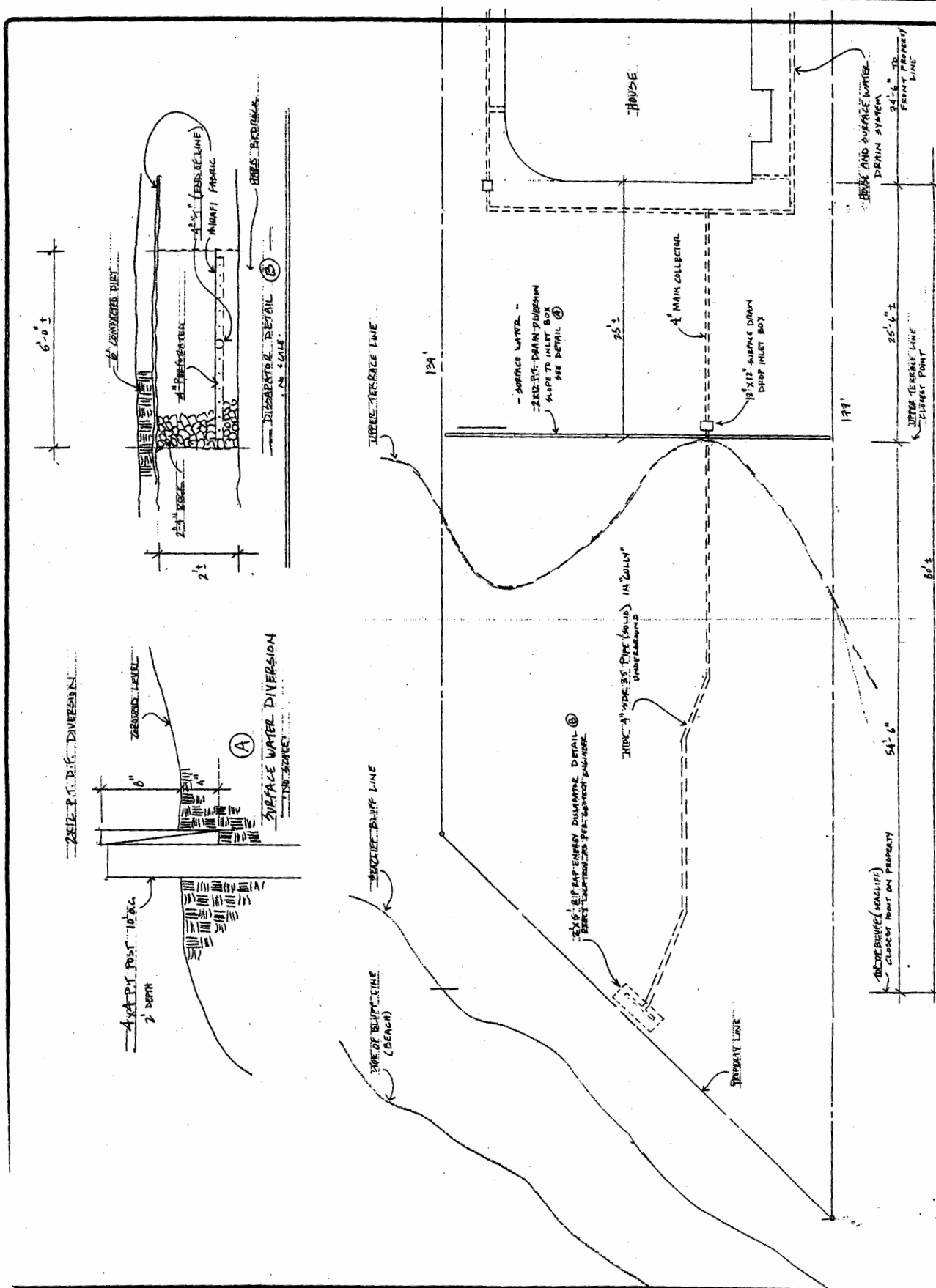
2 for 3

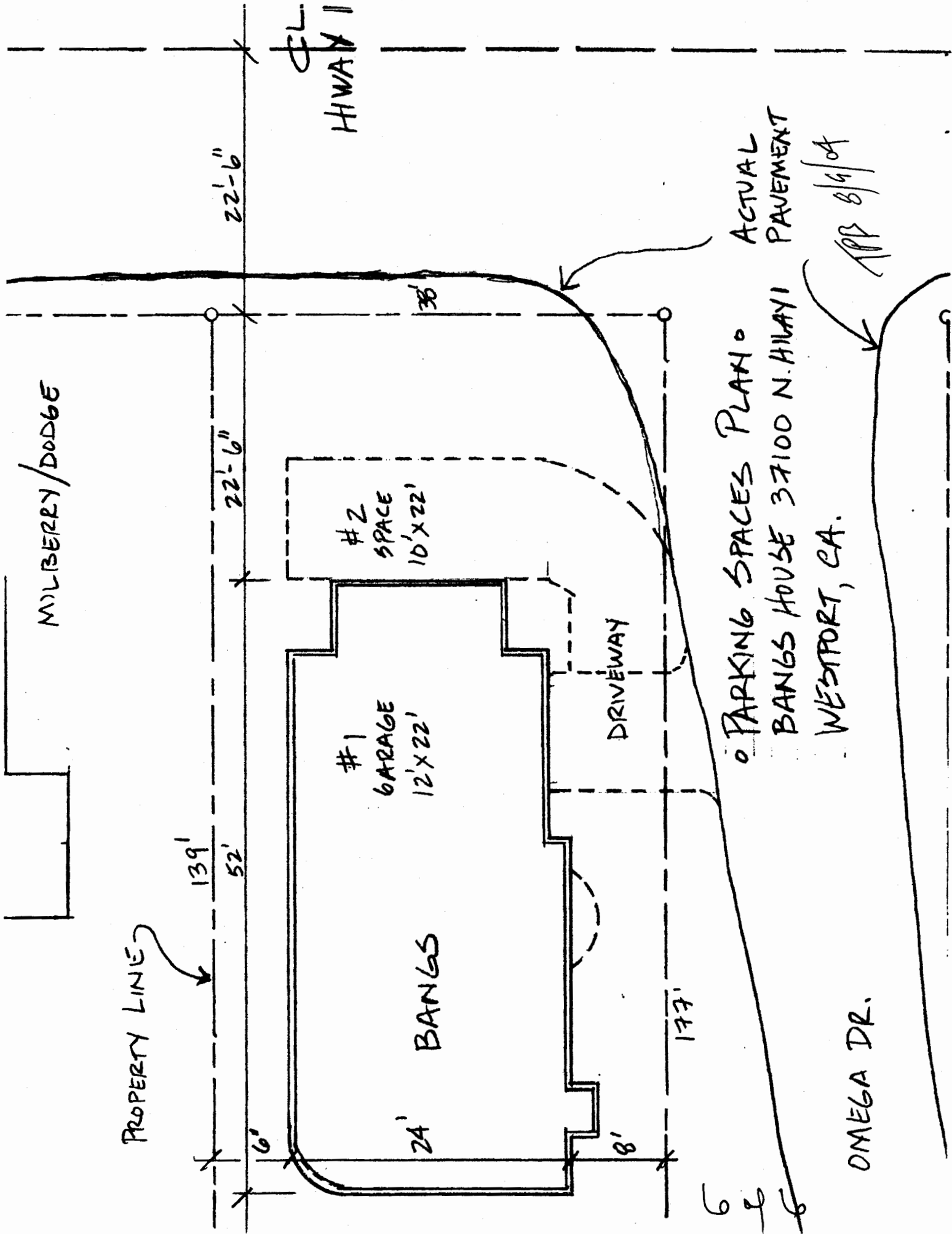


° BANKS ° REVISED DRAINAGE PLAN
ADDENDUM PG. 2

37400 N. HIGHWAY 1
WESTPORT, CA.

2
1/4\"/>





○ PARKING SPACES PLAN ○ ACTUAL
BANGS HOUSE 37100 N. HWAY 1 PAVEMENT
WESTPORT, CA. APR 8/4/04

OMEGA DR.

