STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *GOVERNOR*

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Hearing Opened:	March 17, 2004
Staff:	Jim Baskin
Staff Report:	July 1, 2004
Hearing Date:	July 14, 2004
Commission Action:	

STAFF REPORT: APPEAL

DE NOVO HEARING

APPEAL NO.:	**A-1-MEN-03-062**
APPLICANT:	**Frank and Julia Mello**
AGENT:	**Don Teutsch**
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
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 2,252-square-foot, 17-foot, 8-inch-high, single-family residence, a 960-square-foot, 14-foot, 9-inch-high detached garage with gravel driveway, a 2500-gallon water storage tank, an onsite sewage disposal system, conversion of a test well to a production well, and extension of utilities to the new structures.
APPELLANTS:	(1) **Friends of Schooner Gulch, Attn: Peter Reimuller**; (2) **Moat Creek Managing Agency**; and (3) **Eric Dahlhoff.**
SUBSTANTIVE FILE DOCUMENTS	1) Mendocino County CDP No. 86-01; and 2) County of Mendocino Local Coastal Program.

STAFF NOTES:

1. Procedure.

On March 17, 2004, the Coastal Commission found that the appeal of the County of Mendocino's conditional approval of a coastal development permit for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified LCP and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Submittal of Additional Information by the Applicant.

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of: 1) an analysis of the adequacy of a buffer width of less than 100 feet between the proposed development and a Pelagic Cormorant nesting rookery ESHA adjacent to the project site; 2) a comparative building site alternatives analysis of the effects constructing the proposed improvements at various locations on the parcel would have on visual resources; and 3) information regarding the adequacy of the water and sewage disposal. The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. The applicants have also revised their project description for purposes of the Commission's *de novo* review by changing their site plan to: 1) move the building envelope for the house and garage approximately 27 feet easterly and inland from the blufftop edge to site the structures so that they would be less visually prominent from the Moat Creek Blufftop Trail and other public coastal vista points along the shoreline and provide a greater setback from geologically unstable areas along the parcel's bluff face; 2) add a solar photovoltaic panel array over a 506-square-foot area of the proposed residence's roof; and 3) provide material specifications for assessing the solar panels' conformance with the County LCP's visual resource protection policies and standards. In addition, the applicants have offered to waive any development rights for the future construction of seawalls, shoreline protective works, or other cliff face retaining structures in compliance with the LCP's policies requiring that new development be sited and designed to eliminate the need for the construction of such protective structures during the economic lifespan of the development.

SUMMARY OF STAFF RECOMMENDATION *DE NOVO*: APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that, as conditioned, the development as amended for purposes of the Commission's *de novo* hearing is consistent with the County of Mendocino Local Coastal Program (LCP) and the public access policies of the Coastal Act.

At the Substantial Issue hearing on March 17, 2004, the Commission found that the appeal of the County of Mendocino's conditional approval of a coastal development permit for the subject development raised a substantial issue with respect to the grounds on which the appeal had been filed. The Commission continued the project and directed staff to further analyze the project's potential impacts to area visual resources and rookery habitat, and to ascertain whether adequate water and sewage disposal facilities would be available to support the development. Since the March 2004 hearing on the Substantial Issue determination, the applicant has provided considerable additional information on the effects of the project on these coastal resources.

An alternatives analysis of the relative degree of visual resource impact at four building sites on the parcel has been presented. In addition, further analysis was provided regarding the adequacy of the proposed less-than-100-foot-wide buffer area between the development and the nesting rookery habitat on the sea cliffs adjoining the parcel. The applicant has also provided information as to the production volumes measured for the water well on the parcel, and a revised on-site sewage disposal plan that meets the County's current sanitation system codes.

Based upon the visual and biological resource impact investigations, the applicants have revised their permit application, for purposes of the Commission's hearing *de novo* on the project, to relocate the proposed residential improvements further landward on the parcel to avoid development on the open terrace areas on the parcel, to situate the structures where they would be less visible from the public coastal vista points along the coast and recessed further back from the Moat Creek Bluff Trail that crosses the property's blufftop edge, and to provide a greater buffer between the development and pelagic seabird nesting rookery environmentally sensitive habitat areas (ESHAs) adjoining the project parcel.

The applicants acquired the subject property subject to a public access easement that had been dedicated by the Coastal Conservancy, the property's former owners. Despite the relocation of the house landward, the western open shoreline side of the project site will continue to be subject to coastal erosion that will cause the blufftop edge to incrementally retreat landward. Eventually this erosion will engulf the existing blufftop trail on the property and its preexisting fixed-location easement, leading to the partial loss of the previously dedicated public access trail and severing a link in the California Coastal Trail. Notwithstanding this unfortunate situation, staff does not believe there is a *nexus* between the effects of the currently proposed development and coastal access (e.g., the project causing direct physical impacts on the geologic stability of the access facility, blockage or interference with the trail, or substantially increasing demand for access facilities) such that the Commission could legally require the applicants to dedicate an ambulatory public access easement that would shift laterally landward as the blufftop erodes back over time.

As observed in field visits to the site, approximately half of the 25-foot width of the easement has been eroded away in places along the portions of the easement that traverse the small cove on the blufftop edge of the subject parcel. Based upon estimates inferred from the various geologic reports prepared for the site, the remaining portion of the easement could be completely lost to coastal erosion within a 23-year period. Staff has discussed the situation of the eroding public access trail with the applicant/owners and staff of the Coastal Conservancy. The applicants have indicated that they are not at this time agreeable to voluntarily offering for dedication or willing to sell additional property rights for establishment of either an ambulatory or fixed-location replacement public access easement on a more landward location on the property. Conservancy staff noted their past efforts at acquiring and facilitating development of public access facilities at the Whiskey Shoals Subdivision site and indicated that they are very concerned over the possible future loss of the trail and maintaining connectivity of the California Coastal Trail in this area. Conservancy staff have indicated that grant monies may become available at a future time for the Conservancy or another qualified non-profit organization to possibly acquiring a replacement easement from the owners should they be amenable to such a purchase. Furthermore, given the considerable previous efforts and investment made by the Conservancy in securing this public access facility, the Conservancy staff believe their governing board would likely recognize the crucial need for a replacement easement in this area in any future acquisition funding allocations.

As revised for purposes of the Commission's *de novo* hearing, the applicants have relocated the building envelope to place the house and garage on a portion of the lot that would avoid the open terrace areas on the parcel, cluster the development near existing vegetation so that the structures would be less visible from public vantage points along the coastline, and provide bluff setbacks for development adjacent to or near public areas along the shoreline, namely the Moat Creek Blufftop Trail. As currently proposed, the house and garage would be sited on the lot so that development within the open areas on the parcel would be minimized. In its revised location, a significant degree of physical separation would be provided between the residential uses and the nesting rookery habitat areas on the bluff face would also be afforded. Furthermore, as revised for purposes of the Commission's *de novo* review, the building envelope would be located further back from the eroding blufftop edge. Siting the house in this location would serve to further separate the proposed site improvements from geologically unstable areas.

Staff recommends that the Commission approve the development with conditions that would minimize the impact to visual resources and exposure to geologically unstable areas on the parcel.

Special Condition No. 1 requires the submittal of final plans evidencing that the proposed development will be sited no closer than 142 feet from the blufftop edge to provide an adequately wide buffer between the environmentally sensitive nesting rookery habitat adjoining the parcel and the residential site improvements for the full economic lifespan of the project. Special Condition No. 1 also requires the applicants to submit for the approval of the Executive Director, a revised landscaping and vegetation maintenance plan requiring the applicant to: (1) provide certain new landscaping and to protect existing major vegetation on the parcel in order to screen the development from public vista points and scenic coastal areas; (2) maintain the approved landscaping and screening; and (3) ensure that no invasive exotic vegetation is planted on the parcel. In addition, Special Condition No. 1 requires the submittal of final foundation,

construction, and site drainage plans that incorporate all recommendations of the submitted geotechnical report intended to avoid creating or contributing to geologic hazards.

Special Condition No. 2 requires recordation of a deed restriction stating that no shoreline protective device shall be constructed on the parcel, that the landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened, and that the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, subsidence, or erosion of the site.

Special Condition No. 3 requires recordation of a deed restriction stating that the applicant acknowledges and assumes the inherent and extraordinary risk of developing the blufftop property and waives and indemnifies the Commission against any claim of liability.

Special Condition No. 4 requires that all terms and conditions of the permit be recorded as a deed restriction to notify future property owners of the requirements of the permit.

Special Condition No. 5 requires a permit for all future improvements to the approved development. This requirement will enable the Commission to review any such improvements for their impacts on views, ESHA, public access, and geologic stability.

Special Condition No. 6 sets design standards for the exterior building materials and lighting to ensure that the development is compatible with the character of its surroundings and subordinate to its setting to protect coastal visual resources.

Staff recommends that the Commission find the project, as conditioned, is consistent with the policies contained in the County's certified LCP and the Coastal Act public access and recreation policies.

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

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-03-062 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the

public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

I. **STANDARD CONDITIONS:** See attached.

II. **SPECIAL CONDITIONS:**

1. **Revised Plans**

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-03-029**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall substantially conform with the plans dated February 10, 2004 and March 30, 2004, date-stamped received by the Commission on February 10, 2004 and April 1, 2004, respectively, and consisting of seven (7) sheets, including house and garage floor plans (3), building elevation views (2), photo-voltaic solar panel roof placement diagram (1), and a modified site plan, entitled "Table 2. Proposed Setback Plot Map - Alternative 2" (1) showing all structures sited a minimum of 142 feet from the current blufftop edge, except that the plans shall also provide for the following changes to the project:

1) Site Plan Revisions

a. The plans shall depict all portions of the main residence, detached garage, gravel-surfaced driveway and turning area, water well and storage tank, approved sewage disposal primary and secondary leachfields, and liquefied petroleum gas (LNG) storage tank located no closer than 142 feet from the blufftop edge as existed on July 14, 2004;

b. The plans shall depict the approved septic and LNG tanks located within the 30-foot vegetation clearance radius around the house and garage and sited in accordance with Mendocino County Department of Public Health – Division of Environmental Health regulations; and

c The plans shall depict the driveway and emergency vehicle turn-around at the minimum width required by the County and by the California Department of Forestry and Fire Protection, and surfaced with gravel or another pervious material.

2) Erosion and Runoff Control Plan

a. The plans shall include an erosion and Runoff Control Plan that incorporates design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater

runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The final runoff control plans shall at a minimum include the following provisions:

i. Soils grading activities shall be restricted to the dry-season between April 15 and October 31;

ii. A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed on the downslope perimeter of any construction areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;

iii. Vegetation at the site shall be maintained to the maximum extent possible. Topsoil shall be stockpiled and reused as ground cover after excavation work has been completed. Any disturbed areas shall be replanted with noninvasive native plants obtained from local genetic stock immediately following project completion, and covered by jute netting, coir logs, and rice straw;

iv. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored; and

v. Runoff from the residence and garage roof shall be collected and tie-line conveyed to the vegetated drainage swale running along the eastern road frontage of the property with Warren Drive for infiltration to the maximum extent practicable in a non-erosive manner. Splash block velocity reducers shall be incorporated into the outfall as may be needed to prevent scour and erosion in the drainage swale.

3) Landscape Revisions

a. The revised landscaping plan shall demonstrate that:

i. No non-native invasive plants will be planted at the project site;

ii. No landscaping shall be installed in areas of the lot seaward of the main residence, except as required herein;

iii. The plantings generally illustrated and described within the revised site plan, dated March 30, 2004, comprising two (2) bands of Leyland Cypress (Cupressus macrocarpa x Chamaecyparis

nootkatensis) shall be planted in the locations identified along the northwestern and southern elevations of the residence. Each band of landscape screening shall consist of a minimum of ten (10) 15-gallon container size plantings set on 10-foot centers in a linear fashion oriented parallel to the exterior wing walls of the residence; and

iv. All landscaping planted pursuant to this condition shall be maintained for the life of the project.

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

i. A map showing the type, size, and location of all plant materials that will be retained or installed on the developed site, the irrigation system, delineation of the approved building envelope for structures, driveways, onsite water supply and sewage disposal systems, and fuel storage tanks, topography of the developed site, and all other landscape features; and

ii. Appropriately worded landscaping plan notes, declaring that:

(1) "No non-native invasive plants shall be planted at the project site," and

(2) "All areas located seaward of the approved building site envelope are subject to the requirements of a 'open space deed restriction' imposed by the California Coastal Commission. With the exception of the screening trees illustrated hereupon, this area is not to be developed, landscaped, or otherwise encroached into by residential uses or site improvements;" and

iii. The landscape plan shall provide that all plantings be maintained in good growing conditions throughout the life of the project, and to ensure continued compliance with the landscape plan. If any of the trees and plants to be planted according to the plan die or are removed for any reason, they shall be immediately replaced in-kind.

4) Roofing Materials Specifications

The permittees shall submit revised roofing color plan that identifies the materials to be utilized in covering the roof of the authorized structures. The color of the roofing materials shall be either black, charcoal-gray, dark brown, or similar dark-colored hues.

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

2. No Future Bluff or Shoreline Protective Device

A(1) By acceptance of this Permit, the applicant/landowners agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-03-062 including, but not limited to, the residence, foundations, decks, garage, driveway, and the water supply and septic systems, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

A(2) By acceptance of this Permit, the applicant/landowners further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the house, garage, foundations, driveway, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

A(3) In the event the edge of the bluff recedes to within twenty-five (25) feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the permittee, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure

3. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant/landowners acknowledge and agree: (i) that the site may be subject to hazards from coastal erosion hazards, such as waves, storm waves, and flooding; or landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its

officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. Deed Restriction.

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-03-062, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Future Development.

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-03-062. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (b) shall not apply. Accordingly, any future improvements to the permitted structures shall require an amendment to Permit No. A-1-MEN-03-062 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Design Restrictions

A. All exterior siding of the proposed structures shall be composed of natural or natural appearing materials, and all siding and roofing of the proposed structures shall be composed of materials of the colors proposed in the application or darker earthtone colors only, except for the proposed light-gray/pewter or similar colored roofing material which is not permitted. Only black, charcoal-gray, dark brown, or similar dark-colored roofing materials may be used, pursuant to Special Condition No. 1. The current owners or any future owner shall not repaint, stain, or otherwise modify the house with products that will lighten the color the house without an amendment to this permit approved by the Commission. In addition, all exterior materials, including roofs, solar panels, and windows, shall be non-reflective to minimize glare;

C. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-

wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel; and

D. The photovoltaic solar panel arrays shall be limited to BP Solar® Model 3160U or 3160B Performance microcrystalline 160-watt modules, either unframed or with bronze anodized aluminum frames.

7. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

8. Conditions Imposed By Local Government.

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated March 4, 2004.

B. Project History / Background.

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 an additional 65 feet to a location 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).

