

CALIFORNIA COASTAL COMMISSION

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Filed: September 12, 2003
49th Day: Waived
Staff: Jim Baskin
Staff Report: March 4, 2004
Hearing Date: March 17, 2004
Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-03-062

APPLICANT: Frank and Julia Mello

AGENT: Don Teutsch

PROJECT LOCATION: 27232 Warren Drive, approximately 2½ miles southeast of the town of Point Arena, Mendocino County, APNs 27-412-27, -28, -29, -30, and -31.

PROJECT DESCRIPTION: Construction of a 2,220-square-foot, 17-ft., 8-in.-high, single-family residence with a 720-square-foot, 14-ft., 9-in.-high detached garage, on an approximately three-acre parcel, driveway, onsite sewage disposal system and extension of utilities to the new structures.

APPELLANT(S): (1) Friends of Schooner Gulch, Attn: Peter Reimuller;
(2) Moat Creek Managing Agency; and
(3) Eric Dahlhoff.

SUBSTANTIVE FILE: 1) Mendocino County CDP No. 86-01; and
DOCUMENTS 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.

The appeal is of a decision of the County of Mendocino to grant a permit with conditions for the construction of a 2,220-square-foot, 17-foot 8-inch-high, single-family residence with a 720-square-foot, 14-foot 9-inch-high detached garage, on a roughly three-acre parcel, with an approximately 4,000-square-foot gravel driveway and turn-around, onsite sewage disposal system, conversion of a test well to a production well and extension of utilities to the new structures. Other site developments include the installation of landscaping along the northern and southern flanks of the residence to screen the development from public viewing points along the coastline. The subject property is located on a blufftop lot within the Moat Creek Estates (formerly "Whiskey Shoals") Subdivision, approximately 2½ miles southeast of the City of Point Arena, along the central Mendocino County coastline.

The appellants submitted a joint appeal raising contentions that the project as approved is inconsistent with the certified LCP and public access policies of the Coastal Act as follows:

- The project approval did not include a requirement that a segment of the California Coastal Trail developed within a fixed-location public access easement situated on the parcel's actively-eroding blufftop edge be re-dedicated to an ambulatory access easement that could move inland as the bluff erodes. The effects of stormwater runoff from the project were not considered and/or mitigated for as a contributing factor to increased erosion and further loss of the trail and easement;
- The preparer of the project's geological analysis is a registered geologist, rather than a licensed engineering geologist or registered civil engineer, as specified in the Coastal Zoning Code;
- Permit conditions expressly precluding the future construction of shoreline or cliff face protective structures that were required in other similar blufftop development settings were not included in the subject project's approval;
- The application acted upon was incomplete at the time of the County Coastal Permit Administrator's action, as information regarding the colors of the development and landscaping particulars had not been provided. In addition, final review and approval of these visual resource influencing project features were delegated to a post-hearing, staff-level conditional compliance administrative

process where public scrutiny of the decisions of these crucial elements was not afforded; and

- Siting criteria for development on open terraces in highly scenic areas were not followed.

Staff recommends that the Commission find that the development as approved by the County raises a substantial issue of conformance with the development siting provisions of the certified LCP that require the protection of visual resources in highly scenic areas. The County's Land Use Plan and Coastal Zoning Code contain specific siting criteria for development within designated highly scenic areas, such as the project site, with particular emphasis placed on terrace settings and those sites within the view of shoreline public areas, including highways, coastal trails, parks, beaches, and vista points. These development standards require that new development be sited to avoid large open areas if alternative sites exist, be placed in or near the edge of wooded areas, reduce the number of buildings by clustering them near existing vegetation, and provide for the protection of coastal views from public vantage points, including trails, parks, beaches, and highways by providing bluff setbacks for development adjacent to or near public areas along the shoreline.

Although the conditions of the County's approval restricted the selection of roofing and glazing building materials to those that would blend in with the project's surroundings and required final plan approval of exterior lighting fixtures to ensure the development would not shine lights or cause glare beyond the parcel boundaries, there is no evidence in the project's record that indicates whether the siting standards were considered and/or applied. The County's findings for the project as approved do not discuss the alternative of siting the house further to the east to locate the house within an arc of existing vegetation on the parcel in a manner that may be more consistent with the provisions of the highly scenic area policies that call for locating new development in highly scenic areas near wooded areas and away from open coastal terraces. Therefore, staff believes the appeal of the project approved by the City raises a substantial issue of conformance with the LCP's development siting standards for the protection of the visual resources of highly scenic areas.

Staff also recommends that the Commission find that the approved permit raises a substantial issue of conformance with the certified LCP requirements that new development be sited to avoid the need for the development of seawall or shoreline protective device during its full economic lifespan. The certified LCP specifically requires setbacks be provided of sufficient distance between new development and areas of geologic instability to eliminate the need for shoreline protective works. The County has required in other such similar blufftop settings a permit condition requiring that development rights to future construction of sea walls or cliff face retaining walls be waived as a mechanism to further assure that no such revetment structures would be constructed. The County action did not include this condition based solely upon the

proposed structures being greater than 100 feet from the blufftop edge. However, LUP Policy 3.4-7 and Coastal Zoning Code (CZC) Section 20.500.010(A) are not limited to development within 100 feet of the blufftop edge and the decision to grant the exception was made without specific findings demonstrating conformance of the project as approved with LUP Policy 3.4-7 and CZC Section 20.500.010(A).

Although the other contentions of the appeal are based on valid grounds in that they raise allegations that the development does not conform to the policies and standards of the certified LCP and the public access policies of the Coastal Act, staff recommends that the Commission find that these contentions raise no substantial issue. In the application of the public access policies of the LCP and the Coastal Act, the County, and the Commission on appeal, is limited by the need to show that any denial of a permit 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 public access. No substantial relationship or *nexus* exists between the future effects of approved residential development and the erosion that has been occurring at the blufftop edge and that is threatening the trail easement. The County attached a special condition requiring conformance with all of the recommendations of the geologic report prepared for the project including a recommendation that all runoff from the site be directed away from the bluff edge. As conditioned the development would not cause increased erosion of the trail by increasing the amount of runoff flowing over the trail and bluff edge. The appellants have not demonstrated that impacts to the trail would result from the approved development that would necessitate the imposition of conditions to offset the impacts of the development on the trail.

With regard to the contention that the preparer of the geological investigation did not possess the correct licensure to allow the report's acceptance by the County, staff's basis for recommending that the contention raises no substantial issue of LCP conformity is founded on the observation that the County's action to accept the report from a Registered Geologist rather than a licensed engineering geologist or civil engineer raises a primarily procedural issue rather than substantive one: Although the Registered Geologist that prepared the report was not a licensed engineering geologist or civil engineer, the study's predicted 3-4 inches/year bluff retreat rate was based upon information derived from an onsite reconnaissance and historical photographs and/or from a complete geotechnical investigation, with the recommended blufftop setback extrapolated for a 75-year economic lifespan for the structures as required by the LCP. Accordingly, staff believes that the contention raises a procedural inconsistency and not a substantial or substantive inconsistency of the project as approved with the certified LCP.

Finally, with regard to the contention that the project was approved and findings adopted without the application being complete, staff also believes the contention raises a procedural inconsistency and not a substantial or substantive inconsistency of the project as approved with the certified LCP. Furthermore, though it would better inform the public if all details of a development project were finalized and available for review well

in advance of its project hearing or at the hearing itself, the certified LCP does not mandate that the County provide all final details of the development at a specific time prior to its action on an application. Provided that adequate information is made available prior to action on the permit in sufficient detail to assure consistency of the development with the policies and standards of the LCP, no further detailing or disclosure of finalized project details is mandated by the LCP for a set time prior to or at the public hearing. Therefore, staff believes the contention does not raise a substantial issue of conformance of the project as approved with the certified LCP.

Staff further recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information from the applicant to determine if the approved development can be found consistent with the provisions of the certified LCP and the public access policies of the Coastal Act regarding development within designated highly scenic areas, assurance of water and sewage disposal, and the adequacy of a reduced-width buffer between environmentally sensitive habitat areas.

The motion to adopt the Staff Recommendation of Substantial Issue is found on page 7.

STAFF NOTES:

1. Appeal Process.

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

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

The subject development is appealable to the Commission because the proposed development: (1) is located between the sea and the first public road paralleling the sea; (2) is within 300 feet of the mean high tide line; (3) is within 300 feet of the top of the seaward face of a coastal bluff; and (4) is located in a sensitive habitat coastal resource area: the highly scenic area designated in the certified LCP as comprising lands west of Highway One between the south boundary of the City of Point Arena and the Gualala River.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Since the staff is recommending substantial issue, unless three Commissioners object, the substantial issue question will be considered moot. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project at a subsequent meeting. Because the approved development is located between the first public road and the sea, if the Commission were to hold a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is consistent with the certified Local Coastal Program and the public access policies of the Coastal Act.

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

2. Filing of Appeal.

The initial appellants (Friends of Schooner Gulch) filed their appeal (Exhibit No. 6) to the Commission in a timely manner on September 12, 2003, within 10 working days of receipt by the Commission on September 11, 2003 of the County's notice of final local action (see Exhibit No. 5). The appeal was joined by the Moat Creek Managing Agency and Eric Dahlhoff on September 24, 2004 and September 25, 2004, respectively, prior to the expiration of the appeal period.

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 September 17, 2003, prior to the 49th day after the filing of the appeal, the applicants

submitted a signed 49-Day Waiver waiving the applicants' right to have a hearing set within 49 days from the date the appeal had been filed.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-03-062 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-03-062 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to approve the development on September 12, 2003. The timely appeal was received initially from Friends of Schooner Gulch and later joined by Moat Creek Managing Agency and Eric Dahlhoff. The project as approved by the County consists of the construction of a 2,220-

square-foot, 17-foot 8-inch-high, one-story residence, a 720-square-foot, 14-foot 9-inch-high detached garage, installation of an onsite sewage disposal system, conversion of a test well to a production well, extension of utilities to serve the new structures, and an approximately 4,000-square-foot gravel driveway and turn-around area. The appellants' contentions are summarized below, and the full text of the contentions are included as Exhibit No. 6.

1. Loss of Public Coastal Access.

The appellants raise contentions involving inconsistency of the approved project with the public access policies of the certified LCP and the Coastal Act. The appellants note that the coastal erosion occurring at the project site's blufftop edge has resulted in loss to portions of the fixed-location 25-foot-wide public access easement and developed trail facility held by the Moat Creek Managing Agency. The appellants contend that the County should have undertaken measures to protect the trail and easement as part of its actions on the subject permit by requiring the applicants to re-dedicate an ambulatory or "floating" public access easement whose location would proportionally shift landward as the cliff edge retreats. The appellants argue that to require such re-dedication would not constitute a compensatory taking of private property as the easement exists, re-writing the location of the easement would not represent an intensification of an exaction already in-place, and the redefinition of the easement as ambulatory would serve to mitigate increased erosion and provide for enhanced public safety. The appellants also contend there is a *nexus* to require such re-dedication of an ambulatory public access easement. The appellants contend that the development of over 3,000-square feet of impervious surfaces would increase the amount of runoff and cause a change in drainage patterns on the subject site that could lead to accelerated erosion of the bluff face edge and the coastal trail.

2. Adequacy of Review for and Mitigation for Geologic Stability.

The appellants contend that the geo-technical analysis was prepared by a registered geologist rather than either a licensed engineering geologist or registered civil engineer as specified by the LCP. Therefore, the appellant contends that approval of the project is inconsistent with the hazards policies of the Land Use Plan's (LUP) and the requirements of the Hazard Areas chapter of the County's Coastal Zoning Code (CZC), particularly CZC 20.500.015(A)(2).

3. Completeness of Application.

The appellants also contend that the project as approved is inconsistent with the standards of the LCP that require development applications to contain complete and accurate information in a timely manner such that the environmental effects and merits of the project can be adequately assessed and the required findings made to approve the project. The appellants claim that the application was approved without the final color scheme or

landscaping details being disclosed. In addition, the existing extent of coastal erosion that resulted in partial loss of the lateral blufftop coastal accessway was not disclosed. The appellants assert that without such information the application was incomplete and that all subsequent review and hearing actions were premature. Furthermore, the review and approval of final landscape and lighting plans was delegated as a permit condition to Planning Department staff to be considered at a later time with no opportunity for the public to review the plans' specifics during the hearing process. The appellants assert that as a result, adequate information was not available with which to conduct the required reviews and on which to base all required findings necessary to approve the project as consistent with the LCP. The appellants cite the following Coastal Zoning Code (CZC) provisions as the basis for the approved project being inconsistent with the certified LCP: CZC Chapters 20.504 et seq., 20.540 et seq., and 20.532 et seq.

4. Visual Resources.

The appellants further contend that the project as approved by the County will negatively impact the designated highly scenic area in which it is located. The appellants note that the project site is visible from a State Park and that a County staff recommendation to require the develop be setback a minimum of 180 feet from the blufftop edge to mitigate visual and other project impacts was not included in the Coastal Permit Administrator's action on the project application. The appellants contend that public views along the ocean and from scenic coastal areas will be affected by the approved structures in the building sites authorized by the County.

5. Prohibition of Future Construction of Shoreline Protective Structures.

The appellants contend that preclusion of the need for the construction of seawalls, cliff retaining walls or other such shoreline protective works as required under the County's Land Use Plan and Coastal Zoning Code was not adequately assured for the full economic life of the project. In particular, the appeal asserts that the County's decision not to require the applicant to waive any development rights for the future construction of seawalls and similar revetments and instead rely on the project structures being sited more than 100 feet from the blufftop edge was arbitrary as the requirement for recordation of a deed restriction prohibiting the future construction of shoreline protective works is not limited solely to projects with development proposed within 100 feet of bluff edges.

B. LOCAL GOVERNMENT ACTION

On September 25, 2001, Frank and Julia Mello submitted Coastal Development Permit Application No. 86-01 (CDP #86-01 to the Mendocino County Planning and Building Services Department for a coastal development permit seeking authorization to construct a single-family residence, detached garage, onsite sewage disposal system, extension of utilities, and a gravel driveway/turning area on a three-acre parcel.

The Planning and Building Services staff reviewed the project and prepared a staff recommendation for the subject development for consideration by the County Coastal Permit Administrator. The County staff recommended a number of special conditions, including conditions requiring that: (1) the house be constructed in conformance with the recommendations of the geologic report; (2) building materials and finishes match those specified in the permit application, with the exception of the roofing, which was further limited to being a dark color such as black or dark charcoal; (3) final paint colors for the water and propane tanks be dark in hue and subordinate to the surrounding environment, and that samples be submitted, reviewed and approved by the Coastal Permit Administrator (CPA) prior to issuance of the coastal development permit; (4) lighting details and specification be reviewed and approved prior to permit issuance by the CPA; (5) a final landscaping plan for the installation of vegetative screening of the development from view from public viewpoints including Highway One be similarly approved prior to issuance of the permit; and (6) the house be moved back 180 feet from the bluff edge to allow a greater area between the eroding bluff edge and the residence so that a relocated trail easement could be secured through negotiated purchase or acquisition through inverse condemnation. On August 28, 2003, the Coastal Permit Administrator approved the coastal development permit for the project (CDP #86-01) pursuant to the staff recommendation with the exception of deleting the special condition requiring that the house be setback 180 feet from the bluff edge.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County issued a Notice of Final Action on September 9, 2003, which was received by Commission staff on September 11, 2003 (see Exhibit No. 5).

C. SITE DESCRIPTION

The project site for the approved single-family residential development is located west of Highway One on Warren Drive, a private road located at the western terminus of private Warren Place, that intersects with State Highway One approximately 2½ miles south of the City of Point Arena (see Exhibit Nos. 1 and 2). The subject property comprises the former Lots 27, 28, 29, 30, and 31 of Unit II of the 1972 Whiskey Shoals Subdivision, merged on March 12, 2003 pursuant to County of Mendocino Coastal Boundary Line Adjustment No. CDB 37-02). In the late 1970s, the Coastal Commission found the density of the subdivision to be excessive for its rural setting. The Coastal Conservancy subsequently purchased the 72 lots making up the subdivision in the early 1980s and developed a management plan that identified vertical and lateral coastal access facilities and reduced the residential density consistent with the setting. After considering a variety of development options, including transfers of development rights, land swapping, and a proposed clustered time-share project, the Conservancy eventually settled on individually reselling the vacant lots.

Before making the lots available for sale, the Conservancy recorded covenants, conditions, and restrictions (CC&Rs) effectively consolidating the 72 lots into 11 sets, ranging from three to nine lots of the original subdivision. The CC&Rs further require that the property only be resold in these group sets, that each lot set be merged into one parcel, and development be limited to only one residence per merged parcel. In addition to the five former lots comprising the project site, five other sets of parcels consisting of 25 of the original lots have been resold and subsequently merged by their new owners (see County of Mendocino Coastal Boundary Adjustment and Reversion to Acreage Permit Nos. CDB-78-93, CDRA 1-92, CBD 73-94, CBD 13-00, and CBD 47-02). In addition, in March 1999, the Moat Creek Managing Agency accepted an offer of dedication for two public access easements from the Conservancy. These easements were subsequently developed with the Mote (*sic*) Creek Trail and the Moat Creek Bluff Trail in 1990 and 2001, respectively.

This roughly wedge-shaped property is approximately three acres in size and consists of a generally flat, grass-covered uplifted marine terrace blufftop lot situated between a distinctive small cove along the ocean shoreline and a horseshoe-shaped curve in Warren Drive. The property is bordered by thickets of Bishop pine (*Pinus muricata*), Douglas-fir (*Pseudotsuga menziesii*), and Monterey pine (*Pinus macrocarpa*) arranged in an arc along its northern and eastern sides with scattered shrubby vegetation extending out from the tree covered areas. Plant cover on the open terrace portions of the parcel consists of upland grasses, forbs, and shrubs, including coyotebrush (*Baccharis pilularis*), bracken fern (*Pteridium aquilinum*), bush lupine (*Lupinus arboreus*), coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), and salal (*Gaultheria shaloni*). Although no formally-listed or candidate rare, threatened, endangered plant species were found on or within 100 feet of the subject parcel, the site contains a five-foot-wide band of vegetation along the immediate blufftop edge comprised of coastal bluff scrub vegetation, "a series or association considered rare and worthy of consideration" within the California Department of Fish and Game's California Natural Diversity Database. The consulting botanist for the project identifies this vegetation as an environmentally sensitive habitat area. A pelagic cormorant (*Phalacrocorax pelagicus*) rookery is found approximately halfway down the bluff face of the cove that forms the southwestern side of the parcel.

The project site lies within the LCP's Mallo Pass Creek to Iverson Road Planning Area. The subject property is comprised of a vacant, legal non-conforming (to current minimum lot size standards) parcel designated in the Land Use Plan and on the Coastal Zoning Map as Rural Residential – 5-acre Minimum Lot Area (RR:L-5). The subject property is within a highly scenic area as designated in the Land Use Plan (see Exhibit No. 3).

Due to the intervening topography between Highway One and the project site, views of the site from the highway are limited to a relatively brief gap in the roadside vegetation along the southbound lane as it rounds the curve between its intersection with Warren

Place and the entrance to the H^H Ranch. However, the development would be highly visible along an approximately ¼-mile stretch of the Moat Creek blufftop trail as it passes through and beyond the subject property generally north to south along the uplifted terrace, especially on those trail portions oriented toward the proposed residence's building site as it follows the blufftop edge around the cove the project parcel abuts. In addition, the project site is visible from other public recreational areas to the south, including the headlands of Schooner Gulch State Beach and the Saunders Reef vista point, approximately one mile and 1¼-mile to the southeast, respectively.

D. PROJECT DESCRIPTION

The development approved by the County entails the construction of a 2,220-square-foot, 17-foot, eight-inch-high, one-story residence and 720-square-foot, 14-foot, nine-inch detached garage with an approximately 4,000-square-foot gravel driveway and turn-around, and installation of a septic system on an approximately three-acre parcel (see Exhibit No. 4). The house and detached garage would be built in the southeastern third of the lot with the closest point of the house located 115 feet back from the bluff edge. Domestic water supply would be provided from an existing onsite well that would be converted from a test well to a production well. In addition, a 2,500-gallon redwood-sided water storage tank would be installed as part of the project. The applicants also propose to install landscaping along the northern and southern flanks of the residence to reduce the visual prominence of the development.

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.

1. Appellant's Contentions That Are Valid Grounds for Appeal.

All five of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises substantial issues of conformity of the approved project with LCP provisions regarding: (1) provision and protection of coastal access; (2) mitigation of stormwater runoff impacts; (3) the adequacy of the geologic investigation; (4) the completeness of the application with regard to identification of exterior building materials and landscaping; and (5) conformance with siting standards for development in designated highly scenic areas. The Commission finds that two of these contentions raise a substantial issue, for the reasons discussed below.

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to certain allegations (1.a - 1.b below), the appeal raises a substantial issue of conformity of the approved project with the certified Mendocino County LCP. As further discussed below, the Commission finds that with respect to the allegations regarding the protection of public access facilities, the licensure of the geologist who prepared the geotechnical analysis, and the completeness of the application, the appeal raises no substantial issue of conformity of the approved project with the certified LCP or the access provisions of the Coastal Act.

Appellants' Contentions That Raise a Substantial Issue

a. Development in Highly Scenic Areas (HAS)

The appellants contend that the project raises a substantial issue of conformance with Mendocino County LCP because the approved development was not sited 180 feet from the bluff as recommended by County staff and no findings were adopted providing an analysis of how the project as approved is consistent with the policies and standards of the LCP regarding the protection of visual resources within designated highly scenic areas.

LCP Policies:

LUP Visual Resources, Special Communities, and Archaeological Resources Policy 3.5-1 states, in applicable part:

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

LUP Visual Resources, Special Communities, and Archaeological Resources Policy 3.5-3 states, in applicable part:

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

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

[Note: The foregoing portion of LUP Policy 3.5-3 is implemented verbatim in Coastal Zoning Code Section 20.504.020(A)(4)]

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

LUP Visual Resources, Special Communities, and Archaeological Resources Policy 3.5-14, at sub-part (6) states:

Whiskey Shoals shall be designated as 'highly scenic.'

LUP Visual Resources, special Communities, and Archaeological Resources Policy 3.5-4 states, in applicable part:

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

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area... [emphases added]

CZC Section 20.504.015(C) establishes development criteria for designated highly scenic areas, providing in applicable part:

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

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

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials

including siding and roof materials shall be selected to blend in hue and brightness with their surroundings...

(5) *Buildings and building groups that must be sited in highly scenic areas shall be sited:*

- (a) *Near the toe of a slope;*
- (b) *Below rather than on a ridge; and*
- (c) *In or near a wooded area...*

(7) *Minimize visual impacts of development on terraces by the following criteria:*

- (a) *Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
- (b) *Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
- (c) *Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
- (d) *Design development to be in scale with rural character of the area...*

(10) *Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas...* [emphases added]

Discussion:

The appellants observe that the project site is located within a highly scenic area and state that the proposed residential structures would be visible from a State Park, presumably Schooner Gulch State Beach, located approximately one mile to the southeast. The appellants further note that a recommendation put forward in the County's staff report that would have required the project to be set back a minimum of 180 feet from the blufftop edge was subsequently not included as a permit condition by the Coastal Permit Administrator when action was taken on the subject application. The appellants state that this setback had been originally recommended "to solve visual and other problems."

The project site is located within a highly scenic area as designated by LUP Policy 3.4-14. The project site consists of an uplifted marine terrace with scattered tree cover generally occurring in a broad arc along the northern and eastern sides of the wedge-shaped parcel (see Exhibit Nos. 2 and 4). The site improvements would be constructed on the southwestern third of the parcel on the portion of the property lying westward of the arc of mature vegetation. As the route of Highway One passes through a road cut below the level of the parcel as it passes the property to the east, views from nearby

portions of Highway One to and along the coast through the building site are limited only to views afforded to southbound motorists through an approximately 50 yard stretch between the intersection of Warren Place and the entrance to the H^H Ranch. These views of the site from Highway One are limited to a view of the coastal terrace and the horizon, with no blue water views of the ocean, or coastline or offshore landforms being visible. However, the proposed structures would be visible from a variety of vantage points within several shoreline public areas, including the Moat Creek Blufftop Trail which runs along the bluff edge of the Whiskey Shoals Subdivision and through the subject parcel, the headlands and northern beach areas of Schooner Gulch State Beach to the south, and the Saunders Reef/Bowling Ball Beach Highway One roadside vista point further to the south.

As cited above, LUP Policies 3.5-3, 3.5-4, and CZC Section 20.504.015(C) require that any new development provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, and parks.

In addition to calling for the protection of views to and along the ocean, LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015 provide that development in highly scenic areas must be subordinate to the character of its setting. The policies also provide guidance on how to ensure that new development is subordinate to its setting in highly scenic areas. LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015 provide that Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) near the toe of a slope; (b) below rather than on a ridge; and (c) in or near a wooded area. These policies also state that the visual impacts of development on terraces must be minimized by avoiding development in large open areas if alternative site exists, and minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms.

As approved, the house would be located in the open coastal terrace portion of the parcel rather than nestled further back in the area bracketed by the arc of mature vegetation. To protect views from public vantage points to the south and from portions of the Moat Creek Bluff Trail, the approved project includes the planting of Leland Cypress trees to the north and north of the house. In addition, the project as approved requires that exterior lighting fixtures be shielded and aimed downward, and that exterior materials of the development utilize dark colors that will blend with their surroundings.

Although the LUP encourages the use of landscape as screening and the use of exterior building materials that blend in hue and brightness with their surroundings to help mitigate the visual impacts of development as the applicants propose, both LUP Policy 3.5-4 and CZC Section 20.504.015(C) emphasize the need to avoid impacts to visual resources through appropriate siting of development. CZC Section 20.504.015(B)(1) states that "*Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible.*" Both LUP Policy 3.5-4 and CZC Section 20.504.015(C) at sub-section (5) and

(7) specifically state that, "*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists... Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area." [emphases added]*

Siting the house and other approved development 180 feet from the bluff edge as originally recommended by County staff would have located the development within the arc of vegetation near the east side of the parcel. Contrary to the appellants' contention, the Commission notes that the County staff report recommendation for a 180-foot structural setback was not presented as mitigation for visual resource impacts; the setback was proposed to provide future opportunities for acquisition of a relocated trail easement and an adequate buffer from environmentally sensitive habitat areas. However, the Coastal Permit Administrator's decision not to apply the setback condition, was documented only by a brief written comment on the transmittal cover stating, "Special Condition #6 deleted. Note: Setbacks per submitted plot plan." No supplemental findings were included in the project's public record to explain how and why the project in its approved location 115 feet from the bluff edge, approximately 100 feet from the blufftop trail, and within a relatively open area of the parcel's terrace setting would be in conformance with the siting provisions of LUP Policy 3.5-4 and CZC Section 20.504.020(C). Moreover, no information was included in the project record as to the availability of alternative sites for placing the structure away from open terrace areas and near or into wooded areas, reducing the number of buildings (i.e., having an attached rather than detached garage), clustering the structures near existing vegetation, or the adequacy of the setback from the blufftop trail.

Therefore, the Commission finds that the appeal raises a substantial issue of conformance of the residential development in the site approved by the County with the siting provisions of LUP Policy 3.5-4 and Coastal Zoning Ordinance Section 20.504.015 and the overall requirement of these policies that new development be subordinate to the character of its setting.

There is no evidence in the local record how the County considered the siting of development on the subject property with regard to protecting visual resources in terrace settings. As noted above, the County staff report and adopted findings only consider some of the potential effects of the residential development. Therefore, 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 visual resource policies of the certified LCP.