Jim Glomb

Geotechnical and Environmental Consulting

152 Weeks Way • Sebastopol, CA 95472 • Phone/Fax: 707/829-7258

July 28, 2003

Project 778

Charles Spangler
C/o Rob Borsich
Fort Bragg Realty
809 N. Main St.
Fort Bragg, CA 95437

RE: **Engineering Geologic Evaluation**
37100 N. Highway 1
Westport, California

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-04-030

BANGS

EXCERPTS OF GEOLOGIC
REPORTS (1 of 11)

Dear Mr. Spangler:

INTRODUCTION

At your request we are pleased to submit our engineering geologic investigation report for the seacliff property located at the intersection of N. Highway 1 and Omega Drive in Westport, California. The purpose of our work was to evaluate the sea cliff stability in relation to the planned residence at the subject site.

SCOPE

The scope of this investigation was limited to the following:

1. Review of geologic literature pertaining to the site and vicinity;
2. Analysis of stereo-pairs of aerial photographs and historic photographs;
3. Geologic reconnaissance of the site and mapping of geologic features;
4. Preparation of this report with our findings, conclusions and recommendations.

The data and aerial photographs reviewed are given in the attached References.

FINDINGS

Site Conditions

The subject property consists of a 38 foot by 177 foot rectangular-shaped bluff top parcel with a steep seacliff along the west margins. The upper portion of the lot supports a dense cover of native brush. Topographically, the site slopes gently to moderately to the west to a top of seacliff that descends an estimated 35 feet at an average inclination of 43 degrees to a rock and sand shoreline and the Pacific Ocean.

Geologic Conditions

The geology of the region is dominated by the activity of the northwest trending San Andreas Fault system which juxtaposes Coastal Belt Franciscan bedrock on the east with Cretaceous aged sediments on the west. Near coastal and marine sediments were deposited during the Cretaceous to Miocene ages and were subsequently folded and faulted. Marine terraces were deposited upon the bedrock followed by erosion and weathering processes to form the topography of today.

Geologic materials exposed at the site consist of terrace deposits overlying sedimentary bedrock. The estimated 15 to 20 foot thick terrace deposits consist of unconsolidated gravelly sand that is prone to erosion and sloughing. A 3 to 6 foot deep erosion gully exists within the terrace deposits that trends to west to the seaciff. Underlying the terrace soils and exposed in the seaciff is gray hard sandstone that is poorly bedded and blocky fractured.

Sea Cliff Stability

Like most of the northern California coast, the sea cliff at the subject property is expected to retreat landward due to the processes of wave erosion, erosion from runoff directed over the cliff, and/or rock fall. The bedrock exposed in the seaciff is fractured and subject to rock topple and rock fall. Another possible mode of retreat is from seismic shaking during an earthquake. Two sets of stereo pairs of air photos of the site from 1972 and 1981 were analyzed. Based on this analysis no appreciable retreat was detected. Research by this author indicates an average North Coast sea cliff retreat rate of 0.5 feet/year.

Faulting and Seismicity

The active San Andreas fault lies about 15 kilometers west of the site. The project is not located within a current Alquist-Priolo Special Studies Zone as designated by the State Geologist.

Like the entire North Coast area, the site is subject to severe earthquake shaking. During the 1906 San Francisco earthquake, structural damage in Gualala was relatively minor in comparison with structural damage in surrounding areas. However, the earthquake caused several landslides and seriously damaged the wagon bridge over the Gualala River south of town (*California Geology*, February, 1977). The intensity of future earthquake shaking will depend upon the distance from the site to the earthquake focus, magnitude, and the response of the structures to the underlying soil and/or rock. No significant amounts of loose, saturated, relatively clean, granular soils considered susceptible to densification or liquefaction are known to exist at the site.

Groundwater

No evidence of groundwater, seeps or springs was observed over most of the site. However, surface water from rainfall is expected to flow down through the permeable terrace deposits to the bedrock contact and from there to the face of the seaciff.

CONCLUSIONS

Our conclusions regarding the proposed construction at the property are as follows:

1. Based on analyses of stereo pairs of air photos, no appreciable seaciff retreat was detected. However, it would be prudent to assume a minimal retreat rate of $\frac{1}{2}$ foot per year. Over a 75 year life expectancy, if conditions remain the same, the estimated maximum accumulated retreat at the site would be about 37.5 feet. From a seaciff stability viewpoint it is considered feasible to construct a residence at least 37.5 feet from the top of seaciff.

2 of 11

2. The proposed development is expected to have a beneficial effect on sea cliff stability due to the implementation of additional surface and subsurface drainage systems, recommended in the following section.
3. Seismic forces from a nearby maximum credible earthquake in the future are likely to accelerate sea cliff retreat. Evidence from recent strong earthquakes in California indicates that narrow ridge tops may concentrate earthquake energy causing localized slope failure. These phenomena may also occur at the bluff top at the subject lot. Therefore, the weathered, fractured bedrock on the outer portion of the cliff face could fail during such an event. However, we judge that the potential for earthquake-induced cliff retreat to the proposed building footprint is very low.

RECOMMENDATIONS

Our recommendations regarding the property are as follows:

1. A building setback of 37.5 feet from the top of seacliff is recommended.
2. During site development care should be taken to divert site drainage away from existing on-site erosion gullies to adjacent streets and drainage ditches. In the event that old culverts draining on to the site are detected, they should be terminated and rerouted off-site.
3. Existing dense native ground cover should be maintained on the sloping west portion of the site to reduce future erosion.

LIMITATIONS

This report has been prepared by Jim Glomb for the exclusive use of Charles Spangler for development of the proposed project described in this report. Our services consist of professional opinions and conclusions developed by a certified engineering geologist in accordance with generally accepted engineering geologic principles and practices. This warranty is in lieu of all other warranties, either expressed or implied.

We judge that construction in accordance with these recommendations will be stable, and that the risk of future instabilities are within the range generally associated with construction on seacliffs in the area. However, there is an inherent risk of instability with all seacliff construction, particularly at sites near an active fault zone.

The recommendations and conclusions presented in this report are based on the assumption that subsurface conditions do not deviate from surficial conditions observed in our field evaluation. If conditions different from those described in this report are encountered during construction, or if the project is revised, we should be notified immediately so that we may modify our recommendations, if warranted.

Soil conditions and standards of practice change. Therefore, we should be consulted to update this report if construction is not performed within 18 months.

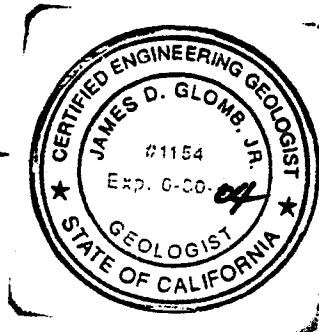
3 of 11

We trust this provides the information you require at this time. If you have questions or wish to discuss this further, please call.

Yours very truly,
JIM GLOMB CONSULTING



Jim Glomb
Engineering Geologist



Attachments: References

4 of 11

REFERENCES

1. California Division of Mines and Geology, 1974, State of California Special Studies Fault Zones.
2. Mendocino County Air Photo Library, Aerial Photographs flown in 1972 and 1981
3. Williams, J.W., February, 1976, Geologic Factors In Coastal Planning, Russian Gulch to Buckhorn Cove, Mendocino County, California, DMG OFR 76-4.