On September 12, 2003, the Commission received an appeal of the County's decision to approve the development initially from Friends of Schooner Gulch and later joined by Moat Creek Managing Agency and Eric Dahlhoff. The appeal alleged that the manner in which the County of Mendocino conditionally approved the project: (1) did not ensure protection of the Moat Creek Blufftop Trail and easement 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; (2) was founded on a geo-technical analysis prepared by a registered geologist rather than either a licensed engineering geologist or registered civil engineer as specified by the LCP; (3) was based on an incomplete application that omitted crucial exterior building material and landscaping details and did not fully disclose the existing coastal erosion affecting coastal access facilities on the subject parcel; (4) was inconsistent with the LCP's criteria for siting development in highly scenic areas; and (5) did not effectively preclude the need for the construction of seawalls or other cliff face retaining structures during the full 75-year economic lifespan of the structures as the County failed to require that rights to such construction be waived by the applicants. The full text of the appellant's contentions is included as Exhibit No. 7.

On March 17, 2004, the Commission found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies and standards of the LCP concerning: (1) the siting of development within highly scenic areas; (2) designing and locating new development so that the need for the construction of seawalls or other cliff face retaining structures are eliminated for the economic lifespan of the structures; (3) providing buffers between new development and environmentally sensitive areas; and (4) the protection of visual resources.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issue. A supplemental biological assessment of the extent of seabird nesting rookery habitat at the project site was provided to the Commission. The study was later accompanied with information addressing the adequacy of a reduced-width buffer between the rookery and the homesite structures. A comparative site study was also prepared and submitted analyzing the visual resource implications of development in one of four different building locations on the parcel. In addition, data regarding the adequacy of onsite water and sewage disposal capacities at the site were submitted. Since the hearing on substantial issue, Commission staff have visited the project site to further examine and document

conditions at the site, and to assess the implications for visual resources under the various house siting alternatives studied.

From the results of these studies, field visits and consultations, and after consideration of the property information, on March 18, 2004, the applicants revised the project description for purposes of the Commission's *de novo* review to include an offer to waive any rights for the future construction of a seawall, revetment or other bluff face retaining structure. Subsequently, on March 30, 2004, the applicants further amended their proposal to relocate the house and garage 27 additional feet further landward from the County-approved location. By waiving future development rights to construct shoreline protective structures, the project could more clearly be found to have been designed and sited to preclude the construction of seawalls during the economic lifespan of the structures as required by the LCP. The revised proposed location would lessen the visual dominance of the development on the area's landscape, provide further distance between the development and areas on the parcel subject to coastal erosion, and provide an adequate buffer width between the residential structures and the nesting rookery ESHA on the neighboring bluff face. In addition, the revised project description now includes provisions for the installation of photovoltaic solar panels on the roof of the main residence (see Section IV.C.2, below, for a more detailed project description).

C. Project and Site Description.

1. Project Setting

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 pre-Coastal Act "Whiskey Shoals Subdivision" and was 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, acting on the County's LCP, 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 1999 and 2001, respectively. For the subject project parcel the 25-foot-wide fixed-location easement containing the portion of the Moat Creek Bluff Trail that crosses the applicants' property is located at the westernmost margin of the property. Due to coastal erosion that has taken place over the years since the Conservancy acquired the subdivision lots, approximately half of the easement has been lost, and portions of the trail are now situated precariously near the eroding blufftop edge.

The subject, 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 (Psuedotsuga menzesii), 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 shalon). 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.

2. Project Description

At the building site location approved by the County, the development would have resulted in the construction of a 2,252 square-foot, 17-foot, eight-inch height, one-story residence with a 960 square-foot, 14-foot, nine-inch height detached garage, with an approximately 4,000-square-foot gravel driveway and turn-around, and installation of a septic system on the western half of the approximately three-acre parcel. The main residence would have been located approximately 115 feet back from the present edge of the blufftop (see Exhibit No. 7). The structures would have been situated more into the open terrace portions of the parcel in a manner such that the house would be visible from several public vantage points and scenic areas along Bowling Ball Beach and from Schooner Gulch State Beach to the south. In addition, the house would have been a very dominant feature in the landward vistas along portions the Moat Creek Managing Agency's coastal blufftop trail on the west side of the parcel.

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 liquefied petroleum gas (LNG) tank, a 2,500-gallon redwood-sided water storage tank, and connections to public utilities would be installed as part of the project. The applicants also proposed to install landscaping along the northern and southern flanks of the residence to reduce the visual prominence of the development.

For the purposes of the Commission's *de novo* review, the project has been subsequently revised by the applicants to relocate the new residence and garage northeastward an additional 27 feet further landward from the building site approved by the County. In this mid-parcel location, impacts to bluff face seabird nesting rookery habitat and visual resources of the area would be further minimized. Although the overall size of the structures would not change, by locating the development on a portion of the lot with more flanking vegetative cover, the overall visual presence of the development from public vistas along the coast would be greatly softened (see Exhibit No. 5). Furthermore, by setting the house further back from the Moat Creek Blufftop Trail, the overall conspicuousness of the development from the trail would similarly be reduced. The structures as re-situated on the parcel would continue to be visible from southbound Highway One. However, only the uppermost portions of the house would be visible from the highway and only for a brief two- to three-second period at the posted vehicular speed limit. In addition, by relocating the development further inland, greater separation is provided between the proposed residential structures and uses, and the geologically unstable and environmentally sensitive seabird nesting habitat areas on the bluff face.

The revised project also includes a 685-square-foot wooden rear deck bridging the two wings of the house, a 147-square-foot covered front porch, two approximately 253-square-foot photovoltaic solar panel arrays, each comprised of a set of 19 - 63″ x 31″ x 2″ modules on the westerly facing roof pitches of the wings of the main residence, and connection of utilities and water and sewage disposal facilities to the new structure. By relocating the residence and garage closer to the Warren Drive lot frontage, the extent of gravel driveway and emergency vehicle turn-around would be correspondingly reduced to an approximately 1,500-square-foot area. The applicants also reiterated their intent to plant further landscaping screening on either side of the main residence to further screen the house from public views.

With regard to the appearance of the exterior building materials, the applicant provided the following color information:

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:	Brown Vinyl
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
Solar panels:	BP Solar® Model 3160U/S/L/B Performance microcrystalline 160-watt modules, either unframed, unframed laminated silver, or with silver or bronze anodized aluminum frames (no frame type or finish specified)

D. Planning and Locating New Development.

1. LCP Provisions

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

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

The subject property is designated in the Land Use Plan and on the Coastal Zoning Map as Rural Residential – 5-acre Minimum Lot Area with Floodplain Combining District (RR:L-5:FP). Coastal Zoning Code Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single-family residences are a principally permitted use in the RR zoning district. Setbacks for the subject non-conforming three-acre parcel are twenty feet to the front, rear, and side yards, pursuant to CZC Section 20.376.040. CZC Sec. 20.376.045 limits building heights to 18 feet above natural grade for areas west of Highway One within highly scenic areas unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. CZC Section 20.376.065 sets a maximum of 15% structural coverage on RR lots of between two and five acres in size. The FP Combining Zone designation applies development restrictions to portions of the site subject to floodwater hazards, namely the areas subject to tidal inundation at the shoreline base of the parcel. As no portion of the subject project would be located within such areas, the provisions of the combining zoning designation are not applicable to this development project.

2. Discussion

The proposed residence would be constructed within an existing developed residential area known as "Moat Creek Estates" (formerly Unit Two of the "Whiskey Shoals Subdivision"). The proposed single-family residential use is consistent with the Rural Residential zoning for the site. The subject parcel, merged in 2003 from five lots created in 1972 before adoption of the County's coastal zoning regulations, is a legal parcel of approximately three acres in size. The applicants propose to construct a total floor area of 3,212 square feet of single-family residential structural improvements, which, with the proposed 685-square-foot rear deck, 147-square-foot covered porch entrance represents a total of approximately 4,044 square feet or approximately three percent lot coverage. The proposed maximum building height would be 17-feet, 8-inches, slightly less than the 18-foot maximum height allowed in the area. The proposed residence's location, lot coverage and building height are consistent with the standards for the zoning district.

Originally, domestic water service for the Whiskey Shoals Subdivision was to take the form of a private community system with the water supply purchased from the City of Point Arena's municipal source. However, after purchase of the subdivision's lots and resale of the parcels in lots contingent upon being merged, water supply was to be provided by individual wells developed on each of the re-sold merged lot sets. In personal discussions with Mendocino County Department of Public Health's Division of Environmental Health (DEH) officials, Commission staff were informed that the four-gallon-per-minute production rate at the test well located on the applicants' parcel would provide an adequate and dependable supply of domestic water to support the proposed single-family residential use.[1] Wastewater from the residence would be processed by a proposed individual septic disposal system. The system's design has received a preliminary approval "clearance" letter from the DEH (see Exhibit No. 15). Therefore, the proposed development is consistent with the LUP and Zoning designations for the site and would be constructed within an existing developed area consistent with applicable provisions of LUP Policy 3.9-1.

Use of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots recognized in the certified LCP were addressed at the time the LCP was certified. Further, the proposed development would meet the prescriptive standards for development within its rural residential zoning district in terms of height, bulk, and coverage, and demonstrated adequacy of water and wastewater infrastructure. Therefore, the proposed development is consistent with the LUP and Coastal Zoning Code designations for the site, would be constructed within an existing developed rural residential area, and would not adversely impact transportation or public service infrastructure capacities consistent with applicable provisions of LUP Policies 3.9-1 and 3.8-1, respectively.

E. Public Access and Recreation.

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

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[1] Pers. comm., Jim Ehlers — Registered Sanitarian, County of Mendocino Department of Public Health, Division of Environmental Health

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.

1. Summary of Coastal Act and LCP Provisions

a. Coastal Act Access Policies

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the certified LCP. Coastal Act Sections 30210, 30211, 30212, and 30214 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 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.* [Emphasis added.]

Section 30211 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]

Section 30212 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, or,*
>
> *(3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 states:

(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.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

b. LCP Provisions

LUP 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. [Emphasis added.]

LUP Policy 3.6-24 states:

> *Public access policies 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:*
>
> - *topographic and geologic site characteristics;*
> - *capacity of the site to sustain use and at what level of intensity;*
> - *fragility of natural resource areas and proximity to residential uses;*
> - *need to provide for management of the access;*
> - *balance between the rights of individual property owners and the public's constitutional rights of access.* [Emphasis added.]

Section 4.11-15 of the LUP's Coastal Access Inventory states:

> *Mote* (sic) *Creek*
> *Location: Wiskey* (sic) *Shoals Subdivision, two miles south of Point Arena*
> *Ownership: California Coastal Conservancy*
> *Existing Development: Dirt road to beach*
> *Potential Development: Day use picnicking, hiking, and ocean viewing*
> *Policy 4.11-15: The California Coastal Conservancy should develop this access point including a parking area, so that it can be used by the public. Offers to dedicate easements for an accessway and lateral bluff trail shall be acquired for public use consistent with Policy 3.6-5.*

Coastal Zoning Code Section 20.528.010(A) states:

> *In specified areas identified in Chapter 4 of the Coastal Element or as indicated on land use maps, prior to the issuance of a coastal development permit, an offer to dedicate an easement for public access shall be recorded unless required public access has otherwise been secured as provided herein.* [Emphasis added.]

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access. To approve the proposed project, the Commission must find the project to be consistent with the public access policies set forth in Section 30210, 30211, 30212, and 30214 of the Coastal Act, LUP Policies 3.6-5, 3.6-24, and 3.6-30, and Coastal Zoning Code Section 20.528.010(A) listed above. The project's consistency with each of these policies is described below.

2. Discussion

Section 30210 of the Coastal Act directs that maximum access shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and

natural resource areas from overuse. Section 30211 states, in part, that "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization." Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast is required but need not be provided in new development projects where: (1) it would be inconsistent with the protection of fragile coastal resources; or (2) adequate access exists nearby. LUP Policy 3.6-5 and Coastal Zoning Code Section 20.528.010(A) similarly set requirements for dedication of public access facilities provided such facilities have not previously been obtained through other means. LUP Policy 3.5-24 directs that in implementing public access policies the permitting agency must consider site topographic and geologic characteristics, resource carrying capacities of the area, management implications for any resulting access facility, and to balance the rights of individual property owners with the public's constitutional rights of access.

Applicants for coastal development permits which involve development between the first public road and the sea must demonstrate that their proposed developments are consistent with the Coastal Act and LCP, including the requirements of Sections 30210 and 30211 of the Act, LUP Policies 3.6-5, 3.6-24, and 3.6-30, and Section 20.528.010(A) of the Coastal Zoning Code. In implementing these policies, the permitting agency, either the Commission or the local government, must consider whether a proposed development: (a) provides for adequate public access consistent with public safety, private property rights, and the protection of natural resources; and (b) would interfere with or adversely affect an area over which the public has obtained rights of access to the sea. Accordingly, the agency must determine the need for access dedications as a condition of authorizing the subject development and whether there is substantial evidence that the development as proposed would interfere with an impliedly or formally dedicated public access use.

As described further in Project Setting Findings Section IV.C.1 above, the applicants acquired their property from the Coastal Conservancy subject to a public access easement. That is, upon its acquisition of the Whiskey Shoals Subdivision, the Coastal Conservancy conducted a feasibility assessment for the development of public access facilities at the site. These assessments included prescriptive rights investigations and geotechnical analyses collecting evidence of past use of the subdivision property by the public and evaluating the inherent stability of the site for supporting developed access facilities, respectively. Based upon the conclusions of these studies, the Conservancy included in its management program for the property a provision that deed covenants, codes, and restrictions (CCRs) be recorded against each property in the subdivision, including the subject site, that reserved areas on the lots for future development of public access facilities, including an access easement along the bluff between Moat and Ross Creeks. As a result of these actions the Moat Creek Blufftop Trail easement was subsequently accepted by the Moat Creek Managing Agency who in turn in 2001 developed the blufftop trail that runs along the western side of the project parcel. The trail is contained within a fixed-location 25-foot-wide easement.

The blufftop area within the Moat Creek Blufftop Trail 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.

The Commission has received numerous comments from concerned and interested parties, as well as from the easement grantee itself, stating their concerns over the potential loss of portions of the trail to coastal erosion and suggesting that the applicants should be required to dedicate an ambulatory easement that would shift laterally inland as erosion occurs as a condition of issuance of any development authorization for the project. Some of the commenting parties reason that such a requirement would be an appropriate measure to protect existing public access while accommodating the applicants' plans to develop the site. Other comment parties contend that the presence of the development would cause direct, indirect, or cumulative impacts on public access (i.e., intensified blufftop erosion due to runoff from new impervious surfaces, increased demand for access facilities, or impacts to area visual resources and aesthetics) where such a dedication would serve to mitigate and offset these impacts. However, for the reasons discussed below, the Commission concludes that the impacts of the proposed development do not result in the need for the applicants to dedicate an ambulatory easement to mitigate the project's impacts.