Additionally, the coastal visual resource affected by the decision is of great significance. The certified LCP designates the subject property and the area surrounding it as "highly scenic" in recognition of its visual qualities. The site is located in a largely undeveloped rural area where open agricultural grazing lands and other open grasslands lie atop a high coastal terrace and sweeping views of the ocean and coastline are afforded from a variety of public vantage points to the west and south. The brightly-hued strata forming the cliffs and the unusual rock formations along Bowling Ball Beach to the south further enhance the visual interest of the setting. Any home built on the portion of the property west of the arc of mature vegetation along the northern and eastern sides of the parcel would dominate the landward view from the blufftop trail as it makes its way around the cove and would fall within view from a variety of public viewing areas to the south for a distance of approximately 1½ miles.

Therefore, the Commission finds that the appeal raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding visual resources.

b. No Prohibition on Future Shoreline Protective Structures

The appellant contends that the County failed to require that the applicants record a deed restriction prohibiting future development of seawalls and similar revetments based on an arbitrary policy that only development within 100 feet of a bluff edge need be so restricted.

LCP Policies:

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. [emphasis added]

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.*
[emphasis added]

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...*

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

- (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 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(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 is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal dependent uses.

The parcel involved in the approved residential development includes approximately 140 lineal feet of shoreline bluff. The bluff overlooking the ocean forms a dramatic cliff that drops roughly 70 to 80 feet to the ocean. Due to its blufftop setting, CZC Section 20.500.015(A)(2) requires that a geologic investigation be prepared.

The geotechnical information submitted with the project application (Thomas E. Cochran RG#6124, 2001) was prepared as a preliminary assessment of stable building sites for generic residential development at the site (see Exhibit No. 7). The report contains the following statement with respect to the rate of bluff retreat and site stability:

I have examined several sets of aerial photos to determine the rate of bluff retreat. The oldest photos were taken in 1952, thus giving us almost a fifty year history of bluff erosion. Other photos were examined, taken in 1972, 1978 and 1993. These photos were enlarged to a similar scale and overlain with a tracing of the most recent bluff shape. Surprisingly, a very low rate of bluff retreat was in evidence... From aerial photo analysis, it appears that erosion has been slow in the past fifty years. My analysis indicates an erosion rate in the range of two to four inches per year. In 75 years we might therefore expect 6 or 7 meters of erosion. Using a safety factor, I would recommend not building less than 50 feet (16+ meters) from the bluff edge.

The following data contributed to these conclusions:

- 1) No surface cracks were visible throughout the extent of the site.
- 2) Although the small cove in front of the subject property contains rocks that are flexed into a small anticline and are greatly fractured and weakened, being the probable reason for the formation of the covelet, the underlying rocks further back from the apex of the anticline are nearly horizontal and therefore more stable.
- 3) While small sea caves are present on all three sides of the cove, none of them seem to underlie the Whiskey Shoals lots that are adjacent to the cove.

Notwithstanding the inclusion by the consulting geologist of a 2.67 safety factor in his setback recommendation, and the applicants subsequently more than doubling the recommended setback by placing the proposed structures a minimum of 115 feet back

from the blufftop edge, the appellants question whether approval of the project without the applicants being specifically required to record a deed restriction prohibiting the construction of future seawalls fully "*eliminate(s) the need for*" and prevents "*in any way*" a situation developing in which construction of such shoreline protective structures would be required.

The Commission notes 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 bluff top 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 bluff top 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 bluff top 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 bluff top 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 bluff top setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

The Commission notes 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 its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The geotechnical investigation report prepared by Cochran states the following:

This geologic reconnaissance was performed within usual and current standards of the profession, as they relate to this and similar localities. No other warranty expressed or implied, is provided as to the conclusions and professional advice presented in this report.

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 subject lot is an inherently hazardous piece of property, the bluffs are clearly eroding, and the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device. Thus, unless construction of future shoreline protective works is prohibited at the time the proposed development is approved, the owners could pursue a coastal development permit in the future to authorize construction of shoreline protective works. Pursuant to Section 30235 of the Coastal Act and Section 20.500.020 of the County of Mendocino Coastal Zoning Code, the respective authorizing agency may be obligated to approve such a permit.

Therefore, as the County did not condition the permit for the approved project to preclude the future development of shoreline protective works, a substantial issue is raised as to whether the project as approved would fully eliminate the need for or prevent in any way the construction of future shoreline protective structures during the project's full 75-year economic lifespan contrary to LUP Policy 3.4-7 and CZC Section 20.500.010(A)(3).

The County and the Commission on appeal have required that bluff top development in Mendocino County be conditioned upon recordation of deed restrictions prohibiting the construction of future seawalls, waiving liability, and assuming the risks. However, the County decided not to require such conditions as the development is proposed more than 100 feet from the bluff edge. The appellants believe that this determination was arbitrary with no factual basis. The Commission acknowledges that in Mendocino County, unlike in other parts of the north coastal California, geologic setbacks to assure protection of structures for a 75-year economic design lifespan have seldom been more than 100 feet. Nonetheless, as the appellants observe, there is no certified LCP policy or standard that distinguishes or excludes projects that are proposed more than 100 feet from a

geologically unstable bluff edge from the requirement that future construction of shoreline protective works be precluded.

Consequently, there is not a high degree of factual or legal support for the County's decision to approve the project as being consistent with the certified LCP. In addition, the County's decision has precedential value for future interpretations of its LCP, and the resources affected by the County's decision are significant and of statewide concern. Therefore, the Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with LUP Policy 3.4-7 and Coastal Zoning Ordinance Section 20.500.010 regarding the need for the approving authority to assure that new development is sited and designed to eliminate the need for or in any way require the construction of shoreline protective works or devices.

Appellants' Contentions That Do Not Raise a Substantial Issue.

c. Loss of Public Coastal Access Facilities

The appellant contends that as a condition of permit approval the applicants should have been required to rededicate an ambulatory public access easement that would move landward as the blufftop edge erodes over time to replace the fixed-location easement that is starting to erode away. The appellants assert that such a condition is appropriate given the accessway's status as a segment of the California Coastal Trail and the fact that the trail is an existing public access facility in need of protection.

Summary of Coastal Act Provisions:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people 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 of the Coastal Act states:

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. [emphasis added]

Coastal Act Section 30212(a) states, in applicable part:

(a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

- (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) *Adequate access exists nearby... [emphasis added]*

Coastal Act Section 30214 states, in applicable part:

(a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- (1) *Topographic and geologic site characteristics.*
- (2) *The capacity of the site to sustain use and at what level of intensity.*
- (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution...*
[emphasis added]

Summary of LCP Provisions:

LUP Shoreline Access Policy 3.6-5 states, in applicable part:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

Discussion:

The appellants note that the access trail in question is contained within a fixed-location easement. Prior to reselling the consolidated lot sets, the Coastal Conservancy recorded CCRs that reserved areas for public access through the Whiskey Shoals Subdivision, including an access easement along the bluff between Moat and Ross Creeks. The blufftop area within the easement is currently eroding with retreat of the blufftop. Within a projected 23 years, the blufftop area within the easement will be completely lost to coastal erosion. With no provision for allowing the public to pass and re-pass further inland on the blufftop exists, as gradual and episodic erosion occurs, the public trail across the subject property will eventually be lost. Accordingly, the appellants argue that imposing a requirement that the applicants re-dedicate an ambulatory easement that would shift laterally inland as erosion occurs is both prudent and legally sustainable. The appellants believe the increased stormwater from the development would increase erosion of the bluff edge and the coastal trail and would provide a nexus for requiring rededication of an ambulatory easement.

The provision of public access to and along the coast is a major objective of both the Coastal Act and the County of Mendocino's LCP. Both the state statute and the local government's coastal regulatory program contain an assortment of policies and standards establishing when public access is to be provided in new development and enumerating specific situations (i.e., if access similar in time, place, and manner are available nearby, providing such access would conflict with agricultural operations, environmentally sensitive areas, or privacy on private property) when requiring access would not be appropriate. For the subject development, access to and along the coast does exist nearby in the form of the Moat Creek beach and blufftop trails.

When exacting property for public use, land use regulatory case law has established two primary tests that regulators must satisfy in order to avoid a judicial determination that the exaction comprises an uncompensated taking of private property. In Nollan v. California Coastal Commission (483 U.S. 825 (1987)), the U.S. Supreme Court found

that in order for a government entity to defeat a claim of an uncompensated taking, the agency must show that there is a "substantial relationship" or "essential *nexus*" between the permit requirements for the exaction and the impacts of the proposed development rather than there being just a casual "reasonable relationship."

In Dolan v. City of Tygard (512 US 687 (1994)), the U.S. Supreme Court found that the Oregon city's requirement for dedication of a public greenway for floodplain management purposes constituted a taking of property without due compensation as no rationale was provided as to why the greenway needed to be a public area rather than just non-developable private open space. The decision in Dolan established a further test for the constitutionality of government exactions: that in addition to the requisite *nexus* established under Nollan, "rough proportionality" must be demonstrated between the exaction and the unique impacts posed by the development project. While no precise mathematical calculation is required, a government entity must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact.

The above cases establish two tests that need to be applied to any consideration of the exaction of additional or different area for public access use on the subject property. First, a reasonable relationship or *nexus* must be found to exist between the impact of the development and the condition being imposed. Secondly, if such a *nexus* can be drawn, the exaction must be shown to be roughly proportionate to the unique effects of the project it is intended to avoid, reduce, or offset.

The appellants argue that a *nexus* exists as the trail is an existing public access facility in need of protection. The appellants also allege that a *nexus* exists as the stormwater runoff associated with the development of impervious site improvements will increase the rate of erosion at the blufftop edge, further accelerating the rate of loss of the trail and the easement, and placing the users of the trail in greater peril of falling off of the crumbling blufftop edge. Accordingly, the appellants reason, requiring the applicants to provide a new easement that would move back from the bluff edge as it erodes would be an appropriate mitigation measure for offsetting the project impacts.

Although there is no disagreement that the trail and its easement will eventually be engulfed by the erosion occurring at the blufftop edge as the appellants contend, the Commission does not similarly concur with the position that a *nexus* exists between the project's impacts on public access and a condition that would require a new ambulatory easement. First, the facts regarding the accessway being an existing property interest, developed with a trail, and actively undergoing erosional loss do not constitute a linkage between the effects of the approved development and the need for a new trail easement. The project does not propose to extinguish the easement through a quiet title action or other legal mechanism, or otherwise remove the trail use. Moreover, the wave action of coastal waters and landsliding are causing erosion at the bluff edge, not the proposed development. Such erosion would have continued whether or not the project had been

proposed. Second, the development of the approved single-family residence would not significantly increase the demand for coastal access facilities in the areas. Third, there is no evidence that the project as approved would direct stormwater from the approved development that would be directed toward the blufftop edge to cause the increased coastal erosion the appellants anticipate.

The approved development entails the construction of a 2,220-square-foot residence, a 20-square-foot detached garage, and the installation of approximately 4,000 square-feet of gravel driveway and turn-around area. A total of approximately 3,000-square feet of impervious surface area would result from the approved project. Development of the subject residential project could result in surface runoff being concentrated and directed toward the bluff edge that could eventually lead to increased bluff erosion or the instability of the bluff itself if not mitigated. The geologic report prepared for the project (Thomas E. Cochran, 2001) states the following with regard to site drainage:

To minimize additional bluff erosion, I would recommend that surface water drainage, as much as possible, be directed behind the house and not into the cove. The house foundation can easily rest on bedrock, found at less than three feet over much of the site.

The development as approved by the County identifies stormwater collection and conveyance away from the blufftop as a mitigation measure to prevent increased erosion from the runoff that would be generated from the new impervious surfaces created by the approved development. In addition, the County included in the conditions attached to the permit approval a requirement that the recommendations of the geologic report regarding drainage be implemented.

Accordingly, with drainage controls required to be installed there is reasonable assurance that the project as approved will be constructed in a manner that will keep drainage from the development from flowing over the bluff edge and contributing to erosion of the bluff. Similarly, with requisite runoff management practices required to be included within the project's design, the likelihood is small that site grading would significantly disrupt natural drainage patterns, or significantly increase volumes of surface runoff. Furthermore, no construction is proposed landward of the setback that would contribute to erosion of the bluff face or to instability of the bluff. Therefore, the project as approved does not raise a substantial issue of conformance with the requirements of the LCP.

The County's staff report did contain findings addressing the loss of the trail and its easement. Based upon a review by the County's legal counsel, a determination was made that the County was not legally empowered to require rededication of a new, mobile easement.

Thus, there is a high degree of factual and legal support for the County's decision that the approved development without a condition requiring re-dedication of an ambulatory easement is consistent with the access policies of the Coastal Act and the certified LCP. Therefore, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the project as approved without a condition requiring re-dedication of an ambulatory easement with the access policies of the Coastal Act, LUP Chapter 3.5, or CZC Chapter 20.528 requiring public access to and along the coast as the necessary *nexus* between the impacts of the project on public access and the need to exact additional or different area for public access to offset those impacts has not been demonstrated.

d. Geologic Report Preparer's Licensure

The appellants contend that the geo-technical analysis was prepared by a registered geologist rather than either a licensed engineering geologist or registered civil engineer as specified by the LCP. Therefore, the appellant contends that approval of the project is inconsistent with the hazards policies within the Land Use Plan (LUP) and the requirements of the Hazard Areas chapter of the County's Coastal Zoning Code (CZC), particularly CZC 20.500.015(A)(2).

Summary of LCP Provisions:

LUP Hazards 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 runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. 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]

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]

Coastal Zoning Code Section 20.500.015(A)(2) states:

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. 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]

Referenced CZC Chapter 20.532 at subsection .070 directs that certain supplemental information accompany applications for coastal development projects in areas where there are issues regarding geologic hazards. The section enumerates requirements for various special analyses by the type of development and their location, and establishes peer review standards for reports involving Alquist-Priolo Act fault hazard evaluations.

Discussion:

The project involves the construction of a single-family residence on a blufftop lot. Because the project's blufftop setting is regarded as an area of known or potential geologic hazards, LUP Policy 3.4-1 and CZC Section 20.500.015(A)(2) direct that a geologic investigation and report be prepared. These LCP policies and standards further stipulate that the report is to be prepared by "licensed engineering geologist or registered civil engineer." Provided with the County's list of approved geologic consultants, the applicant's retained Thomas E. Cochran, a California Registered Geologist, to prepare the geologic analysis for the project. Upon subsequently realizing that Mr. Cochran did not possess the LCP-specified licensure, County staff contacted the applicants' agent and requested that the geologic analysis be prepared by an engineering geologist or a civil engineer.

The applicants objected to this request citing that they had been directed prior to making application to utilize one of the County's approved geologists. No response was apparently made by the County staff to the objection until the issue was raised again at the time the County staff report was prepared for the hearing on the project. At that time, County staff decided to waive the licensure requirement because: (1) Planning and Building staff had not promptly responded to the applicants' objection to the request that a new geologic analysis be prepared; (2) the location of the house had been revised from 45 feet from the bluff edge to 115 feet, more than double the minimum 50-foot setback recommended in the Cochran report; (3) at 115 feet back for the bluff edge, the house would be a greater distance from the bluff edge than the 26.- to 40-foot setbacks applied

to similar development located above nearby Bowling Ball Beach; (4) it is the practice of the Planning and Building Services Department not to require geologic analyses for projects in blufftop settings if all of the development would be setback more than 100 feet from the blufftop edge.

The appellants contend that the decision to exempt application of the licensing requirement for the preparer of the geologic analysis is inconsistent with the policies and standards of the LCP. In addition to being in *prima facie* nonconformance with the LCP's geologist licensing requirement stated in LUP 3.4-1 and CZC Section 20.500.015(A)(2), the appellants contend that the decision to exempt application of the requirement was arbitrary and could set a troublesome precedent, whereby future geologic analyses prepared by other non-licensed parties would similarly be deemed acceptable by the County.

The Geologist and Geophysicist Act (G&GA) establishes the licensing requirements for professional geologists and geophysicists in the State of California. The Board Geologists and Geophysicists administer the G&GA's requirements and also provides non-binding suggested guidelines to regulatory agencies for setting appropriate form and content requirements for geologic analyses. Under the G&GA, a Registered Geologist is recognized as an entry-level professional classification, requiring possession of an accredited bachelors degree in the study of geology, seven years of professional experience under the guidance of a registered geologist, and successful completion of a Board-administered examination. By comparison, a Certified Engineering Geologist is classified as a type of "Specialty in Geology," requiring both possession of a Registered Geologist license and additional professional experience consisting of either a minimum of three years performed under the supervision of a Certified Engineering Geologist or under the supervision of a Registered Civil Engineer, or five years experience in responsible charge of professional engineering geology work. Experience in engineering geology used to qualify for licensure as a Registered Geologist may also be used to qualify for licensure as a Certified Engineering Geologist.

The Professional Engineers Act, as administered by the Board for Professional Engineers and Land Surveyors, establishes the licensing requirements for civil engineers in the State of California. A Registered Professional Engineer may perform geotechnical analysis work if the license holder has received supplemental training and work experience in matters relating to geologic principles, and has successfully passed the Board's examination for Geotechnical Engineer.

Although the County LCP does require that the preparer of any required geologic investigation be either a licensed a licensed engineering geologist or registered civil engineer, staff believe the contention regarding licensure is process oriented, and deals with the 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 Commission notes that regardless of the licensing status of the preparer, the subject geologic analysis followed the content requirements specified in the LCP, in that the calculated bluff retreat rate was determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation, the recommended setback was projected over a 75-year economic lifespan, and mitigation measures were incorporated into the development through conditions attached to the approval of the permit by the County, as required by the LCP. In addition, with the development setback well in excess of the recommended minimum setback put forth in the report, the development incorporates a significant margin of safety. The setback from the bluff edge is more than double what is recommended in the geologic report.

Thus, regardless of the particular license possessed by the preparer of the project's geologic report, the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP was high in that specific data relating to the degree and extent of geologic instability followed prescribed standards within the LCP.

The Commission further finds that the project as approved by the County will have no precedential effect on future interpretations of its LCP. Although the County's Coastal Permit Administrator exercised his discretion as provided for in CZC Section 20.500.005 and determined that the project structures as amended to be located 115 feet from the bluff edge no longer would be subject to threats of geologic hazards, this determination is not binding and would not otherwise affect the geologic report requirements for other development proposals in similar known or suspect hazardous areas.

Therefore, the Commission concludes that the appeal raises no substantial issue with respect to conformance of the approved project with the requirements of LUP Policy 3.4-1 and Coastal Zoning Code Section 20.500.015(A)(2) regarding preparation of geologic reports.

e. Completeness of Application

The appellants contend that the project as approved conflicts with the standards of the LCP that require development applications to contain complete and accurate information in a timely manner such that the environmental effects and merits of the project can be adequately assessed and the required findings made to approve the project. The appellants state that the application was approved without the final color scheme and the details regarding the extent of erosion of the existing coastal access easement on the property being disclosed. In addition, the appellants assert that review and approval of final landscape plans and color details were improperly delegated by permit condition to Planning Department staff to be considered at a later time with no opportunity for the public to review the plans' specifics during the hearing process. Accordingly, the appellants note that adequate information was not available with which to conduct the

required reviews and base all required findings to approve the project as consistent with the LCP. Accordingly, the appellants assert that the application was incomplete and that all subsequent review and hearing actions were premature. The appellants cite the following Coastal Zoning Code Sections as the basis for the approved project being inconsistent with the certified LCP: CZC Chapters 20.504, 20.532, and 20.540.

Summary of LCP Provisions:

Section 20.504.015(B)(1), entitled "Determining Extent of [Highly Scenic Areas] HSA," states:

The Coastal Permit Administrator shall review all permit applications for coastal developments to determine whether the project is to be located within an HSA. Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible. Additional information may be required of the applicant to demonstrate the extent of the HSA. [emphasis added]

Section 20.532.025 of the Coastal Zoning Code states, in applicable part:

Each application for a coastal development permit (administrative, use permit, variance or standard permit) shall be submitted to the Department of Planning and Building Services on forms provided by the department and completed by the applicant, accompanied by a fee set by resolution of the Board of Supervisors. When more than one development is proposed on a parcel, the applications shall be processed concurrently, where possible as one (1) application. The application shall include the following information:

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

Section 20.532.035 of the Coastal Zoning Code states, in applicable part:

- (A) The Planning and Building Services Department shall review all applications for completeness and accuracy before the applications are accepted and officially filed as complete...*

- (C) *The application shall be deemed complete and accepted unless the department finds that the application is not complete and notifies the applicant of such finding by mail within thirty (30) calendar days after receipt of the application. If the application is determined to be incomplete, the department shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete...*

Coastal Zoning Code Section 20.532.095(A)(1) states:

The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

- (1) *The proposed development is in conformity with the certified local coastal program...*

Coastal Zoning Code Section 20.540.015 states:

Applications for a variance or modification thereof shall be filed with the Coastal Permit Administrator upon such forms and accompanied by such plans and data as may be prescribed by the Coastal Permit Administrator so as to assure the fullest practical presentation of facts for the permanent record. Such application shall be accompanied by a fee.

LUP Visual Resources, Special Communities, and Archaeological Resources Policy 3.5-5 states, in applicable part:

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

Discussion:

It should be noted that these procedural contentions do not allege an inconsistency of the approved project with the certified LCP. That is, rather than challenging the project as approved, the appellants challenge the process leading up to the County's approval. Although the below analysis addresses these procedural complaints, the Commission also finds that these procedural complaints fail to allege an inconsistency of the approved project with the certified LCP. Though it would arguably be a benefit to the public if all details of a development project were finalized and available for review well in advance

of its project hearing, the certified LCP does not mandate that the County provide such comprehensiveness and all final project details as part of its coastal development permit procedures. The Coastal Zoning Code sections cited above, require that "*sufficient detail*" be provided by the applicant in order to determine if the project complies with the requirements of the Coastal Zoning Ordinance and that a public hearing be conducted "*to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.*" No further detailing or disclosure of finalized project details for a set time prior to or at the public hearing is mandated by the LCP. Moreover, such a practice is not uncommon: It is a standard practice for both local coastal jurisdictions and the Commission to base their project approvals on draft or preliminary plans and to condition the permit's approval on finalized development plans containing detailed criteria for approval set forth in the permit condition. Such a practice is necessary to ensure timely processing of development permit applications in compliance with state mandated timelines, and so as not to unduly burden applicants with requirements for providing often costly project specifications before the fate of their permit has yet to be determined. This practice is acceptable so long as: (1) in the condition requiring the review of final plans, the decision making authority articulates clearly the criteria against which final plans would be reviewed by staff for conformance with the condition; and (2) the decision maker requires that a plan based on these criteria is prepared that would be adequate to insure that the project as approved would conform to the policies of the certified LCP.

In this case, the applicant did provide color information in their application materials of September 25, 2001. The applicant's initial color choices were as follows:

Roofing:	Pewter / Heavy Shadow High Wind Composition Shingles
Siding:	Cedar Shingles with Natural Sealed Finish
Fascia and Trimwork:	Wood, Driftwood Gray Stain
Doors:	Wood, Natural Sealed Finish
Window Frames:	Beige Vinyl

As reflected in the County staff report, the selections were further refined to substitute dark brown vinyl window frames and additionally detailed to include:

Guardrails:	Driftwood Gray Stain
Decking:	Natural Weathered Wood
Chimney & Roof Vents:	Paint Flat Black
Flashing:	Copper, painted to blend with background where visible
Skylights:	Flat, clear glazed, on 4-inch curbs
Exterior lights:	Low wattage, down-aimed, shaded fixtures

The roofing color was subsequently determined by County staff to be too light in hue to blend in with the dark green coastal bluff scrub plants that grew on the parcel. The Coastal Permit Administrator subsequently attached a special condition to the permit

requiring the roofing to be a dark color such as black or charcoal gray (see Exhibit No. 5).

With regard to landscaping details, the applicants proposed in their application correspondence and illustrated on the plot plan considered by the County the planting of two bands of landscape screening along the north and south sides of the house, comprised of Leyland Cypress (Cupressus macrocarpa x Chamaecyparis nootkatensis). The County included a special condition requiring the preparation and submittal for the review and approval of the Coastal Permit Administrator of a final landscaping/tree management plan. The criteria for the final plan included the setting of a minimum number of cypress trees to be planted (20), detailing pruning, watering, fertilizing and replacement procedures, and requiring the identification of additional landscaping to further screen the development from view from Highway One.

Although the County ultimately required a roofing material color that differed from the color specified in the project application, the applicant did indicate choices of building material colors in the application and their intent to retain native vegetation and illustrated the placement of additional Mitigative landscaping on their development site plan. This information was adequate to enable the County to consider the project's conformance with LCP requirements, particularly the provisions of CZC Section 20.504.015(C)(3) that in highly scenic area, building materials be selected to blend in hue and brightness with their surroundings and LUP Policy 3.5-5 that encourages new development be screened to reduce impacts to visual resources. Therefore, the fact that samples of all of the final colors and final planting details may not have been available for public review prior to the hearing does not raise a substantial issue of conformance with Section 20.532.025(A) requirements that sufficient information be provided to determine conformance with the Coastal Zoning Ordinance provisions. In addition, the mere fact that final plans were not approved directly by the Coastal Permit Administrator but were required to be submitted for County staff review and approved prior to issuance of the permit does not raise a substantial issue of conformance of the approved project with Section 20.532.025(A) requirements that sufficient information be provided to determine conformance with the Coastal Zoning Ordinance provisions.

The geologic report prepared for the project did not specifically detail the erosion of the existing coastal access easement on the property. However, this information would only have been valuable if site planning for a relocated access easement was being contemplated as a condition of permit approval. Thus, as the County had determined that it lacked a legal basis to require relocating the easement, the details of the complete extent of the erosion were not germane to the County determination that the project as approved would conform to the policies of the certified LCP. Therefore, the lack of detail about the extent of erosion of the existing trail does not raise a substantial issue of conformance of the project as approved with Section 20.532.025(A) requirements that sufficient information be provided to determine conformance with the Coastal Zoning Ordinance provisions.

Thus, there is a high degree of factual support for the County staff's determination that the application contained sufficient color and landscaping information to determine the project's conformance with the color requirements of the LCP and to deem the permit application complete. In addition, the application information requirements of CZC Section 20.532.025(A) are process oriented, and deal with the 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 LCP application information requirements policies in place and the County's decision to approve the permit would not influence the existing LCP standards that include application information requirements. The Commission therefore concludes that the appeal raises no substantial issue with respect to conformance of the approved project with the requirements of Coastal Zoning Code Section 20.532.025(A) that a permit application contain sufficient detail to determine whether the project complies with the requirements of the LCP and with the requirements of Coastal Zoning Code Section 20.532.035 that the Planning and Building Services Department review applications for completeness and accuracy before they are accepted and officially filed as complete.

Furthermore, the Commission finds that as sufficient information to review the project's conformity with the visual resource siting and design requirements of the LCP policies was provided in the application, and as the County addressed the conformity of the requested colors and landscaping with these policies in the findings, the appeal raises no substantial issue with respect to conformance of the project as approved with Coastal Zoning Code Section 20.532.095(A)(1) and its requirements that the approval of the coastal development permit be supported by findings that establish the conformity of the development with the certified LCP.

f. Conclusion

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies of the LCP concerned with geologic hazards and visual resources.