5911

Jim Glomb

Geotechnical and Environmental Consulting

152 Weeks Way • Sebastopol, CA 95472 • Phone/Fax: 707/829-7258

March 9, 2004
Project 839

Mr. Thomas Bangs
P.O. Box 569
Placerville, CA 95667

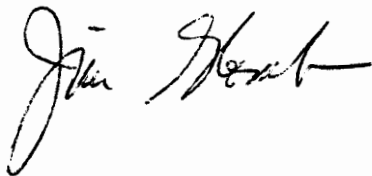
RE: **Geotechnical Conformance Plan Review**
Drainage Plan
37100 N. Highway 1
Westport, California

Dear Mr. Bangs:

At your request, we reviewed geotechnical aspects of the Drainage Plans, dated 2/17/04, revised 3/9/04, for the proposed construction at the subject property. Based on our review, we find the geotechnically related notes and plans in general conformance with the requirements of this office.

We trust this provides the geotechnical information requested. If you have questions or wish to discuss this further, please call.

Yours very truly,
JIM GLOMB CONSULTING, INC.



Jim Glomb
Engineering Geologist, C.E.G. 1154



6711

Rev'd 4/24/04
Jim Glomb

Geotechnical and Environmental Consulting

152 Weeks Way • Sebastopol, CA 95472 • Phone/Fax: 707/829-7258

April 27, 2004
Project 839

Mr. Thomas Bangs
P.O. Box 569
Placerville, CA 95667

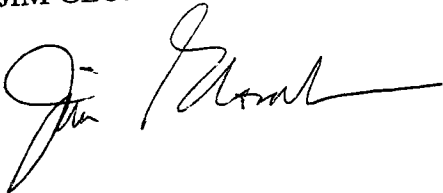
RE: **Seacliff Setback Review**
37100 N. Highway 1
Westport, California

Dear Mr. Bangs:

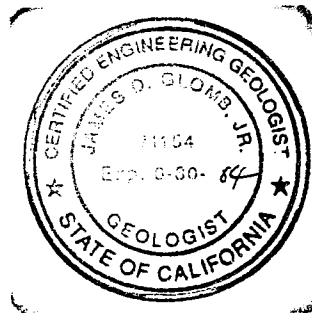
At your request, we reviewed the attached cross section establishing the termini point on the top of seacliff. The cross section shows that the proposed building is 46 feet from the 37.5 foot setback from the termini. We agree with these projections and find that the building is appropriately setback.

We trust this provides the geotechnical information requested. If you have questions or wish to discuss this further, please call.

Yours very truly,
JIM GLOMB CONSULTING, INC.



Jim Glomb
Engineering Geologist, C.E.G. 1154



7911



BANCO PROPERTY 3700 N. HWY 1
SITE CENTER LINE PROFILE SECTION.

• SCALE: $\frac{1}{2}'' = 10'-0''$.

EAST PROPERTY LINE

46'± TO BUILDING

52' BUILDING

(43°) CLIFF FACE PROJECTION LINE

22'-6"

PROJECTED BLUFF

TERMINI POINT

TOP OF SEA CLIFF

35°

37.5'

BASE OF SEA CLIFF

75 YR. BUILDING SETBACK LINE

1'±

HWY 1

±9'

← PROPOSED BUILDING →

Jim Glomb

Geotechnical and Environmental Consulting

152 Weeks Way • Sebastopol, CA 95472 • Phone/Fax: 707/829-7258

#A-1-MEN-04-030

July 19, 2004

Project 839

Mr. Thomas Bangs
P.O. Box 569
Placerville, CA 95667

RECEIVED

JUL 22 2004

RE: **Revised Bluff Retreat Evaluation**
37100 N. Highway 1
Westport, California

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Bangs:

At the request of the Coastal Commission, we are providing the following revised evaluation of the bluff retreat rate at the subject property. Upon discussions with Dr. Mark Johnsson, the Commission's staff geologist, we have reviewed additional air photos and estimated retreat rates for both the upper terrace deposits and the underlying bedrock that make up the bluff. In addition, we have provided additional drainage recommendations. Additional references reviewed are listed in the attachments.

In addition to previously reviewed stereo air photos, we reviewed stereo air photos from 1963 and 2001. The 2001 photos show bluff conditions similar to those we found at our recent site visit in February. Review of photos from 1964 showed no appreciable retreat when the distance from the centerline of the highway to the top of bluff at the bedrock were compared. The bedrock exposed in the bluff consists of hard sandstone with an average seaward dip slope of about 45 degrees. The attached Photo 1 illustrates this condition. The bedrock is also steeply and blocky fractured with an average fracture spacing of several feet. The retreat of the bluff is chiefly controlled by the bedding and the bluff face has conformed to the bedding. A secondary mode of bluff retreat is due to block toppling along steep fractures. A quantitative slope stability analyses was not performed on the bedrock portion of the bluff because of the well demonstrated negligible retreat rate over the past 39 years and the geologically favorable dip slope bedding condition. Based on air photo analysis, a retreat rate of about 0.5 feet/year was measured for the top of bluff at the terrace. The terrace consists of erodible gravelly sand. The mode of failure in the past has been erosion from surface drainage, probably diverted from the highway. A slope stability analysis was not performed on the terrace because the mode of failure is not considered to be from landsliding. However, the coarse grained terrace is estimated to have a friction angle and expected slip surface greater than 30 degrees that exceeds the current 17 degree average angle of repose of the terrace bluff surface. In order to retard erosion of the terrace bluff surface drainage recommendations are presented below. Once the drainage over the terrace bluff is captured, contained and outletted near the bedrock surface, the retreat rate from erosion should be reduced to less than 0.1 foot/year or a total of less than 7.5 feet/75 years.

Bluff retreat rates of 1 to 8 inches/year were estimated by others, listed in references, on adjacent properties.

The attached revised drainage plan depicts our recommendations. All site drainage should be collected and contained in plastic pipes. In addition, surface drainage between the proposed residence and the top of bluff should be collected and contained in plastic pipes. All site drainage should then be conveyed to an

9911

FAX**ADDRESSEE #1:****RANDY STEMLER**

North Coast District Office
California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501

Fax: (707) 445-7877**Phone:** (707) 445-7833

RECEIVED
SEP 20 2004
CALIFORNIA
COASTAL COMMISSION

ADDRESSEE #2:

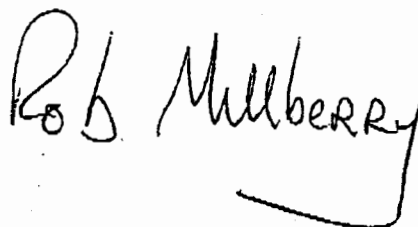
County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

Fax: (707) 961-2427**Phone:** (707) 964-5379

From: Rob Millberry
8737 Barracuda Way, Sacramento, CA 95826-1801
Date: 17 September 2004
Subject: **PETITIONS & LETTERS** for
37100 North Highway 1, Westport CA
Appeal #A-1-MEN-04-030
Assessor's Parcel Number: 013-280-03

When the above permit was heard by the Mendocino Planning and Building Department in April of 2004, there were a dozen or two dozen letters and two petitions that had been submitted opposing the permit. I ask that those letters and petitions to be submitted to the Coastal Commission for the October hearing. This fax is my permission to release them to the Commission. Please make the appropriate arrangements to submit them (Commission fax and address above). Please provide them by 4 October, 2004 so that they can be included in the package for consideration.

Thank you,

**EXHIBIT NO. 9****APPLICATION NO.**

A-1-MEN-04-030

BANGS

CORRESPONDENCE
OPPOSING PROJECT

(1 of 37)

STATE OF CALIFORNIA
Mendocino County

Bangs CDP

The undersigned hereby petition the Planning Department of the County of Mendocino to **DENY** the proposed permit to construct a house at 37100 N. Highway 1 (Main Street) on the NW corner of the intersection of Omega Drive and Highway 1 [Assessor's Parcel Number 013-280-03].