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.

In addition, Coastal Act Section 30010 provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use without the payment of just compensation.

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 of the various commenting parties 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 house as proposed would be set back approximately 130 feet from the inland extent of the access easement where it would not physically block the easement in any way, including projecting shade onto the easement or other similar intrusions, and would not inhibit use of the trail by giving the impression to access users that they are trespassing through a residential yard.

Third, the development of the approved single-family residence would not significantly increase the demand for coastal access facilities in the area. Based upon 2000 U.S. Census data, the average household size in Mendocino is 2.53 persons. This increment of increased population to the project area would not represent, individually or cumulatively, a significant increase demand for or burden on nearby access facilities that would exceed the capacity of the site to sustain access use.

Fourth, there is no evidence that the project as approved would physically exert or cause increased instability at the blufftop edge that would result an increased rate of coastal erosion for which a requirement that the applicants rededicate a replacement access easement could be justifiably applied. A total of approximately 4,011 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. However, as discussed further in Geologic Hazards and Site Stability Findings Section IV.E, below, the development proposes stormwater collection and conveyance away from the bluff edge 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 Commission has included in the special conditions attached to the permit approval a requirement that these 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. The proposed structures and site improvements located at a minimum of 142 feet from the blufftop edge would provide a nearly six-fold setback distance from the maximum estimated 25-foot needed to protect these improvements from instability over the development's entire 75-year economic lifespan. Given this large margin of safety, such factors as the physical weight of the structures or that of irrigation water or septic wastewater applied into the blufftop soils are not likely to significantly affect or contribute to geologic stability that could impact the access trail.

Thus, the Commission finds that the development without a condition requiring re-dedication of an ambulatory easement would be consistent with the access policies of the Coastal Act and the certified LCP. In addition, the Commission finds that the proposed development would not interfere with dedicated rights of public access that exist on the property.

As observed in field visits to the site, approximately half of the 25-foot width of the easement has been eroded away in places along the portions of the easement that traverse the small cove on the blufftop edge of the subject parcel. Based upon estimates inferred from the various geologic reports prepared for the site, the remaining portion of the easement could be completely lost to coastal erosion within a 23-year period. Staff has discussed the situation of the eroding public access trail with the applicant/owners and staff of the Coastal Conservancy. The applicants have indicated that they are not at this time agreeable to voluntarily offering for dedication or willing to sell additional property rights for establishment of either an ambulatory or fixed-location replacement public access easement on a more landward location on the property. Conservancy staff noted their past efforts at acquiring and facilitating development of public access facilities at the Whiskey Shoals Subdivision site and indicated that they are very concerned over the possible future loss of the trail and maintaining connectivity of the California Coastal Trail in this area. Conservancy staff have indicated that grant monies may become available at a future time for the Conservancy or another qualified non-profit organization to acquire a replacement easement from the owners should they be amenable to such a purchase. Furthermore, given the considerable previous efforts and investment made by the Conservancy in securing this public access facility, the Conservancy staff believe their governing board would likely recognize the crucial need for a replacement easement in this area in any future acquisition funding allocations.

Conclusion

In conclusion, although there is an unresolved question as to how best to respond to the damage to which the Moat Creek Blufftop trail is being subjected and the inevitable loss of blufftop access in the project area once the trail and its easement have been completely eroded away, the impacts of this proposed development do not require the applicants to provide a replacement access easement as a condition of the subject development permit. The Commission concludes that regardless of whatever future actions may or may not be undertaken to replace or realign the eroding trail and easement, the subject development would not: (1) interfere with the public's access to the sea; and (2) necessitate the provision of additional public access from the nearest public roadway to the shoreline and along the coast, especially in a location in which adequate access exists and has been secured nearby. Therefore, the Commission finds that the project as proposed without additional new public access would be consistent with Sections 30210, 30211,

and 30212 of the Coastal Act, with LUP Policies 3.6-5 and 3.6-24, and with Coastal Zoning Code Section 20.528.010(A).

F. Geologic Hazards and Site Stability.

1. 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.]

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:*
>
> *Setback (meters) = Structure life (years) x Retreat rate (meters/year)*
>
> *The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*
>
> *All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.*[2] [Emphases added.]

LUP Section 3.4-8 states that:

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

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

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

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

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

(1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;

(2) *Assure structural integrity and stability; and*

(3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Coastal Zoning Code Section 20.500.015 states, in applicable part:

(A) Determination of Hazard Areas.

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

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

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

(B) Bluffs. ...

(2) Drought tolerant vegetation shall be required within the blufftop setback.

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

...

(E) Erosion.

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

2. Discussion

CZC Section 20.500.015(A) requires all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff top lots be reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and Coastal Zoning Code Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed "in any way" over a full 75-year economic lifespan for the development. A sole exception to this prohibition 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 RG6124, 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 the geologist's 50-foot setback recommendation, upon amending the project for the Commission's de novo review, the applicants approximately trebled the recommended setback by proposing to place the residential structures a minimum of 142 feet back from the blufftop edge. In addition, as noted in Project Description Findings Section IV.C.1, in amending the project for purposes of the Commission's *de novo* review, the applicants have included an offer to record a deed restriction against the subject property, waiving their development rights for the future construction of seawalls, revetments, and other bluff face retaining structures.

Mark Johnsson PhD, CEG, the Commission's staff geologist, has reviewed the geologic report prepared for the project, as well as other preceding geologic evaluations conducted for the Coastal Conservancy for siting the blufftop trail (Geo/Resource Consultants, Inc., May 1999) (see Exhibit Nos. 8 and 9).

Dr. Johnsson notes that while the examination and comparison of aerial photographs were a part of the basis for the calculation of projected bluff retreat rates in both the Cochran (2- to 4-inches/year) and Geo/Resources (0.7- to 1.1-foot/year) reports, as required by LUP Policy 3.4-7, neither report included a quantitative slope stability analysis of the blufftop materials in proximity to the cliff edge in developing the recommendations for the building setback.

Despite the omission of a slope stability assessment and projected failure-prone area that such an analysis would generate, Dr. Johnsson acknowledges that even under a worst-case scenario of blufftop failure at the site, with all portions of the residential structures, landscaping, and support infrastructure being proposed to be located a minimum of 142 feet back from the blufftop edge, it can reasonably be concluded that the development would be safe from geologic instability for a full 75-year economic lifespan, as required by the LCP.

Therefore, the Commission finds that repositioning the buildings to more landward locations so as to provide a minimum 142-foot setback from the bluff edge would ensure that the project conforms to the requirements of Coastal Zoning Code Section 20.500.010 that development "*minimize risk to life and property in areas of high geologic, flood and fire hazard*" and "*assure structural integrity and stability.*" Although the applicants have prepared to locate all residential

development a minimum of 142 feet back from the blufftop, they have not submitted revised site plans showing the proposed residential development set back 142 feet. Therefore, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires submittal of revised site plans showing the proposed residence and garage set back a minimum of 142 feet from blufftop, thereby increasing the assurance of structural stability and integrity. Special Condition No. 1 also requires the permittee to construct the development consistent with the approved final plans.

Notwithstanding Dr. Johnsson's conclusion as to the relative degree of insulation of the proposed project improvements in their proposed locations from geologic hazards, the applicants are proposing to construct a new residence that would be located on a ±65-foot-high uplifted marine terrace blufftop that is actively eroding. Consequently, the house would be located in an area of high geologic hazard. New development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a shoreline or bluff face protective device would not be needed in the future. The applicant has submitted information from a geologist which states that if the new development is set back 50 feet from the bluff edge, the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life. In addition, the applicants have further bolstered the project design to insure avoidance of geologically unstable areas by moving the building site for the structures an additional 92 feet further onto the terrace and away from the blufftop edge.

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

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant 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 emphasizes that the examples above are not intended to be absolute indicators of future bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form it's opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The geotechnical 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, inconsistent with Coastal Zoning Code Section 20.500.010. The Commission finds that the proposed development could not be approved as being consistent with Coastal Zoning Code Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicants' geologist and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized with the proposed 142-foot setback from the bluff edge. However, given that the risk cannot be completely eliminated, the geologic report does not assure that shoreline protection will ever be needed to protect the residence, the Commission finds that the proposed residence could be found consistent with the certified LCP only if it is established that shoreline protective works will not be constructed in the future as proposed by the applicants. Thus, the

Commission further finds that due to the inherently hazardous nature of the project site lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because the LCP requires that in the permitting of new development the need for shoreline protective devices shall not be engendered, it is necessary to attaches Special Condition Nos. 2 and 3 to ensure that no future shoreline protective device will be constructed as proposed by the applicants.

Special Condition No. 2 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the residential development if bluff retreat reaches the point where the residential development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with Coastal Zoning Code Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with Coastal Zoning Code Section 20.500.010 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 3 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 4 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 2 requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and provide a geotechnical investigation if bluff retreat reaches the point where the structure is threatened and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 3 is also required to ensure that the proposed development is consistent with the certified LCP. Special Condition No. 3 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. Special Condition No. 4 requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

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

However, in this case because the project site is located within a highly scenic area, future improvements to the approved project will not be exempt from permit requirements pursuant to Section 30610(a). Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect.

In addition, Section 13250(b)(1) indicates that improvements to a single-family structure in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, Special Condition No. 5 expressly requires all future improvements to the approved development to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in an adverse environmental impact. As discussed above, Special Condition No. 4 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 4 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The proposed development would entail the construction of a 2,252-square-foot residence with a 147-square-foot covered front porch and a 685-square-foot rear deck, a 960-square-foot detached garage, and the installation of approximately 1,500 square-feet of gravel driveway and turn-around area. A total of approximately 4,011 square-feet of impervious surface area would result from the 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 recommends 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 project description of the development indicates 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. To ensure that the runoff from the development is conveyed away from the bluff edge as proposed, Special Condition No. 1 requires that a final erosion and runoff control plan be submitted for the review and approval of the Executive Director that demonstrates that runoff from the residence and garage roof shall be collected and tie-line conveyed to eh vegetated drainage swale running along the eastern road frontage of the property with Warren Drive for infiltration into the ground to the maximum extent practicable.

Therefore, the project as proposed and conditioned 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.

With respect to the provisions of LUP Policy 3.4-8 that property owners should maintain drought-tolerant vegetation within the required blufftop setback, no site development, including grubbing or clearing for building sites has been proposed within the 25-foot-wide blufftop setback areas (or within the required 25-foot-wide sea cave setback in which proposed building sites are to be relocated) for which revegetation would be necessary. These areas are currently covered with grass and sod that should continue to provide protection to the blufftop edge from the erosive forces of rainfall and runoff.

Finally, with regard to the particular licensure requirement enumerated in Coastal Zoning Code Section 20.500.015(A)(2), although Mr. Cochran is not a civil engineer and does not currently possess engineering geologist credentials, his work was reviewed by Dr. Johnsson who holds such certification and found the conclusions and recommendations of the report to be reasonable. Therefore, the Commission finds that the project as proposed and conditioned is consistent with Coastal Zoning Code Section 20.500.015(A)(2).

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-7, 3.4-8, 3.4-9, 3.4-12, and Zoning Code Sections 20.500.010, 20.500.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or cause erosion, will not require the construction of shoreline protective works, and the Commission will be able to review any future additions to ensure that development will not be located or designed in a manner that might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

G. Stormwater Runoff.

1. LCP Provisions

LUP Policy 3.1-25 states:

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

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

> *(A) The erosion rate shall not exceed the natural or existing level before development.*
>
> *(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*
>
> *(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...*
>
> *(D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.*
>
> *(E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur...* [Emphases added.]

CZC Section 20.492.020 sets sedimentation standards and states in part:

> *A. Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
>
> *B. To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where*

necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.

C. *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*

D. *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection.* [Emphasis added.]

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

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

(C) The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy disapators [sic].

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

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

Discussion

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

As discussed above, the subject parcel is located on a nearly flat portion of coastal terrace planned and zoned for low-density rural residential development. Runoff from portions of the

site flows southerly and westerly into drainage ditching along the access easement and County Road and eventually discharges into Ross Creek, approximately ¼-mile to the south of the project site. Runoff originating from the development site that is allowed to drain off the site to the creek would contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters, including downstream marine waters.

Sedimentation impacts from runoff would be of the greatest concern during and immediately after construction. Consistent with CZC Section 20.492.020(B), the Commission includes within attached Special Condition No. 1 a requirement that the applicants minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 1 requires that the applicants submit for the review and approval of the Executive Director revised site plans that include erosion and runoff control measures that would require that: (1) hay bales be installed to contain runoff from construction and demolition areas; (2) on-site vegetation be maintained to the maximum extent possible during construction; (3) any disturbed areas be replanted with noninvasive native plants obtained from local seed stock immediately following project completion and covered with jute netting, coir logs, and rice straw; and (4) runoff from roofs, decks and other impervious surfaces by collected and conveyed away from the blufftop edge and to the vegetated drainage swale located along side the parcel's frontage with Warren Drive where it may infiltrate into the ground and undergo bio-filtration prior to entry into any drainage course or waterway. Consistent with CZC Section 20.492.025(E), Special Condition No. 1 requires that the applicants surface the driveway with gravel as proposed to facilitate infiltration into the ground of greater amounts of runoff from the driveway.

The Commission finds that as conditioned, the proposed development is consistent with CZC Sections 20.492.015 and 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) using hay bales to control runoff during construction, and (4) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the proposed development as conditioned to require these measures to control sedimentation from storm water runoff from the site is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained. Moreover, the Commission finds that the proposed development is consistent with CZC Section 20.492.025(E) because, as conditioned, runoff from the roofs will be directed in to vegetated areas and the driveway will be paved with pervious material to facilitate infiltration of runoff and minimize erosion and sedimentation from stormwater runoff.

H. Environmentally Sensitive Habitat Areas

1. LCP Provisions

LUP Policy 3.1-7 in applicable part states:

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

> *minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area 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...*[3]

Section 20.308.040(F) of the Mendocino County Coastal Zoning Code (CZC) defines the term "environmentally sensitive habitat area" as follows:

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

CZC Section 20.496.010 states, in applicable part:

> *Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals."* [Emphasis added.]

CZC Section 20.496.020 states, in applicable part:

> *(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*
>
> > *(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division*

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[3] The requirements for establishing buffers adjacent to all ESHAs and the buffer width adequacy standards of Policy 3.1-7 are implemented verbatim through CZC Section 20.496.020.]

shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:

- *(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- *(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- *(iii) An assessment of the impact and activity levels of the proposed development on the resource.*

(c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

> *(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*
>
> *(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*
>
> *(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*
>
> *(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.*
>
> *(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).* [Emphases added.]