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

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

have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

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

Highly Scenic Area Building Site Alternatives Analysis

As discussed above, authorization of the proposed placement of structures within a Highly Scenic Area is contingent upon affirmative findings being made that: (a) buildings and building groups are sited in or near the edge of a wooded area; (b) development in large open areas is avoided if alternative site exists; (c) the number of structures are minimized and clustered near existing vegetation, natural landforms or artificial berms; (d) bluff setbacks are provided for development adjacent to or near public areas along the shoreline; (e) the development is designed to be in scale with rural character of the area; and (f) protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes is provided. Because there are sites available on the property where the structural improvements could be constructed and clustered outside of the open terrace portions on the property in or near wooded areas and existing vegetation further from the bluff and the shoreline public areas therein, analysis of alternative designs or locations is needed as prescribed in LUP Policy 3.5-4, and Coastal Zoning Code 20.504.015(C)(7). This analysis should encompass, at a minimum, a review of: (1) the current proposed building site and design under appeal; (2) relocation and/or redesign of the residential structures to a location near the center of the property (near the center point of the arc of major vegetation along the parcel's road frontage); (3) relocation and/or redesign of the site improvements to a location in the northwestern quadrant of the property (near the proposed route of the driveway to the garage); and (4) relocation and/or redesign of the site improvements to a location in the northeastern quadrant of the property (in the area between the 100-foot-wide water well exclusion zone and the proposed location for the sewage leachfield). The analysis should assess the potential impacts to the visual resources of the area as viewed from public vantage points (i.e., Highway One, Moat Creek Bluff Trail, Schooner Gulch State Beach, Saunders Reef/Bowling Ball Beach Vista Point, etc.). The analysis should also discuss all other applicable limitations and restrictions on development that may affect the feasibility of development in the specified locations (i.e., required setbacks from property lines, access drives, wells, sewage disposal systems, removal of vegetation required for conformance with wildland fire safety standards, the presence of problematic soils and/or geologic instability, etc.)

Demonstration of Proof of Water

LUP Policy 3.8-1, 3.9-1, and Coastal Zoning Code Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. The Mendocino Coastal Groundwater Study (California Department of Water Resources, June 1982) recommends that proof of water be provided for development on parcels less than five acres in size in Critical Water Resource Areas, such as where the subject property is located. Although a test well was authorized by the County in 1995, no information is contained in the local record regarding the adequacy of the well to provide the parcel with the minimum domestic water supply required by the County Public Health Department standards. Therefore, information demonstrating that the quantity and quality of water yielded by the existing well or some other source available to the applicant meets the standards of the County Health Department is needed to evaluate whether adequate water will be available to serve future development at the site, consistent with the certified LCP.

Demonstration of Adequate Sewage Disposal

As detailed on the referral memo received from the Mendocino County Public Health Department's Division of Environmental Health (see Exhibit No. 10), the project's sewage disposal system leachfield is proposed to be located on a portion of the parcel that does not correspond to the area where percolation tests were performed. In addition, the system design submitted for the project in 1995 was based on standards in place at that time and do not reflect current standards for individual septic systems designs enacted in 1998. Therefore, a new system design meeting post-1998 disposal system standards is needed. In addition, either: (a) new percolation data for the area in which the leachfield is currently proposed; or (b) a revised site plan showing the leachfield in the location where previously-reviewed percolation data was collected is needed to evaluate whether adequate sewage disposal will be available to serve future development at the site, consistent with the certified LCP. Regardless of the option chosen, a clearance letter is needed from the DEH stating that they have reviewed the revised septic system proposal and concluded that preliminary assurance that an adequate onsite sewage disposal system could be developed on the parcel to serve the proposed use has been provided to DEH's satisfaction.

Adequacy of Buffer for Environmentally Sensitive Habitat Areas

The applicants propose that a 100-foot buffer be provided on the site as measured from the current blufftop edge above the Pelagic Cormorant nesting rookery in order to protect the adjoining ESHA from the impacts of the proposed development. As the blufftop erodes landward through the parcel over time, this buffer will incrementally decrease. Biological studies of the Pelagic Cormorant indicate that the species utilizes the same nests or nesting sites multiple times, refurbishing or incrementally adding onto an existing nest or reestablishing nests that have been lost or damaged since their last use. Pelagic cormorants inhabit open, windswept, coasts. They nest along with other

cormorants and seabirds, preferring steep, remote cliffs. The best sites provide little or no access for land-based predators as these birds are not effective at defending their eggs or young. Accordingly, there is a strong likelihood that the cormorants will continue to use the nesting rookery at the project site into the future and would necessarily abandon such nesting sites solely because the bluff face has further eroded. Based on the bluff retreat projected in the geologic analysis prepared for the project, the bluff edge would be located only approximately 34 feet from the residence at the end of its 75-year economic lifespan.

LUP Policies require minimum 100-foot buffers protecting ESHA resources unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game and County Department of Planning and Building staff, that a 100-foot buffer is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. Standards to be used for determining the appropriate widths for ESHA buffer areas are set forth in CZC Section 20.496.020 (A) (1) (a) through (g).

The biological information provided by the applicants' botanist, and relied upon by the County in approving the project, does not provide an evaluation of the width of buffer needed now and in the future as bluff retreat continues, based on the standards in 20.496.020 (A) (1) (a) through (g). As the smallest and least gregarious of their genus, Pelagic Cormorants are a unique species in that they are very susceptible to disturbances when nesting. The most bothersome stimulus is related to humans, dogs, or other potential predators coming within line-of-sight proximity to the nests. As a result many marine sanctuary managers and wildlife biologists have adapted an exclusion area standard of 30 meters around nesting sites, approximating the 100-foot setback proposed by the applicant/biologist, in which wildlife preserve guests and researchers are instructed not to enter.

Accordingly, given the likelihood that the proposed building site will come in closer proximity to the nesting rookery over time as the bluff edge retreats landward, the project's consistency with the requirements of CZC Section 20.496.020 (A) (1) (a) through (g) needs to be evaluated. Such an evaluation prepared by a qualified biologist is needed to determine what width of buffer is appropriate and whether the buffer can be allowed to be reduced by natural bluff retreat to 50 feet under the criteria specified in the LCP. If an evaluation provides a basis for a buffer of less than 100 feet, then staff will be able to share the evaluation with the Department of Fish & Game and seek the Department's opinion as to whether Department staff agree that a narrower buffer is sufficient. The evaluation and the California Department of Fish and Game's opinion is necessary for staff to be able to evaluate the consistency of the proposed development with the ESHA buffer policies of the LCP.

Without all of the above information, the Commission cannot reach a final determination concerning the project's consistency of the project with the ESHA policies of the LCP.

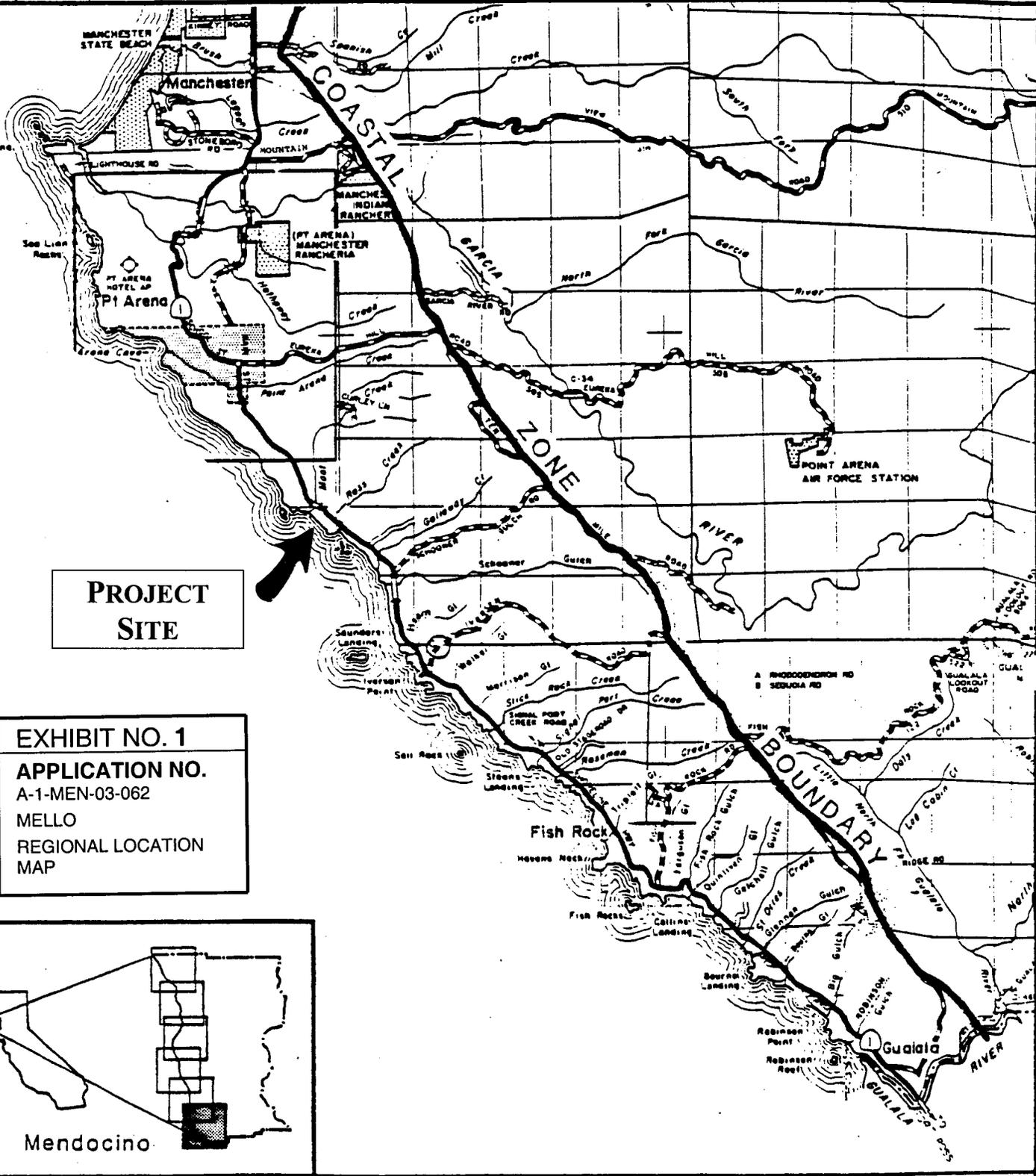
Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

III. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Excerpt, Land Use Plan Map No. 28 – “Schooner Gulch”
4. Site Plan and House Elevations
5. Notice of Final Local Action
6. Appeal, filed September 12, 2003 (Friends of Schooner Gulch, Moat Creek Managing Agency, Eric Dahlhoff)
7. Geologic Report (Thomas E. Cochran RG)
8. Biological Assessment (Frank C. Mello PhD)
9. Site Visibility Study Map
10. Review Correspondence
11. General Correspondence

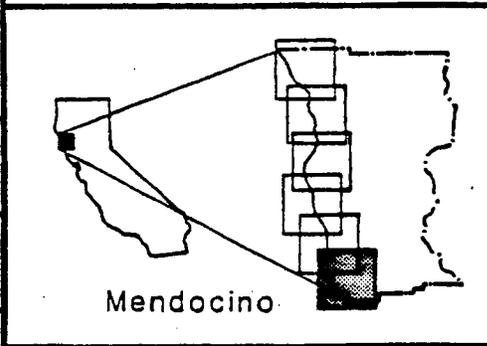
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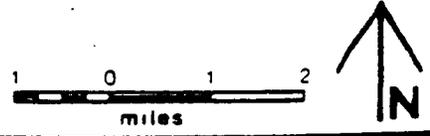


PROJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
 A-1-MEN-03-062
 MELLO
 REGIONAL LOCATION
 MAP



LOCATION MAP



California Coastal Commission

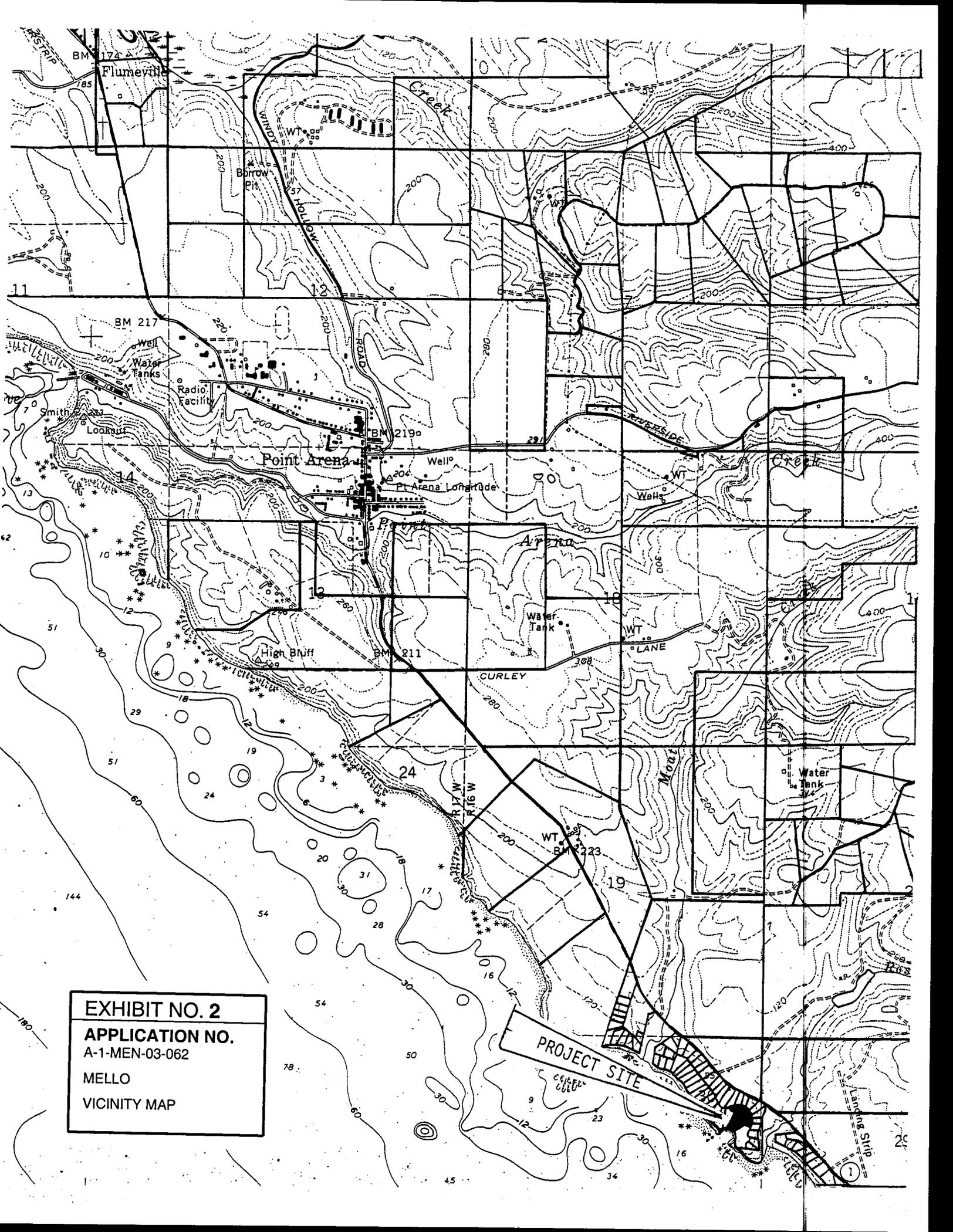


EXHIBIT NO. 2
APPLICATION NO.
 A-1-MEN-03-062
MELLO
VICINITY MAP

PROJECT SITE

Flumeville

Point Arena

High Bluff

Point Arena

CURLEY

PROJECT SITE

BM 217

BM 219

BM 211

BM 223

BM 174

Borrow Pit

Radio Facility

Well

Pt. Arena Longside

Water Tank

WT

LANE

Water Tank

WT

LANE

Laurel Slip

Well

Water Tanks

Smith

Lookout

WT

Wells

WT

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RMR-40

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RR-5

RR-1

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REMOVAL

PROJECT SITE

ROSS CREEK SHORELINE ACCESS

RR-9-DL

TURNOUTS

EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-03-062

MELLO

EXCERPT, LAND USE

PLAN MAP NO. 28 -

"SCHOONER GULCH"

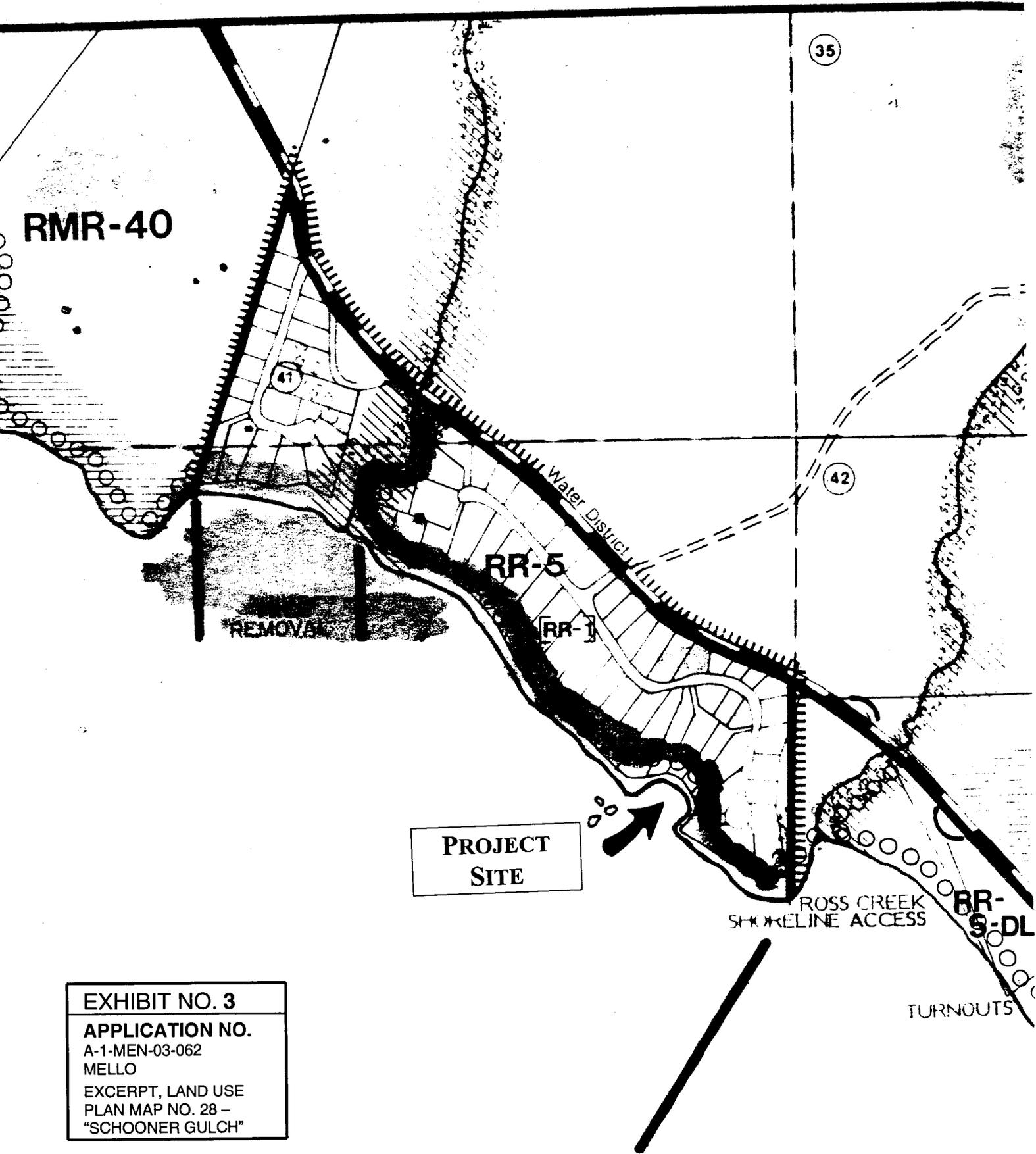
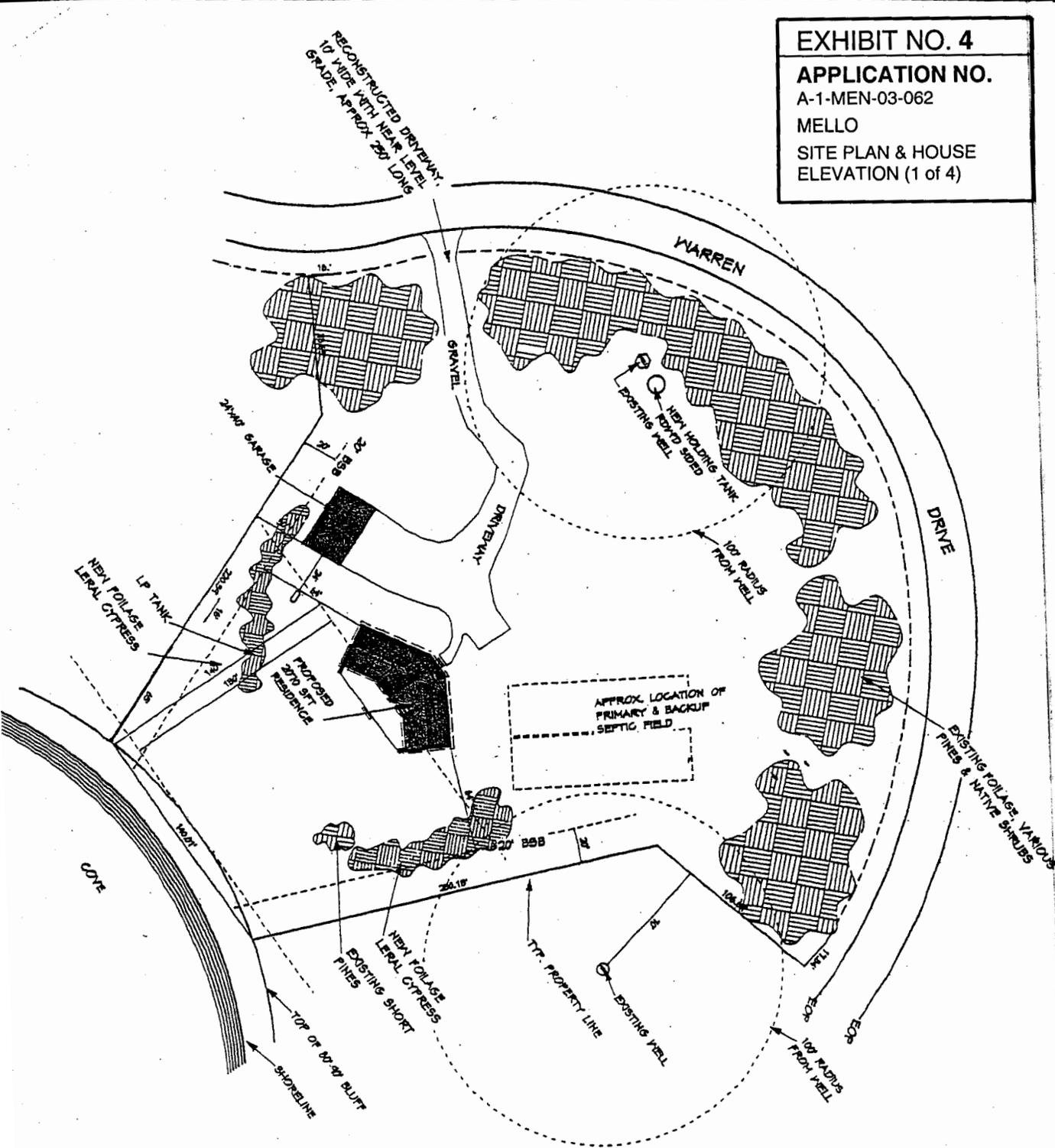


EXHIBIT NO. 4
APPLICATION NO.
 A-1-MEN-03-062
 MELLO
 SITE PLAN & HOUSE
 ELEVATION (1 of 4)

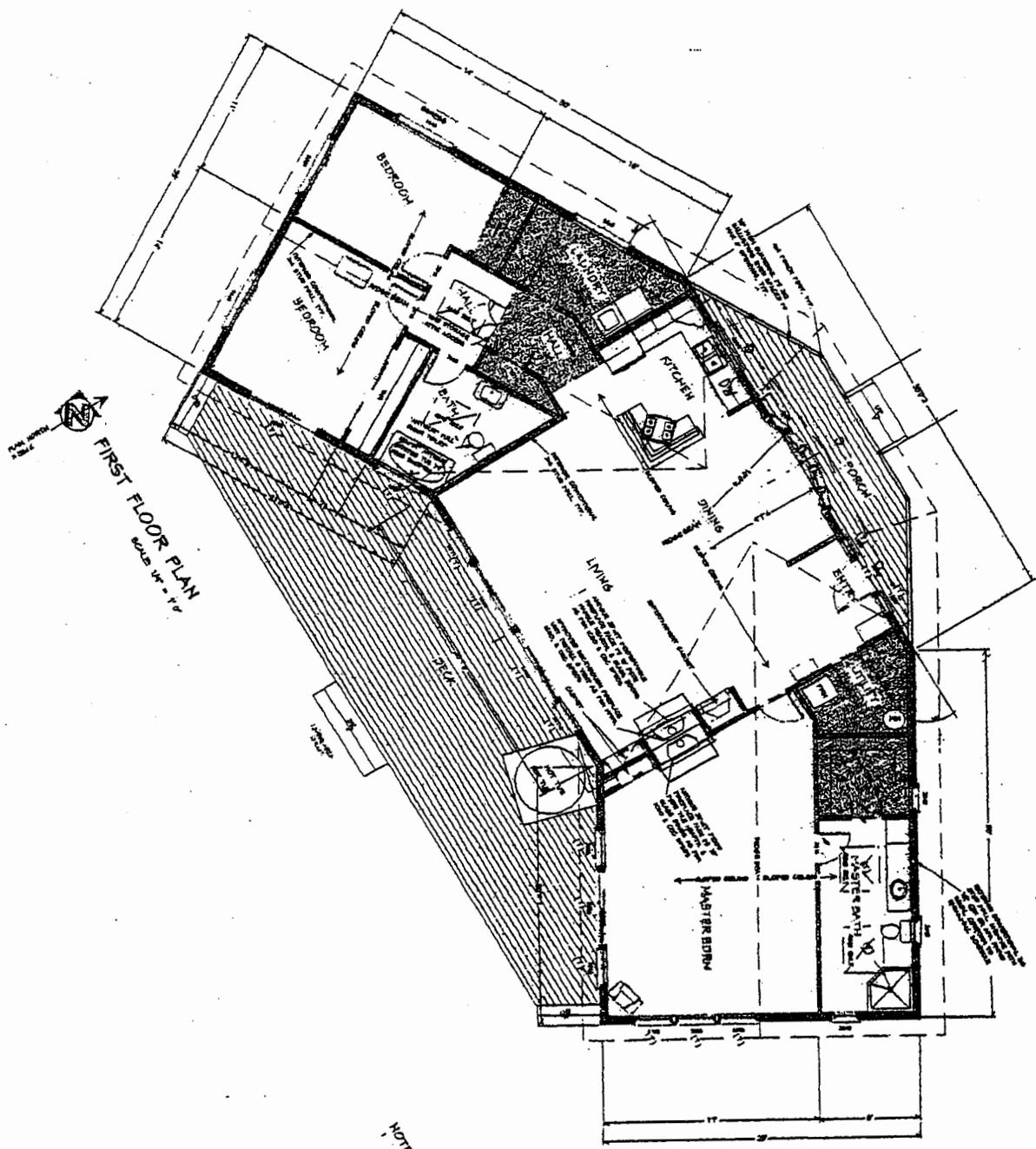


SITE PLAN

CASE NO: CDP 86-01
 EXHIBIT C

FRANK & JULIA MELLO
 SITE PLAN
 SCALE: NONE





FIRST FLOOR PLAN
 10.12.03

NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. ALL WALLS ARE 1/2" THICK UNLESS NOTED OTHERWISE.
 3. ALL DOORS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 4. ALL WINDOWS ARE 60" WIDE UNLESS NOTED OTHERWISE.
 5. ALL FLOORS ARE 1 1/2" THICK UNLESS NOTED OTHERWISE.
 6. ALL CEILING ARE 8' HIGH UNLESS NOTED OTHERWISE.
 7. ALL ROOF ARE 12/12 PITCH UNLESS NOTED OTHERWISE.
 8. ALL EXTERIOR WALLS ARE 16" THICK UNLESS NOTED OTHERWISE.
 9. ALL EXTERIOR DOORS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 10. ALL EXTERIOR WINDOWS ARE 60" WIDE UNLESS NOTED OTHERWISE.
 11. ALL EXTERIOR WALLS ARE 16" THICK UNLESS NOTED OTHERWISE.
 12. ALL EXTERIOR ROOF ARE 12/12 PITCH UNLESS NOTED OTHERWISE.