Among other concerns, we believe that the lot in question should **NOT** be developed as proposed because:

1. The proposed house will disproportionately block the view of the coast line and ocean from Highway One and Omega Drive, some of the finest views available to the public.
2. Construction of the home is likely to damage Omega Drive which is already suffering from erosion.
3. The proposed house is markedly higher than adjacent homes.
4. The proposed house projects much further seaward than adjacent homes.
5. The proposed house will cause very serious hydrological runoff problems for Omega Drive and adjacent homes.
6. Finally, this structure, as proposed, does not fit into the character of Westport, a unique rural seacoast village.

Name (printed)	Signature	Address	Legal Residence City	County	State ZIP
Larry Jonking	<i>[Signature]</i>	38905 Pacific Ave	Westport	Mendo	95488
Russell Barnes	<i>[Signature]</i>	24100 De Haven Creek	Westport	Mendo	95488
Mark Plourd	<i>[Signature]</i>	2323 ^{2nd} St	Paradise	Butte	95769
Casey Lane	<i>[Signature]</i>	58961 Hwy 1	Westport	mendo	95488
Shawn Siemor	<i>[Signature]</i>	151 S. McPherson ³	Fort Bragg	mendo	95437
Rheta Shaw	<i>[Signature]</i>	215 Chestnut Apt 5	Fort Bragg	Mendo	95437
MARIE FORMER	<i>[Signature]</i>	PO Box 7	Westport	CA	95488
Lee Tepper	<i>[Signature]</i>	PO Box 26	Westport	CA	95488
Frank Escobedo	<i>[Signature]</i>	P.O. Box 233	Westport Calif.	Mendocino	95488

20F37

County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

2/3/04

Dear Department of Planning and Building Services:

As a friend of Westport and the Dodge Millberry House, our family has visited Westport for the last three years and feels strongly attached to this seacoast village with its rural unspoiled beauty. We have concerns about the proposed construction of a home on the narrow half-lot between the Dodge Millberry house and Omega Drive, primarily that the view on that route will change considerably with a new building along Omega that is 52 feet long (plus two decks to seaward) and 35 feet high (on the ocean end). More importantly we are concerned that disturbing the delicate geological nature and hydrology of the sea cliff could hasten erosion.

Please understand that we are not opposed to this construction; we are just asking that the building conforms to a structure and size that will not hinder the scenic view of existing neighboring sites and considers the erosion issue..

Thank you.

Yours truly,

Paul Landman
Paul Landman

RECEIVED

FEB 19 2004

PLANNING & BUILDING SERV
FORT BRAGG CA

4 of 37

over a verdant half-lot and the charming rural Omega Drive. The far view is of one of the grandest formations of rocks and breakers to be found on the Mendocino Coast (I admit to bias). The houses to both sides (to the North is our house) are well-kept but quaint houses that date back a century or so. Before you decide on this development, please examine this view and consider the impact of a new discordant 35 foot high house (much higher than the houses on either side) that fills the narrow lot from side to side (unlike the adjacent lots that have broad view corridors to the ocean). Attached to this letter are two photos of that view, the first photo shows the current view while the second one shows roughly how the proposed construction will block the highly scenic view from Highway One. [*I am not a graphic artist]

2. A view of the scenery and topography at Westport, is available by going to www.californiacoastline.org. Scroll down to "photograph number" and enter 11187. This view makes clear the narrowness of the proposed lot as well as the currently open nature of the seaward view from Highway 1 through the currently open full-sized lots. The second attached photo page shows that view.
3. Residents and visitors to Westport have long enjoyed the walk along Omega Drive. From Highway One there is a deep green corridor with a long view over the rugged coastline, waves, breakers and whales (in season). As one walks or drives seaward, a breathtaking panorama beckons, one that looks down steeply to the beach and tideline 100 feet below. Looking out to sea, one has a sweeping view of Fort Bragg to the south and Cape Mendocino to the north. Much of that view will be blocked by the proposed house. Even past the edge of the proposed house, the distinct and soothing feeling of wildness will be gone as one looks to sea with a huge tower (over three stories high) up against one's shoulder. The proposed decks to seaward will further chop off the view to the North from Omega. The house itself will closely crowd Omega Drive if the 18 foot variance is granted as requested. The application places the house (not the yard, but the house itself) right up against the Omega Drive corridor.
4. This is a new and denser development of a rural seacoast village. Currently, most of the houses on the seacoast side have side lots that allow a view of the ocean, creating a unique rural and scenic character. There

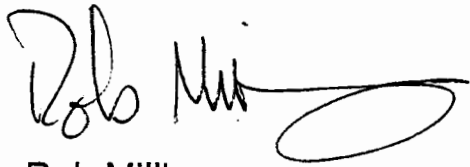
application described a 1762 square foot house on a 6,000 square foot lot which would mean that 29% of the lot was occupied by building. However the true lot is less than half that (2926 square feet by my calculation) which means that 60% of the lot would be occupied by building. Subtracting the required set-backs from Highway 1, Omega Drive, and our lot, I estimate that the buildable lot is only really 2,000 square feet (I estimate 26 feet by 80 feet - I am not a surveyor). A house of 1,762 sq. ft on that lot means that 85% of the buildable lot is filled with building. That is a far denser development than found elsewhere on the seaward side of Highway 1 in Westport (or seaward in most places, I believe).

8. Disturbing the delicate geological nature and hydrology of the sea cliff will hasten erosion. A huge blackberry patch has been on the lot for decades, if not centuries. Westport suffers fast-moving runoff from the ridgeline during heavy rains. Omega Drive continues to lose its shoulders as runoff undercuts the road. Even now, sinkholes in the road surface appear during heavy rain as I am sure your road maintenance records will verify [one had to be repaired around the New Year of 2004]. Until now, much of the runoff has drained into the blackberry patch which has slowed it and allowed the water to be absorbed into the soil, preserving the seacliff and protecting Omega. Once a house replaces the blackberry patch, the runoff that used to flow through the blackberry patch will be diverted toward Omega Drive (and/or our lot), potentially hastening erosion. The planned development of the hillside East of Highway One Street and/or extension of Omega Drive will add even further to the runoff problem. The geological study in the application says that rate of erosion is only $\frac{1}{2}$ foot per year, but that is an average. I believe that further study will also reveal that the rate of erosion is accelerating. Even now, when the erosion comes, it comes all at once, as it did to us in the seventies when we lost 100 square feet of our backyard in a single day. Construction on this fragile lot will accelerate erosion of the seacliff.
9. Bringing in construction equipment is likely to damage the seacliff and/or Omega Drive. Cement trucks, pile-drivers and other heavy equipment will need access to the lot during construction. Because there is virtually no "yard" with 85% of the lot filled with building, heavy machines and materials will have to work from Omega Drive. No other access to the lot is possible. Omega Drive is already deteriorating badly from normal vehicle traffic. The

to buy it as a buffer to preserve its drainage virtues and based on a letter from the owner, we believed we had the right of first refusal. Further, we have erected simple memorials on this lot (on the edge of the seacliff) to two recently deceased family members of my generation who were regular visitors to our ocean retreat which has long been a solace to us. We believe we have solid grounds for a prescriptive easement for both the memorial point and access trail.

3. The Dodge-Millberry house has only wood and solar heat. Opening the windows to the south during the day warms the house, even in winter. This proposed house, being so tall, will block this heat source.
4. While we will still have a view of the ocean if this proposed house is allowed to be built, we will be looking directly into and up at a disharmonious 35 foot tall house and the two decks. If this structure were in line (to seaward) with its neighbors, we could all enjoy the view equally.