2. Discussion

In order to assess the biological significance of lands at and in proximity to the project site, Dr. Mello conducted a reconnaissance for the presence of wildlife in the vicinity of the property (see Exhibit No. 11). In addition, the applicants contracted a botanical survey of the property and its surroundings (Dorothy T. Scherer, July 24, 2002) (see Exhibit No. 10). No listed or candidate rare, threatened or endangered plant species were found on or within 100 feet of the property.[4]

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[4] The Commission notes that the Scherer report did contend that a five-foot-wide band of plants along the immediate bluff edge comprised a form of environmentally sensitive habitat area. However, the individual plants therein are not formally listed or candidate rare, endangered, or threatened species. Although this plant *assemblage* is indicated within the California Department of Fish and Game's Natural Diversity Data Base as "a series or association considered rare and worthy of consideration," consistent with the opinion of County Planning and Building Services

However, the presence of nesting seabirds along the cliff face adjoining the subject property has been observed and documented in past Coastal Conservancy and Moat Creek Management Agency actions regarding coastal access facility development at the site.

A pelagic cormorant (Phalacrocorax pelagicus) rookery is found approximately halfway down the ±70-foot-high bluff face of the cove that forms the southwestern side of the parcel. 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. Although pelagic cormorants are not currently a listed or candidate threatened or endangered species under either the federal or state Endangered Species Acts, "rookeries" are recognized as a class of environmentally sensitive habitat area, or "ESHA," under Sections 20.308.040(F) and 20.496.010 of the County's Coastal Zoning Code.

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. . Biological studies of the Pelagic Cormorant indicate that the species utilizes the same nests or nesting sites multiple times, from nesting season to nesting season, refurbishing or incrementally adding onto an existing nest or reestablishing nests that have been lost or damaged since their last use. 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 not necessarily abandon such nesting sites solely because the bluff face has further eroded.

Under the revised project description, the applicants propose to site the residential structures and other lot improvements such that a 142-foot buffer would be initially provided on the site, as measured from the current blufftop edge above the Pelagic Cormorant nesting rookery 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. Based on the bluff retreat rates projected in the geologic analysis prepared for the project site, the bluff edge could be located as close as approximately 60 feet from the residence at the end of its 75-year economic lifespan [142 feet – (1.1 feet/year · 75 years) = 59.5 feet].

As set forth above, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant disruption resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff,

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Department staff, this status does not meet the County of Mendocino LCP's definition of ESHA as promulgated in Section 20.308.040(F) of the Mendocino County Coastal Zoning Code, as its component species within the North Coast regional setting are not particularly "rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments."

that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

CZC Section 20.496.020(A)(1)(a) through (g) sets forth specific standards to be considered when determining the width of a buffer. These standards include: (a) an assessment of the biological significance of adjacent lands and the degree to which they are functionally related to nesting rookery resources; (b) the sensitivity of species to disturbance such that the most sensitive species of animals will not be disturbed significantly by the permitted development; (c) the susceptibility of the parcel to erosion determined from an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel; (d) the use of natural topographic features to locate development so that hills and bluffs adjacent to ESHA's can be used to buffer habitat areas; (e) use of existing cultural features such as roads and dikes to buffer habitat areas; (f) lot configuration and location of existing development such that buildings are a uniform distance from the habitat area, and provision for additional mitigation if the distance is less than 100 feet; and (g) the type and scale of development proposed as a determining factor for the size of the buffer zone necessary to protect the ESHA.

Consistent with the standards contained within CZC Section 20.496.020(A)(1)(a) through (g), the applicants provided supplemental evaluations of the width of the buffer needed to protect the seabird rookery ESHA, as requested by the Commission for purposes of the Commission's *de novo* review of the proposed project (see Exhibit No. 13). Frank Mello PhD, in conjunction with biologist Nancy Lang PhD, developed a peer-reviewed supplemental evaluation of the buffer width requirements to adequately protect the avian resources near the project site, considering the following seven standards in arriving at their recommendation of a minimum 50-foot buffer:

(1) Biological Significance of Adjacent Lands.

With regard to habitat consideration of lands adjacent to the project site, Dr. Mello notes that the migratory nature of the subject species must be taken into consideration. The Pelagic Cormorant, the smallest and most widely distributed of six cormorant species inhabiting the North Pacific, ranges from the Arctic waters of the Chukchi and Bering Seas south through temperate waters along the North American Pacific Ocean coast to Baja California and along the North Pacific Ocean Asian coast to southern China. The North American population totals about 130,000 birds, the majority of which occur in Alaska. Local populations often fluctuate considerably because of movement among breeding sites.

Although the Pelagic Cormorant is exclusively marine in habits, its name is misleading, since it prefers inshore areas. Dr. Mello notes that Pelagic Cormorants seek out nesting habitat on offshore islands and narrow ledges on steep, rocky cliff faces where isolation from predators can be realized. A wide assortment and variety of such sites occur along the coastline extending to the north and south of the project site for a mile or more. With respect to adjacent lands on the project parcel inland from the cliff face nesting sites, these areas are comprised of relatively flat uplifted marine terrace with scattered vegetative cover. Dr Mello concluded that these lands are not generally significant because cormorants do not roost on flat open terrestrial sites. Thus, the adjacent blufftop lands are not functionally related to the nesting rookery resources.

(2) Sensitivity of Species to Disturbance.

Drs. Mello and Lang also examined the distance necessary to ensure that the sensitive animals would not be disturbed by the permitted development in a significant way. Drs. Mello and Lang considered four factors as being of primary relevance in determining adequate spatial separation between the nests and the residential use: (a) light; (b) noise; (c) vibration; and (d) human activity.

(a) Light: Artificial lighting is believed to confuse seabirds while they are migrating long and short distances, especially while they move between urbanized nesting sites to their feeding grounds at sea. Many seabirds are nocturnal and move between land and sea at dusk or at night and as such are particularly vulnerable to artificial lighting. Once they are disoriented they are at risk of colliding with artificial structures such as buildings and transmission towers or of falling onto roadways and being run over by vehicles. Light project onto a prospective nesting area may cause the brooding bird to reject nesting therein due to its greater visibility and thus, greater exposure to air-borne predators, such as larids, corvids, or raptors.

Drs. Mello and Land observed that the cormorants roost, nest and spend all of their activity at least half way down the bluff cliff. With their location halfway down the face of the cliff, the nests are not in direct line-of-sight to the house site and any residential lighting that might be developed to illuminate the structures and their surroundings. As such the rookery would not be affected be light originating from the house site and the proposed setback would be sufficient to shield the nesting habitat from light impacts of the development.

To further mitigate for potential lighting impacts, the applicants propose to use low watt, low glare and downward-directed lighting that will not project out from the residence toward the ocean. In addition, no exterior yard lighting is proposed between the house site and the blufftop edge portion of the parcel.

(b) Noise: Another source of potential disturbance from the proposed development would be noise emanating from the residence and its surroundings. Sudden loud noises, such as firearm discharges, fireworks, boat horns, and machine cycling can disturb nesting birds causing them to take flight and flee their nests, occasionally ejecting the eggs or young therein. Steady noises are less upsetting to nesting birds, though with substantial amplitude can similarly cause the birds to alight from their perches.

Dr. Mello reports that the residence would be built utilizing 2″ x 6″ wooden framing with R19 insulation. These construction materials would insure that noise would not come from the home. Further, no outside stereo speakers would be installed as part of the development. The setback/buffer will be adequate to muffle sound based on known documentation. Drs. Mello and Land also note that, similar to the situation with lighting impacts, sound waves propagated from noise sources at the residence would not significantly refract or bend over the lip of the blufftop and down toward the nesting rookery. Rather, the main thrust of acoustical energy would radiate outward from the blufftop toward the open ocean, where it would likely meld into the ambient noise generated by the sounds of the waves breaking along the shoreline. Only noise

originating from the bluff edge and directed downward would pose a problem to nesting cormorants.

(c) Vibration: Vibrations associated with the use of heavy construction equipment, such as during pile-driving or crane work associated with shoreline structures, have been shown to cause impacts on nesting cormorants. Dr. Mello notes that any vibration attributed to persons walking around or in the house would be imperceptible at the nesting sites. In addition, as autos are only allowed on the eastern side of the property, a considerable setback/buffer from vibration associated with those sources would be afforded. Further, the applicants have committed to not conducting any outside construction work during the months that cormorants would nesting on the adjoining cliff face.

(d) Human Activity: Human and human-related activity in proximity to nesting rookeries is by far the most significant potential source of disturbance to nesting pelagic cormorants. The presence of humans, dogs, or other similar large potential predators within 100 feet of the view from a nest will inevitably cause a roosting bird to flee. For the subject site, this impact category would most directly take the form of the visual presence of humans and animals along the bluff edge and looking down the bluff edge toward the rookeries. Dr. Mello reiterates that the applicants do not plan on going near the bluff edge and creating a visual appearance for obvious safety and liability reasons. In addition, Drs. Mello and Land note that there are numerous signs and a fence discouraging uses of the existing trail from being too close to the bluff edge, both from a safety perspective and to prevent impacts to nesting cormorants during their nesting season.

Therefore, Drs. Mello and Lang indicate the proposed setback would provide adequate spatial separation between the nests and the proposed residential use to ensure that the sensitive cormorants would not be affected by the proposed residential development.

(3) Susceptibility of Parcel to Erosion.

Dr. Mello notes that it has been well documented that the project with the proposed setback/buffer does not pose any threat to cliff erosion because all of the natural flora ground cover will not be disturbed. In addition, all stormwater drainage from the house would flow down gutters and be directed away from the bluff edge. Therefore, Dr. Mello believes that significant adverse impacts to the delineated wetland from erosion resulting from the proposed development is very unlikely.

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

The bluff edge is a natural topographic feature that would be used to buffer the cormorant nesting sites below from the residence above. Dr. Mello evaluated other natural topographic features located on the property in recommending the 50-foot buffer. Dr. Mello observed that the uplifted marine terrace setting beyond the blufftop edge is effectively featureless with respect to natural landforms. Accordingly, there are no such features at the site, such as vertical hillsides or swales that could be incorporated into the

development buffer to further shield the nesting rookery from potential impacts of the development in any meaningful fashion.

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

Dr. Mello evaluated the site for the presence of cultural features on the property in recommending the 50-foot buffer. Dr. Mello observed that as the uplifted marine terrace setting beyond the blufftop edge is effectively featureless with respect to cultural features. Accordingly, there are no such features at the site that could be incorporated into the development buffer to bolster its effectiveness.

(6) Lot Configuration and Location of Existing Development.

Dr. Mello evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. As discussed above, the proposed development would be within an existing rural residential developed area. The subject parcel would be the first to be developed in the Moat Creek Estates rural residential neighborhood. Because there are no houses currently developed in the vicinity of the project parcel, there are no opportunities to extrapolate an equivalent buffer from the nesting habitat areas using the so-called "string-line" method as suggested by the policy. The applicants have revised the project description to provide the minimum 50-foot reduced-width buffer required by the LCP.

In addition, the applicants propose to leave the intervening area between the house and the blufftop edge in a "natural state" (i.e., kept free of accessory structures and landscaping except for requisite screening, leaving the native blufftop vegetation un-mowed, utilizing tinted glass with modified blinds on the west-facing side of the house to minimize sunset-associated light and glare.)

Accordingly, Dr. Mello believes that the proposed 60-foot buffer would be adequate to protect the avian nesting resources in relation to the configuration of the parcel, to the location of the nests being vertically offset down the cliff face, and to siting of the proposed development, and would not result in significant adverse impacts to the rookery ESHA.

(7) Type and Scale of Development .

Dr. Mello considered the nature of the delineated nesting habitat resources involved, the fact that adjacent properties have not been developed, and the type of development in the vicinity in order to arrive at the recommended 60-foot buffer. As discussed previously, the development would be limited to a single-family residence, a graveled access driveway and parking/turn-around area, and on-site water well and sewage disposal systems. Only one other lot in the Moat Creek Estates residential area has been developed with improvements that consist of a home, garage, driveway, and site amenities in excess of the size of development being proposed by the applicants. For the applicant's parcel, the intensity of use is limited and within the character of the existing residential community. The proposed buffer would effectively limit development to the

southwest half of the subject property. The actual area proposed for structures and other improvements on the approximately 3-acre parcel is a relatively modest 4,111 square feet, and would represent only about 3% lot-coverage. The remaining 97% of the parcel would remain undeveloped. In considering the type and scale of development proposed, Dr. Mello determined that a 60-foot buffer would be adequate to protect the seabird nesting rookery ESHA.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by Dr. Mello would be adequate to protect the seabird nesting habitat areas. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other standards. For instance, the fact that a vertical offset exists between the building site and the rookery ESHA is very significant. This topographic break serves to insulate the habitat from activities on the blufftop.

Those factors that support the establishment of a 60-foot buffer as adequate to protect the riparian areas include: (1) the presence of similar suitable habitat opportunities along this section of the Mendocino coast; (2) the lack of utilization by the species of the more terrestrial portions of the property in closer proximity to the proposed development site; (3) the presence of a vertical offset between the level of the bluff face where the cormorants nest and the adjoining bluff top where development would occur that serves to shield the habitat from light, noise, and vibratory impacts; (4) the fact that light and noise originating from the dwelling would be minimized through the project's design features; (5) the fact that the parcel slopes away from the bluff edge, is well-vegetated, and that the proposed development would not entail significant grading or result in stormwater runoff patterns that would cause erosion; (6) the lack of definable physical or cultural features that could be incorporated into a larger buffer; and (7) the proposed development is similar and scale and size to other developments in the immediate area.

To conform to the need to provide an adequate ESHA buffer, the applicant has revised the project description to relocate the proposed development to a location 142 feet back from the blufftop edge, such that it is a minimum of 50 feet from the edge of habitat, as measured from the bluff top edge would be provided throughout the project's 75-year economic lifespan. The proposed residence would be of modest size, leaving approximately 97% of the parcel undeveloped. When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the delineated seabird nesting rookery buffer as provided by Dr. Mello, sufficiently demonstrates that no significant adverse impacts will result from the recommended buffer width.

Staff of the California Department of Fish and Game (CDFG) reviewed the habitat assessment and buffer width analysis. CDFG staff has determined that the recommended 142-foot buffer would be an acceptable buffer for this particular project (see Exhibit No. 14).

To ensure that the ESHA buffer is established consistent with the terms under which CDFG determined that the buffer would be adequate, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires the applicants to submit final plans for review and approval that illustrates the proposed structures being located a minimum of 142 feet landward from the

blufftop edge and incorporating the development specifications discussed above to ensure that impacts to ESHA are minimized.

Based on all of the foregoing, the Commission finds that the proposed 142-foot (±60 feet in 2079 A.D.) buffer between the proposed development and the seabird nesting rookery ESHA adjacent to the site in conjunction with the requirements of Special Condition No. 1 to deed restrict the area seaward of the main residence will adequately protect the wildlife ESHA and is consistent with the buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4).