294

CASE NO: CDP 86-01

EXHIBIT D

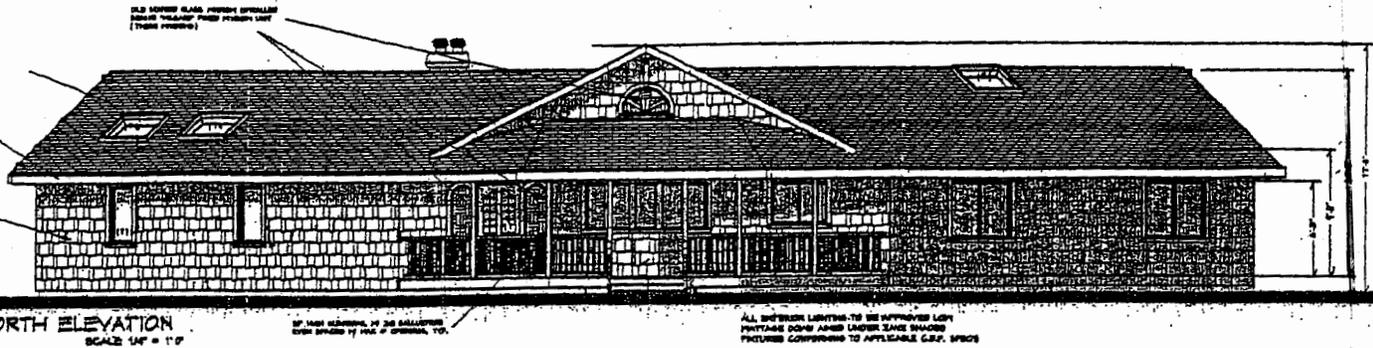
FRANK & JULIA MELLO

RESIDENCE FLOOR PLAN

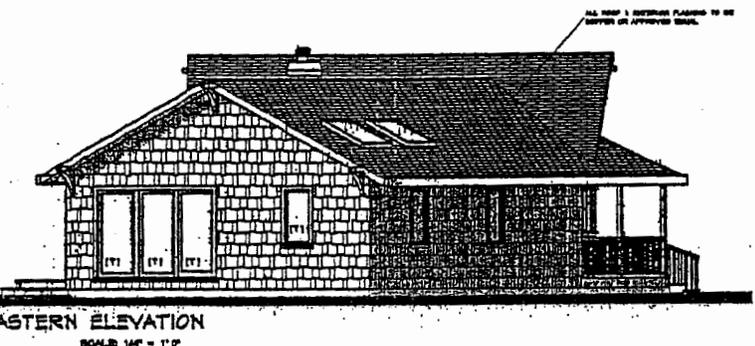
SCALE: NONE



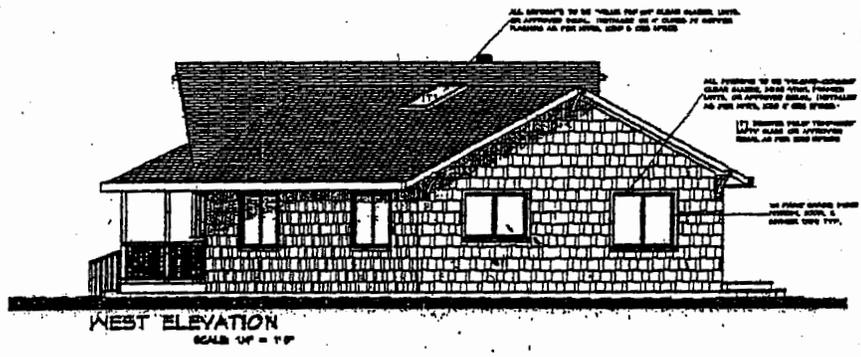
NORTH



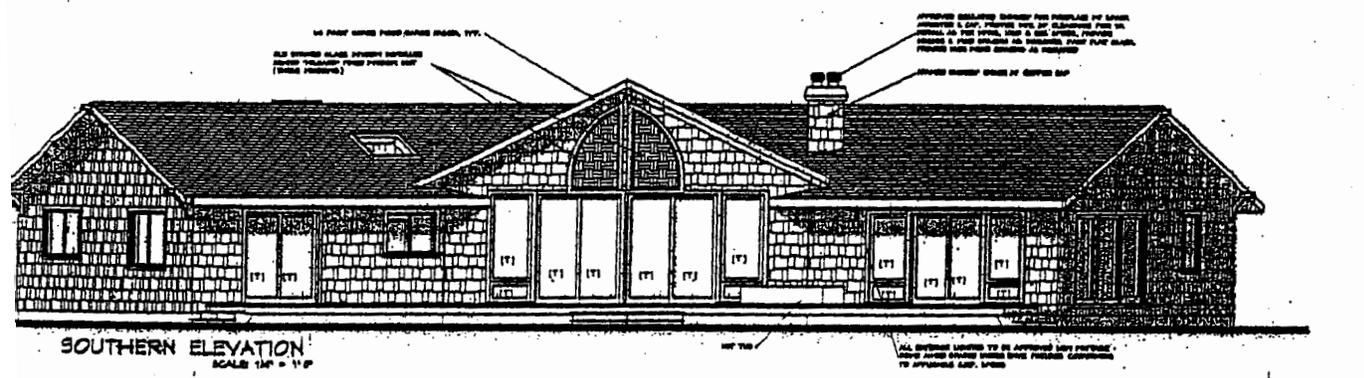
NORTH ELEVATION
 SCALE: 1/4" = 1'-0"



EASTERN ELEVATION
 SCALE: 1/4" = 1'-0"



WEST ELEVATION
 SCALE: 1/4" = 1'-0"



SOUTHERN ELEVATION
 SCALE: 1/4" = 1'-0"

394

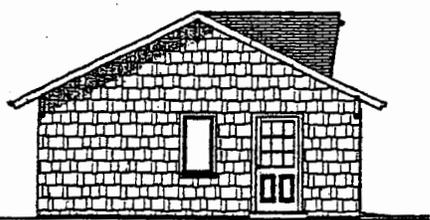
SE NO: CDP 86-01	FRANK & JULIA MELLO	
EXHIBIT E	RESIDENCE ELEVATIONS SCALE: NONE	



EAST ELEVATION

20 YEAR HIGH PINE FIBERGLASS SHINGLE
 ROOFING (HIGH CONTRAST PITCHES OR SHEAR
 COLORS) OVER 1/2" ASPHALT FELT, TYP.
 1/2" FINIT BRANE POODS FABRIC,
 1/4" VINYL BUTTER, TYP.

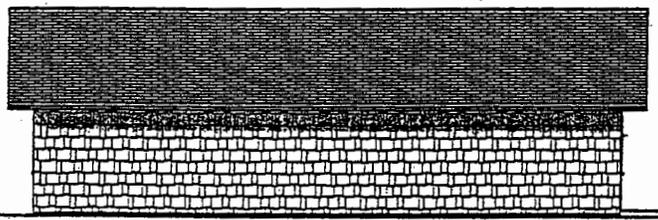
GRADE SHINGLE, OVER TYVEK OR
 BERM, RALDING 1/2" PLY, TYP.



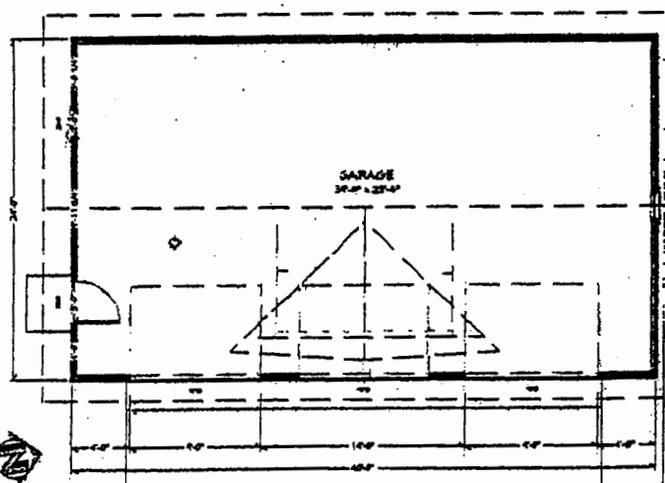
SOUTH ELEVATION
 SCALE: 1/4" = 1'-0"



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



WEST ELEVATION
 SCALE: 1/4" = 1'-0"



GARAGE FLOOR PLAN
 SCALE: 1/4" = 1'-0"

4 of 4

CASE NO: CDP 86-01

FRANK & JULIA MELLO

EXHIBIT F

GARAGE PLAN & ELEVATIONS

SCALE: NONE



1-MEN-DI-308

RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

TELEPHONE
(707) 964-5379

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

RECEIVED

September 9, 2003

SEP 11 2003

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDP #86-01
OWNER: Frank & Julia Mello
AGENT: Don Teutsch
REQUEST: Construction of a 2,070 square foot single family residence with a building height of 17 feet 8 inches; and a 720 square foot detached garage with a building height of 14 feet 9 inches. Conversion of a test well to a production well and installation of a water tank. Construction of a septic system and driveway. Connection to utilities. Plant trees to screen buildings from public viewpoints.
LOCATION: 2.5+- miles SE of Point Arena, in Whiskey Shoals Subdivision, on a blufftop parcel on the W side of Warren Drive (pvt.), approximately 750' SW of its intersection with Highway One at 27232 Warren Drive (APN's 027-412-27;-28;-29;-30;-31).
PROJECT COORDINATOR: Charles Hudson

HEARING DATE: August 28, 2003

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 5

APPLICATION NO.

A-1-MEN-03-062

MELLO

NOTICE OF FINAL LOCAL
ACTION (1 of 28)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 86-01 HEARING DATE: 8/28/03

OWNER: Mello

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

Special Condition #6 ~~added to~~ deleted

note: set back per submitted plot plan

[Signature]
Signed: Coastal Permit Administrator

2 of 28

OWNER: Dr. Frank and Julia Mello
2259 Shadowlawn
West Point, MS 39773

AGENT: Don Teutsch
42000 Hathaway Crossing
Point Arena, CA 95468

REQUEST: Construction of a 2,070 square foot single family residence with a building height of 17 feet 8 inches; and a 720 square foot detached garage with an building height of 14 feet 9 inches. Conversion of a test well to a production well and installation of a water tank. Construction of a septic system and driveway. Connection to utilities. Plant trees to screen buildings from public viewpoints.

LOCATION: 2.5± miles southeast of Point Arena, in Whiskey Shoals Subdivision, on a blufftop parcel on the west side of Warren Drive (pvt.), approximately 750 feet southwest of its intersection with Highway 1, at 27232 Warren Drive. (APNs 027-412-27, 28, 29, 30, & 31)

APPEALABLE AREA: Yes (west of first public road, blufftop lot, highly scenic).

PERMIT TYPE: Standard

TOTAL ACREAGE: 3.0± acres

GENERAL PLAN: RR-5 [RR-1]

ZONING: RR:L-5:FP

EXISTING USES: Undeveloped except for a blufftop trail and test well.

ADJACENT ZONING: North: RR:L-5:FP
East: RR:L-5
South: RR:L-5:FP
West: Pacific Ocean

SURROUNDING LAND USES: North: Residential
East: Residential
South: Residential
West: Pacific Ocean

SUPERVISORIAL DISTRICT: 5

3 of 28

ENVIRONMENTAL DETERMINATION: Categorically Exempt, Class 3(a)

OTHER RELATED APPLICATIONS:

Categorical Exclusion CE 49-95 was issued on September 15, 1995, for a test well.

Coastal Development Permit CDP 23-99, submitted in March, 1999, by the Moat Creek Managing Agency, for acceptance of an offer of dedication and development of a blufftop trail connecting Moat Creek and Ross Creek within an existing 25 foot wide access easement along the bluff, was issued February 7, 2001.

Coastal Development Boundary Line Adjustment CDB 37-02 was approved on March 12, 2003, merging five of the original lots into one parcel, creating the parcel of this application.

OTHER APPLICATIONS IN THE VICINITY:

Use permits U 6-88 and U 5-90 were granted by the Planning Commission to allow the Coastal Conservancy to develop public access along Moat Creek to the beach. Moat Creek is approximately 3/8 of a mile northwest of the Mello parcel and separates Unit I of Whiskey Shoals Subdivision from Unit II.

Reversion to Acreage RA 1-91 was approved by the Board of Supervisors on April 27, 1992, to merge seven parcels located within Unit I of Whiskey Shoals subdivision, north of Moat Creek. Subsequently, due to a change in the interpretation of state and local land division regulations, Coastal Development Boundary Line Adjustment CDB 78-93 was submitted to complete the process in lieu of the Reversion to Acreage application, and was approved by the Coastal Permit Administrator on March 11, 1993.

Coastal Development Permit 1-92-59, La Franchi, SFR, in Unit 1, was granted by the Coastal Commission on August 14, 1992

Coastal Development Reversion to Acreage CDRA 1-92, immediately south of the Mello parcel, was approved by the Board of Supervisors on June 14, 1993, merging 4 lots into one lot containing 2.51± acres. Although submitted as a Reversion to Acreage application CDRA 1-92 was processed as a Coastal Boundary Line Adjustment based on a County Counsel opinion dated May 10, 1993 (Opinion Number 93-193).

Coastal Development Boundary Line Adjustment CDB 73-94, in Whiskey Shoals Subdivision Unit I, was approved merging three parcels into one parcel.

Coastal Development Permit CDP 5-94, Jones, SFR, south of Ross Creek, was issued in June, 1994.

Coastal Development Boundary Line Adjustment CDB 13-00, LaFranchi, in Whiskey Shoals Subdivision Unit I, merging seven parcels into one was completed on November 27, 2000.

Coastal Development Boundary Line Adjustment CDB 47-02, in Whiskey Shoals Subdivision Unit II, south of the Mello parcel, was completed on January 7, 2003, merging four parcels into one parcel containing 2.28± acres.

4 of 28

Coastal Development Permit CDP 16-98, Calone, SFR, on a blufftop lot 600 feet south of Ross Creek.

Coastal Development Permit CDP 44-00, McClure, SFR, on a blufftop lot 700 feet south of Ross Creek.

Coastal Development Permit CDP 35-01, Williams, SFR, on a blufftop lot 400 feet south of Ross Creek.

BACKGROUND: The Whiskey Shoals subdivision was created in 1972 and consisted of 72 single-family lots in a subdivision of two units. Unit I contained 20 lots located north of Moat Creek and Unit 2 contained the remaining lots located between Moat Creek on the north and Ross Creek on the south. The total area of the subdivision was approximately 65 acres.

In the late 1970's, the subdivision was determined by the Coastal Commission to be inappropriate for the area and the Coastal Conservancy was asked to acquire the property to consolidate lots and redesign the subdivision. The Conservancy acquired the subdivision in the early 1980's and proposed a redesign of the subdivision to allow 55 units of clustered housing on the south end of the site, preserving open space and scenic values over the remainder of the site. The proposal, which included public access and a parking facility, was to be implemented by a private development corporation that had an option to acquire the site from the Coastal Conservancy. This proposal evolved into a time-share condominium project that met with resistance from area residents, the Planning Commission, and the Board of Supervisors. The grounds for opposition ranged from aesthetics, to environmental concerns, to the nature of time-share projects.

Various options to the proposal were considered, including a Transfer of Development Credits (TDC) program, a property trade program, the original subdivision, or a further redesign. The various parties of interest did not reach agreement over the final design or use of the property and consequently the Conservancy proceeded to dispose of the lots.

Before making the lots available for sale, the Conservancy recorded covenants, conditions and restrictions (CC&R's) that combined lots by deed and restricted development to one residence per parcel, regardless of how many of the original lots comprised each parcel. The Conservancy also reserved areas for public access and public parking, including an access easement along the bluff between Moat Creek and Ross Creek. As a result, the Conservancy offered for sale eleven homesites ranging in size from 2± acres to 6± acres. The Conservancy also renamed the subdivision from Whiskey Shoals to Moat Creek Estates.

Each reconfigured parcel (or "homesite") consists of three to nine lots from the original subdivision. In order for purchasers of the homesites to be able to construct a residence, the underlying lots are required to be merged and the old lot lines removed to insure that structures would not be built across lot lines. The subdivision contains underground electric and telephone service.

PROJECT DESCRIPTION: The applicant proposes to construct a 2,070 square foot, one story, single family residence with a building height of 17 feet 8 inches; and an 800 square foot detached garage with a building height of 14 feet 9 inches. The project also includes construction of a 250± foot driveway, a septic system, conversion of an existing test well to a production well, installation of a water tank near the well, an LPG tank, and connection to utilities. The initial application included a future detached solar panel array, but it has been deleted from the request. New trees are proposed to be planted between the residence and the side lot lines. The residence is proposed to be approximately 84 feet from the side lot lines, and 115 feet back from the top of the bluff. The garage is to be 30 feet from the northwesterly property line, and 155 feet from the bluff. The project site is one of the homesites created by the Coastal

5928

Conservancy by combining five of the original subdivision lots. (This will be the first residence developed in Moat Creek Estates Unit 2, between Moat Creek and Ross Creek. There are two residences in Moat Creek Estates Unit 1, north of Moat Creek, and several along the bluff south of Ross Creek.)

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use: The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum with the potential of a one-acre minimum depending on water availability (RR-5[RR-1]). The parcel is zoned Rural Residential Five Acres Minimum subject to the requirements of the Flood Plain Combining District (RR:L-5:FP). The proposed single family residence and associated development is a permitted use within the Rural Residential zoning district, and is consistent with the Rural Residential land use classification. The portion of the parcel subject to the :FP combining zone is limited to the beach and shoreline below the bluff. All the proposed development will be above the bluff, 80 to 90 feet above the ocean, and not subject to flood plain regulations.

The required setbacks for a parcel less than five acres in an RR zone are 20 feet from all property lines. A corridor preservation setback of 25 feet would apply along Warren Drive, however, because Warren Drive is within a 50 foot wide road corridor, only the 20 foot front yard setback from the property line is applicable. As shown on the Site Plan, the residence will be 84 feet from the side lot lines, 115 feet from the top of the bluff, and a minimum of 200 feet from the front lot line. The garage will be 30 feet from the northerly side lot line, and a minimum of 120 feet from the front lot line. The well and water tank will be a minimum of 40 feet from the front lot line. The locations of the buildings and other development shown on the Site Plan comply with setback requirements.

The site is within a designated highly scenic area which limits building height to 18 feet above natural grade unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed 17 foot 8 inch height of the residence and 14 foot 6 inch height of the garage comply with the height limits for a highly scenic area. No residences have been developed on any of the nearby homesites.

Maximum lot coverage for a lot between 2 and 5 acres in size in an RR zone is 15%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 3 acres, or 130,680 square feet. The Site Plan shows approximately 8,950 square feet of coverage, or 6.8%. The project complies with lot coverage limits.

Public Access: The project site is a blufftop parcel formed by the merger of five former Whiskey Shoals Subdivision lots. The parcel is subject to a blufftop access easement established by the Coastal Conservancy when the Conservancy reconfigured the Whiskey Shoals Subdivision. Following issuance of Coastal Development Permit CDP 23-99 in 2001, the Moat Creek Managing Agency accepted an offer of dedication along the access easement and developed and maintains a trail for public use. The easement along the blufftop is consistent with a proposed lateral trail shown on the County's Land Use Plan Maps extending between Moat Creek and Ross Creek, both of which are beach access points available to the public.

The deeded easement within which the blufftop trail has been developed is in a fixed location along the blufftop. Due to bluff erosion and retreat, some portions of the land subject to the easement may have fallen into the ocean, and the potential exists that, over time, the entire easement width in some sections

6 of 28

may be lost to erosion and bluff retreat, resulting in a loss of continuity of the trail. (More recent offers of dedication are established within easements that move as the bluff retreats, thereby maintaining continuity.) Correspondence has been received from several people (Peter Reimuller, Secretary, Friends of Schooner Gulch; Goija Post, Moat Creek Managing Agency; Patricia Schwindt, Treasurer, Moat Creek Managing Agency; Richard Nichols, Executive Director, Coastwalk; and Eric Dalhlhoff) all urging that the fixed easement be modified to become an easement that moves with the bluff. The applicant has stated in several letters that he is unwilling to consider a modification of the easement. An opinion was requested from County Counsel advising whether or not the County could require a modification of the easement as a condition of the permit for the residence. Frank Zotter, Jr., Chief Deputy County Counsel, responded that a modification could not be required. (A copy of Mr. Zotter's opinion is attached.) Mr. Zotter does offer some possible alternatives. One possibility is that a right of public use could be established through prescriptive rights, should land outside the easement be used by the public for five years without objection by the land owner. It is unlikely that this would occur with the owner living on the parcel and available to monitor public use of the trail. Another possibility is that a public agency could condemn additional access rights through eminent domain in the event that the original easement becomes unusable. Mr. Zotter also states that the County may impose sufficient setback requirements to maintain the possibility of a future acquisition of additional easement width.

At the present time it is not clear exactly how much of the easement may have eroded away. A survey prepared in April, 1999, in conjunction with CDP 23-99 for the development of the trail, found that five of the easement corners along the westerly side of the easement now on Dr. Mello's parcel, had eroded away. Stakes were placed within the remaining easement to mark the missing corners. Distances from the reference stakes to the missing corners are noted, ranging from 1.5 to 9.0 feet. These distances do not represent the actual amount of easement lost because the stakes were placed an unspecified distance back from the bluff edge. Nevertheless, the fact is that bluff retreat is causing a reduction in width of the easement. As discussed below under Hazards, bluff retreat has been estimated to be between two and thirteen inches per year along the easterly edge of the cove which forms the westerly boundary of Dr. Mello's parcel. At these rates a 25 foot easement might take 150 years to disappear, or might be eroded away within 23 years.

The residence is proposed to be located approximately 115 feet back from the bluff edge. At that distance, even at the highest estimated rate of retreat, 33 feet of land would remain between the bluff edge and structure after 75 years. If a revised trail easement has been obtained through some means, the proposed setback would still allow space for the trail between the residence and the bluff, although they would be so close together that it is likely that both hikers and the occupants of the residence would feel uncomfortable with the lack of separation. Even with the current separation, when walking along the trail and imagining a residence in the location indicated by the story poles, there is a feeling of walking through someone's yard.

Provision of public access to and along the coast is a major objective of the Coastal Act of 1976, and continues to be a State goal as evidenced by Assembly Concurrent Resolution 20 (Pavley), which declares the California Coastal Trail to be an official State trail, and by Senate Bill 908 (Chesbro and Karnette), signed by Governor Davis in October, 2002, which directs the preparation of a State plan to complete the Coastal Trail. Coastal access is also an important County goal, as evidenced by several policies contained in the Coastal Element of the County's General Plan.

7 of 28

Policy 3.6-5 states:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

Vertical accessways from the sites of all existing ocean front visitor accommodations and services and from all sites in which visitor accommodations and services are designated as the principal permitted use shall be considered to be designated as such in the Land Use Plan, and appropriate provisions implementing this policy shall be required in conjunction with all new or expanded developments on such sites. (For the purpose of this section, the blufftop area is that area between Highway 1 and the beach or ocean.)

Policy 3.6-8 states:

Easements for lateral shoreline accessways shall extend landward 25 feet from mean high tide or to the toe of the bluff or the first line of terrestrial vegetation if the width of the beach is greater than 25 feet. Lateral blufftop accessway easements shall be at least 25 feet in width. However, the passageway within the easement area may be reduced to the minimum necessary to avoid: (1) adverse impacts on habitat values identified in the plan; or (2) encroachment closer than 20 feet from an existing residence; or (3) hazardous topographic conditions. Bluff retreat (erosion) shall be considered and provided for the life of the development when planning lateral accessways.

In the case at hand, the access easement has already been established and the trail constructed, but erosion and bluff retreat threaten to close off the public accessway because the easement is in a fixed location on the ground and does not move as the bluff erodes. County Counsel has advised that it is not within the County's purview to impose any modification of the easement, but that sufficient setback may be required to provide for eventual acquisition of additional easement necessary to provide for continuation of the trail. As proposed, the residence is set back far enough from the bluff so that space for a trail would remain even if the maximum estimated bluff retreat occurred for the entire 75 year economic life of the residence, however the trail would be less than 30 feet away from the residence. By locating the residence farther back from the bluff, more space could be provided, as the size of the parcel would allow the residence to be moved back an additional 180 feet from its proposed location. Therefore, in part to make adequate provision for continuation of the blufftop trail as an integral part of the California Coastal Trail, and in part for reasons discussed elsewhere in this report, staff is recommending that approval of this application be subject to an increased setback from the bluff. (See Special Condition Number 6.)

Hazards: The parcel is a blufftop lot with a nearly vertical cliff, 80 to 90 feet high, between the development site and the shoreline. The proposed residence is shown on the Site Plan to be approximately 115 feet back from the top of the bluff, with other development located farther back. Additional trees are proposed to be planted toward the sides of the parcel, extending to within 60 to 70

8 of 28

feet of the top of the bluff. The project site is bounded on the west by a cove which has developed due to a higher rate of erosion and bluff retreat than is occurring on adjacent portions of the shoreline.

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.

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.

A geologic reconnaissance was performed by Thomas E. Cochrane, California Registered Geologist. In a letter dated July 23, 2001, he presents the results and conclusions of his reconnaissance. Based on several sets of aerial photos dating back to 1952, he estimates that bluff retreat at the site is approximately two to four inches per year. At that rate he estimates that 6 to 7 meters (20 to 23 feet) of bluff retreat could be expected in 75 years. Incorporating a safety factor, he recommends a minimum setback of 50 feet from the bluff edge. He also recommends that surface water drainage not be directed over the bluff. Due to the proximity of the site to the San Andreas Fault, he states that there is a probability of strong seismic shaking during the lifetime of the proposed structure, but that wood framed structures designed in accordance with current building codes are well suited to resist shaking. He does not expect liquefaction to be a problem on the site, and predicts that the bluff height will lesson the risk of tsunami danger.

Mr. Cochrane is a California Registered Geologist, not a licensed engineering geologist or registered civil engineer as required by Section 20.500.015 (A) (2) of the Code. In a letter dated May 30, 2002, to Don Teutsch, the applicant's agent, Doug Zanini made note of this fact and requested that a report prepared by engineering geologist, a civil engineer or a geotechnical engineer be submitted. In a letter to Doug Zanini dated June 15, 2002, the applicant, Dr. Mello, objected to the request, stating that Mr. Cochrane was on the County's list of consultants, and that in a conversation with County staff prior to selection of a consultant, there had been no objection expressed to the use of Mr. Cochrane. There does not appear to be any response from the Department of Planning and Building Services to Dr. Mello's letter, and this

9 of 28

issue did not reappear until preparation of the staff report. Rather than subject the applicant to further delay in processing the application, it was decided to accept Mr. Cochrane's geologic reconnaissance in this case, in light of the following considerations: (1) Planning and Building did not promptly respond to Dr. Mello's June 15, 2002 objection to having a new geotechnical report prepared. (2) The location of the house has been revised, and is now proposed to be 115 feet back from the bluff. At 115 feet back from the bluff, the house location is more than twice the distance of 50 feet recommended by Mr. Cochrane. (3) At 115 feet he proposed house will be farther from the bluff than the recommended setbacks for three nearby residences (CDP 16-98, Calone, 26.1 feet; CDP 44-00, McClure, 35 feet; and CDP 35-01, Williams, 40 feet.) (4) It is the practice of the Department of Planning and Building Services not to require a geologic report for development on a blufftop lot if all of the proposed development is set back more than 100 feet from the top of the bluff. Special Condition Number 1 is recommended to require that all the recommendations of the July 23, 2001 Cochrane reconnaissance are followed.