However, far more important than our issues are the serious public rights issues as listed at the beginning of this letter. I look forward to having the Planning Department thoroughly examine this application to build. Please advise me of any and all hearings. I would like to make a detailed presentation of my concerns.


Rob Millberry

RECEIVED

FEB 13 2004

PLANNING & BUILDING SERV
PORT BRAGO CA

January 24, 2004

Dear Dept. of Planning and Building Services,

Re: Proposed Development of 37100 N. Highway 1, Westport, CA
Assessor's Parcel Number: 013-280-03

My husband and I live in the busy city of Sacramento. We had a wonderful weeks vacation at the Dodge-Millberry home at 37110 Main Street in Westport, CA. After leaving the hectic, stressful, traffic clogged city, we truly felt like we were on a different planet when drove into the peaceful village of Westport. We spent the entire time walking and enjoying nature and the beautiful scenery.

Consequently we were very concerned to hear that someone is planning to build a three story house adjacent to the 37110 Main Street property. My first fear is the damage that will occur to the sea cliff and near by homes due to heavy equipment and pile drivers. We personally experienced damage to our home from 18 wheeler trucks driving into the court we lived in. We had cracks in our walls and ceiling and our foundation was cracked in two places. Our neighbors also had damage. We do not want to see the beauty and tranquil nature of the quaint village of Westport changed by the construction of a modern three story house extending 52 feet toward the ocean plus a deck. Access to the beach will be lost along with the view from Highway One.

12 of 37

continued →

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JAN 30 2004

PLANNING & BUILDING DE
FORT BRAGG CA

January 28, 2004

Department of Planning and Building Services
790 S Franklin Street
Fort Bragg CA 95437

Dr Sir/Madame:

RE: Proposed Development of 37100 Highway 1, Westport CA
Parcel #013-280-03

Respectfully request denial of this proposed development for the following reasons:

1. This proposed house will deny Oceanside access to the residents in the house next door, the Dodge-Millberry house, as the access path is across this property;
2. The Dodge-Millberry house, which was constructed in the 1890's, is heated only by one wood stove and the solar heat from the south side windows that face the proposed development; if the proposed development is approved the solar heat for the home will no longer be available and the wood stove use will increase, which of course is detrimental to air quality;
3. This proposed development is on the sea cliff North of Omega which is roughly a straight and small strip of land and only dense long uncut vegetation (mostly blackberries) makes it appear that it is a build able lot and much bigger than it actually is today; with the sea cliff that the proposed decks of the purposed house will be built without either cantilve or pole construction which would overhang the cliff; this small strip is currently used by all different types of wild life and a development that crowds or overloads the cliff edge would threaten that wild life, which we must protect;
4. The building of this development would jeopardize the geological nature of the sea cliff and hasten erosion; bringing in construction equipment due to the proximity of Omega Drive is likely to damage the sea cliff and the huge blackberry patch which has been there for decades; During months of heavy rain, the fast moving runoff from the ridge line from those heavy rains have taken out 100 square feet of our own backyard and that was in just one storm; even now sinkholes in the road appear during heavy rain and much of the runoff has drained into the blackberry patch which has slowed it and allowed the water to be absorbed into the soil preserving the sea cliff and protecting Omega; once a house replaces that blackberry patch, the runoff that used to flow through the blackberry patch will be diverted toward Omega Drive potentially hastening its erosion; the planned development of the hillside East of Highway One Street and/or extension of Omega Drive will add even further to the runoff problem and hasten erosion of the sea cliff;
5. With the unique character of Westport of man made structures and nature, the view of nature should not be blocked by any one house; the structures should fit into the historical character of Westport by being small; especially on this small strip of land, and not appearing jarringly modern

14 of 37

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JAN 30 2004

PLANNING & BUILDING SERV
FORT BRAGG CA

January 28, 2004

County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

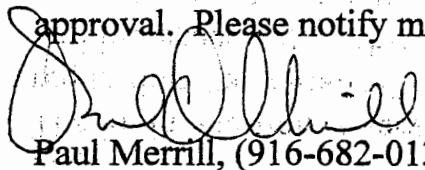
RE: Opposition to the Proposed Development of 37100 N. Highway 1,
Westport, CA Assessor's Parcel Number: 013-280-03

Dear Planners:

Our family has been privileged to vacation in the unique and beautiful town of Westport. I am writing out of grave concern that the above referenced proposed development will be an eye-sore in the town of Westport, and do aesthetic violence to the view from both Omega Drive and Highway 1. The public view from both these vantages is stunning.

The lot in question is very narrow. To me, this proposal is similar to requesting "a variance" for a Winnebago to park in a compact parking space. It is absurd to consider such a variance as being in concert with the public trust, with which you are endowed, to preserve the highly scenic beauty and view of the public - both resident and passers-by. Such a structure is neither in keeping with the village nature of Westport nor the quaint and open experience of our land and seascapes along Highway 1.

I ask that you deny approval of this proposed development. There should be no encroachment onto Omega Drive and certainly no structure so massive and tall blocking the highly scenic public view of the ocean and cliffs of Westport. Thank you for your consideration and vision in questioning and denying this project's approval. Please notify me of any hearings.



Paul Merrill, (916-682-0132)

9154 Rothsay Way, Sacramento, CA 95829. pmerrill@citlink.net

16 of 37

2-26-04

RECEIVED

MAR 11 2004

PLANNING & BUILDING SERV
FOR MARIETTA, GA

To Whom It May Concern,

Regarding property development
in the town of Westport:

Over 40 years ago my mother
bought the house/property at
37110 Hwy. 20 and my family
has been going over there for
holidays and vacations ever
since.

There is a new building proposal
on the narrow lot between our
house and Omega Dr. that, if com-
pleted, would drastically alter
our 40 years' experiences on, and
use of, the yard on the seaside
edge of the property that we had
always assumed was part of our
land. The ashes of three members
of my family have been honored at
the Kroll of land at the southwest
corner of that back yard, three
18 of 37

10 April 2004

County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

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APR 14 2004

Hello,

I am writing to you about the proposed development of 37100 N. Highway 1, Westport, CA, Assessor's Parcel Number: 013-280-03.

I am very, very opposed to this development. Let me tell you why.

The town of Westport has been the one steady rock in my life. For reasons I won't bore you with, my life has been really chaotic. My parents got divorced, people kept moving, the family kept changing. But one thing did not change - Westport. I have always been able to return to Westport to restore my sanity. Westport always reminded me that there are some enduring good things that can be relied upon.

Being in Westport is like time travel - to a time that keeps all the good things that I have learned to love. I have traveled around Mendocino County. There is a different flavor to each town. I love to visit Mendocino, Ft. Bragg, Caspar and Willits. I want each of them to be the town that they want to be. But I also want Westport to be something different from those places. Please keep Westport the rural ocean village that it is. I know that things must change, that new people will fall in love with Westport, as I have. I do not wish to exclude them. I do wish to have them join the town rather than change the town.

I believe that if you look at this towering structure, especially how it changes the seaside view from Highway One, you cannot believe that it "fits in" to Westport. Further, I have been in the town when heavy rains came off the ridge. Omega Drive is already at risk. I do not see how this almost 4 story high (at ocean's edge) structure can be built without damage to both the sea cliff and to Omega Drive.

Both my father and grandfather spent decades in military service. Both returned to Westport from overseas to relax and recharge and reconnect with the land, family and community that they had gone so far away to serve and protect. I am now in the Marine Corps myself. I would like to return during my service on leave to the same Westport that has always sustained me and my family. Please deny this application or at least scale it way back to fit into the town as it is now and always should be.

Please advise me of the date and time of the hearings on this development.

Thank you.