I. Visual Resources.

1. LCP Provisions

LUP Policy 3.5-1 states in applicable part:

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

LUP Policy 3.5-3 states, in applicable part:

> *The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...*
>
> - *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1...*
>
> *In addition to other visual policy requirements, new development west of Highway One in designated 'highly scenic areas' is limited to one story (above natural grade) unless an increase in height would 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...*

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...

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible. [Emphasis added.]

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

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

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

2. Discussion.

The development is located in the Moat Creek Estates development, formerly known as the "Whiskey Shoals Subdivision," situated approximately 2½ miles south of the City of Point Arena. 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 property is situated within a designated highly scenic area as designated by LUP Policy 3.4-14 and is designated as such on its LUP maps.

The proposed project entails the construction of a 17-foot, 8-inch-height, 2,252-square-foot single-family residence, with a 960-square-foot detached garage, 149-square-foot covered front porch, 685-square-foot deck, a 1,500-square-foot graveled driveway and emergency vehicle turn-around area, associated water well and sewage disposal systems, and utility extensions. A dark earthtone color scheme is being proposed for the exterior paint colors. Roofing and fascia materials would be a light gray color with black-painted chimney and roof vents. In addition, the applicants propose to install two banks of roof-mounted photovoltaic solar panels, one each on the wings of the residence (see Exhibit No. 5). The applicants propose to use cedar shake siding

coated with a natural (clear) stain. The roof would be covered in pewter gray composite shingles. The proposed development also includes landscaping for screening and breaking up the visual bulk of the structures.

As approved by the County, the house would have been 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. As revised for the Commission's *de novo* review, the site improvements would be constructed on the center of the parcel on the portion of the property lying within an arc of mature vegetation to the south and north. 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, 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 Code 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 CZC Section 20.504.015(C) emphasize the need to avoid impacts to visual resources through appropriate siting of development. 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]

The above listed visual resource protection policies set forth three basic criteria that development at the site must meet to be approved. First, LUP Policy 3.5-1 and CZC Section 20.504.010 require that development be sited and designed to protect views to and along the ocean and scenic coastal areas. Second, LUP Policy 3.5-3 and CZC Section 20.504.015(C)(2) generally require that new development in highly scenic areas be limited to one story and 18 feet in height.

Finally, LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting.

1. Protecting Views To and Along the Coast

LUP Policy 3.5-1 and CZC Sections 20.504.010 and 20.504.015(C)(1) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas including roads and trails.

No blockage of views to and along the ocean would result from the approved development. Because Highway One east of the site lies within a roadcut, no views to the ocean are affected through the property from the highway. All public views of the site are oriented away from the ocean. Although the development will be visible from a short stretch of Highway One, the Moat Creek Blufftop Trail, and other public vantage points, the development won't directly obstruct views to and along the ocean and coastline from any of those vantage points. The views toward the development from public vantage points generally look away from the ocean.

Therefore, the Commission finds that the proposed development would be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas including roads and trails consistent with LUP Policy 3.5-1 and CZC Sections 20.504.010 and 20.504.015(C)(1).

2. Consistency with Height Requirements

According to the certified LCP provisions of LUP Policy 3.5-3, new development located in an area designated as highly scenic 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. Likewise, according to CZC Section 20.504.015(C)(2) new development located in an area designated as highly scenic is limited to eighteen 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. If these two criteria can be met, the building height can be raised to a maximum of twenty-eight feet and include two stories.

The main residence, the tallest of the proposed structures, would be one-story and extend 17-feet, 8-inches above natural grade, a height that would not be greater than the 18-foot limit of CZC Section 20.504.015(C)(2). The proposed garage would be 14-foot, 9-inches above natural grade, a height that also conforms to the 18-foot height limit. Therefore, the Commission finds that the proposed height of the structures would be consistent with the height limitations of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(2).

3. Subordinate to the Character of the Setting

In addition to calling for the protection of views to and along the ocean and scenic coastal areas, LUP Policies 3.5-1, 3.5-3, 3.5-4, and Coastal Zoning Code 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 Code Section 20.504.015 provide that buildings and building groups that must be sited on terraces 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. (c) to avoid development in large open areas if alternative site exists; (d) so as to minimize the number of structures, cluster them near existing vegetation, natural landforms or artificial berms; and (e) with bluff setbacks provided between the development and adjacent or nearby public areas along the shoreline. These policies also state that the visual impacts of development on terraces must be designed to be in scale with rural character of the area. In addition, Policy 3.5-5 states that tree planting to screen buildings be encouraged. Furthermore, the County's Coastal Zoning Code Section 20.504.010 states that permitted development shall be sited and designed to minimize the alteration of landforms. Coastal Zoning Code Section 20.504.015(C)(3) requires that in highly scenic areas, building materials, including siding and roof materials, shall be selected to blend in hue and brightness with their surroundings.

As revised by the applicants for purposes of the Commission's *de novo* review, the residential structures have been relocated further inland, out of the more open terrace portions of the site and in a more mid-center location on the parcel. In addition to lowering the visibility of the residential structures by clustering them in and among the more significant vegetation on and bracketing the site, the re-siting also shortens the driveway length, correspondingly lessens the amount of grading, and eliminates the need for removing trees along the northern property line. The structures in their new location would be back-dropped and surrounded by this and other wooded cover on the parcel, consistent with the requirements of LUP Policy 3.5-4 and CZC Section 20.504.015.

Even with the relocation of the development, the house would still be visible from the Moat Creek Blufftop Trail and the uppermost portions of the rear of the house would still be visible from public recreational area along Bowling Ball Beach and Schooner Gulch State Beach further down the coast to the south. Consequently, additional tree planting is needed to screen the development and make it subordinate to the character of its setting. The applicants propose to plant an unspecified number and size of Leyland Cypress (Cupressus macrocarpa x Chamaecyparis nootkatensis) trees on the northern and southern sides of the main residence for this purpose. If sufficient numbers of trees are planted in particular locations, this landscaping would be effective in making the appearance of the development subordinate to the character of its setting, as viewed from the Moat Creek Blufftop Trail and the downcoast beach and headland areas. Therefore, Special Condition No. 1 requires that a revised landscaping plan be submitted for the review and approval of the Executive Director that includes the planting of a minimum of ten 15-gallon Leyland Cypress trees on ten-foot centers along the northern and southern flanks of the house to ensure that the development will be subordinate to the natural appearance of its setting.

With regard to the design of the proposed structures, the proposed 2,252-square-foot, 17-foot, 8-inch-height house and 960-square-foot, 14-foot, 9-inch-height detached garage would be similar in size and height to the one other structure already developed in the Moat Creek Estates rural residential neighborhood area.

In general, the natural/neutral colors and materials proposed for the residential development would be in character with the one other house in the neighborhood and with the character of hoses in this general area of the coast. The applicants have indicated that the exterior of the residence would have cedar shingle siding coated with a natural stain. Trim colors would be

either dark brown, dark green, or black around the main floor windows, and natural stained wood around the dormer windows. The proposed solar panel modules to be located on the westward-facing pitch of the two wings of the main residence would be composed of microcrystalline silicon cells, dark cobalt-blue in color, which, according to technical information provided by the applicants, would have very low reflectivity (6.7% Weighted Front Reflectance) throughout the visible portion of the light spectrum that would project glare onto surrounding areas (see Exhibit No. 5, page 12).

However, two elements of the proposed building materials would not blend in hue and brightness with the development's surroundings. The roof is proposed to be covered by composition shingles of a light gray/pewter color. In addition, the proposed solar panels have the option of being framed in matte aluminum, silver, and bronze anodized finishes. Light colored building materials tend to stand out rather than blend with their surroundings. The Commission finds that the proposed roof color and that of the more reflective of the framing for the solar panels would not blend in hue and brightness with the predominantly dark-green and buff colored vegetated blufftop terrace surroundings as required by Coastal Zoning Code Section 20.504.015(C)(3). To ensure that compatible exterior building materials are utilized in the development, Special Condition No. 1 requires that a revised roofing color plan be submitted for the review of the Executive Director providing that the colors of the roof and solar panel framing be modified. The revised roofing materials shall be limited to black, charcoal-gray, dark brown, or similar dark hues. In addition, the solar panels shall be limited to being either unframed or having bronze-anodized aluminum frames that would be less light-reflective and have a more subdued overall appearance. Setting these material specifications will ensure the roof and panel framing will blend in hue and brightness with their surroundings as required by the LCP.

To further ensure that the building materials of the development as conditioned, including siding and roof materials, continue to blend in hue and brightness with their surroundings and are subordinate to the character of its setting during the life of the structures, the Commission attaches Special Condition No. 6. This condition imposes design restrictions, including requirements that all exterior siding and roofing of the proposed structures shall be maintained in natural or natural-appearing materials of dark earthtone colors only, and that the color of the framing for the solar panels is limited to unframed or bronze anodized finish models. The special condition also requires that the current owner and any future owner not repaint or stain the house with products that will lighten the color of the house as approved without an amendment to the permit. In addition, all exterior materials, including roofs, solar panels, and windows, are required to be non-reflective to minimize glare. Furthermore, Special Condition No. 6 requires that all exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

To ensure that any future buyers of the property will be aware of the requirements of Special Condition Nos. 1 and 6 for tree planting, maintaining the dark colors, prohibiting the use of reflective glass and maintaining a certain kind and array of exterior lighting fixtures, the Commission imposes Special Condition No. 4. This condition requires that the applicants execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the

use and enjoyment of the property. As conditioned, the proposed development will be subordinate to the character of its setting as required by LUP policy 3.5-1, 3.5-3, 3.5-4, and CZC Section 20.504.015(c)(3), as the development will be designed and sited consistent with the criteria for highly scenic areas, the development will not require major alterations of landforms, additional screening vegetation will be planted and maintained to ensure that the appearance of the development would be in keeping with the brushy and wooded nature of the property, and all exterior materials and colors will blend with the hue and brightness of the colors of its surroundings as required by CZC Section 20.504.015(c)(3).

4. Conclusion

Therefore, for all of the above reasons, the Commission finds that the proposed development as conditioned will protect public views to and along the coast, conform to height requirements, and be subordinate to the character of its setting consistent with the visual resource protection provisions of the certified LCP.

J. California Environmental Quality Act (CEQA).

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

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the County of Mendocino LCP. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Excerpt, Land Use Plan Map No. 28 – *Schooner Gulch*
4. Project Area Setting and Surroundings
5. Site Plan, House and Garage Floor Layout & Exterior Elevations, and Landscaping Plans

6. Notice of Final Local Action
7. Appeal, filed September 12, 2003 (Friends of Schooner Gulch, Moat Creek Managing Agency, Eric Dahlhoff)
8. Project Geologic Report (Thomas E. Cochran RG)
9. Coastal Conservancy's Bluff Analysis Geologic Report (Geo/Resource Consultants, Inc.)
10. Botanical Survey (Dorothy T. Scherer)
11. Biological Assessments (Frank C. Mello PhD, Nancy Anne Lang PhD)
12. Alternative Building Site Scenarios (Frank C. Mello PhD)
13. Reduced-width Buffer Adequacy Evaluation (Frank C. Mello PhD, Nancy Anne Lang PhD)
14. Reviewing Agency Correspondence
15. General Correspondence

ATTACHMENT A:

STANDARD CONDITIONS

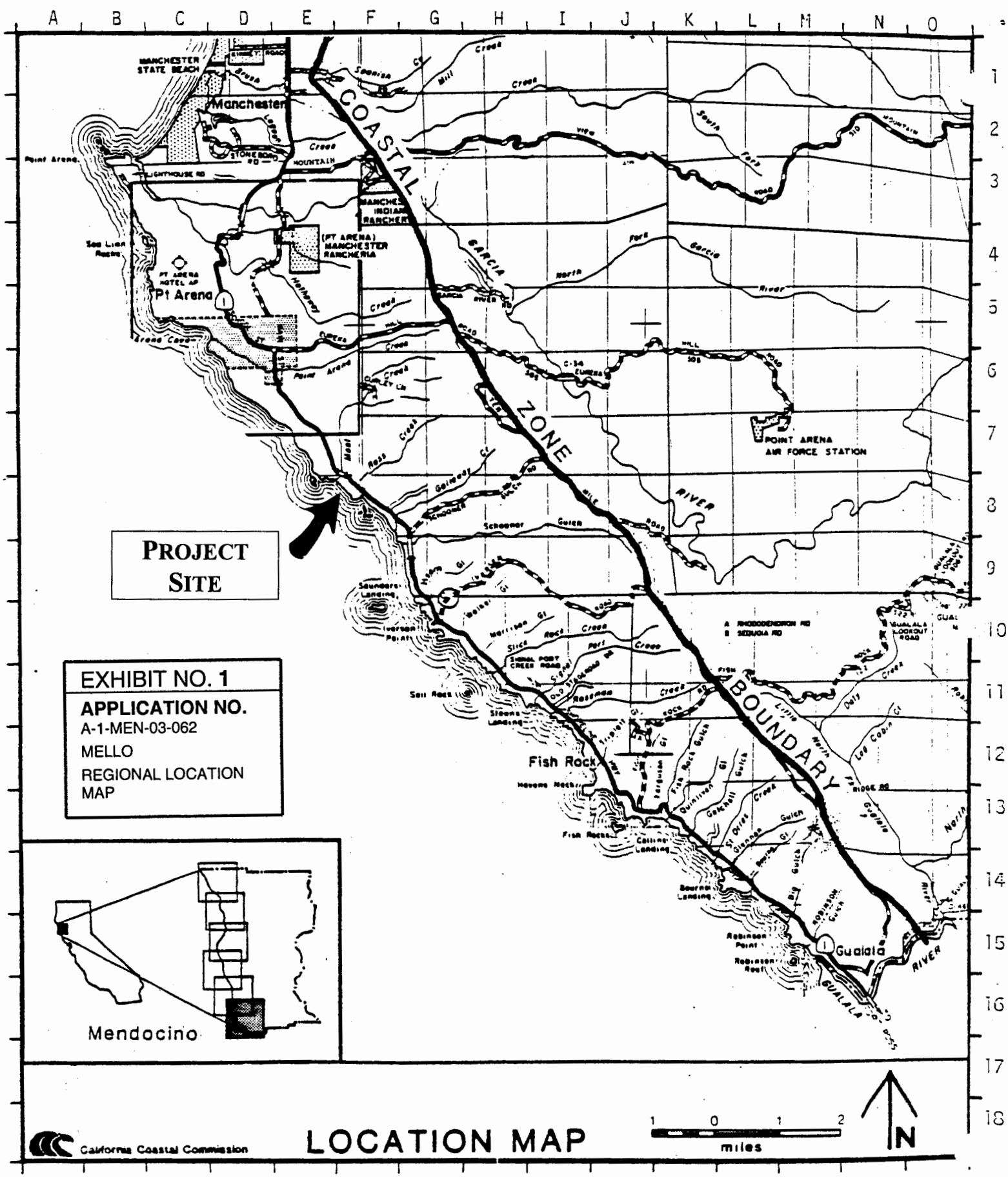
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.