A comment was received from the Division of Building Inspection stating that a geotechnical survey would be required for the building foundation design. Originally the building was proposed to be approximately 45 feet back from the bluff. Subsequently the bluff setback was increased to 115 feet. Based on the increased setback, the Senior Building Inspector in Fort Bragg has stated that geotechnical engineering for foundation design would not likely be required. The final decision would be made upon review of building plans submitted with a building permit application.

On blufftop parcels on which development is within 100 feet of the bluff, the Coastal Commission and Mendocino County have been requiring recordation of a deed restriction prohibiting the construction of seawalls, and requiring that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development that might fall onto a beach. Because all the development proposed in this application is more than 100 feet from the bluff, the deed restriction is not being recommended as a condition of this application.

Visual Resources: The proposed project is west of Highway 1, within a designated highly scenic area, and therefore is subject to the visual resource policies of the Mendocino County Coastal Element and Chapter 20.504 of the County Zoning Code. The proposed residence and garage will be visible against the sky from Highway 1, but only briefly, as one travels southbound just south of the Highway 1/Warren Drive intersection. The project may also be distantly visible from public viewpoints in the vicinity of Schooner Gulch and Bowling Ball Beach, but from these locations it will be partially screened by trees and will be seen against a backdrop of trees and hills. The public viewpoint from which the proposed residence will be most visible will be the blufftop trail which runs along the westerly edge of the applicant's parcel. The residence will be visible from a considerable length of the trail, and especially from the portion of the trail that goes around the horseshoe cove in front of the applicant's parcel, where portions of the trail head toward the building site and come within 115 feet of the proposed residence.

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

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

10428

highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

Policy 3.5-3 of the Mendocino County Coastal Element states, in part:

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

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

The California Department of Parks and Recreation commented that the project will be visible from the headlands and north beach of Schooner Gulch State Park, and recommended that exterior colors be earth tones to blend into the surroundings, that glass be non-reflective, and that a perpetual landscaping plan be imposed to make the building subordinate to the landscape.

The Friends of Schooner Gulch also expressed concern about visibility of the proposed residence, recommending that both exterior and interior lighting be shielded from direct view, that darker exterior colors be required, that a landscape plan with requirements for replacement be required, that the solar panels be screened, and that color samples be available prior to the hearing.

The proposed residence and garage are single story structures less than 18 feet in height. The most recent plans show the building materials and colors listed below. Window frames originally proposed to be beige, have been changed to dark brown.

Roofing:	Pewter, heavy shadow, composition shingles.
Siding:	Cedar shingles, natural sealed finish.
Fascias & Trim	Wood, driftwood gray stain.
Doors:	Wood, natural sealed finish.
Window frames:	Dark brown vinyl.
Guardrails:	Driftwood gray stain.
Decking:	Natural weathered wood.
Chimney & roof vents:	Paint flat black.
Flashings:	Copper, paint to blend with background where visible.
Skylights (4)	Flat, clear glazed, on 4 inch curbs.
Exterior lights:	Low wattage, down-aimed, shaded fixtures.

In letters dated June 15, and November 10, 2002, the applicant expressed his willingness to specify a dark color for the composition shingle roof, subject to availability and cost.

Both the proposed residence and garage are less than 18 feet in height, and therefore comply with the height limit in highly scenic areas west of Highway 1. The exterior materials and colors proposed are subdued and will not contrast unnecessarily with the natural character of the site. The skylights proposed use flat, clear glazing, rather than translucent domes, and will therefore be less visible at night. Exterior

11928

lighting fixtures will be shielded and aimed downward. Special Condition Number 2 is recommended to require that building materials and colors will not be changed without prior approval of the Coastal Permit Administrator. Special Condition Number 3 is recommended to require that the water tank and LPG tank be of dark colors that will blend with their surroundings.

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.

In a letter dated June 15, 2002, the applicant stated: "...[W]e do not plan on using any interior lighting described as bare light bulbs. The fact is that all of the interior lighting has already been purchased for this project. The lighting are all 1930's Art Neuvou and Art Deco (colored glass slip shades). These lights are less intense and will offer a 'diffused' visual atmosphere. Additionally all windows will be tinted to help further diffuse light." The applicant also expressed a willingness to use shielded exterior lighting fixtures.

The latest building plans state that all exterior lighting is to consist of approved low wattage down aimed under eave shaded fixtures conforming to applicable coastal development specifications. Actual fixture specifications have not been submitted. Special Condition Number 4 is recommended to require that specifications for the fixtures be submitted for approval prior to issuance of the building permit, and that interior fixtures be designed or located to prevent direct view of light sources from public viewpoints.

Policy 3.5-5 states:

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

The applicant's letter of November 10, 2002, and the latest Site Plan indicates that additional landscaping consisting of Leland Cypress trees to the north and south of the residence will be included to provide some screening of the residence and garage from the blufftop trail between Moat Creek and Ross Creek. The parcel is not within a tree removal area, and consequently no removal or thinning of trees is required. Special Condition Number 5 is recommended to require that trees providing screening of the proposed structures be planted and maintained, and replaced if necessary.

Natural Resources: There are two natural resource issues related to this application, both associated with the coastal bluff. There is a coastal bluff scrub plant community along the bluff edge, and the bluff face is a Pelagic Cormorant nesting site.

Policy 3.1-7 of the Mendocino County Coastal Element states, in applicable part:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of

12 of 28

the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width.

This policy is implemented through Section 20.496.020 of the County Code which establishes standards for protection of environmentally sensitive habitat areas.

A botanical survey of the site dated July 24, 2002, was prepared by Dorothy T. Scherer. The survey was based on visits to the site in June, July, August and October of 2001, and January, April, May and June of 2002. The survey states that the only portion of the site constituting an environmentally sensitive habitat area (ESHA) is the bluff face and a coastal bluff scrub plant community limited to a band within five feet of the bluff edge. She recommends that development be a minimum of 105 feet back from the bluff edge to maintain a 100 foot setback from the ESHA. She also recommends that the stands of Coyote Brush Series vegetation be spared as much as possible.

Correspondence was received from Peter Reimuller of the Friends of Schooner Gulch, expressing concern that the site may contain wetlands. The botanical survey states that scattered facultative wetland plants are found on the site, but in the absence of any obligate wetland plants, the site does not constitute a sensitive area requiring protection.

Dr. Mello prepared a report on the Pelagic Cormorant nesting sites on the bluff face. (He is a biologist with a PhD. in Animal Science and Biochemistry.) In the report he states that he observed the site in April, 2002, and looked for nesting activity at three sites identified in a previous study done in conjunction with CDP 23-99 for the construction of the blufftop trail. The report states that two of the three sites were being used by nesting pairs of Pelagic Cormorants, three pairs at one site, and two pairs at the other. No nests were observed at the third site. None of the three sites are on the portion of the bluff on Dr. Mello's parcel, but are on adjoining portions of the bluff around the horseshoe cove. The study contains the following recommendations:

1. No human or construction activity during the nesting cycle months of March and April.
2. No physical disturbance of the cliff side of the cove.
3. Minimize noises around nesting Cormorants.
4. Mendocino County should encourage fishermen not to disturb or harm Cormorants.
5. Exterior lighting should be minimal and should be aimed down, not out.
6. The proposed house should be set back 100 feet from the bluff edge.

Because Dr. Mello is also the applicant for this application, he had his report reviewed by Nancy Anne Lang, PhD, and former San Francisco Zoo avian, marine mammal and primate curator. Dr. Lang found the recommendations proposed by Dr. Mello to be adequate.

Correspondence was received from Patricia Schwindt, Treasurer, Moat Creek Managing Agency, expressing concern that the proposed development would adversely impact the cormorant rookery on the bluff face. She recommended that the house be placed an additional 100 to 200 feet back from the bluff.

13 of 28

The latest revised Site Plan shows a setback from the bluff edge of approximately 115 feet to the edge of the deck on the west side of the residence. The setback provides a 100 foot buffer required by the Coastal Plan and Ordinance under current conditions, but makes no allowance for anticipated bluff erosion and retreat. As discussed in the Hazards section above, bluff retreat of up to 13 inches per year may occur at this location. At this rate, at the end of the 75 year economic life of the residence, only a 34 foot buffer would remain. An additional 66 feet of setback would be required to ensure a 100 foot buffer after 75 years. For this reason, and others discussed elsewhere in this report, an increased setback is recommended. Special Condition Number 6 is recommended to require that a revised site plan be submitted showing minimum of 180 feet between the bluff edge and the proposed structures.

Archaeological/Cultural Resources: The project was reviewed by the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University. The Information Center responded that the project area has the possibility of containing unrecorded archaeological sites and recommended a study. The application was reviewed by the Mendocino County Archaeological Commission on February 13, 2002 which determined that no survey was required. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance in the event that archaeological or cultural materials are unearthed during site preparation or construction activities.

Groundwater Resources: The site is located within an area of Marginal Water Resources (MWR) as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Categorical Exclusion CE 49-95 was issued on September 15, 1995, for a test well, and this application includes a request to convert the test well to a production well.

Sewage disposal is to be by a private leach field system. The Department of Environmental Health commented that the original soils work was done in 1995 and will need to be updated to meet current requirements. Standard Condition Number 4 requires that all applicable County permits be obtained.

Transportation/Circulation: Access to the site from Highway 1 is provided by Warren Drive, a private road serving the Whiskey Shoals Subdivision. The project would not involve any alterations to the existing road. The Mendocino County Department of Transportation had no comment on the project. While the project would contribute incrementally to traffic volumes on local and regional roads, such incremental increases were considered when the LCP land use classifications and densities were assigned to the site, and no mitigation measures are required.

Zoning Requirements: The project complies with the zoning requirements for the Rural Residential Zoning District set forth in Chapter 20.376, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and

14 of 28

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.

STANDARD CONDITIONS:

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

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit is subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.

15 of 28

5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or is a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more the conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. The applicant shall incorporate all recommendations within the Geologic Reconnaissance prepared by Thomas E. Cochrane dated July 23, 2001, into the design and construction of the proposed residence.
2. All exterior building materials and finishes shall match those specified in the coastal development permit application, with the exception of the roof, which shall be a dark color such as black or dark charcoal. Windows shall be made of non-reflective glass. Any change in approved colors or materials shall be subject to the review and approval of the Coastal Permit Administrator for the life of the project.
3. Prior to issuance of a building permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, color samples for the water tank and LPG tank. Colors selected shall be dark in hue and selected to be subordinate to the surrounding environment.

116 of 28

4. Prior to issuance of the building permit the applicant shall submit for the review and approval by the Coastal Permit Administrator, lighting details and specifications to indicate that all exterior lighting shall be downcast and shielded and shall not allow glare beyond the boundaries of the project site. Interior light fixtures shall be designed or located to prevent direct view of light sources from public viewpoints.
5. Prior to issuance of the Coastal Development Permit, the applicant shall submit for the Coastal Permit Administrator's review and approval, a landscaping/tree management plan that includes planting of native trees (such as Leland Cypress) along the boundaries of the parcel as shown on the Site Plan (Exhibit C) for the purpose of softening the view of the structures when seen from public viewpoints. A minimum of 20 five-gallon size trees shall be specified in the locations shown on the Site Plan. (If the residence is relocated farther from the bluff as recommended in Special Condition Number 6, the proposed trees may be moved back accordingly.) Additional trees shall also be specified that will eventually provide some screening of any portions of the residence or garage that will be visible from Highway 1. The plan shall specify the species of trees to be planted and the anticipated mature height of the trees.

The plan shall include a tree maintenance program (pruning, fertilizing, watering, etc.) for newly planted and existing trees, and a tree replacement program on a minimum one-to-one ratio for trees that die during the life of the project. The new trees shall be planted within 60 days of completion of the project, at which time the applicant shall notify the Coastal Permit Administrator and shall allow Planning and Building staff to inspect the site to confirm that the trees have been planted in accord with this condition.

6. Prior to issuance of the building permit the applicant shall submit a revised site plan showing a minimum setback of 180 feet between the bluff edge and the proposed structures.

Staff Report Prepared By:

Aug 15, 2003
Date

Charles N. Hudson
Charles N. Hudson
Senior Planner

Attachments: Exhibit A- Location Map
Exhibit B- Vicinity Map
Exhibit C- Site Plan
Exhibit D- Residence Floor Plan
Exhibit E- Residence Elevations
Exhibit F- Garage Plan & Elevations

17 of 28

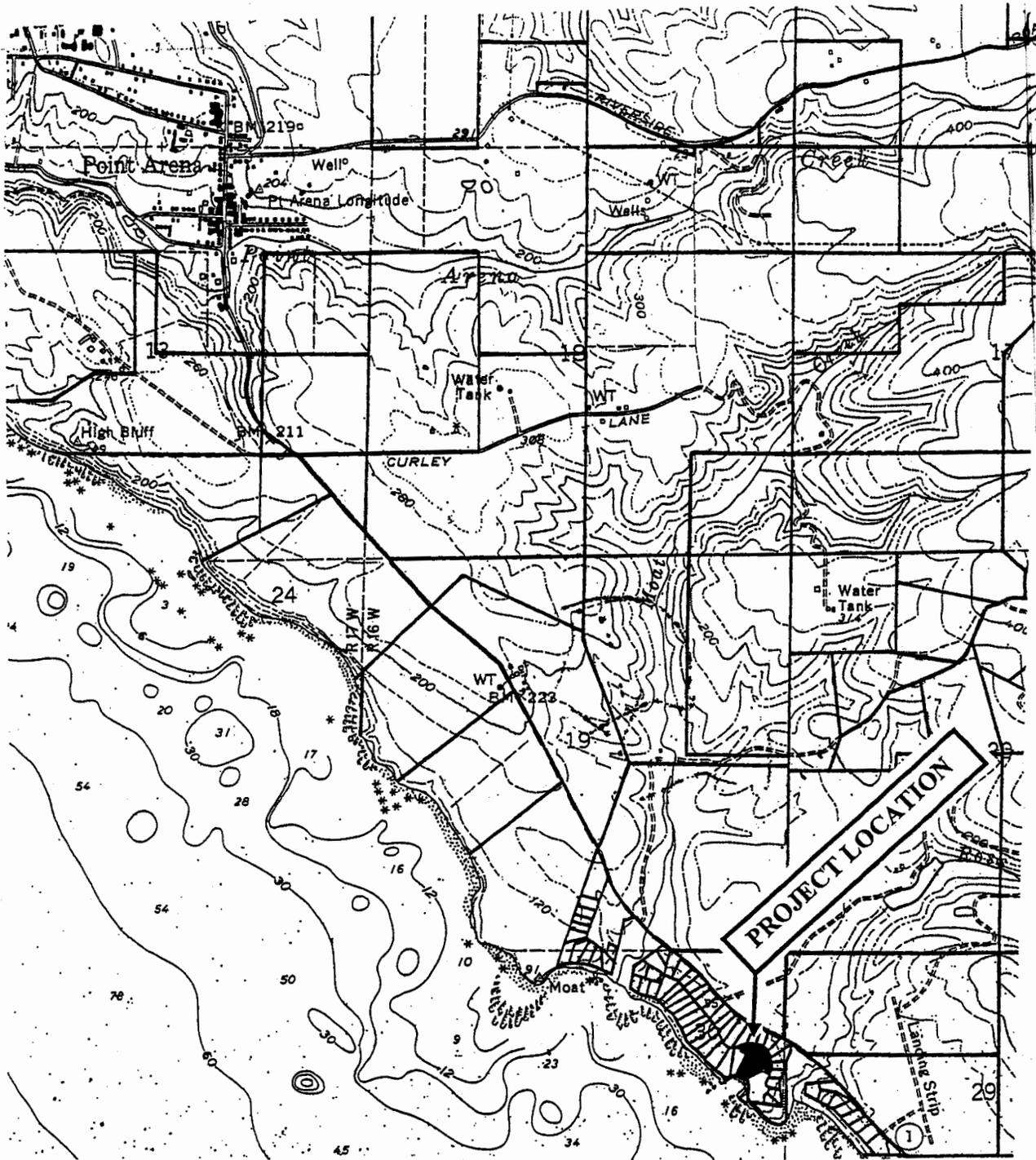
Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by 10 working days for the California Coastal Commission.

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

SUMMARY OF AGENCY COMMENTS:

Department of Transportation	No comment.
Environmental Health – Fort Bragg	Needs BLA to merge 5 lots into 1, and updated septic plans.
Building Inspection – Fort Bragg	Require geotechnical survey for foundation.
Assessor	No response.
Dept. of Parks & Recreation	Recommends dark exterior colors, shielded lighting, and perpetual landscaping.
SSU	Study recommended.
Archaeological Commission	No survey required.
Coastal Commission	No response.
Friends of Schooner Gulch	Concerns include: visibility & lack of screening from public blufftop trail, lighting impacts from both exterior and interior lights, exterior colors, landscaping for screening, tree retention. solar panels, bluff setback, need for floating public trail easement.
CDF	CDF File No. 337-01: Standards for address, driveway, emergency water supply and defensible space.
Coastal Conservancy	No response.
Moat Cr. Mgt. Agency	Cormorant rookery nearby. Trail easement needs to be a floating easement. Rare plant in bluff top area.
Redwood Coast Fire Protection Dist.	No response.
County Counsel	Existing “fixed” easement cannot be changed to a “floating” easement.

18928



CASE NO: CDP 86-01

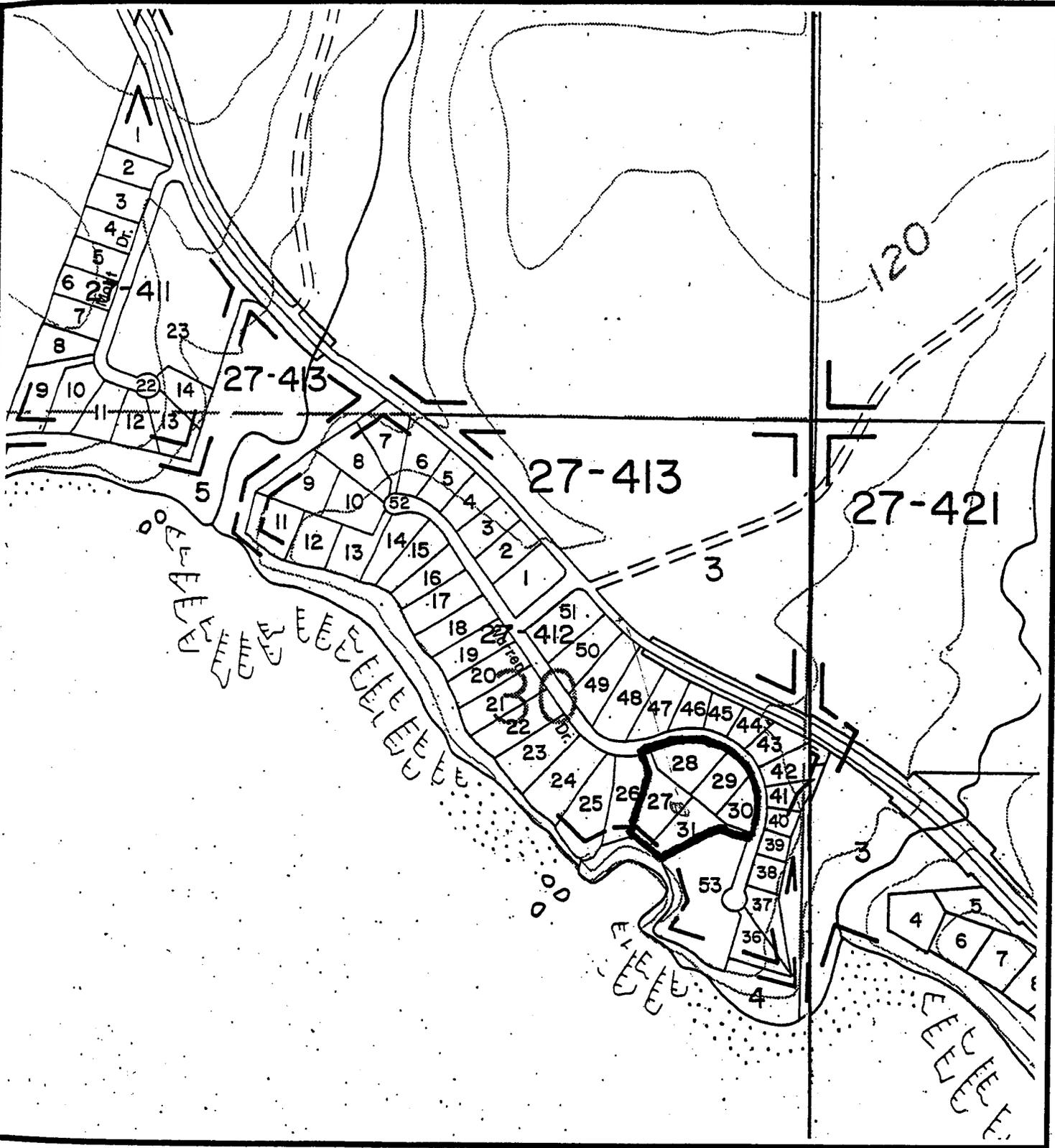
EXHIBIT A

FRANK & JULIA MELLO

LOCATION MAP
1 INCH = 2000 FEET



19 of 28



CASE NO: CDP 86-01

EXHIBIT B

FRANK & JULIA MELLO

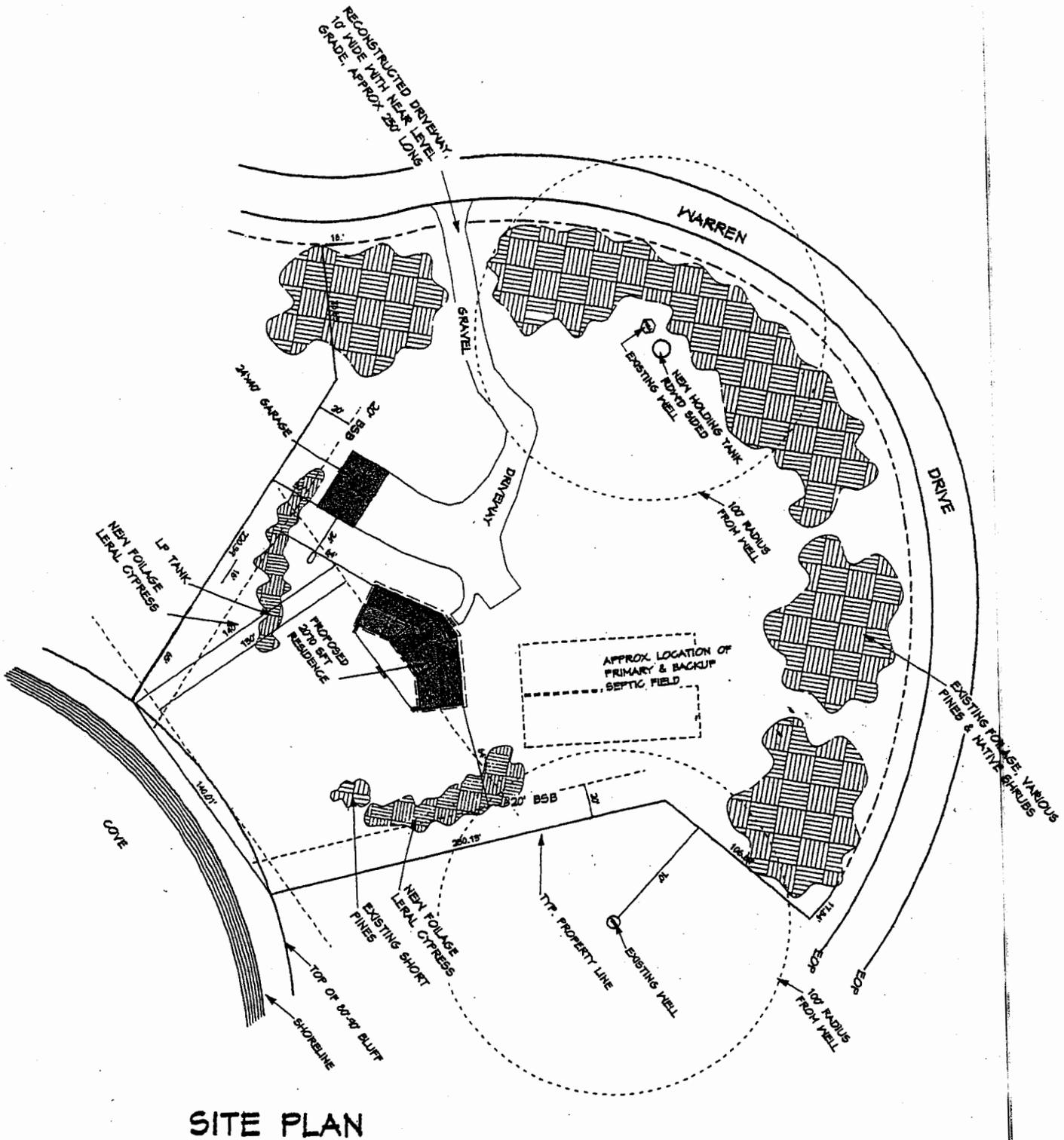
VICINITY MAP

1 INCH = 500 FEET



NORTH

20 of 28



SITE PLAN

CASE NO: CDP 86-01

EXHIBIT C

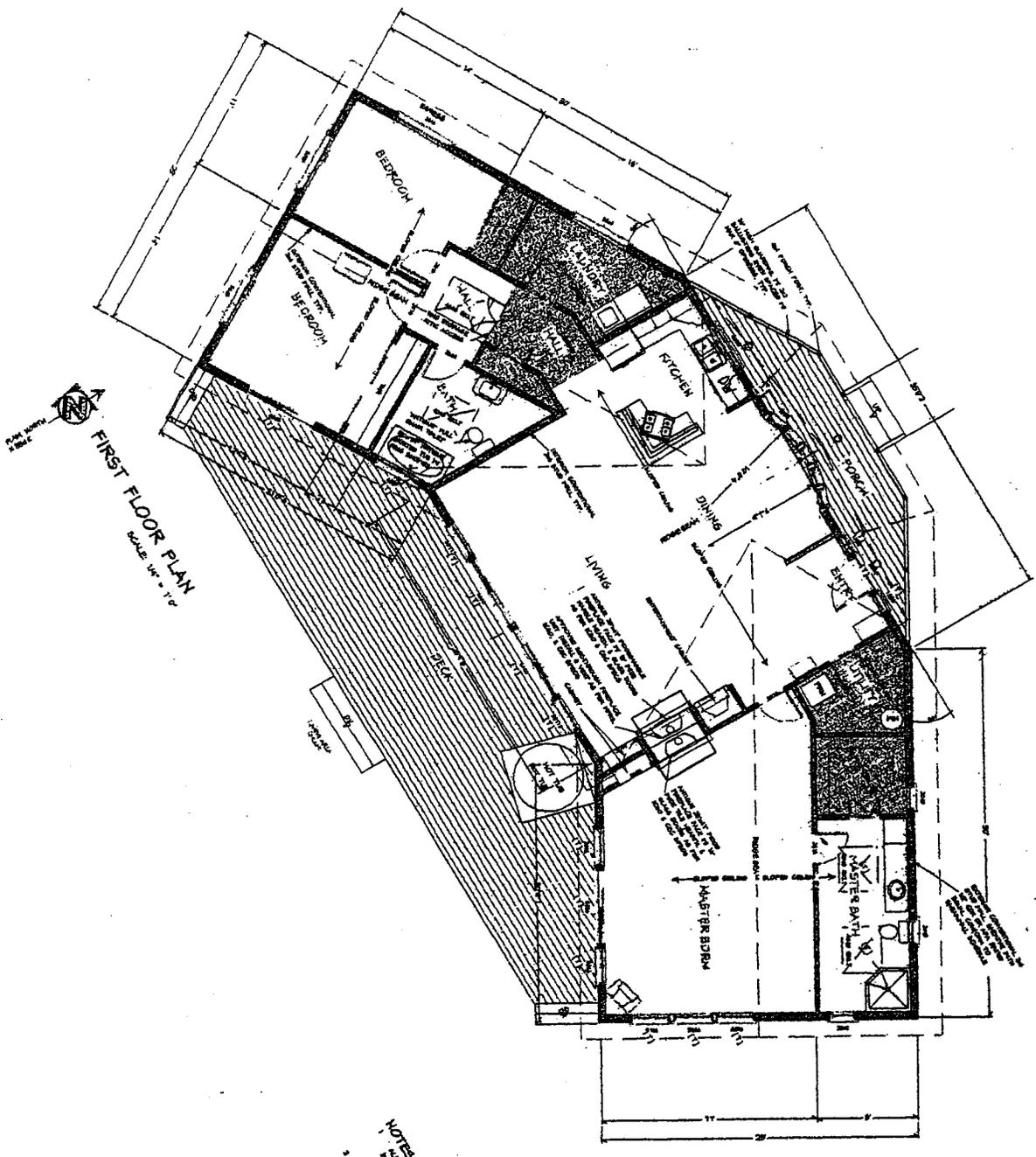
FRANK & JULIA MELLO

SITE PLAN
 SCALE: NONE



NORTH

21 of 28



NOTES

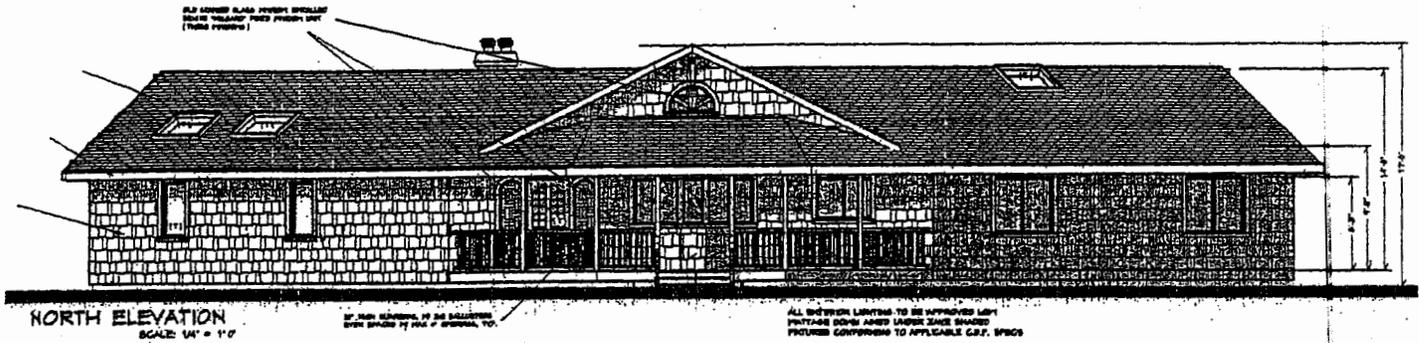
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- 2. ALL WALLS ARE 1/2" THICK UNLESS NOTED OTHERWISE.
- 3. ALL DOORS ARE 6'0" HIGH AND 3'0" WIDE UNLESS NOTED OTHERWISE.
- 4. ALL WINDOWS ARE 6'0" HIGH AND 3'0" WIDE UNLESS NOTED OTHERWISE.
- 5. ALL FLOORING IS TO BE DETERMINED BY THE OWNER.
- 6. ALL CEILING IS TO BE DETERMINED BY THE OWNER.
- 7. ALL LIGHTING IS TO BE DETERMINED BY THE OWNER.
- 8. ALL FIXTURES ARE TO BE DETERMINED BY THE OWNER.
- 9. ALL FINISHES ARE TO BE DETERMINED BY THE OWNER.
- 10. ALL MATERIALS ARE TO BE DETERMINED BY THE OWNER.
- 11. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE 2000 INTERNATIONAL RESIDENTIAL CODE BOOK.
- 12. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE 2000 INTERNATIONAL MECHANICAL AND ELECTRICAL CODE BOOK.
- 13. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE 2000 INTERNATIONAL PLUMBING AND HEATING CODE BOOK.
- 14. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE 2000 INTERNATIONAL FIRE AND SAFETY CODE BOOK.
- 15. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE 2000 INTERNATIONAL BUILDING DEPARTMENT CODE BOOK.