Cyreneia
Millberry

20 of 37

RECEIVED

JAN 18 2004

Cole Spohr
288 Valley View Dr.
Paradise, Ca. 95969
e mail, sproderick@aol.com

PLANNING & BUILDING SER
FORT BRAGG CA

To: County of Mendocino
Department of Planning and Building Services
790 South Franklin St.
Fort Bragg, CA. 95937

RE: Proposed Development of 37100 N. Highway 1
AP # 013-280-03

To Whom it May Concern,

As a long time member of Friends of Westport I would like to express my objection to the proposed development plan for the above mentioned parcel. A three story home on this lot would not be in keeping with the existing nature of Westport Village or the neighborhood of Omega Drive specifically. A house of this scale would dominate the neighborhood and those homeowners have a right to maintain the ambiance of their street and community.

I am a 25year veteran of the Construction Industry and I understand an Owners desire to do what they want regarding the design and size of their home. I also know that a responsible developer takes into consideration the impact of their construction on it's surroundings and designs to mitigate that impact. When there is no consideration of the impact of the construction on it's neighbors and environment by the developer it is common planning practice to impose that consideration on them. That is what must be done in this case. There must be some consideration given in a developed area to the continuity of size and design in a new building with what is existing. Continuity not necessarily conformity. In the historical village of Westport this is especially true. The common scale of construction in the village is two story and at the very least this should be a limiting factor especially in the location in question. If the Owners of this property had any real interest or connection to this community other than convenience they would not have proposed such a building for this site. I am sure there are other sites along the coast that would allow them to build as grandiose a house as they like. In their current location the community of Westport should be allowed to maintain it's identity as a Historical Coastal Village and impose some restrictions on what is build within it's boundaries.

It would be a travesty to allow this community to become another Stinson Beach. A house of this scale in the community would set a bad precedent allowing most anything to be built in future and turning Westport from a rural community with an important historical past to just another upscale ocean front development.

Thank you for considering my opinion in this matter.

Sincerely
Cole Spohr



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County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg, CA 95437

Re: Support of Proposed Bangs Coastal Development Permit
37100 North Hiway 1
Westport, CA A.P.N. #013-280-03

Planning Commissioner:

My name is Cathy Phelps, I reside in Camino, California just east of Placerville where Mr. Bangs, my brother currently lives. I also am employed as Mr. Bangs office manager for his construction business. In fact, Mr. Bangs built our family home in Camino in 1991, a beautiful Victorian design complete with a wrap-around porch.

As I am working for Mr. Bangs, I have been aware of the letters you have received from the neighbor next door and their friends. Frankly, I feel Mr. Bangs has gone out of his way to introduce, accommodate, befriend and appreciate the concerns expressed. The land in fact was for sale for two years, giving the "neighbor", and I use that term loosely ample opportunity to purchase the lot. To even address his concerns about the use of someone else's property to access the beach is ludicrous. As far as the blackberry bushes, not to sound anti-environmentalist but PLEASE, if I could rid my own yard which is over an acre of a couple of those pesky prickly vines I'd be a happy camper. The erosion and drainage issue are genuine concerns, which as you all are aware would require distinct and definitive plans working with your department, which could only improve the area and correct any current problems.

Truthfully, I hesitated in writing this letter, as I am just a fond visitor to the area. My husband and our children vacation in the area every summer and fall. It truly is a piece of paradise. I believe the opinions of the immediate neighbors in the 300 foot radius is much more valuable to you. After all they are the ones particularly impacted with any new building. My brother has met them all and they seem to support him with the exception of his "neighbor" to the north.

Rest assured Mr. Bangs is a respectable and sought-after contractor in the Placerville and Napa Valley areas. He is absolutely entranced with the Westport area and town.

I have reviewed the plans and am familiar with the other homes in the direct area and can only commend him for the careful consideration of the landscape and fine tuning to add a beautiful addition to an incredibly beautiful town.

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PLANNING & BUILDING SERVICES
COUNTY OF MENDOCINO

Cathy Phelps

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1. The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.
2. New development shall be sited such that public coastal views are protected.
3. The location and scale of a proposed structure shall not have an adverse effect on nearby historic structures.
4. Building materials and exterior colors shall be compatible with those of existing structures.

In my opinion, the scale of the proposed development is well outside the scope and character of existing development in the surrounding neighborhood. The new development not only does not protect public coastal views but completely blocks such views. Furthermore, the proposed structure adversely affects neighboring historical structures. As such, the applications do not meet county development criteria, and the applications should be denied.

There is also a significant lot coverage issue with this project. The applicant states that the footprint for the project is 24 feet by 52 feet. The variance application identifies the lot area as 6004 square feet. However, it has been my observation that a good portion of this lot extends beyond the bluff edge and is accordingly not buildable. I would hope that staff has independently verified the lot measurements, including set backs and state and county road locations. Based on my observation, it appears that the applicant is attempting to build on virtually the entirety of the buildable portion of his lot. The applicant characterizes the proposed project as a two-story residence. However, with the added towers and cupolas, the structure has the appearance of a three-story building, far larger than the surrounding structures (many of which could be characterized as historical.) While I acknowledge the right of the applicant to build a reasonably sized home on his property, the proposed project is substantially denser and more massive than the surrounding uses, and this massiveness is accentuated by the narrowness and partially unbuildable nature of this lot.

This massiveness also adversely affects public views from Highway One and Omega Drive. The existing homes in this area are largely in line along the west side of the properties, permitting views of the ocean past the houses. Moreover, the existing structures have side yards which permit intermittent views of the ocean from the State Highway. Any home constructed on the applicant's lot should likewise not extend beyond the existing line of homes, and should provide adequate side yard set backs to maintain public views.

The applicant has requested extraordinary variances regarding the front yard set backs and preservation corridor. As I understand it, the applicant has proposed the north and south set backs be reduced to 6 feet, and also wants to reduce the eastern set back to 17 feet. My

26 of 37

Woody Hudson
April 22, 2004
Page 4

(including the loss of solar heat and light) from permitting a structure at maximum permitted height without the concomitant protections afforded by the usually required setbacks. This will work a hardship on neighboring properties (as attested to in letters in your file) that has been completely ignored by the applicant and staff. Property owners are not simply complaining about the loss of an unobstructed view (as unfairly characterized in the staff report), but the virtual elimination of the sun light and heat afforded by this southern exposure.

I note that the Department of Transportation has requested a grant of the southerly six feet of the property for roadway purposes, as well as a 15-foot triangular wedge at the intersection of Omega Drive and Highway One. These requests further reduce project setbacks, but no doubt reflect reasonable concerns on the part of the Department of Transportation that the existing roadways will require future maintenance and development (and may already encroach on this property.) Any permits issued to this applicant should include the requested grants to the Department of Transportation.

In addition to excessive lot coverage, overly dense development, and the negation of public views proposed by these applications, we are also concerned about the following issues which should be determined before any permit may be issued:

1. Will construction of a massive structure on this lot increase the hydraulic pressure on a bluff top that is already showing signs of geological stress and retreat?
2. Will the proposed project exacerbate existing drainage problems in this area?
3. Has an archeological site review been completed (as I understand this is an area rich with native artifacts)?

In conclusion, this house would no doubt look fine on a full sized lot. Compared to some of the other vacation palaces proposed for the coast, 1800 square feet is arguably modest. However, the applicant is the owner (or prospective owner) of an extremely narrow undeveloped lot in a special community where the applicant bears the burden of proving compatibility with surrounding uses, reasonable scale, and protection of public views. If the applicant proposes a home consistent in size and scale with the surrounding uses which does not unduly interfere with public views and is consistent with the surrounding

April 21, 2004

County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

Subject: Proposed Development of 37100 N. Highway 1, Westport, CA
Assessor's Parcel No.: 013-280-03

To Whom It May Concern:

I have been a visitor to the town of Westport for a number of years and have been pleased each time I returned to find that the ambience of this lovely little town on the coast has continued to exist. A visit to Westport is a refreshing experience because of the small-town atmosphere, the old and interesting architecture and the beautiful and practically unobstructed views of the ocean that all the residents and tourists have enjoyed for a very long time. It is also a town rich in California history of the 1800s.