A B C D E F G H I J K L M N O
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
COASTAL ZONE BOUNDARY
GARCIA RIVER
GUALALA RIVER
MANCHESTER STATE BEACH
Manchester
Point Arena
Pt Arena
(PT ARENA) MANCHESTER RANCHERIA
POINT ARENA AIR FORCE STATION
Fish Rock
Gualala
PROJECT SITE
EXHIBIT NO. 1
APPLICATION NO.
A-1-MEN-03-062
MELLO
REGIONAL LOCATION MAP
Mendocino
LOCATION MAP
1 0 1 2
miles
N
California Coastal Commission
County of Mendocino
Sheet 6 of 6

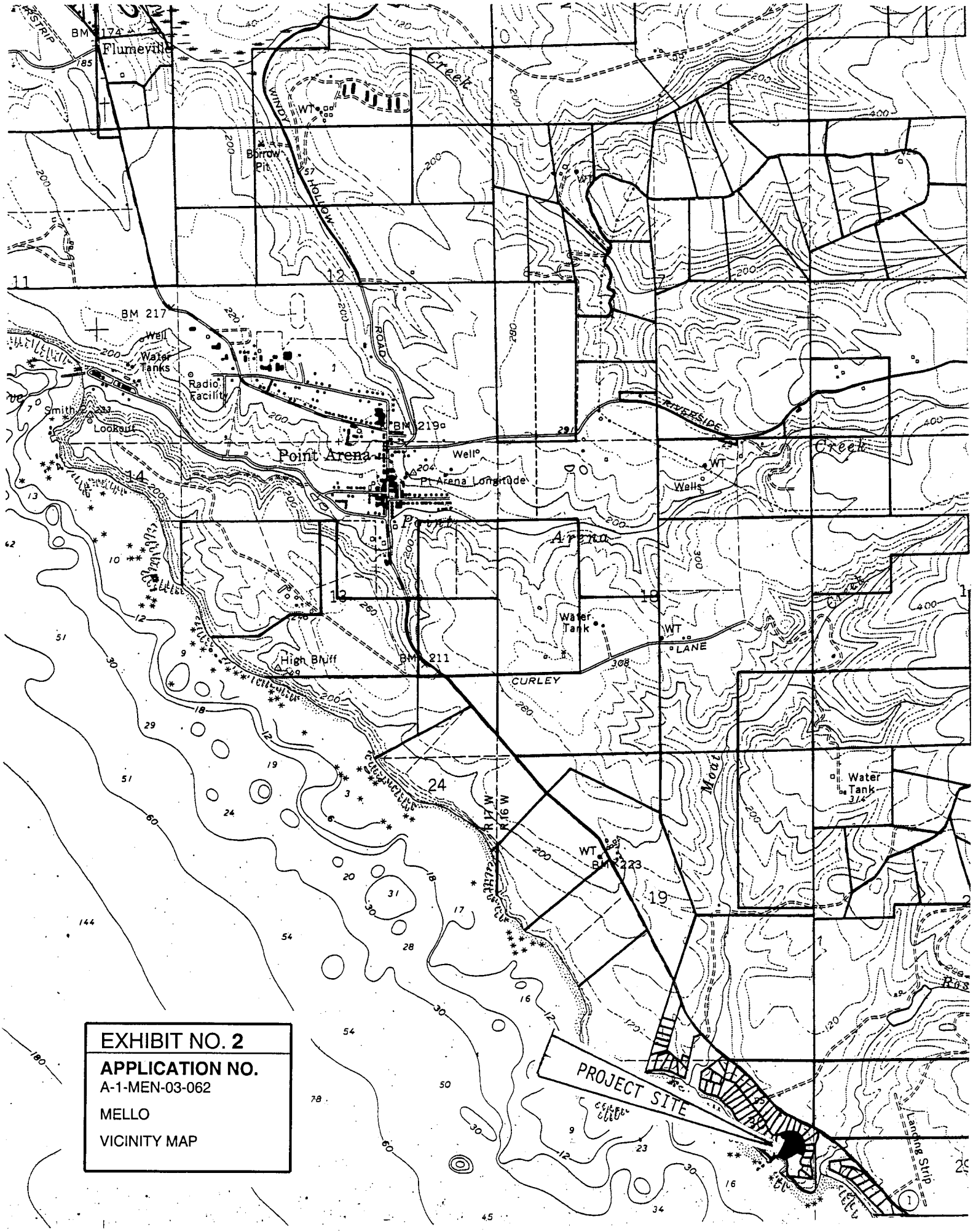


EXHIBIT NO. 2

APPLICATION NO.
A-1-MEN-03-062

MELLO

VICINITY MAP

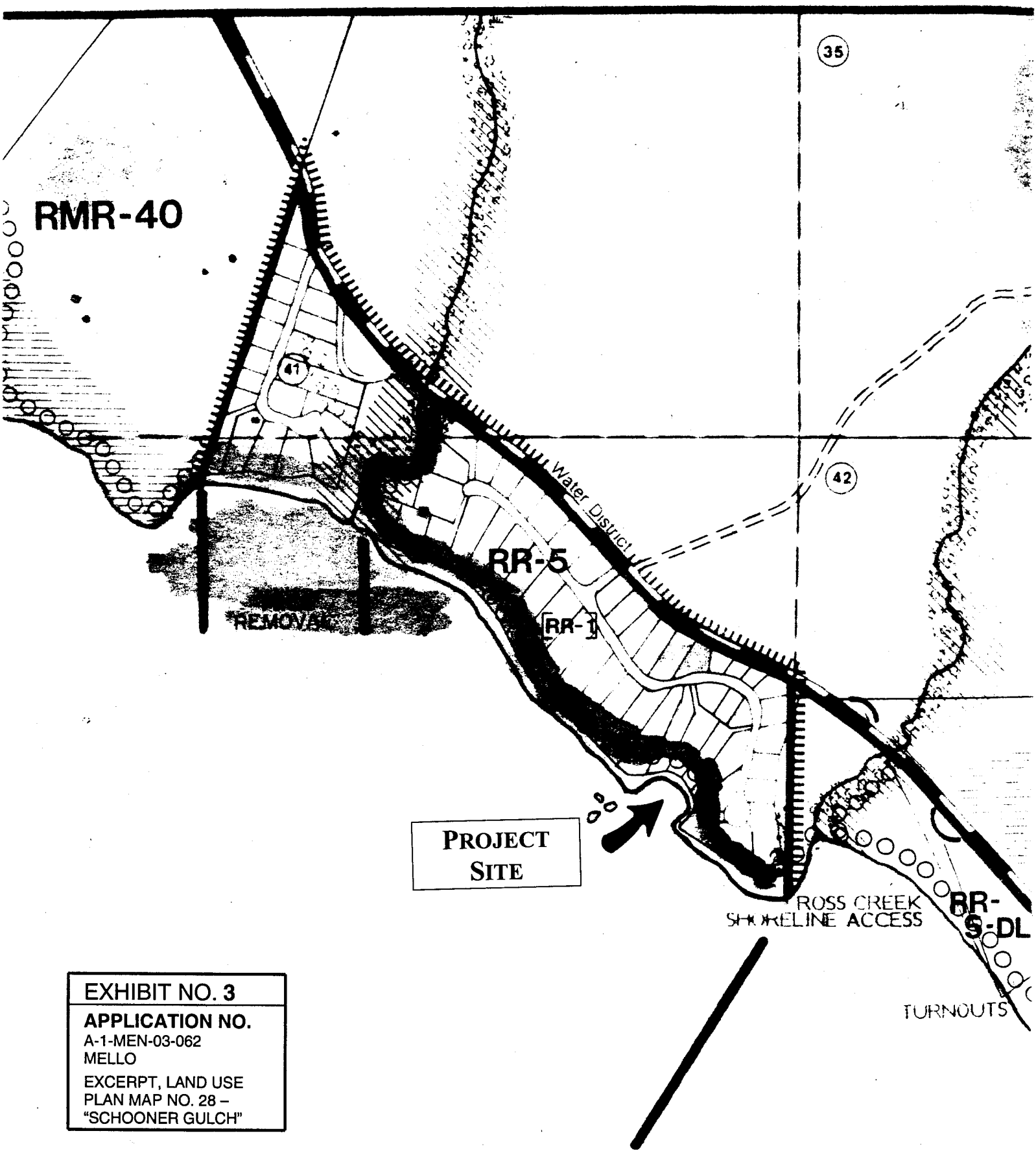


EXHIBIT NO. 3

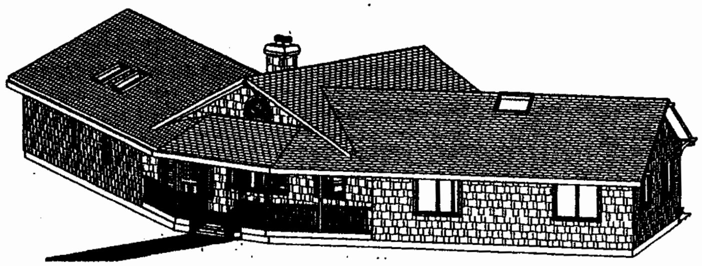
APPLICATION NO.
A-1-MEN-03-062
MELLO

EXCERPT, LAND USE PLAN MAP NO. 28 – "SCHOONER GULCH"

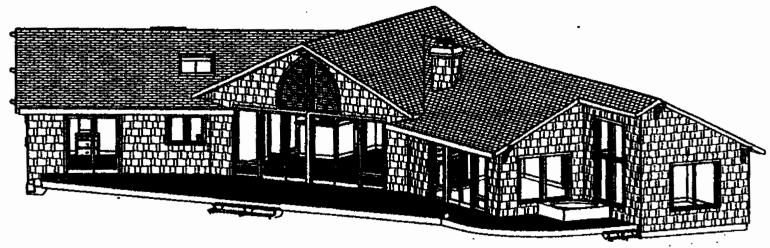
Figure 1: **Project Area Surroundings and Setting**

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:

EXHIBIT NO. 4
APPLICATION NO.
A-1-MEN-03-062
MELLO
PROJECT AREA SETTING AND SURROUNDINGS

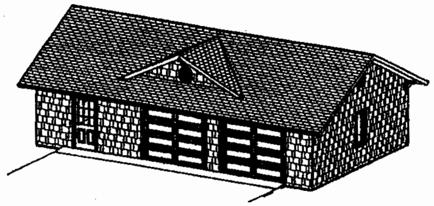


NORTH-EAST

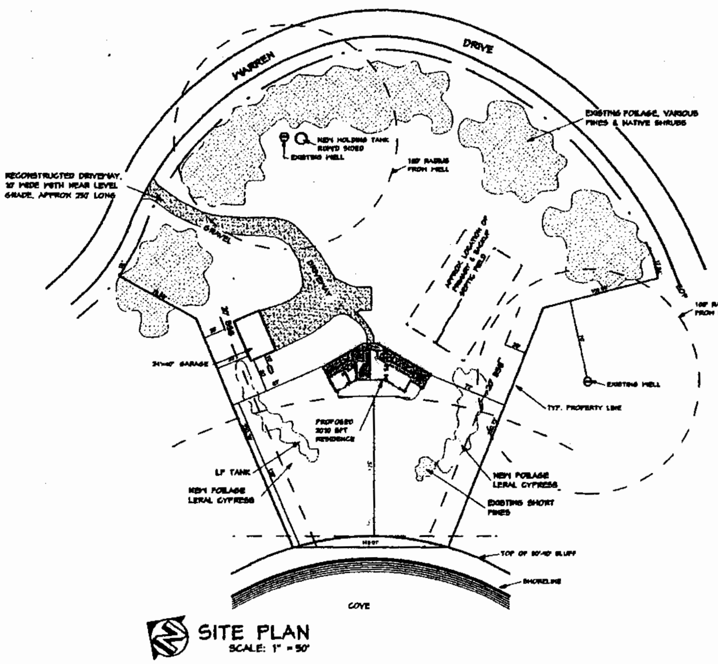


SOUTH-WEST

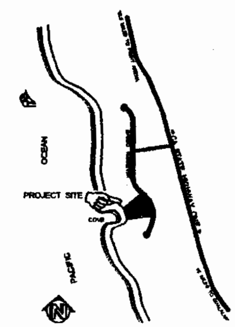
EXTERIOR VIEWS
FOR REFERENCE ONLY
NOT TO SCALE



FUTURE GARAGE



SITE PLAN
SCALE: 1" = 50'



LOCATION MAP
NOT TO SCALE

PROJECT DATA

ICBO OCCUPANCY:	R-3
CEC OCCUPANCY:	SINGLE FAMILY DETACHED RESIDENCE
ICBO CONSTRUCTION TYPE:	V - N
	CONVENTIONAL LIGHT WOOD FRAMED
CEC CLIMATE ZONE:	ONE

BUILDING AREAS

STORIES:	ONE
FIRST FLOOR C.F.A.	2010 SQ. FT.
SECOND FLOOR C.F.A.	N/A
CONDITIONED LIVING FLOOR AREA:	2010 SQ. FT.
ATTACHED GARAGE / SHEDS:	N/A
COVERED PORCHES:	147 SQ. FT.
RAISED / ROOF DECKS:	N/A
TOTAL BUILDING MASS	2219 SQ. FT.
BUILDING FOOTPRINT:	2219 SQ. FT.