CASE NO: CDP 86-01
 EXHIBIT D

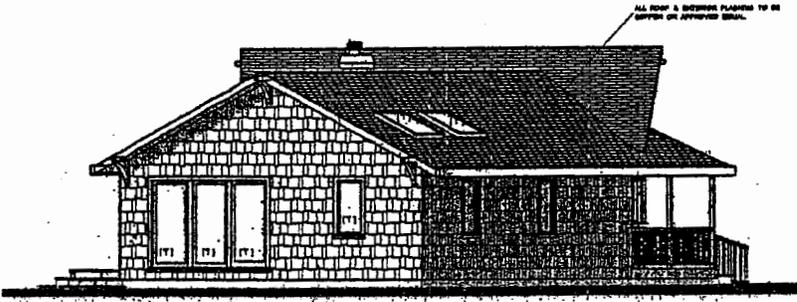
FRANK & JULIA MELLO
 RESIDENCE FLOOR PLAN
 SCALE: NONE



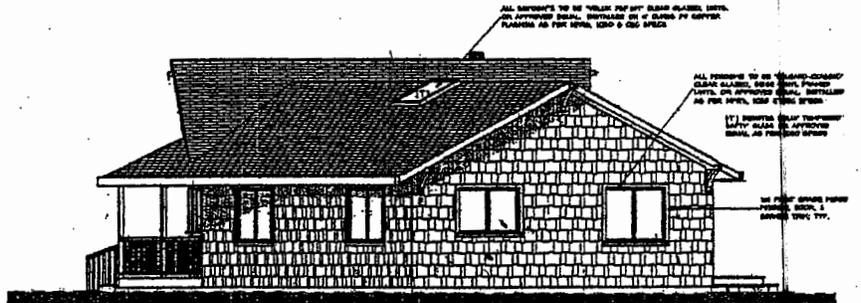
22 of 28



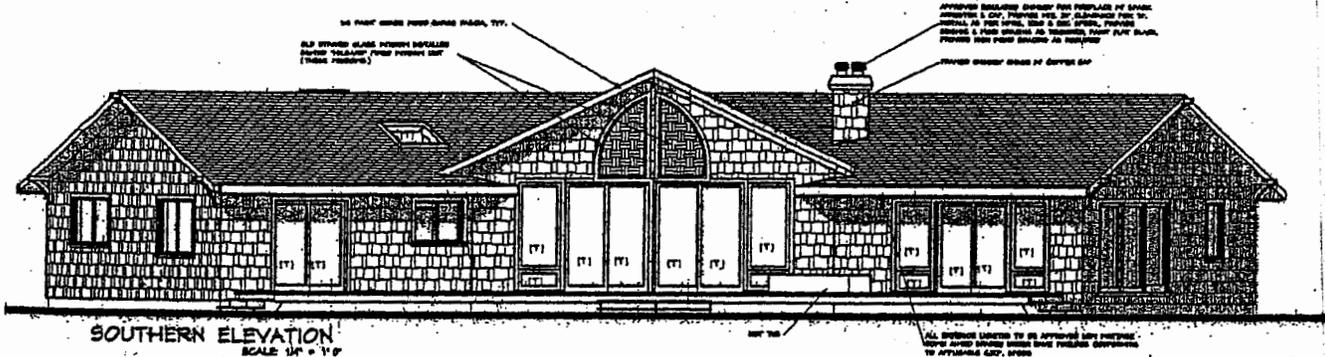
NORTH ELEVATION
 SCALE: 1/4" = 1'-0"



EASTERN ELEVATION
 SCALE: 1/4" = 1'-0"



WEST ELEVATION
 SCALE: 1/4" = 1'-0"



SOUTHERN ELEVATION
 SCALE: 1/4" = 1'-0"

CASE NO: CDP 86-01

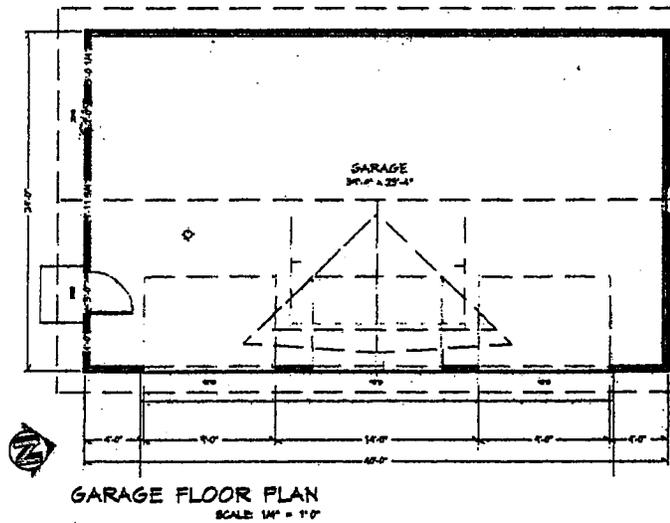
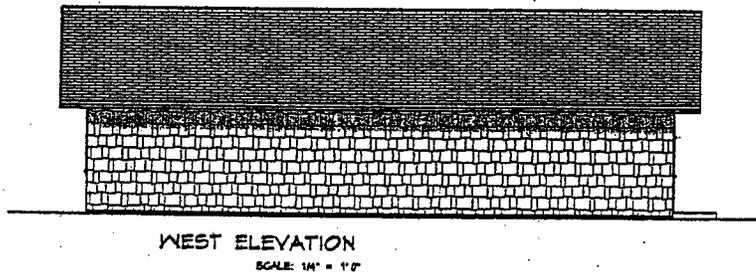
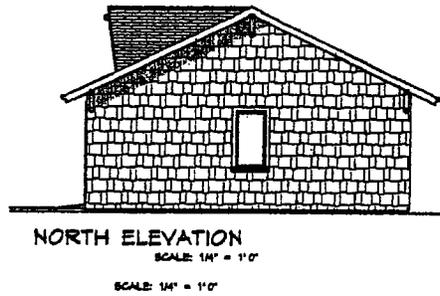
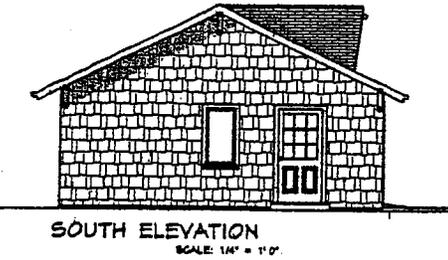
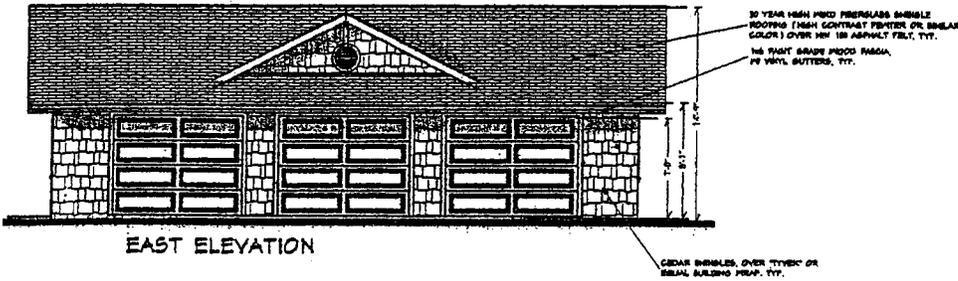
EXHIBIT E

FRANK & JULIA MELLO

RESIDENCE ELEVATIONS

SCALE: NONE

23 of 28



CASE NO: CDP 86-01

EXHIBIT F

FRANK & JULIA MELLO

GARAGE PLAN & ELEVATIONS

SCALE: NONE

24 of 28

JUN 20 2003

MENDOCINO COUNTY MEMORANDUM

PLANNING & BUILDING SERV
FORT BRAGG CA

TO: Woody Hudson, Senior Planner June 12, 2003

FROM: Frank Zotter Jr., Chief Deputy County Counsel *FZ*

RE: Conversion of Fixed Easement to a "Floating Easement" on Property Subject to Coastal Development Permit (Mello, CDP #86-01); #03-651

You have asked for an opinion regarding the following factual background and question:

Dr. Frank Mello wants to develop a parcel in the Whiskey Shoals area of the south coast of Mendocino County, and to that end has filed an application for a coastal development permit. His property is subject to a public access easement that was obtained some years ago by the State Coastal Conservancy. The easement is 25' wide for public access along a lateral bluff trail abutting the seaward part of the property, and constitutes part of the Moat Creek coastal access trail that is managed by the Moat Creek Management Agency.

The County is ready to take action upon Dr. Mello's application for a permit. The Friends of Schooner Gulch, a group of local residents who use this trail, as well as the Management Agency, would like the County to include a condition in the CDP that the existing easement be converted to a "floating easement" that would move with the bluff as the bluff retreats from the ocean.

QUESTION:

Can the County impose such a "floating easement" as described above that would move landward as the bluff face retreats and the present area where the public easement is located becomes inaccessible?

ANSWER:

No. Unfortunately for the Friends and the Management Agency, California law is clear that the original location of an easement established by a grant (as this easement was) cannot be changed later even if physical changes to the land make continued use of the easement impossible. California law also does not recognize a "floating easement" (at least as contemplated by the Friends and the Agency). The County could, however, impose other restrictions on the CDP, such as a greater setback from the bluff or the use of building envelopes, to abet future exercise of eminent domain.

ANALYSIS:

The governing principle here is set forth in Civil Code § 806, which was adopted in 1872: "The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." This statute has been interpreted to mean that "the scope of the easement [is] to be fixed by the location, character and use in existence at the time the land became subject to the

25 of 28

easement,"¹ which in this case would mean the physical location of the easement at the time it was created or as it has been used since that time. Even in situations where the physical condition of the land has changed to make the continued use of an easement no longer viable, the courts have held that this does not give the user of the easement the right to relocate the easement even if it can be done with little burden to the owner of the land burdened by the easement.

Thus, in *Felsenthal v. Warring*,² the owner of a water-ditch easement sought to reconstruct the ditch along a new line (twenty-five to forty feet west of the old line) after the bed of the creek from which owner of the easement formerly took water was altered by a flood. In holding that the easement could not be relocated, the court stated:

Whether [the easement owners]' title to a right of way for a ditch be regarded as one resting upon an express grant . . . or upon prescription . . . the result is the same. If regarded as an express grant . . . , it was a grant that did not specifically bound or define the right of way. . . . [T]he way became definitely fixed and located along a certain line by the conduct of the grantees . . . ; and . . . the terms of the grant could not be changed, without his consent, so as to change the character of the easement or materially increase the burden of the servient estate. [Citation omitted.] The nature of respondents' enjoyment of the servitude consisted in conducting water in an open earthen ditch *that followed a certain well-defined and established course over appellant's land a line that had been established for many years. That line, therefore, and none other, fixed the extent of the servitude that rested upon appellant's realty.*³

A similar result occurred in *Fletcher v. Stapleton*,⁴ in which the purchaser of a residential lot in Los Angeles was granted a 10' wide easement over an adjacent lot for access to a nearby street. The owner of the lot traversed by the easement then graded that lot so that it was substantially lower than the lot benefited by the easement (and also so that it was no longer level with the street). This rendered the lot impassable for the continued use of the easement. Quoting from a treatise on easements and servitudes, the court stated, "Another mode of extinguishing easements is by such a change in the condition of the estates, in reference to which such easements have existed, as to render the use and enjoyment thereof no longer of any practical utility or avail."⁵

¹ *Krieger v. Pacific Gas & Electric Co.* (1981) 119 Cal.App.3d 137, 143, citing *Vestal v. Young* (1905) 147 Cal. 715, 717 and 719.

² *Felsenthal v. Warring* (1919) 40 Cal.App. 119.

³ *Felsenthal, supra*, 40 Cal.App. at 127, emphasis added.

⁴ *Fletcher v. Stapleton* (1932) 123 Cal.App. 133.

⁵ *Fletcher, supra*, 123 Cal.App. at 137 (internal quotation marks deleted).

26 of 28

Fletcher also relied on Civil Code § 806 for the principle that "it is well settled that the burden of the dominant tenement cannot be enlarged to the manifest injury of the servient estate by any alteration in the mode of enjoying the former; nor can the owner thereof commit any trespass upon the servient tenement beyond the limits fixed by the grant."⁶ Thus, because the easement had been rendered unusable by the actions of the owner of the lot over which it ran (albeit with the acquiescence of the easement owners until it was too late), the easement was extinguished.

Thus, the public easement over the Mello lot, now fixed in a given location, cannot be moved even if the land underlying the easement is eroded by natural conditions. Indeed, if the easement owners in *Fletcher* were unable to protect their easement against the voluntary actions of the landowner, the County is likewise unable to compel Dr. Mello to move his easement as the result of natural forces.

The suggestion of the Friends that the existing fixed easement be converted to a "floating easement" that would move with the edge of the bluff as it erodes is actually a concept not recognized by California law. A "floating easement" does not refer to an easement that "moves with the land" (although it might be possible to create such an easement if the owner of the burdened land agreed to it in advance). A true "floating easement" simply refers to an easement that does not have a fixed location prior to the first use of the easement.⁷ Unless the right to change or expand the usage is expressly granted or reserved, however, such an easement, becomes "fixed" by the first usage thereof and just like an easement expressly fixed by a grant, thereafter may not be modified, either in location or in degree.⁸

The County therefore cannot impose upon this CDP a condition such as described above that is not otherwise recognized by California law (i.e., a "moveable easement"). That does not leave the public completely bereft, of course. One possibility is that, even without the easement as requested by the Friends, members of the public might continue to use the property outside the easement as the bluff erodes so that an implied dedication will take place.⁹ An implied dedication, however, would require acquiescence by the owner in what would amount to a trespass for five years, and it is unlikely that the property owner will do that knowing that it might give rise to public access rights.

More likely, however, is that the Coastal Conservancy or some other public entity will exercise eminent domain to condemn a new access if the original one is lost to erosive forces. While rarely done, the exercise of the power of condemnation

⁶ *Fletcher, Id.*

⁷ *City of Los Angeles v. Howard* (1966) 244 Cal.App.2d 538, 541, fn. 1. This was in fact what happened in the *Felsenthal* case above, in which the easement was not originally described in the grant. The court nevertheless held that the easement, once exercised, could not be relocated.

⁸ *City of Los Angeles, Id.*, citing *Winslow v. City of Vallejo* (1906) 148 Cal. 723.

⁹ *Gion v. City of Santa Cruz* (consolidated with *Dietz v. King*) (1970) 2 Cal.3d 29.

27 of 28

Woody Hudson
Senior Planner
June 12, 2003
Page 4

is always available to a public entity. Given that the easement already exists and has been improved, the County could lawfully impose such conditions as a 100' setback, or restrict development to building envelopes, or both, under an analogy to the "corridor of preservation" that the County Department of Transportation often requests for land adjoining an existing public road. Such restrictions would allow the property owner to make many private uses of the land, while still preserving the possibility that the State could exercise its power of eminent domain in the future at lesser cost and disruption to the property owner than the removal of structures would entail.

FZ/STZ

28 of 28

CALIFORNIA COASTAL COMMISSION

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

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

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SEP 11 2003



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Friends of Schooner Gulch
P.O. Box 4
Point Arena CA 95468 (707) 882-2001
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: County of Mendocino

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

3. Development's location (street address, assessor's parcel no., cross street, etc.): 27232 WARREN DR, APN 027-412-27, 28, 29, 30, 31

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-03-062

DATE FILED: 9/12/03

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 6
APPLICATION NO.
A-1-MEN-03-062
APPEAL, FILED 9/12/03
(FRIENDS OF SCHOONER GULCH, MOAT CREEK MANAGING AGENCY, ERIC DAHLHOFF) (1 of 20)

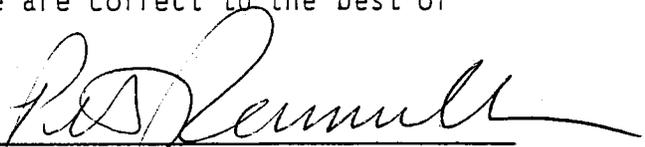
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 9-1-03

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 _____

2-9-20

Friends of Schooner Gulch

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

Executive Committee:

*Lucie Marshall
Charles Peterson
Peter Reimuller*

September 8, 2003

Commissioners and Executive Director
California Coastal Commission
Box 4908
710 "E" Street
Eureka, CA 95501
via fax: (707) 445-7877

RE: Appeal of Mello Project

Dear Commissioners and Executive Director:

The project is inconsistent with Mendocino County's LUP and LCP.

The 25' California Coastal Trail easement along the cliff line has already begun to erode an unknown amount. To protect this public trail from becoming unsafe for passage, and to mitigate increased erosion caused by this and other future developments on the properties along the easement, the easement must be rededicated and accepted as a "floating" easement which will follow the cliff edge as it recedes. This is a matter of statewide precedent. (County Zoning Code 20.528 et seq.)

There would not be a "taking" if the definition of the physical location of this easement were to be rewritten. The easement and the trail traffic on it already exist, and the redefinition of its location would only serve to mitigate the increased erosion and provide the required public safety.

There is "nexus" for this action. The Mello development will unavoidably cause increased erosion of the trail in many ways, as will the addition of the other future developments on the remaining unbuilt lots along the cliff.

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

3420

The County accepted a geologist's report from a geologist who is not a Licensed Engineering Geologist or Registered Civil Engineer. This would create a precedent for other developments to similarly ignore the Code. (County Zoning Code 20.500 et seq., especially 20.500.015 (A) (2).)

The application is incomplete. The information about colors of the development, the landscaping plan, and the extent of already existing California Coastal Trail easement erosion are not provided. (County Zoning Code 20.504 et seq., 20.540 et seq., 20.532 et seq.)

The color and landscape requirements are left for future approval by the Coastal Permit Administrator without the benefit of a public hearing. This is a Highly Scenic Area, and it is visible from a State Park. Staff recommended that the development be set back 180' from the bluff to solve visual and other problems, but this recommendation was not followed.

The County failed to include the usual requirement of a future sea-wall prohibition for coastal bluff developments. The County uses an inappropriate and arbitrary policy (100' from the bluff edge) to trigger this requirement.

Citations above are not exhaustive. Further arguments and an expanded list of interested parties will follow. Additional appellants will be signing on to this appeal.

Sincerely,



Peter Reimuller
Secretary

4 of 20

Interested parties:

Assemblymember Patty Berg
Room 2137
State Capitol
Sacramento CA 95814

Supervisor Fifth District David Colfax
Mendocino County Board of Supervisors
5101 Low Gap Road, Room 1090
Ukiah CA 95482

Supervisor Fifth District Mike Reilly
Sonoma County Board of Supervisors
575 Administration Drive, Room 100A
Santa Rosa CA 95401

Ms. Britt Bailey, Chair
Gualala Municipal Advisory Council
P. O. Box 67
Gualala CA 95445

Ms. Jan Harris, President
Redwood Coast Chamber of Commerce
P. O. Box 199
Gualala CA 95445

Ms. Susan Boyd, Consultant
Senator Wesley Chesbro
Room 5100
State Capitol
Sacramento CA 95814

Christopher J. Evans, Esq., Executive Director
Surfrider Foundation
Box 6010
San Clemente CA 92674

Ms. Patricia Schwindt C.P.A., President
Moat Creek Managing Agency
Box 404
Point Arena CA 95468

Mr. Bob Lorentzen
Pocket Hiking Guides to the Mendocino Coast
Box 1832
Mendocino CA 95468

Ms. Margaret Pennington, Chair
Redwood Chapter Sierra Club
Box 466
Santa Rosa CA 95402

Ron Guenther, Chair
Sierra Club Land-Use Committee
Box 2330
Fort Bragg CA 95437

Ms. Julie Verran
Box 382
Gualala CA 95445

Rixanne Wehren, Mendocino Group
Sierra Club
Box 340
Albion CA 95410

Mr. Richard Nichols, Executive Director
Coastwalk
1389 Cooper Rd.
Sebastopol CA 95472

Mr. Steven Apple, AICP
Director of Community Development
City of Solana Beach
635 S. Highway 101
Solana Beach CA 92075

Mr. Steve Aceti, JD
California Coastal Coalition
1133 Second Street, Suite G
Encinitas CA 92024
760-944-3564
fax 760-944-7852

Mr. Alan Levine
Coast Action Group
Box 215
Point Arena CA 95468

Peter Y. Dobbins
Friends of the Gualala
Box 916
Point Arena CA 95468

Ms. Rixanne Wehren, Executive Director
Coastal Land Trust
Box 340
Albion CA 95410

7 of 20



MOAT CREEK MANAGING AGENCY

P.O. Box 404 Point Arena, CA 95468 • (707) 882-2617

September 24, 2003

Commissioners and Executive Director
California Coastal Commission
P.O. Box 4908
710 "E" Street
Eureka, CA 95501
via fax: (707) 445-7877

Re: Appeal of Mello Project

Dear Commissioners and Executive Director:

The Board of Directors of Moat Creek Managing Agency has voted unanimously to join the appeal by Friends of Schooner Gulch of Mendocino County's Mello decision to the Coastal Commission (A-1-MEN-03-062).

Please include our organization as an "additional appellant" on the signature page of that appeal. We testified regarding this matter by letter at the County's CPA hearing.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Patricia Schwindt". The signature is fluid and cursive.

Patricia Schwindt, Treasurer
Moat Creek Managing Agency

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SEP 24 2003

CALIFORNIA
COASTAL COMMISSION

8 of 20

California Coastal Commission
Commissioners and Executive Director
Box 4908
710 "E" Street
Eureka, CA 95501
via fax: (707) 445-7877

Re: Appeal of Mello Project

Dear Commissioners and Executive Director,

I wish to join the appeal of Mendocino County's Mello decision
(A-1-MEN-03-062) to the Coastal Commission by Friends of Schooner Gulch.

Please include me/us as "additional appellant" on that appeal. I testified
regarding this matter by letter during the County's permit process.

Please notify me when a appeal hearing will be set. And please attempt to hold
the hearing in Northern California.

Thank-you.



Eric Dahlhoff
PO Box 543
Point Arena, CA 95468
(707) 882-3127
(707) 882-3950 fax

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SEP 25 2003

CALIFORNIA
COASTAL COMMISSION

9 of 20

Friends of Schooner Gulch

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

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DEC 30 2003

CALIFORNIA
COASTAL COMMISSION

Executive Committee:

Lucie Marshall
Charles Peterson
Peter Reimuller

December 22, 2003

Hon. Mike Reilly, Chair
Mr. Peter Douglas, Executive Director
Members, California Coastal Commission
Box 4908
710 "E" Street
Eureka, CA 95501
via fax: (707) 445-7877

RE: (A-1-MEN-03-062) Mello

Dear Mr. Reilly, Commissioners and Director Douglas:

This appeal could halt the future loss of segments of the California Coastal Trail by erosion. This test case is a trail connecting from Moat to Ross Creeks, about 3 miles south of Point Arena, and very near Schooner Gulch and Bowling Ball State Beach.

Based upon recent studies, and the County staff report for this project, it is clear that a crisis is brewing. If not addressed it will undo past planning efforts and doom future efforts to establish a continuous California Coastal Trail for future generations. Assembly Concurrent Resolution 20 declares the California Coastal Trail an official State trail.

Disappearing Public Access Trail:
A Fixed Easement on Crumbling Blufftops

According to the County staff report, the previously dedicated California Coastal Trail segment on the project could collapse and disappear "within 23 years."

Losing the "The Moat Creek Trail" because of entirely predictable natural erosion would represent a catastrophic failure of planning and wasted State money.

10 of 20
From the Coastal Ridge to the Pacific Ocean, since 1986.

This spectacular headland, called "Whiskey Shoals," was purchased and developed by the Coastal Conservancy in the 1980's to correct a badly-designed old subdivision. As part of the Conservancy's efforts, a permanent bluff top trail was established, and then the property was re-subdivided and resold.

The present owners ("Mello") purchased their property subject to the public access trail. The trail, however, was incorrectly identified as a fixed-location easement based upon faulty erosion data and analysis.