Places like Westport are disappearing from the California coastline as people are allowed to build structures, such as the one under consideration, that are not in keeping with the style and size of the existing towns and that obstruct the public views. It certainly would be a terrible shame if future generations are robbed of such a beautiful place.

I have seen the plans for the above-mentioned development and am opposed to the structure which would, as currently designed, destroy a beautiful and unobstructed view of the ocean from Highway 1 and Omega Drive, both of which are favorite spots for tourists. It is also such a tall building that many of the property owners who have lived in Westport for years will be robbed of the ocean vistas they have always enjoyed.

It also seems that the lot is not big enough to accommodate the house and that the requested variance will really crowd Omega Drive, making it difficult for tourists to drive on the road so they can stop and enjoy the view and take pictures which, of course, cannot be done from Highway 1. Since the house plans show the house to be so close to Highway 1, where do the residents plan to park? On Omega Drive?

I feel it would be detrimental to the town of Westport and to the general public to approve the construction of the proposed house. When one person's project can have such a negative effect on so many others and change the face of an entire town, I think the decision should be very carefully considered. I hope that this process will consider preserving the ambience of the town of Westport for current and future generations to enjoy.

Sincerely,

Capital City

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A CENTER FOR HEALING INTEGRATION

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Post Office Box 282 • Lower Lake, CA 95457 • (707) 995-9121 / 262-0637

Sandra Wade
Founder-Director

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Certified in Massage Therapy
Holistic Health Guidance

County of Mendocino
Department of Planning & Building Services
790 South Franklin Street
Fort Bragg, CA 95437

DEC 30 2003

PLANNING & BUILDING SERVICES
FORT BRAGG, CA

December 26, 2003

Dear Director of Planning & Building Services,

I have been a regular visitor to the Dodge-Millberry house in Westport since 1982, and have enjoyed its rural character, glorious views and simplicity.

Recently I have learned that the Placerville resident who has purchased the adjacent narrow lot (Assessor's parcel #013-280-03) hopes to build there a three-storey house, at 37100 North Highway 1.

Apart from the arrogance of totally overshadowing the small, almost historic Dodge-Millberry house, blocking its light, warmth and ocean view to the South, this plan seems to be foolish and dangerous.

Already one cliff-edge house at the South end of the village has had to be moved back on its lot, away from edge erosion. On the lot at the junction of N. Highway 1 and Omega Drive, proposed site of a "Victorian", blackberry bushes and nasturtiums currently cover the swale where, in the 1970's, 100 ft of cliff subsided. The soil had become saturated by rains and run-off waters. This could occur again.

I understand that by the Venturi Effect, building on the lot in question could divert run-off waters onto the Dodge-Millberry property next door, since the paved Omega Drive is on the other side.

It is a matter of serious concern that building activity on this narrow lot, let alone a deck overhanging the cliff edge as proposed, would doubtless affect the stability of this area already proven prone to erosion. There could be a 'domino' effect to all the oceanside properties north of that lot - affecting dwellings set well back from the cliff edge, as is prudent. Why should one new construction, buildable only if current regulations are waived, jeopardize several others?

Apart from blocking the view to the North of houses on the East side of Omega Drive, as well as spoiling the view of many others in the village, a three-storey house would be out of keeping with the historical character of Westport.

I hope you will consider these points as grounds for denial of the proposed plans, and require thorough research into the advisability of building on parcel #013-280-03.

Sincerely,

Sandra Wade

Ms. Sandra Wade

REMEMBER TO BREATHE

32 of 37

a personal nature is the fact that the Dodge-Millberry House has a scenic point within its boundaries on the ocean side that can only be accessed by a trail through the adjacent lot (one I have used during my many visits). As well, the Dodge-Millberry House has only wood and solar heat and opening windows to the south during the day heats the house. A tall house will block this heat source.

The unique character of Westport, and certainly of the Dodge-Millberry House, is one of the reasons I have been a returning visitor over the years. It exudes a beauty, a peacefulness, and a consideration for nature . . . a respect for people and animals and nature alike. Existing homes and buildings fit into the historical character of Westport and do not dominate the existing village of Westport.

I would hope that a variance to build this large structure would not be granted for all the reasons I have stated above, and certainly others I could mention. However, at least for now, I do not wish to take up any more of your precious and valuable time.

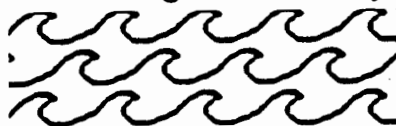
Sincerely,



Larry Desmond

e-mail: larrydesmond@earthlink.com

Robert Ingalls Millberry



REC'D / ED

DEC 2 2003

PLANNING & BUILDING SERVICES
FORT BRAGG, CA

780 4th Street, Lakeport, CA

95453-4523

(707) 263-4571

December 27, 2003

County of Mendocino
Department of Planning & Building Services
790 South Franklin St.
Fort Bragg CA 95437

Re: Proposed Development of 37100 N. Highway 1, Westport, CA
Assessor's Parcel Number: 013-280-03

People,

I am the one-half owner of parcel 013-280-02 at 37110 Main Street (North Highway One) in the community of Westport. I purchased my share from my sister and her husband (Patricia M. and Jack L. Dodge) in 1966. Since my retirement from the Air Force in 1967, both of our families, as well as friends, have used this as a vacation home. We consider the town of Westport to be our second home town.

Our property, with 60 feet frontage on Highway #1 is adjacent (to the North) to the 38 foot frontage parcel at 37100 Main Street. Omega Drive is the southern boundary for the narrow lot which is now overgrown in blackberries. Your office is considering the issue of a building permit on this property for a three story, 24 foot by 46 foot "Cabin," described as "Victorian" in design.

I am not an architect but I have been an engineer for more than 60 years, supervising architects and engineers in the construction of many large projects from housing developments to major airfields. To me, this structure is neither a "Cabin" nor is it "Victorian."