EXHIBIT NO. 5

APPLICATION NO.
A-1-MEN-03-062
SITE PLAN, HOUSE & GARAGE FLOOR LAYOUT & EXTERIOR ELEVATIONS, & LANDSCAPING PLANS
(1 of 14)

DO NOT SCALE DRAWINGS

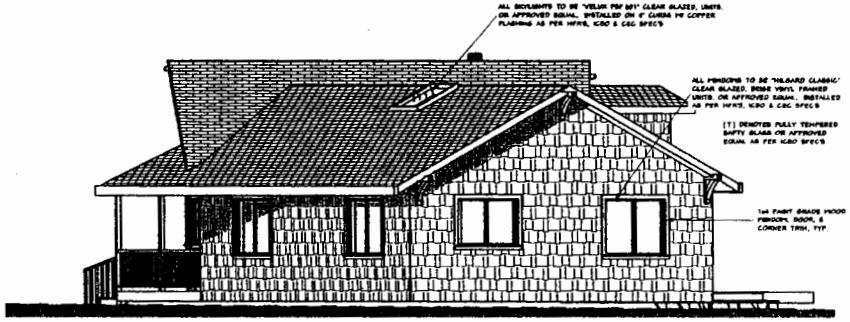
NEW COAST HOME FOR
FRANK & JULIA MELLO
27232 WARREN DRIVE, POINT ARENA, CA

SITE PALNS

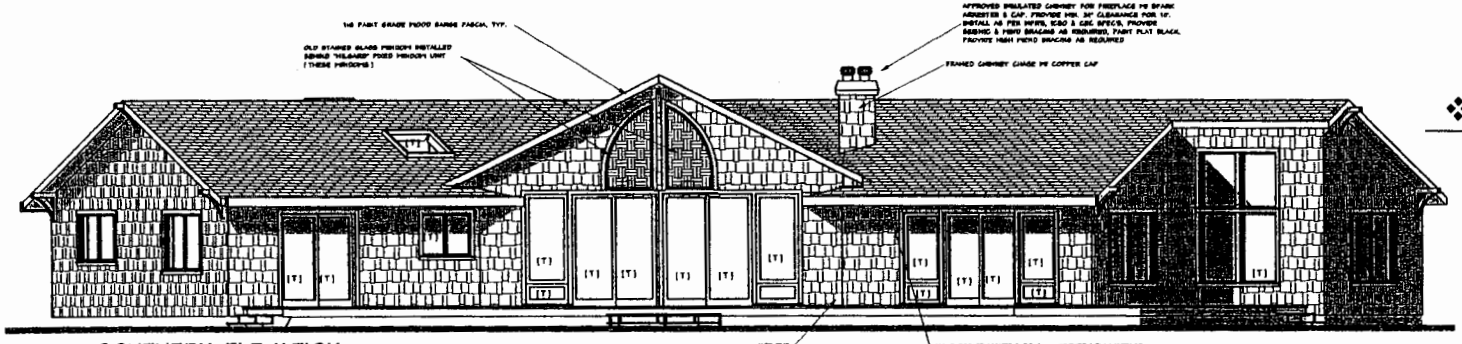
1

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"

EXTERIOR FINISHES

ROOFING:	FEATHER / HEAVY SHADOW COMP. SHINGLES
SIDING:	CEDAR SHINGLES, NATURAL SEALED FINISH
FASCIAS:	WOOD, DRIFTWOOD GRAY STAIN
TRIMWORK:	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

DO NOT SCALE DRAWINGS

10-23-02	JMD
11-18-02	JMD

NEW COAST HOME FOR
FRANK & JULIA MELLO
27232 WARREN DRIVE, POINT ARENA, CA
A.P.No 027-412-27/31

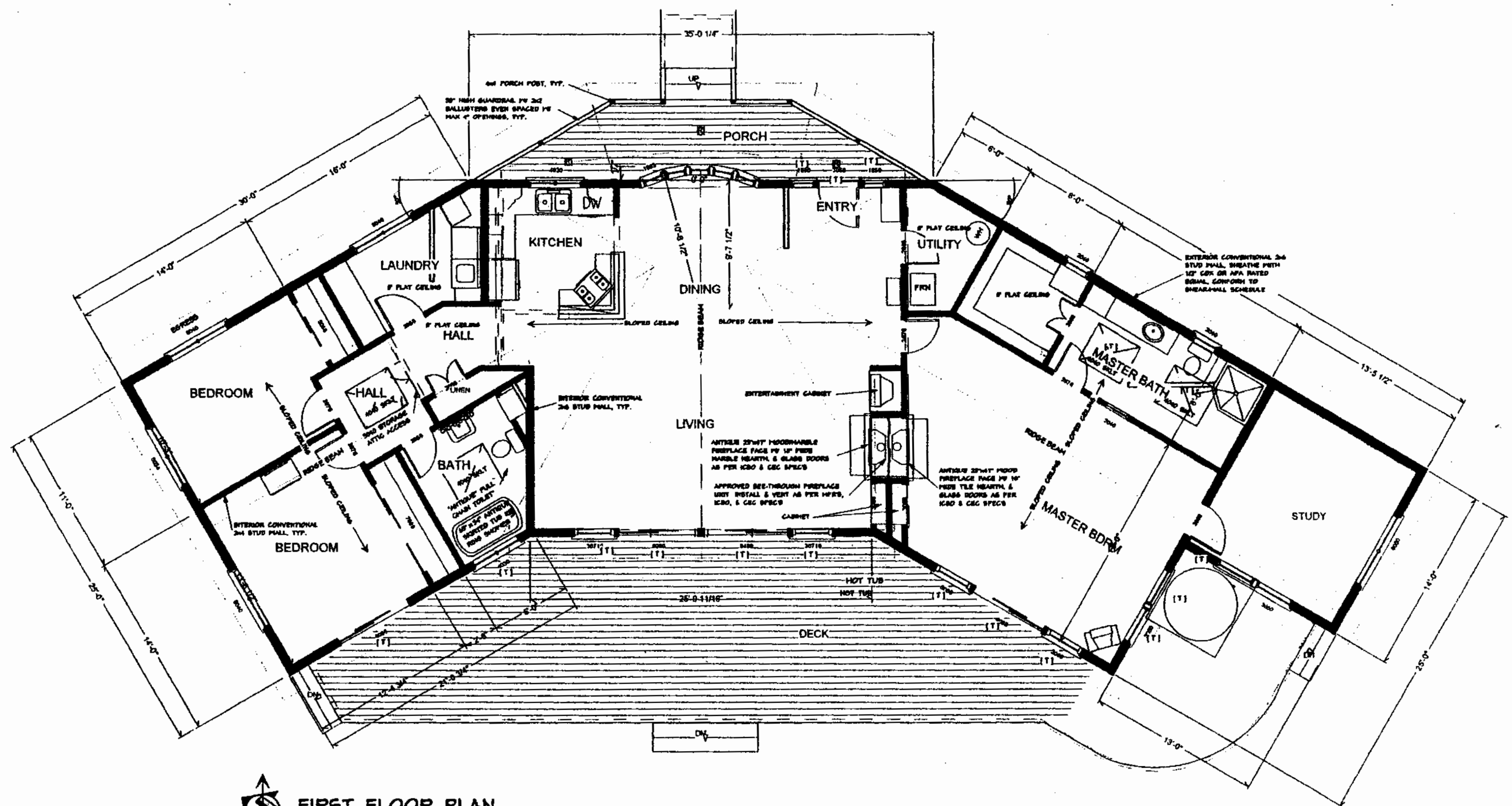
HOUSE ELEVATIONS

CUSTOM DRAFTING & DESIGN by John M. Dennis
P.O. Box 1806, Fort Bragg, CA 95437
(707) 937-4712 jmdennis@mcn.org

DRAWN BY: J. M.
D. CHECKED BY:
08-18-01
PLOT SCALE

JOB NO. 85403
SHEET 2 OF # SHEETS

2 of 2



FIRST FLOOR PLAN

SCALE: 1/4" = 1'0"

LIVING AREA
2252 sq ft

NOTES

1. ALL EXTERIOR LIGHTING TO BE APPROVED LOW WATTAGE DOWN AIMED UNDER EAVE SHADED FIXTURES CONFORMING TO APPLICABLE C.D.P. SPEC'S
2. INTERIOR 26810 BEDROOM DOORS TO BE ANTIQUE STAINED GLASS UNITS INSTALLED AS PER ICBO SPEC'S
3. BELOW EACH SKYLIGHT IS TO BE MOUNTED A 54"X57 ANTIQUE STAINED GLASS SKYLIGHT, INSTALLED & PROTECTED AS PER ICBO SPEC'S.
4. ALL TOILETS TO BE CERTIFIED AS ULTRA-LOW FLUSH (1.6 GAL MAX)

DO NOT SCALE DRAWINGS

10-22-02	JMD
11-18-02	JMD

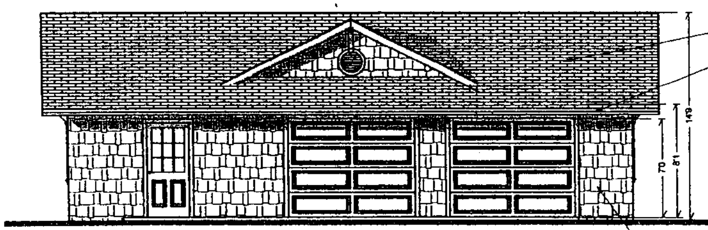
NEW COAST HOME FOR
FRANK & JULIA MELLO
27232 WARREN DRIVE, POINT ARENA, CA
A.P.No 027-412-27/31

HOUSE FLOOR PLAN

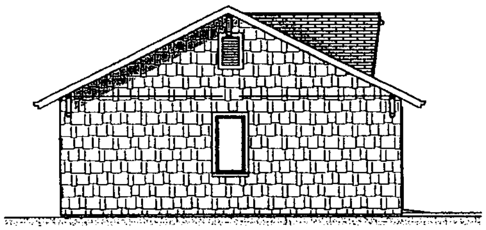
CUSTOM DRAFTING & DESIGN by Julia M. Dennis

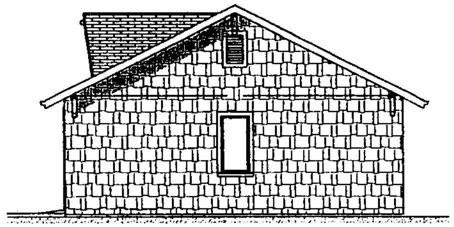
J.M.
08-19-01
85483

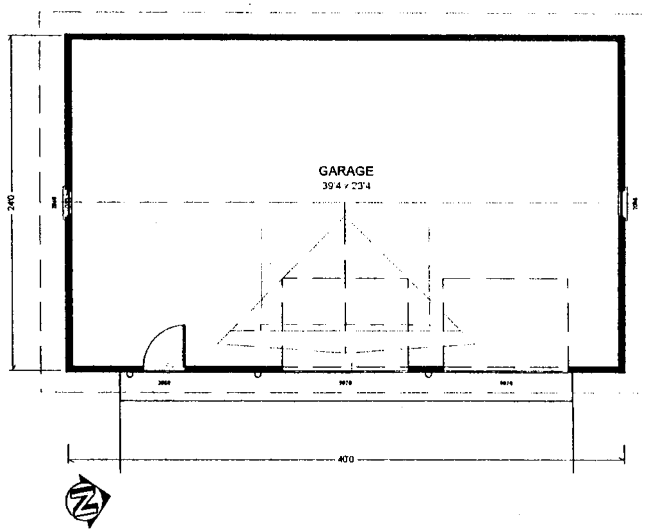
3



EAST ELEVATION
SCALE: 1/4" = 1'0"



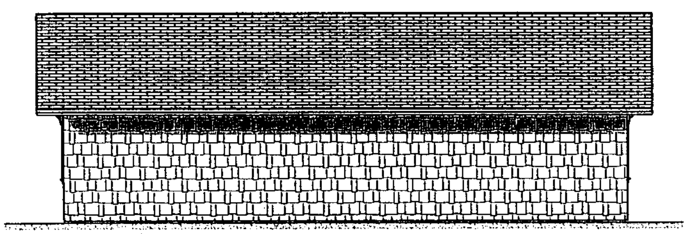




GARAGE FLOOR PLAN
SCALE: 1/4" = 1'0"

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

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



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

ALL EXTERIOR LIGHTING TO BE APPROVED LOW WATTAGE DOWN AIMED SHADED FIXTURES CONFORMING TO APPLICABLE C D P SPECS

EXTERIOR FINISHES

ROOFING:	PEWTER / HEAVY SHADOW COMP. SHINGLES
SIDING:	CEDAR SHINGLES, NATURAL SEALED FINISH
FASCIAS:	WOOD, DRIFTWOOD GRAY STAIN
TRIMWORK:	WOOD, DRIFTWOOD GRAY STAIN
DOORS:	WOOD, NATURAL SEALED FINISH
WINDOW FRAMES:	DRK 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

GARAGE ROOFING, SIDING, FASCIAS, TRIMWORK & FINISHINGS TO CLOSELY MATCH RESIDENCE

DO NOT SCALE DRAWINGS

REVISIONS	BY
10-22-02	JMD
11-18-02	JMD

NEW COAST HOME FOR
FRANK & JULIA MELLO
27232 WARREN DRIVE, POINT ARENA, CA
A.P.No 027-412-27/31

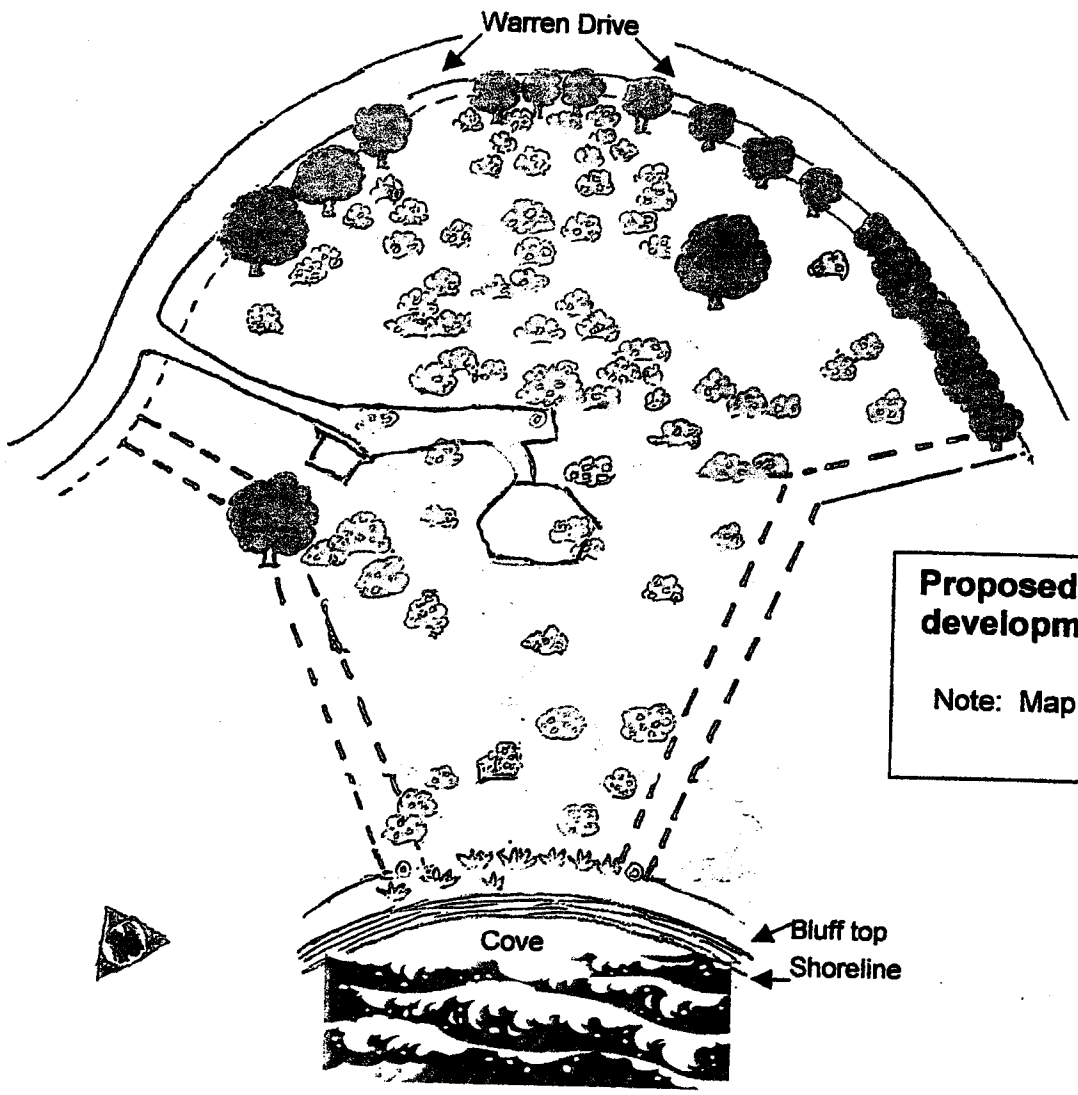
GARAGE PLAN

CUSTOM DRAFTING & DESIGN by John M. Dean

DRAWN BY: J.M.D.
ISSUE DATE: 08-18-01
JOB NO. 05403

APPENDIX I – Area Description

Vegetation Map



Proposed footprint of development project.