In the meantime, natural erosion has continued and it is now clear that in as soon as 23 years this hard won public trail will be entirely lost. This project presents the Commission with an opportunity to create an "ambulatory" public trail easement that accounts for the new disturbances associated with the newly proposed development, and to establish statewide policy with respect to newly emerging appreciation of the extent of erosion problems. If left unaddressed, we will witness the catastrophic end result of the disappearance of hundreds of public access trails and the California Coastal Trail.

Over the years, extensive trail improvements here (fences, signs, stairs, grading, bridges) were funded by the Conservancy, and also included the beautiful parking lot and bathroom facilities at Moat Creek. Dozens of local residents including students and volunteers have donated their time and effort to accomplish these improvements, and to create the trail system next to the proposed development.

Today, the trail connects across the headland from Moat to Ross Creeks, and immediately connects south to Bowling Ball and Schooner Gulch State Beach. It is well managed by a local volunteer group, the Moat Creek Managing Agency (MCMA).

The horseshoe cove directly in front of the Mello parcel is eroding faster than the rest of the headland—and that is why it is in a classic cove shape. This very parcel may be the most erosion-prone area on the entire Whiskey Shoals headland. Signs on the bluff top in front of the parcel say "Danger Bluffs Crumble." Please see the Coastal Records Project photo #11968 which clearly shows the eroding cove.

11/1/20

Disappearing Trail

If only one segment of the trail from Moat to Ross Creek is completely lost, the entire trail will be effectively lost to the public and to the local owners. This is an urgent matter because this permit is for the first development on this headland.

The LCP mandated the acquisition of this trail and requires that it shall be permanent, not temporary. Unfortunately, only a temporary easement was originally retained because the rapid erosion was not anticipated.

The Commission has required "ambulatory" easements in other locations. Such easements move inland as the bluff edge erodes--they are the preferred style of easement in such cases. Please see the Commission's attached "Savoca" and "Tomcik" ambulatory easements.

Benefits for Headland Owners and Public Alike

It is important to recognize that the trail benefits all of the property owners along this bluff top, and their guests and vacation renters. Each owner is able to use the trail to walk to both Moat and Ross Creeks and the State Beach. The loss of any one segment of the trail would affect those owners, guests, and vacation renters as well as the public.

The local management organization, MCMA, already assumes all trail liability, maintains high levels of insurance, and provides trail maintenance, policing and clean-up. If the trail becomes impassable, those functions will not likely be continued and the burden may rest with the landowners.

Assuring the trail's future existence is of great benefit to the owners of the bluff top parcels, their visitors and vacation renters.

Remains of Trail Must be Mapped

Mendocino County's staff report says "...bluff retreat is causing a reduction in width of the easement... [and] ...threatens to close off the public accessway."

12 of 20

The remaining portions of the trail have not been measured or mapped to find out just how much is already gone. It is not known how much of the 25' trail easement remains now, either in front of this property or in front of the other parcels. The trail is not shown on the applicant's plans. The trail area may have already substantially eroded from the bluff top. Mendocino County should have required this information. The Commission should ask the applicant for this information before proceeding.

The Coastal Trail Must Be Safe

"Accessways should be of a width adequate to provide safe public access along the bluff edge of the property." (LCP p.86, Coastal Act 30604(c))

Everyone concerned wants a safe trail—including the public, the applicant, and the future neighbors and vacation renters along the trail. As the trail becomes narrower it will, suddenly and without notification sometime in the unknown future, become dangerous and perhaps impassible. Establishing an ambulatory easement at this time would relieve the owner of future "trespassing" hikers and the need to block off and/or police the easement. It would eliminate possible "dead end" trails and cliff-edge cul-de-sacs.

"All access easements shall be a minimum of 25 feet wide [with certain exceptions]." (LCP, 3.6-7)

"Bluff retreat (erosion) shall be considered and provided for the life of the development..." (LCP, 3.6-8)

It is common in the geotechnical reports from this area of the coast to find statements such as "unexpected bluff retreat episodes may occur." This is true on this headland, and was not considered when the original easement was written. This is new information for the Commission and shows the need to rewrite the easement

Correcting the Easement

"...developers obtaining CDP's shall be required prior to the issuance of the CDP to record an offer to dedicate an easement for public access purposes...where

13 of 20

it is delineated in the LUP as a condition of permit approval. This offer shall be in a form and content approved by the Commisison..." (LCP 3.6-5)

"All accessways shall be located and designed to minimize the loss of privacy or other adverse impacts on adjacent residences..." (LUP 3.6-10)

"[The trail shall not] encroach closer than 20' from a residence." (LUP 3.6-7)

"Public access policies shall be implemented..to take into account the need to regulate the...place and manner of public access depending [on] geological site characteristics; ...proximity to residential uses; ...need to provide for management of the access; [and] balance between the rights of individual property owners and the public's constitutional rights of access." (LUP 3.6-25)

An ambulatory easement would maintain the public's constitutional rights of access to this magnificent headland and its views, and still satisfy the need to manage the access for safety. In the future, when the trail finally begins to encroach within 20' of the residence, then the easement should be extinguished in order to provide privacy for the property owner.

Developments Will Create More Erosion

"...Runoff and human activities can also increase the rate of cliff retreat." (LCP: Hazards/Erosion p. 72-73)

The cliff erosion rate on this parcel will accelerate with the new building activity, digging and ditching, saturated septic systems, runoff from driveways and roofs, removal of trees, and other disturbances which building and living on this parcel will bring. Developing the other lots in the subdivision will also cumulatively increase the use of the trail and will therefore also increase the erosion at the bluff top all along the headland. The permanent changes brought by this development and its neighbors create a need to rewrite the easement, to maintain the public's and neighbors' rights to a passable and safe trail.

14 of 20

"It is the intent of the Legislature that the public access policies...be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owners with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section...shall be construed as a limitation on the rights guaranteed the public..."
(Coastal Act 30214(b))

Not a New Trail

The easement is already in place, but fixed. The right to use the trail has already passed to the public. The owner (Mello) purchased the property with knowledge of the trail easement and the public's right to use it. It is fair to the owner, the neighbors, and the public to correct the original fixed-location easement. No new trail is being created.

The applicant's neighbors also purchased their lots with the trail in place. It would be a great loss to them to lose any one segment of the trail, making the whole trail impassable for them too.

New Information

The rate of erosion of the trail, both in front of this site and along the bluff top in front of the other owners' sites, has apparently accelerated since the property was originally subdivided. It is clear to hikers on the trail that several medium to large blocks of bluff top next to the trail have slid-out.

It is expected that inevitable global warming, and the resulting rise in sea level, will accelerate the loss of the bluff top by wave action. In the recent nearby staff report (A-1-MEN-01-063, Kennedy) the Commission's staff Geologist Mr. Mark Johnsson acknowledges an anticipated sea level rise of 1.2' over the next 75 years. The applicant's geologist did not factor this rise into the anticipated cliff retreat rate. Clearly, the rate of erosion will accelerate here. This is new information to the Commission and argues for rewriting the easement.

There are already many slide-outs on the trail. If this 25' wide trail is allowed to erode away completely at

15920

any one place along the cliff, it will represent a relinquishment of public's property rights, and those rights will revert to the owners of the lots. The public would lose the trail without compensation for the loss.

Mendocino County did not require a "slope stability analysis" for this parcel from the applicant. Such a requirement is necessary to analyze the future erosion and safety of the trail and the development. In fact, Mendocino County accepted a geotechnical report from a geologist who does not have the appropriate professional license. If the County's approval is not challenged at this time, a disturbing precedent will be set to accept unqualified geotechnical reports (without expertise in soils analysis) for future County developments.

The Trail Shall be Acquired

"[The Mote Creek] lateral bluff top trail shall be acquired for public use." (LCP, Coastal Trail System, p.A113-8, Table 3.6-1, #92; also 4.11-15, 4.11-17)

"[The] LCP...shall...assume that maximum public access to the coast and public recreation areas is provided." (Coastal Act 30500(a))

"...Coastal access shall be implemented in a manner that ensures coordination among, and the most efficient use of, limited fiscal resources by [government] agencies...responsible for [their] acquisition, development and maintenance..." (LUP 3.6-24)

Re-acquisition of this and other lost trails by condemnation would be very expensive—the Commission must cooperate to eliminate this possible future expense. Senate Bill 908 (California Coastal Trail) directs the completion of the trail and requires agencies to cooperate with the Conservancy.

The most cost effective way to guarantee this trail for the future is for the agencies involved to cooperate to rewrite it as a condition of this permit. The first step would be to require the mapping of the remains of the trail at this time.

16 of 20

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Reimuller".

Peter Reimuller
Secretary:

Appended: Savoca and Tomcik ambulatory easements,
Coastal Records Project photograph #11968

17 of 20



20 of 20

THOMAS E. COCHRANE
CA. Reg. Geologist #6124
P.O. BOX 358
The Sea Ranch, CA 95497
707-785-2953
FAX 707-785-3666

EXHIBIT NO. 7**APPLICATION NO.**

A-1-MEN-03-062

MELLO

GEOLOGIC REPORT

(THOMAS E. COCHRANE RG)

(1 of 8)

July 23, 2001

Frank & Julia Mello
2259 Shadow Lawn
West Point, MS 39773

**RE: Geologic Report for Proposed Bluff top Residence,
27232 Warren Drive, Point Arena, CA 95463
Mendocino County, California
APN 027-412-27,28,29,30 & 31**

Introduction

This letter presents the results of my Geologic Reconnaissance of your proposed bluff top residence at 27232 Warren Drive, Point Arena, California. The property is located just west of Highway One approximately two and one-half miles south of Point Arena.

I reviewed files on the property located at the Mendocino Planning & Building Services and at the Mendocino Environmental Health Departments in Ft. Bragg. I reviewed published literature covering the area. I examined aerial photos, from 1952 to 1993 to determine the rate of bluff retreat erosion. I made two site visits to the property to examine the geologic setting, measure dips and strikes, photograph the bluff edge and to visually examine the stability of the bluff edge.

Site Conditions

The site consists of a consolidation of five lots from the old Whiskey Shoals Subdivision and fronts to a small cove at the Pacific Ocean edge. This cove indents the coast by approximately 160 feet and is 360 feet long. The bluff rises to 80 to 90 feet elevation and is very flat in this part of the subdivision. The five lots are over 450 feet from Warren Drive to the bluff edge. The cove frontage is approximately 150 feet. The central part of the lot is approximately 400 feet wide.

A water well has been drilled on Lot 28 approximately 55 feet from Warren Drive. (Mendocino County has no records in their files on this well, although it was reported in their files as having been drilled.) The Environmental Health Department

requires water to the lot, but has no requirements as to quantity and quality. I would recommend that you pump test the well for quantity and test for quality. There are no adjacent septic leach fields that might cause contamination.

A Soils Evaluation Report was done in 1995 by David R. Miller for the design of an onsite septic system. Three backhoe pits were dug and tested and a septic system was designed for the proposed house site. The three pits measured 26 inches, 37 inches and 32 inches of soil cover over fractured and indurated shale. This compares with the soil profile of two to three feet which I measured at the bluff edge. This soil consists of a sandy dark brown loam with medium compaction. Ample room exists on the lot for the proposed septic system. (A copy of that report is included here as an addendum.)

The surface of the site is an old beach terrace of Pleistocene age, probably cut during the Sangamon Interglacial. No terrace deposits are in evidence at the bluff edge. Site vegetation consists primarily of grasses. No surface cracks were visible throughout the extent of the site. Adjoining lots are at a similar elevation. No surface runoff or flooding is anticipated as the general area drains gently west to the ocean but to a greater extent east toward the highway and south into Ross Creek.

Site and Regional Geology

The bedrock in the area consists of sedimentary rocks of Miocene age. Just to the south, the Schooner Gulch section (Tmg(s)) forms the steeply west dipping cliffs of Schooner Gulch. The south end of the Whiskey Shoals subdivision is underlain by steeply west dipping rocks assigned to the Abalone Cove section (Tmg(a)). These give way upward into the Monterey formation (Tmm). All these rocks consist of interbedded sands, silts and shales and are difficult to separate into distinct separate units.

The area has been severely fractured, folded and faulted as the Pacific Plate has wrenched its way north along the North American Plate. The San Andreas Fault Zone lies four miles to the east, with its major trace marked by the Garcia River. Many of the small coastal stream traces are eroding along adjustment faults. Ross Creek, just south of the subdivision marks one of these faults. The strike and dip of the rocks show a marked change from one side of the stream to the other. (See Geologic Site Map.)

The small cove in front of the subject property contains rocks with strong west-southwest dip at the ocean edge, but are flexed into a small anticline toward the back of the cove. This bending of the rocks has greatly fractured the area and weakened the rocks as compared to those on the west flank (ocean side). This is the probable reason for the formation of the cove, which seems to be retreating (eroding) at a faster pace than the adjoining areas to the north and south.

2
2098

Bluff Retreat

I have examined several sets of aerial photos to determine the rate of bluff retreat. The oldest photos were taken in 1952, thus giving us almost a fifty year history of bluff erosion. Other photos were examined, taken in 1972, 1978 and 1993. These photos were enlarged to a similar scale and overlain with a tracing of the most recent bluff shape. Surprisingly, a very low rate of bluff retreat was in evidence.

On the southeast side of the cove, one segment has fallen off the cliff. Part of it is in evidence in the photo included for the south side of the cove. Visually, there is an additional chunk of loose rock at the southwest point of the cove to the ocean. This section is off the subject property, but may affect further development of that area. (See Photo 1.)

Small sea caves are present on all three sides of the cove. None of these seem to underlie the Whiskey Shoals lots that are adjacent to the cove. However, their presence offers specific sites for slumping and higher degrees of erosion than we might expect in other areas. (See Photos 2 & 3.)

Causes of Bluff Retreat

1. Exposure to the winter storms is the chief hazard attributing to bluff erosion. The southern front edge of the cove is therefore the most susceptible to erosion.
2. The folding of the rocks into a sharp anticline has left the rocks in a highly fractured state. This is most noticeable in the photo of the north side of the cove. Small caves occur near the top of the cliff near the apex of the anticline.
3. The steepness of the edge of the bluff into the cove adds to the instability of the fractured rocks. Even a small earthquake could cause some of these rocks to fall into the cove.
4. The shale layers are more easily eroded than the sandstone beds. The shale beds are more numerous in the east part of the cove and probably were a contributing factor in the formation of the cove.

Conclusions

Therefore, caution in building on the cliff edge is warranted. From aerial photo analysis, it appears that erosion has been slow in the past fifty years. My analysis indicates an erosion rate in the range of two to four inches per year. In 75 years we might therefore expect 6 or 7 meters of erosion. Using a safety factor, I would recommend not building less than 50 feet (16+ meters) from the bluff edge.

The proposed house site has the advantage of being a little more protected than adjacent sites on the bluff edge to the north and the south. The underlying rocks are nearly horizontal back from the apex of the anticline and therefore more stable.

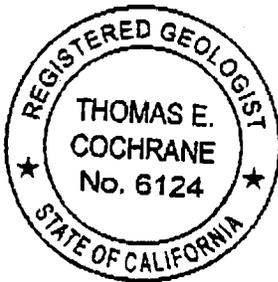
To minimize additional bluff erosion, I would recommend that surface water drainage, as much as possible, be directed behind the house and not into the cove. The house foundation can easily rest on bedrock, found at less than three feet over much of the site.

Due to the proximity of the San Andreas Fault, there is a probability of strong seismic shaking during the lifetime of the proposed residential structure. Wood framed structures, designed in accordance with current building codes, are well suited to resist the effects of ground shaking, except possibly for the most severe earthquakes. Liquefaction is not thought to be a problem at this location. The bluff height would seem to lesson the risk of tsuanumi danger.

Limitations

This geologic reconnaissance was performed within usual and current standards of the profession, as they relate to this and similar localities. No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in this report.

Respectfully submitted,



Thomas E. Cochrane

Thomas E. Cochrane
CA. Registered Geologist-#6124

Attachments:

Photos 1,2,3.

Geologic Site Map

4 of 8

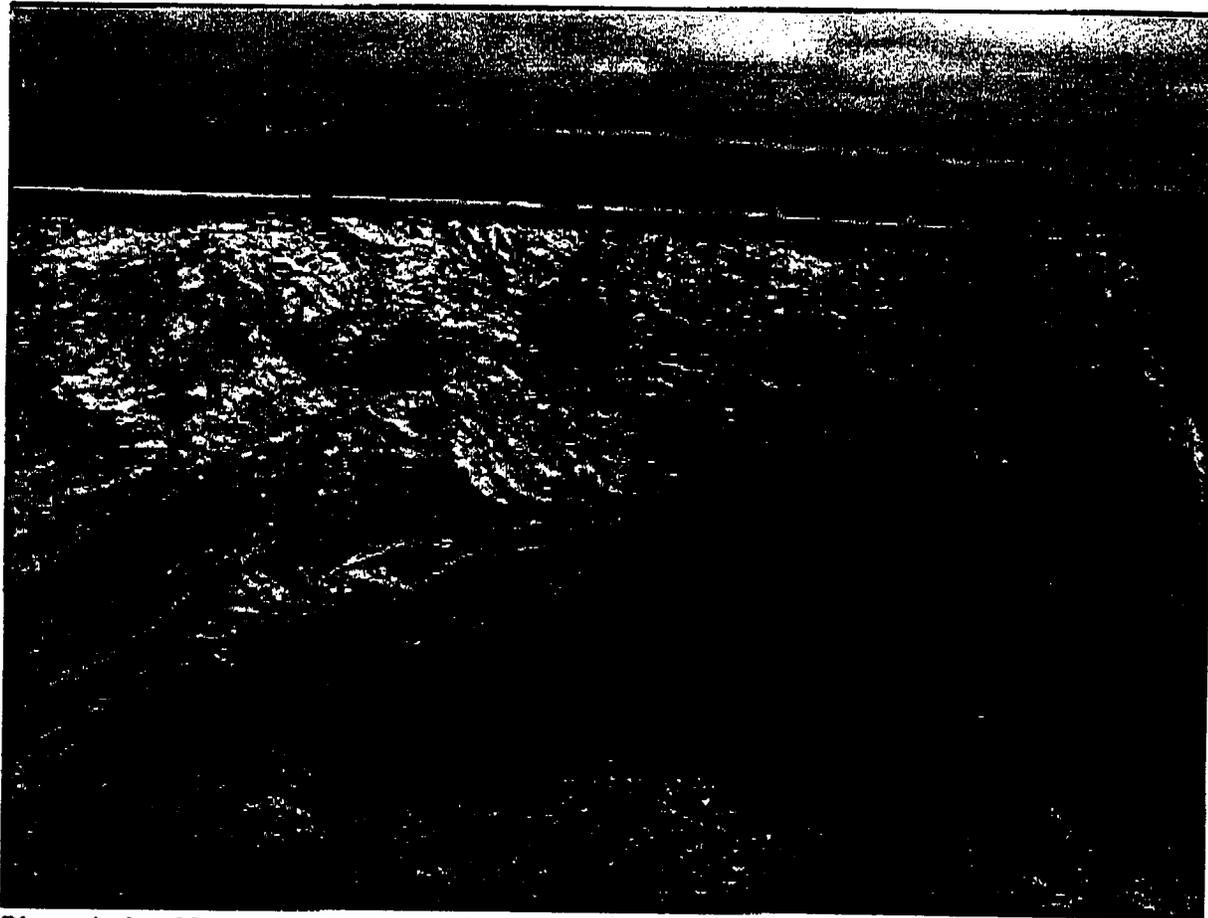
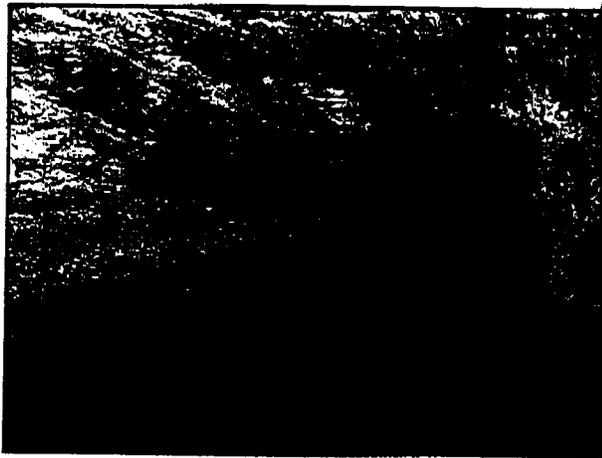


Photo 1 Looking at South Side of Cove

2001 Photo

Indicates steeply dipping west beds at ocean edge (52 to 58 degree SW dip), small sea caves forming at ocean edge, beds flatten toward the left (east) into an small anticline.



Sea Caves forming at base of cliff

598



Photo 3 Looking Northeast at East Side of Cove

2001 Photo

Indicates gently west dipping beds of shale and sandstone, some evidence of minor slumping at the top edge of the cliff near the center of the photo, slight wave undercutting near the base of the cliff.

Photo 3A Looking Southeast at Bluff edge

Note: 2-3 ft. Soil profile, overlying nearly flat lying beds of sandstone, small slump at right side of photo, thick squeezed shale beds at center and lower right corner.



648

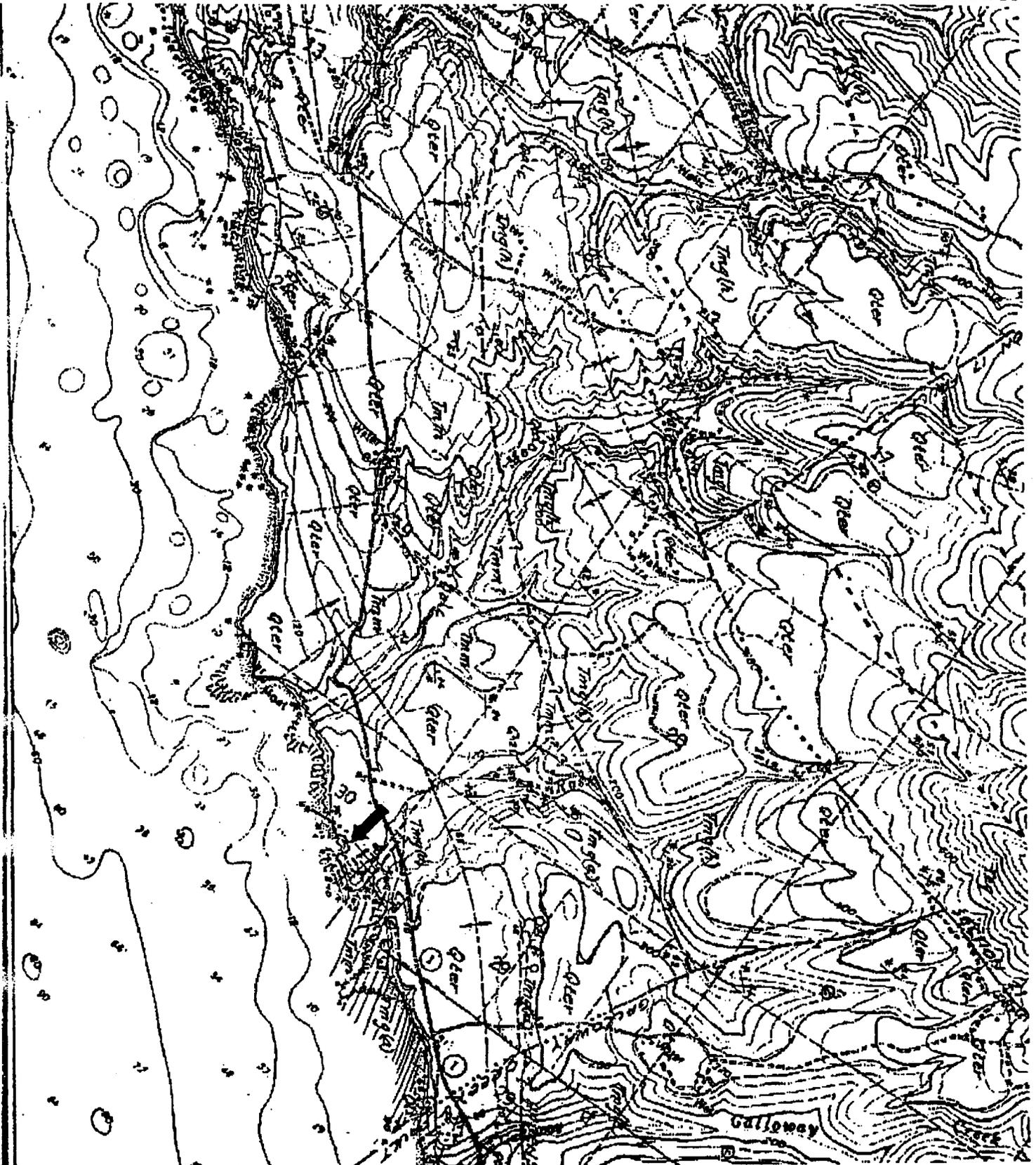


Photo 2 Looking at North Side of Cove

2001 Photo

Indicates steeply west dipping beds at the ocean edge, small sea caves at the ocean edge, beds flatten to the right (east), highly contorted and squeezed beds near the center of the photo. In the distant top left, the next point has nearly flat lying beds.

7 of 8



Geologic Map South of Point Arena
 From: E.S.A. 1971
 PG & E Mendocino Power Plant Site Geology Investigation

LEGEND

- Qter Marine Terrace Deposits Pliocene-Pleistocene
- Tmm Monterey Formation Miocene
- Tmg Galloway & Schooner Gulch Formations
- Tmg(a) Abalone Cove Section

8 of 8

Nesting and Habitat of Pelagic Cormorants in Mendocino County, California in 2002

Frank C. Mello, Ph.D.

Summary and Recommendations:

This study recommends that human residents in the proposed house to be build be encouraged not to approach or make loud noises at the cliff bluff edge during March and April of each year. Persons using the access trail must not approach or make loud noises at the cliff bluff edge during March and April of each year. No attention should be made to the presence of the Cormorant Rookery. The subject property to be built should not have any outside loud speakers that will make noise capable of disturbing birds in the area. Normally in the months of March and April the weather is cool which discourages persons from venturing outside or leaving windows open. Outside lighting for the house should be minimal and should be facing down and not out. The proposed setback for the house can be remained at 100 feet as there is no significant proof that any further setback would be more beneficial for bird habitat. The main reason for this is that most all bird activity is down the face of the cliff and not near the bluff edge. Lastly it is recommended that no project construction be conducted during the months of March and April.

Introduction:

This evaluation was conducted to observe the nesting, habitat and population status of roosting and breeding seabirds in the Moat Creek Subdivision Development in Point Arena, California. This evaluation is required by the Department of Planning and Building Services, County of Mendocino in the State of California for approval of Coastal Development Permit Application CDP# 86-01.

Study Area:

Refer to attached Mendocino County Deed Recording (Mendocino County 2003) for a legal description of the property and bluff area. The subject property is located in the Moat Creek Subdivision and is a bluff top ocean front lot. For the purposes of consistency, I will use the area locations provided by Elliott 2000. Again these area locations are as follows (Elliott 2000):

1. **Area 1:** Southern side of cove, under marker 152. This area is located approximately half way between the water and the top of the bluff
2. **Area 2:** Southern side of cove, under marker 150. This area is located east of Area 1.
3. **Area 3:** Northern side of cove, near marker 113.

The habitat studied was inclusive of the entire cove in front of the property (see exhibit 1 for aerial photograph). These areas were located on the adjacent south and east lots that are not part of the project deed. The estimated cliff elevation from low tide shore line to the top of the cliff over the ocean is estimated to be 150 feet.