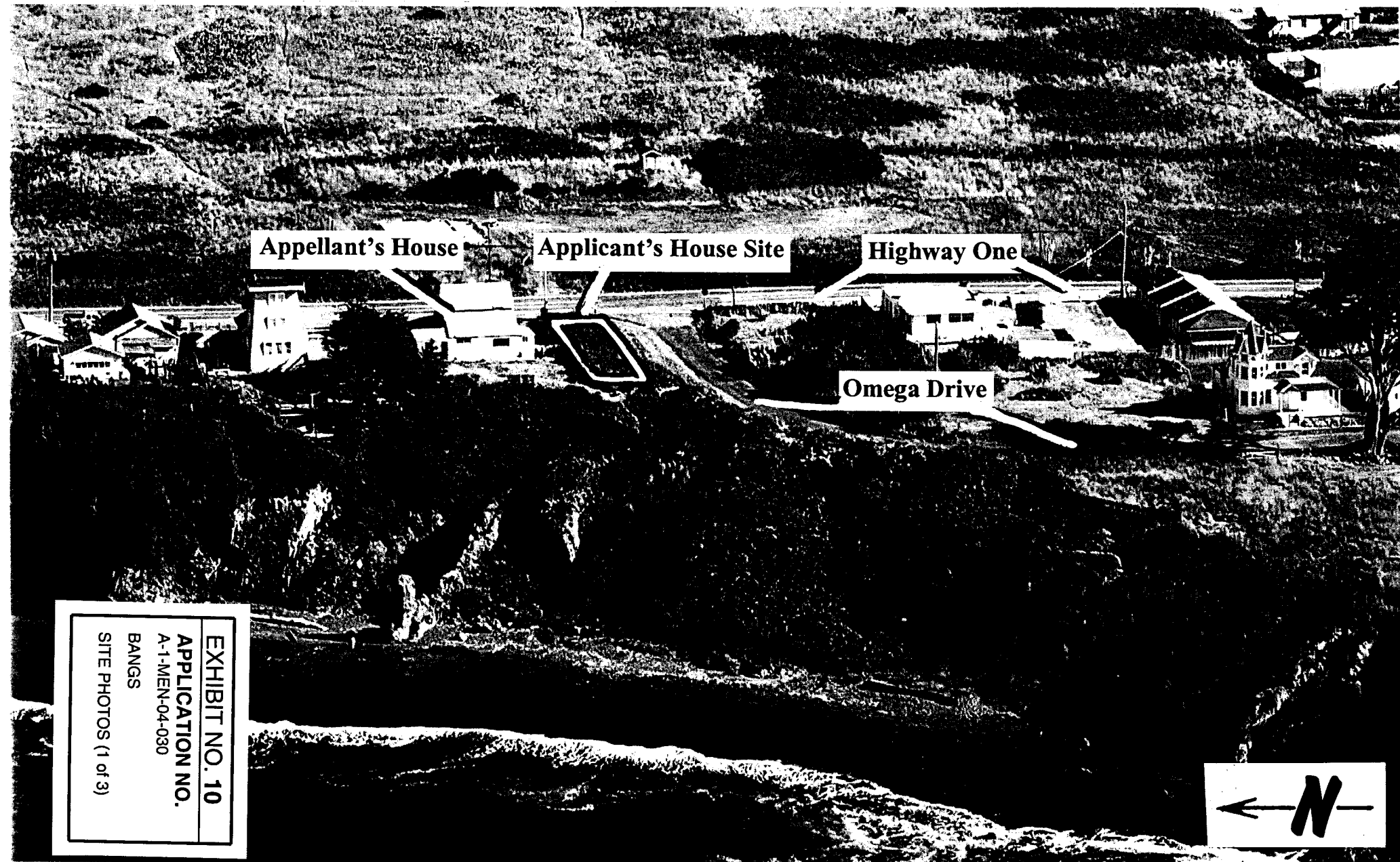
Reviewing the proposed structure and site development, I have serious reservations relative to:

1. The height of this structure on the ocean side of Highway One, blocking the view.
2. The siting of the house on a sensitive coastal lot.
3. The incongruity of the style of this house with the existing true Victorians along the North Coast, in Fort Bragg and in the community of Westport.
4. The height and location of this proposed house will obstruct the public view for both pedestrians and vehicle occupants who travel along Omega Drive. One of the pleasures of staying at our coast house is to see numerous vehicles turn onto Omega Drive, only to stop so that the amazed occupants can get out to enjoy the astounding view of the ocean, rocks and beach from Omega. If this new structure were to be allowed, that view would instead be of the walls and deck of this overlarge house.
5. As proposed, this structure would overlook the cliff edge of the lot and project out over the beach. This would have a very negative effect on the view from the beach up toward the cliff. Now the view is of dense growth. Note that the actual depth of the lot is the same as our own (about 25 feet). What appears to be land projecting out further than that is actually just part of the dense growth, the landform itself descends steeply. A house as long as that proposed would actually have to use cantilever or post construction for the portion of the house to the West.

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APPLICANT'S HOUSE SITE

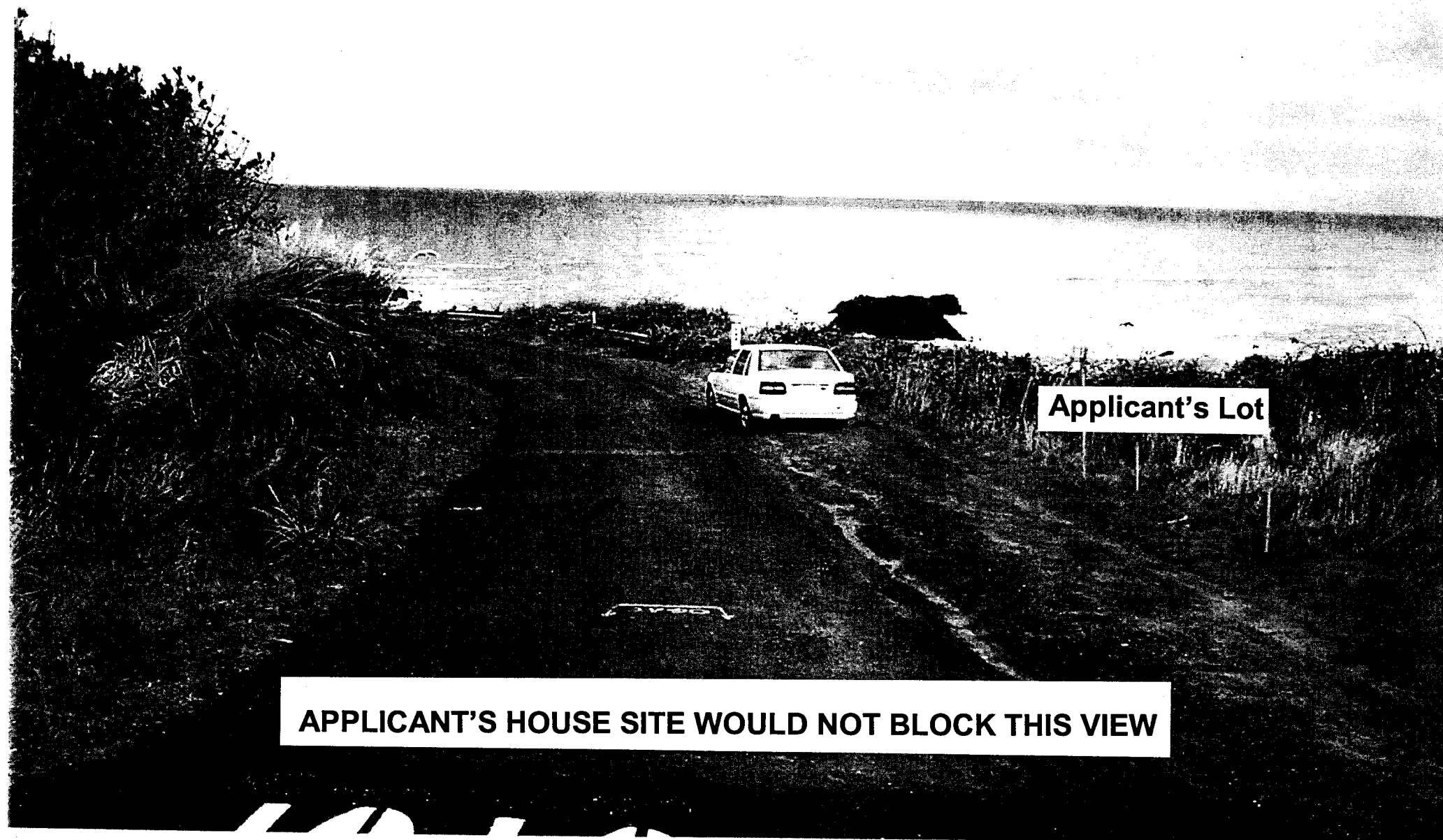
located at the northern end of the rural village of Westport, Mendocino County



3/8/03

OMEGA DRIVE

View Looking West Toward the Ocean from Highway One



APPLICANT'S HOUSE SITE WOULD NOT BLOCK THIS VIEW