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-03-062

MELLO

BIOLOGICAL ASSESSMENT

(FRANK C. MELLO PhD)

(1 of 8)

Methods:

The subject cove was visited on April 19-23, 2002. This particular time was selected because studies (Anderson 2002; Weed 2002) indicate that for the months of March and April, ocean shore birds arrive at the northern California coast for roosting, nest selection, breeding and nesting. Observation of the cove wall, bird flight patterns and nesting, roosting, and feeding activities were made with a 20x Bushnell Spacemaster II spotting scope. There were shortcomings of observations. Some observation sites were unsatisfactory because not all nests or eggs/young were readily visible, or a site was logistically difficult to visit. Consequently, nests were not quantitatively measured for number of eggs or young.

Results and Conclusions:

During my visit I observed only one specie of shore bird namely the Pelagic Cormorant (*Phalacrocorax Pelagicus*). Information about the Pelagic Cormorant (Anon 2003) are as follows:

1. Length: 22 inches; Wingspan: 40 inches
2. Sexes similar in appearance
3. Large, dark water bird with a long, hooked bill and long tail
4. Long, thin neck
5. Gular region red
6. Often perches with wings spread to dry them
7. Adult Pelagic Cormorants are entirely dark plumage except for a white flank patch. There are two crests on the head and thin, white plumes on the neck
8. Immature Pelagic Cormorants have very dark plumage
9. Live along open, windswept, coasts and can nest with other cormorants and other seabirds on steep, remote cliffs where they're safer from predators or disturbances
10. Unlike Brandt's Cormorants, which sometimes hunt cooperatively, Pelagic Cormorants hunt alone
11. Their diet consists of fishes (to 35 inches), crabs and worms
12. The fish that they feed on are generally of little commercial value, though in times past they were harassed by fishermen who blamed the birds for depleting their catches
13. Their range is Alaska to Baja California
14. Pelagic Cormorants will use one nest for several years, piling up seaweed, grass and ocean debris until the mound is five to six feet high.
15. Nests are easily visible because they are white-washed with bird guano

Nesting Pelagic Cormorant pairs were observed in the subject cove as follows:

1. **Area 1:** Three nesting pairs of Pelagic Cormorants were observed.
2. **Area 2:** Two nesting pairs of Pelagic Cormorants were observed.
3. **Area 3:** No nesting seabirds of any kind were observed.

248

No attempt to count the number of eggs or young birds was made as it was difficult to make these observations. It appears that no empty nests were observed. The Pelagic Cormorants were commonly seen leaving and returning to their nests. As characteristically evident they fly low to the water after leaving the cove in their trip to their feeding grounds. The birds seemed mostly heading northward during my observations.

All of the nests were generally visible from the cliff edge from different angles. It appeared to the author that the nesting pairs seemed more disturbed (causing flight) when humans were present than from any noises made.

Breeding seabird populations along the west coast declined since European settlement began in the late 1700's because of human occupation of, commercial use of, and introduction of mammalian predators to seabird nesting islands. In the 1900's, further declines occurred in association with rapid human population growth and intensive commercial use of natural resources in the Pacific region. In particular, severe adverse impacts have occurred from partial or complete nesting habitat destruction on islands or the mainland, human disturbance of nesting islands or areas, marine pollution, fisheries, and logging of old growth forests (Ainley and Lewis 1974; Bartonek and Nettleship 1979; Hunt et al. 1979; SOWLS et al. 1980; Nettleship et al. 1979; Speich and Wahl 1989; Ainley and Boekelheide 1990; Sealy 1990; Ainley and Hunt 1991; Carter and Morrison 1992; Carter et al. 1992; Vermeer et al. 1993). Bayer 1996 suggests that nesting success of some Brandt's Cormorants during the El Nino year of 1983 may have reduced. In California, nesting success can vary widely among years and with the age of breeders (Boekelheide and Ainley 1989; Boekelheide et al. 1990).

With regard to Cormorants in general, the species have declined in much of its North American range. It has also declined along the western coast of Baja California (Remsen 1978). Reason for the decline is habitat destruction and human disturbance, particularly from boating (Lederer 1976). In the Channel Islands' populations have declined due to eggs thinning from DDE contamination and to some extent human disturbance at nest sites (Gress et al. 1973). In 1978 Remsen (Remsen 1978) recommended an immediate ban on pesticides, and an elimination of boating and other human disturbances in the vicinity of nesting colonies during the breeding season.

Summary:

Based on my observations, there is a thriving colony of Pelagic Cormorants on subject property under investigation. These birds are rare and they and their habitat need to be protected. Based on known data, humans and birds can successfully coexist if the following actions are enacted: 1) No human activity during the nesting cycle (March and April of each year) for Pelagic Cormorants; 2) no physical disturbance of the cliff side of the cove facing the subject property 3) Minimize noises around nesting Cormorants during March and April; and 4) the Mendocino County should encourage fisherman in the area to not disturb or harm Cormorants at any time.

398

Recommendations:

This study recommends that human residents in the proposed house to be build be encouraged not to approach or make loud noises at the cliff bluff edge during March and April of each year. Persons using the access trail must not approach or make loud noises at the cliff bluff edge during March and April of each year. No attention should be made to the presence of the Cormorant Rookery. The subject property to be built should not have any outside loud speakers that will make noise capable of disturbing birds in the area. Normally in the months of March and April the weather is cool which discourages persons from venturing outside or leaving windows open. Outside lighting for the house should be minimal and should be facing down and not out. The proposed setback for the house can be remained at 100 feet as there is no significant proof that any further setback would be more beneficial for bird habitat. The main reason for this is that most all bird activity is down the face of the cliff and not near the bluff edge. Lastly it is recommended that no project construction be conducted during the months of March and April.

Literature Cited:

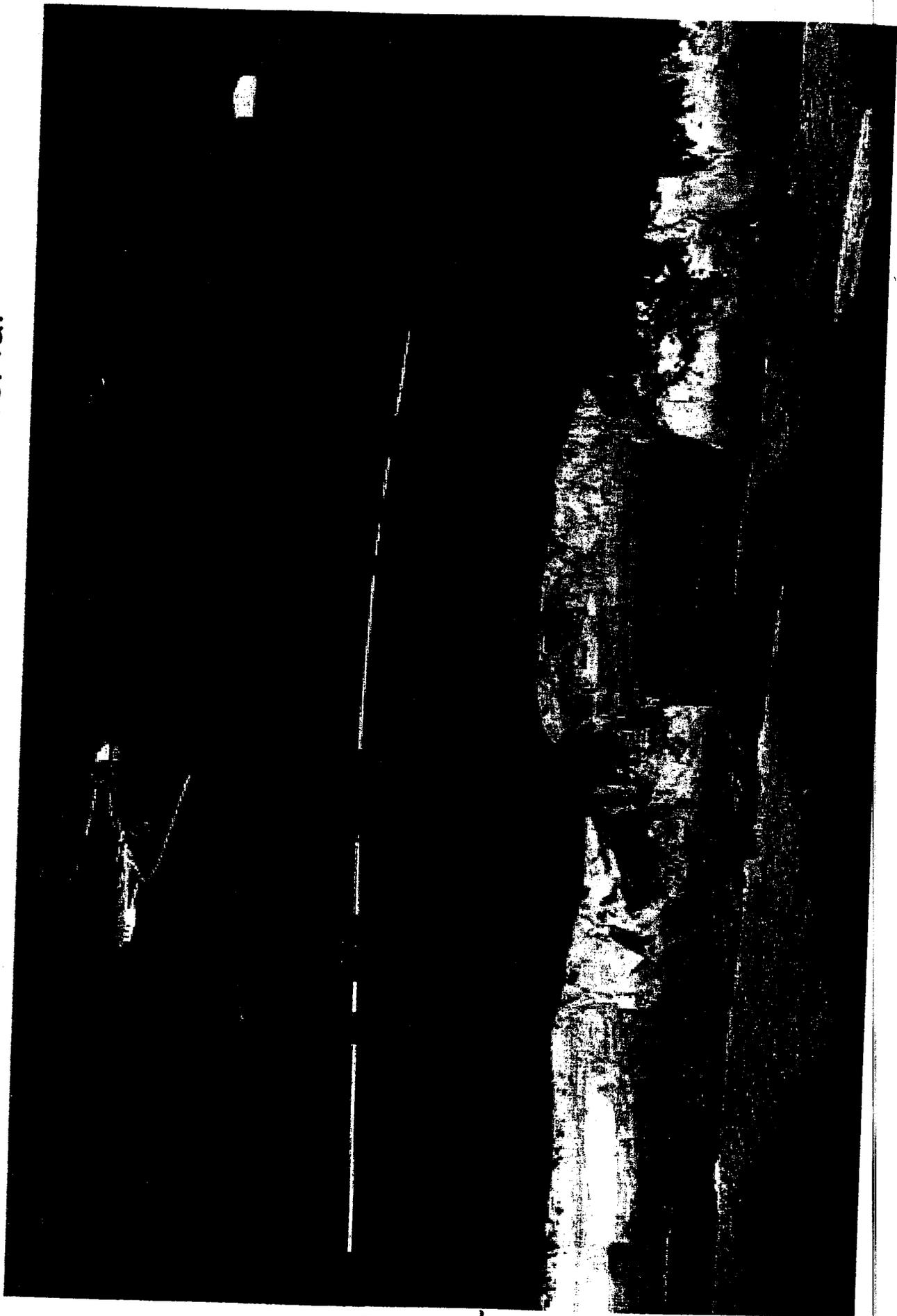
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Exhibit 1 - California Lot Aerial



7098

Fax to: 662-492-8982

Draft - for your review + comments + edits

July 9, 2003

Mr. Woody Hudson

Mendocino County Planning and Services Department

PLEASE PROVIDE ME WITH MR HUDSON'S ADDRESS AND TITLE

Re: Coastal Development Permit Application DCP#86-01

Dear Mr. Hudson:

I am writing to you regarding the proposal presented to you by Dr. Frank C. Mello as it affects the nesting of the Pelagic Cormorants on his property. It is my understanding that Dr. and Mrs. Mello are requesting permission to construct a home that will be 100 feet from the cliff on which this species nests on an annual basis. It is my understanding that the Pelagic Cormorants nest on the face of the cliff approximately half way down the cliff and not near the top of the bluff.

I have spent many years studying breeding behavior and monitoring disturbances in the Bald Eagle. I have also worked on disturbance studies for a number of other species. It has been my experience that source of most bird disturbance is caused by visual and/or auditory annoyance. Human presence is a major cause of disturbance in wildlife. Since the Pelagic Cormorants will not be able to see the Mello family or their construction team, this will not be a source of disturbance. The colonies are described as being on the face of the cliff over breaking waves. This in itself will be a natural auditory mitigator. Finally, the Mello family plans on carrying out construction during months that would have the least impact on the birds. Assuming that eggs are laid in the beginning of March, they would hatch in the beginning of April. By the end of April, chicks would be over half their adult size and weight. Should, in the unlikely event that the parents are disturbed and leave the nest, the likelihood of aerial predation would be greatly minimized. Also, as the chicks get larger, parents spend minimal time with them, as they must spend significantly larger amounts of time foraging to feed enormous chicks.

When all of these factors are taken into consideration, it appears that Dr. and Mrs. Mello have devised a very well thought out plan for protecting the Pelagic Cormorants on their property.

As a final note, it is my understanding that there is a public access trail adjacent to the bluff. Cormorants tend to use nests over and over. If the birds have become acclimated to hikers, they should not be disturbed at all by a family living a hundred feet from the bluff.

Please contact me should you have further question.

Sincerely,

Nancy Anne Lang, Ph.D.

RECEIVED

JUL 14 2003

PLANNING & BUILDING SERV
FORT BRAGG CA

8098



Figure 1: Project Area Surroundings and Setting

Oblique aerial photo looking toward Mello project site (left of mid-center). Note distinctive covelet at base of project site's blufftop. The area between Moat and Ross Creeks comprises a predominantly grass- and forb-covered uplifted coastal terrace prairie with scattered tree cover, that transitions into a coastal closed-cone forest further inland. The development pattern is remote rural residential in character. The Mello project would be the first private development within the southern unit of the reconfigured Moat Creek Estates Subdivision (formerly "Whiskey Shoals"). Source: Copyright © 2002-2004 Kenneth Adelman, California Coastal Records Project, www.californiacoastline.org

EXHIBIT NO. 9
APPLICATION NO. A-1-MEN-03-062
MELLO
SITE VISIBILITY STUDY MAP



Post Office Box 1099
Goleta, CA 93116
(805) 563-7976
gavcoast@silcom.com

February 26, 2004

California Coastal Commission,
Box 4908,
Eureka CA 95501
fax: (707) 445-7877

RECEIVED

FEB 26 2004

CALIFORNIA
COASTAL COMMISSION

Re: A-1-MEN-03-062 (Mello)

Board of Directors

Mike Lunsford
President

Lee Moldaver
Vice-President

Phil McKenna
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Sharyn Main

Marc McGinnes

Don Olson

Paul Relis

Selma Rubin

Paul Shaw

Col. David Van Mullem
USAF (Ret.)

Diane Wondolowski

Dear Commissioners:

The Gaviota Coast Conservancy supports the appeal by Friends of Schooner Gulch of A-1-MEN-03-062. (Mello)

We are particularly concerned about the implication of this appeal for segments of the California Coastal Trail in Santa Barbara County.

It appears that rapid sea cliff erosion was not adequately contemplated and accounted for when these fixed-location easements were acquired. Losing this trail, or similarly situated trails elsewhere, would represent a catastrophic failure of planning and associated funding. In the case of Schooner Gulch, extensive trail improvements have been funded by the Coastal Conservancy including a parking lot and bathrooms.

The Commission can reasonably expect to face this problem repeatedly in the future. This case presents the Commission with an opportunity to not only create a new ambulatory easement in mitigation for project-related disturbances, but to establish statewide policy addressing this problem.

Please act now to head off this problem.

Sincerely,

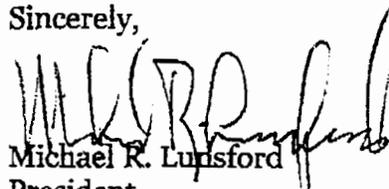

Michael R. Lunsford
President

EXHIBIT NO. 10

APPLICATION NO.

A-1-MEN-03-062

MELLO

GENERAL

CORRESPONDENCE

(1 of 12)

26 February 2004

California Coastal Commission,
Box 4908,
Eureka CA 95501
fax: (707) 445-7877
Re: A-1-MEN-03-062 (Mello)

Commission:

As a member and supporter of Coastwalk, and an advocate for completion of the California Coastal Trail, I support the appeal by Friends of Schooner Gulch of A-1-MEN-03-062 (Mello). This appeal could halt the future loss of segments of the California Coastal Trail by erosion.

The California Coastal Trail is an official State Trail. This segment connects through to Schooner Gulch and Bowling Ball State Beach. In as soon as 23 years this public trail will be lost. This rapid erosion was not anticipated. Losing this trail would represent a catastrophic failure of planning and wasted state money. Extensive trail improvements have been funded by the Conservancy including a parking lot and bathrooms.

Based on recent studies, and the County staff report, it is clear that if this crisis is not addressed it will undo past planning efforts and doom future efforts to establish a continuous California Coastal Trail.

Based upon faulty erosion data and analysis, the trail was originally described as a fixed-location easement. Most new trails now are required to be "ambulatory" and move back with the cliff face. If not solved now, we will witness the disappearance of hundreds of public access trails and the California Coastal Trail.

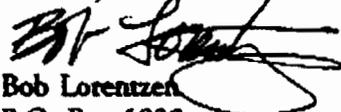
If only one segment of the trail is lost to erosion, then this entire trail section will be effectively lost to the public and to local owners. The trail benefits all the property owners along this bluff top, and their guests and vacation renters.

This project presents the Commission with an opportunity to create a new easement accounting for the erosive disturbances brought with the proposed development, and the erosive effects of rising seas due to global warming. It will establish statewide policy regarding our newly emerging appreciation of future erosion problems.

As the trail becomes narrower, it will become suddenly unsafe. An ambulatory easement would preserve the public's constitutional rights of access to this magnificent headland and its views, and still satisfy the need to manage the access for safety.

The owner bought the lot with the trail already in place. We are asking for a change in the nature of the easement's description only.

Sincerely,



Bob Lorentzen
P.O. Box 1832
Mendocino CA 95460

RECEIVED

FEB 26 2004

CALIFORNIA
COASTAL COMMISSION

2912

Jon Breyfogle
10110 Old Redwood Highway
Penngrove, CA 94951

RECEIVED

February 26, 2004

MAR 01 2004

California Coastal Commission
P.O. Box 4908
Eureka, CA 95501

CALIFORNIA
COASTAL COMMISSION

RE: A-1-MEN-03-062 (Mello)

Commission Members:

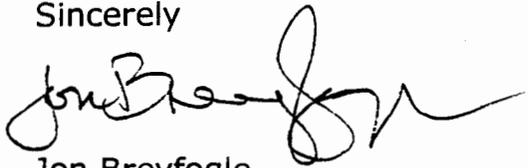
As a citizen of California and as a member of Coastwalk I support the appeal by the Friends of Schooner Gulch of A-1-MEN-03-062 (Mello).

Erosion along our coastline is an inevitability. Provisions for such entities as trail easements, a requirement for planning approval for past coastal development, must not be erased because prior faulty planning ignored this fact.

If trail easements do not have the flexibility of moving back as erosion forces eat away at exposed coastline properties there will soon be no coastal trail at all. As one who has walked the trail from Oregon to Mexico, including this disputed portion, I urge you to remedy this situation.

I would contend that the descriptive words used to "fix" the location of existing easements are not as rigid as they would seem: the bearings and distances and descriptive phrases used to define these easements should be viewed as merely locative; a verbal way to define where the bluff top is. The intent is that there be a trail, not an empty description mocking the planning process.

Sincerely


Jon Breyfogle

3 of 12



Saving the California coast...one step at a time

7207 Bodega Avenue Sebastopol, CA 95472-3725 ☎ 707 829-6689 ☎ 800 550-6854 ☎ FAX 707 829-0326 ☎ www.coastwalk.org

2-20-04
California Coastal Commission
Box 4908,
Eureka CA 95501

RECEIVED

FEB 23 2004

CALIFORNIA
COASTAL COMMISSION

Re: A-1-MEN-03-062 (Mello)

Dear Commissioners:

The Board of Directors of Coastwalk directed me to write on their behalf to support the appeal by Friends of Schooner Gulch of A-1-MEN-03-062 (Mello).

This appeal could halt the future loss of segments of the California Coastal Trail by erosion. The implications of allowing fixed trail easements to remain or be established are enormous. We will ultimately lose many miles of public access to the coast, as well as opportunities, and we will halt any and all attempts to finish the Coastal Trail as mandated by state law.

This very situation has developed at Sea Ranch, where the public trail easement has eroded away and no provision was made to remedy the condition. Public access, while intended as part of the settlement under the Bane Bill, now appears to be at the mercy of the Sea Ranch Association, who is negotiating with the Sonoma County Parks Dept.

The Coastal Commission, Coastal Conservancy, Coastwalk, State and Federal Parks, numerous environmental organizations and, most importantly the public, supports public access and the creation of the Coastal Trail. Public access is guaranteed by the state Constitution and the Coast Act and demanded by the public.

4012

Del Norte Humboldt Mendocino Sonoma Marin San Francisco San Mateo Santa Cruz
Monterey San Luis Obispo Santa Barbara Ventura Los Angeles Orange San Diego

I would like to re-emphasize the points already stated by Friends of Schooner Gulch:

- The California Coastal Trail is an official State Trail as mandated by SB 908 (Chesbro). The dramatic segment in question connects through to Schooner Gulch and Bowling Ball State Beach. In as soon as 23 years this public trail will be lost. This rapid erosion was not anticipated. Losing this trail would represent a catastrophic failure of planning and wasted state money. Extensive trail improvements, funded by the Coastal Conservancy, include a parking lot, bathrooms, and an established trail.
- If this crisis is not addressed it will undo past planning efforts and doom future efforts to establish a continuous California Coastal Trail.
- If only one segment of the trail is lost to erosion, then this entire trail section will be effectively lost to the public and to local owners. The trail benefits all the property owners along this bluff top, and their guests and vacation renters.
- This project presents the Commission with an opportunity to create a new easement accounting for the erosive disturbances brought with the proposed development, and the erosive effects of rising seas due to global warming. It will help establish statewide policy regarding our newly emerging appreciation of future erosion problems.
- As the trail becomes narrower, it will become suddenly unsafe. An ambulatory easement would preserve the public's constitutional rights of access to this magnificent headland and its views, and still satisfy the need to manage the access for safety.
- The owner bought the lot with the trail already in place. We are asking for a change in the nature of the easement's description only.

Sincerely,



Richard Nichols
Executive Director

5 of 12

2249 Graham Road
Bayside, CA 95524
February 19, 2004

California Coastal Commission,
Box 4908,
Eureka CA 95501
fax: (707) 445-7877

Re: A-1-MEN-03-062 (Mello)

RECEIVED

FEB 23 2004

CALIFORNIA
COASTAL COMMISSION

Commission:

As a member and supporter of Coastwalk, We support the appeal by Friends of Schooner Gulch of A-1-MEN-03-062 (Mello). This appeal could halt the future loss of segments of the California Coastal Trail by erosion.

The California Coastal Trail is an official State Trail. This segment connects through to Schooner Gulch and Bowling Ball State Beach. In as soon as 23 years this public trail will be lost. This rapid erosion was not anticipated. Losing this trail would represent a catastrophic failure of planning and wasted state money. Extensive trail improvements have been funded by the Conservancy including a parking lot and bathrooms.

Based on recent studies, and the County staff report, it is clear that if this crisis is not addressed it will undo past planning efforts and doom future efforts to establish a continuous California Coastal Trail.

Based upon faulty erosion data and analysis, the trail was originally described as a fixed-location easement. Most new trails now are required to be "ambulatory" and move back with the cliff face. If not solved now, we will witness the disappearance of hundreds of public access trails and the California Coastal Trail.

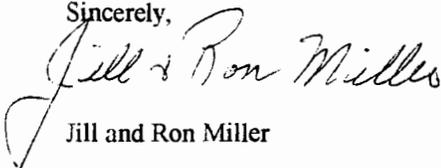
If only one segment of the trail is lost to erosion, then this entire trail section will be effectively lost to the public and to local owners. The trail benefits all the property owners along this bluff top, and their guests and vacation renters.

This project presents the Commission with an opportunity to create a new easement accounting for the erosive disturbances brought with the proposed development, and the erosive effects of rising seas due to global warming. It will establish statewide policy regarding our newly emerging appreciation of future erosion problems.

As the trail becomes narrower, it will become suddenly unsafe. An ambulatory easement would preserve the public's constitutional rights of access to this magnificent headland and its views, and still satisfy the need to manage the access for safety.

The owner bought the lot with the trail already in place. We are asking for a change in the nature of the easement's description only.

Sincerely,


Jill and Ron Miller

6 of 12

Sunshine
6 Limetree Lane
Rancho Palos Verdes, CA 90275-5909
(310) 377-8761
SunshineRPV@aol.com

February 20, 2004

CALIFORNIA COASTAL COMMISSION
BOX 4908
EUREKA, CA 95501

RECEIVED

FEB 27 2004

CALIFORNIA
COASTAL COMMISSION

RE: a-1-MEN-03-062 (Mello). Whiskey Shoals appeal.

Dear Honorable Commissioners:

It is truly difficult to believe that this letter needs to be written. Of all people, the Coastal Commission should understand that coastal erosion happens. Preserving public access to our coast should mean preserve it forever. Keeping development set back hundreds and hundreds of feet from the mean tide line also encourages the survival of our native coastal habitat residents.

This specific case is an opportunity for you to live up to the purpose of your existence as a legal body. Please uphold this appeal and make the best of this situation.

Sincerely



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Feb 24 04

California Coastal Commission
Box 4908
Eureka, Ca 95501

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FEB 27 2004

CALIFORNIA
COASTAL COMMISSION

Re: A-1-Men-03-062 (mello)

To The Commission:

As a member and supporter of COASTWALK, and
Completion of the CALIFORNIA COASTAL TRAIL being
very important to me,

I urge your support of the appeal by Friends
of Schooner Gulch of A-1-Men-03-062 (mello) to
change the description of the TRAIL EASEMENT at
Whiskey Shoals from a fixed to a floating easement.

Losing this trail to the rapid erosion that's going
on (faster than anticipated, as I understand) would
be a big waste of state money, and improvements
done by Coastal Conservancy.

Please solve the problem now by a change
in wording from FIXED to floating.

Thank you,

Jinda Hanes
PO Box 754
Sebastopol Ca 95473

8 of 12

California Coastal Commission
Box 4908
Eureka CA 95501

RECEIVED

FEB 27 2004

CALIFORNIA
COASTAL COMMISSION

RE: A-1-Men-03-062 (Mello)

Commissioners and Staff:

Coastwalk has brought to my attention the appeal by Friends of Schooner Gulch to rectify the fixed-location easement of the trail that connects Schooner Gulch and Bowling Ball State Beach.

Within decades the easement will be lost to erosion, and the trail will be lost. The parallel to similar erosion problems on the bluff trail at Sea Ranch is obvious.

Both examples of trail erosion threaten the continuity of the California Coastal Trail. The state long trail will eventually become the icon of Coastal Commission success. The Commission should address this fundamental challenge to public access to the California coastline.

I hope the Commission will rectify these past mistakes of engineering and trail planning.

Sincerely,



Bill Kortum

February 25, 2004

9 of 12



Stewards of the Coast and Redwoods

Preservation through Education and Restoration

Russian River Sector State Parks

February 22, 2004

California Coastal Commission,
Box 4908,
Eureka CA 95501

Re: A-I-MEN-03-062 (Mello)

Dear Commission Members:

On behalf of **Stewards of the Coast and Redwoods (Stewards)** we support the appeal by Friends of Schooner Gulch of A-I-MEN-03-062 (Mello). This appeal could halt the future loss of segments of the California Coastal Trail by erosion.

The California Coastal Trail is an official State Trail. This segment connects through to Schooner Gulch and Bowling Ball State Beach. In as soon as 23 years this public trail will be lost. This rapid erosion was not anticipated. Losing this trail would represent a catastrophic failure of planning and wasted state money. Extensive trail improvements have been funded by the Conservancy including a parking lot and bathrooms.

Based on recent studies, and the County staff report, it is clear that if this crisis is not addressed it will undo past planning efforts and doom future efforts to establish a continuous California Coastal Trail.

This project presents the Commission with an opportunity to create a new easement accounting for the erosive disturbances brought with the proposed development, and the erosive effects of rising seas due to global warming. It will establish statewide policy regarding our newly emerging appreciation of future erosion problems.

We urge your support for this appeal. Stewards is the nonprofit environmental organization that supports volunteer stewardship programs and resource management projects in the State Parks in the Russian River sector.

Sincerely,

Michele Luna, Executive Director

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FEB 27 2004

CALIFORNIA
COASTAL COMMISSION

10 of 12



Sara Mikkelsen, Resource Specialist
Creekside Career Center
4111 Broad Street
San Luis Obispo, CA 93401

March 1, 2004

RECEIVED

MAR 01 2004

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission,
Box 4908,
Eureka CA 95501
fax: (707) 445-7877

Re: A-1-MEN-03-062 (Mello)

Commission:

As a member and supporter of Coastwalk, we support the appeal by Friends of Schooner Gulch of A-1-MEN-03-062 (Mello). This appeal could halt the future loss of segments of the California Coastal Trail by erosion.

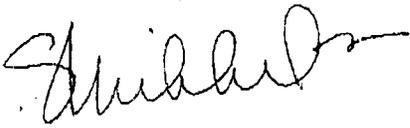
- The California Coastal Trail is an official State Trail. This segment connects through to Schooner Gulch and Bowling Ball State Beach. In as little as 23 years this public trail will be lost. This rapid erosion was not anticipated. Losing this trail would represent a catastrophic failure of planning and wasted state money. Extensive trail improvements have been funded by the Conservancy including a parking lot and bathrooms.
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11912

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- --The owner bought the lot with the trail already in place. We are asking for a change in the nature of the easement's description only.

Yours,



Sara Mikkelsen

12 of 12