Note: Map is not to scale

Key:

	Introduced Perennial Grassland (Ground cover)	
*	North Coast Bluff Scrub (Ground cover)	
*	Coyote Brush Series (Shrub layer)	
*	Bishop Pine Forest (Tree canopy)	

*Locations and size are approximate. See photos in Appendix III for overview of vegetation.

© 1" steel monument with tags 3184

5414

Additionally we do not want to be continuously trimming these trees whereby we reduce their filtering and screening benefits or over trim them to a point that they are excessively stressed and ultimately killed especially during dry years. Please note that when the Bishop Pine trees were planted in 1960-70's (by we assume Billy Hay); they were planted too close to Warren Drive. Because of this they have overgrown onto the road. They will have to be trimmed back significantly in order to clear the road. This action will certainly contribute to the trees demise if they have to be significantly cut back on two sides. With this in mind we do not recommend moving the proposed development into the northwestern quadrant (your item #3 alternate request) for all of the same reasons (i.e., moving the garage for the same reasons as the last option). Regarding all options any northern view of the proposed structure from Highway One will be eliminated by us filtering the area with Leland Cypress after the driveway is completed. Additionally as has been proposed all along, we will provide Leland Cypress landscape screening on the northern and southern sides of the house. In addition to the low profile of the proposed house, this action will certainly reduce any view of the structure from any direction.

2. Demonstration of Proof of Water

Based on your request I have directed my Contractor, Don Teutsch of Point Arena, to call the leading expert in the area to complete this testing and to get the information to the Mendocino County Public Department's Division of Environmental Health (DEH). This should be completed in the next several weeks.

3. Demonstration of Adequate Sewage Disposal

Based on your request I have directed my Contractor, Don Teutsch, to have Dave Miller (Septic System design specialist) retest the site and submit data to DEA. Dave has conducted these test twice before but will redo them to meet the 1998 standards. This should be completed in the next several weeks.

4. Buffers for Environmentally Sensitive Habitat Areas

I have read through your document requiring more information. Thus I have consulted with a representative of the California Department Fish and Game. I and Dr. Nancy Lang [former ornithologist and curator for the San Francisco Zoo] are compiling more data to substantiate that our proposed 142' + ESHA buffer width is more than adequate to protect this wonderful Rookery in our Pacific Ocean cove. In brief, Pelagic Cormorants are migratory birds (Granholm, 2004). I have not generally noticed any birds roosting on the subject cliffs during the summer and winter months. The birds normally migrate south during the winter months to as far as Baja, CA, and migrate north during the summer months to as far as Alaska. Thus, other than their normal nesting period on these cliff rookeries during March to June, they are not in the area to be affected. As we have stipulated, the house will have a low occupancy rate year round, will be well insulated (6" studs for optimal insulation and low

noise), we will not conduct outside construction during the nesting time, minimal outside lighting, and we will certainly not be spending none if any time on or around the bluff edge for safety reasons. Regarding Biological Significance of Adjacent Lands, Pelagic Cormorants do not roost on these properties (being generally grassy and flat) because of their preference of roosting on cliffs and then feeding in shallow waters off of the cliffs (Robertson, 1974). Lastly Dr. Lang and I agree with you that Pelagic Cormorants are not on the Endangered Species List (State of California Department of Fish and Game, 2004). However, they are still wonderful birds and deserve attention to protecting their habitat. As you know we have recommended to the Friends of Schooner Gulch that the access trail be closed during the Pelagic Cormorant nesting season of March to June. This activity (along with people jogging with animals, etc.) is a much higher risk to this ESHA matter than the proposed project. This also applies to any mowing on the trail. Our botanical study by Ms. Scherer has shown that North Coast Bluff Scrub has been classified as "a series or association considered rare and worthy of consideration" by the CNDDB making the bluff edge and bluff face of the cove an ESHA. Unfortunately we allow this ESHA to be mowed and thus the destruction of the rare flora.

5. Solar Electricity

For the record we did provide the Mendocino County Planning and Building Services Department (MCPD) written updated information on our solar power stipulation to remain in our building permit request. We hope this eliminates any confusion as it appears that the MCDP neglected to pass this information on to you or include it in their final review. However under proper protocol, *for purposes of the Commission's de novo review of the project*, we are amending this project description to include solar photovoltaic panels. We propose building a 4.8 KW photovoltaic system comprising of 38 – 160 Watt panels to be mounted on two locations of the west roof of the house. The panels will be facing west to the ocean. Thus 19 panels will be mounted on two separate roof surfaces (refer to **Appendix 2**). Each panel measures 62.2"x30.8"x0.75". Refer to the attached **Appendix 3** for a description and details. The color of the panels is a flat darker blue. I would ideally prefer that they be black. However, the technology has not advanced to obtain silicon of this hue. Also attached is **Appendix 4** which describes the reflectivity as determined by Sandia National Laboratories. In layman's terms their findings indicated that their latest panel technology has resulted in "zero" glare attributed to a significant increase in panel surface area and modifications to the silicon cell composition. We plan on installing hot water coil floor heating which will be powered by a photoelectric boiler. The solar electric system will also power all electricity for appliances and lighting, etc. In a nutshell the house will be self-sustaining total electric grid system. If you have been watching the news lately, gasoline prices are hitting new highs each day with no end in sight. In the long term this phenomenon will negatively impact electric and heating costs which have been climbing about 6% per year. What is more interesting it that the sales of "hybrid" (gas/electric/hydrogen)

7 of 14

have doubled over last year just in the first three months of 2004. Based on the world supply vs. demand of fossil fuels, it appears that there is a lot more bad news heading our way, especially for California.

Because of our solar design we see no negative visual impact and a lot of ecological and economic benefit to State of California in the future. Bob Merrill has seen a panel sample. It was sent back to the vendor. If you or the Commission would like to see the panel again, I can arrange to borrow another sample.

In conclusion, we hope this information is useful to you for scheduling our May 12-14 California Coastal Commission hearing in San Rafael, CA.

Sincerely,

Frank Mello, Ph.D.
B. Bryan Preserve

Literature Cited

Granholm, S. 2004. Pelagic Cormorants. California Department of Fish and Game.

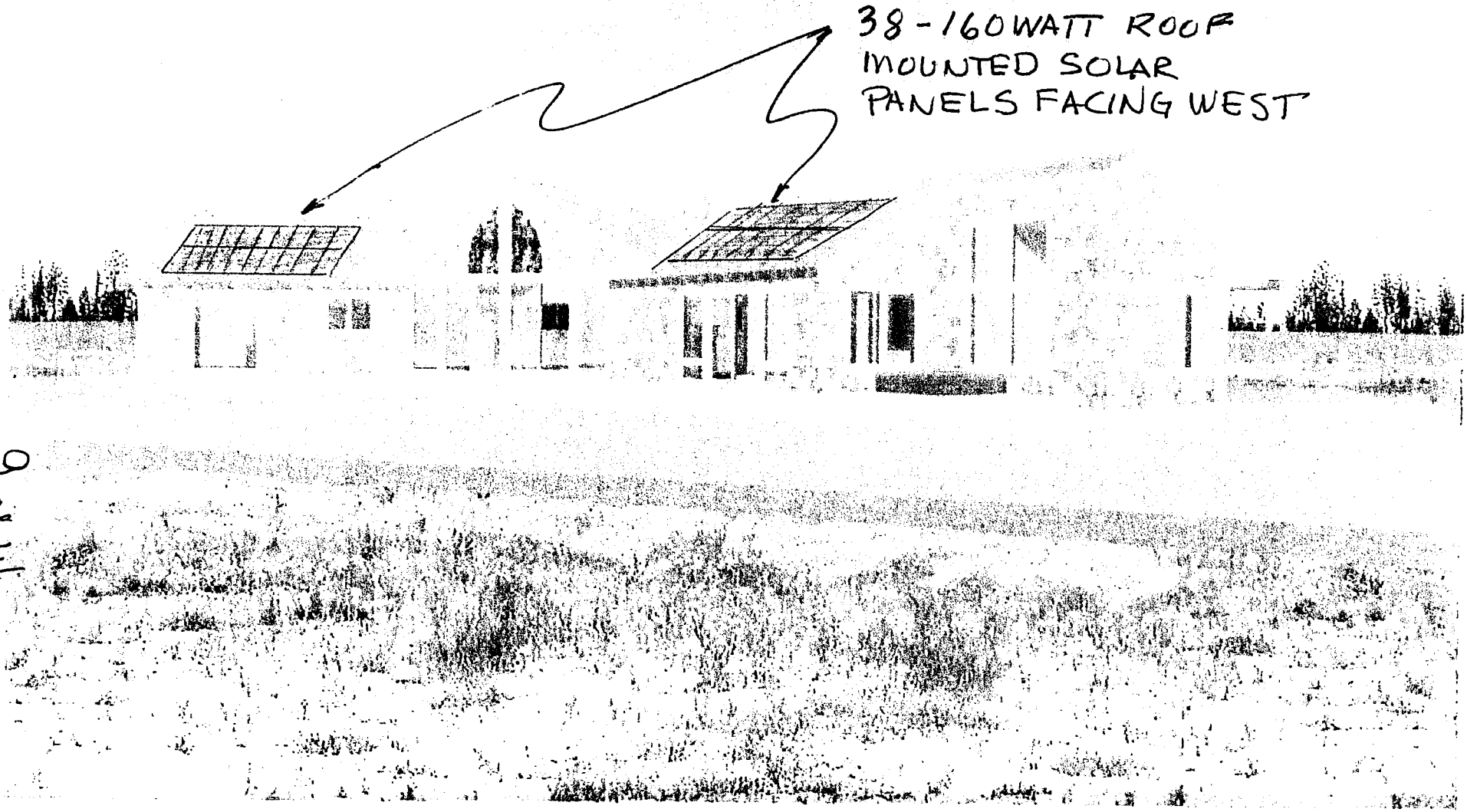
Mello, Frank. 2003. Nesting and Habitat of Pelagic Cormorants in Mendocino County, California in 2002. Document.

Robertson, I. 1974. The Food of Nesting Double-Crested and Pelagic Cormorants at Mandarte Island, British Columbia: with notes on feeding ecology. Condor 76:346-348

Scherer, Dorothy. 2002. Botanical Survey for Warren Drive in Whiskey Shoals. Document.

State of California. January, 2004. State and Federally Listed Endangered and Threatened Animals of California.

8 of 14



Page

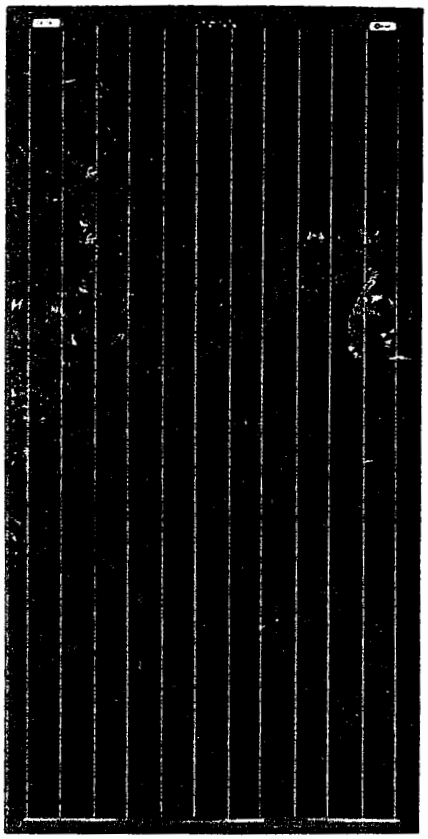
Appendix 2. PHOTOVOLTAIC MODULE ROOF LOCATION

Appendix 3. SOLAR PANELS

bp

160 Watt Photovoltaic Module

High-efficiency photovoltaic module using silicon nitride multicrystalline silicon cells.



Performance

Rated power (P_{max})	160W
Power tolerance	± 5%
Nominal voltage	24V
Limited Warranty[1]	25 years

Configuration

B BP 3160B	Bronze frame with output cables and polarized Multicontact (MC) connectors
S BP 3160S	Clear universal frame with output cables and polarized Multicontact (MC) connectors
L BP 3160L	Unframed laminate version of BP 3160S
U BP 3160U	Clear universal frame with standard junction box

Electrical Characteristics[2]

	BP 3160
Maximum power (P_{max})[3]	160W
Voltage at Pmax (V_{mp})	35.1V
Current at Pmax (I_{mp})	4.55A
Warranted minimum P_{max}	152W
Short-circuit current (I_{sc})	4.8A
Open-circuit voltage (V_{oc})	44.2V
Temperature coefficient of I_{sc}	(0.065±0.015)%/ °C
Temperature coefficient of V_{oc}	-(160±20)mV/°C
Temperature coefficient of power	-(0.5±0.05)%/ °C
NOCT (Air 20°C; Sun 0.8kW/m^2; wind 1m/s)	47±2°C
Maximum series fuse rating	15A (S, L); 20A (U)
Maximum system voltage	600V (U.S. NEC & IEC 61215 rating) 1000V (TÜV Rheinland rating)

Mechanical Characteristics

Dimensions	**B,S,U**	Length: 1593mm (62.8")	Width: 790mm (31.1")	Depth: 50mm (1.97")
	L	Length: 1580mm (62.2")	Width: 783mm (30.8")	Depth: 19mm (0.75")
Weight	**B,S,U**	15.0 kg (33.1 pounds)		
	L	12.4 kg (27.3 pounds)		
Solar Cells	**B,S,L,U**	72 cells (125mm x 125mm) in a 6x12 matrix connected in series		
Output Cables	**B,S,L**	RHW AWG# 12 (4mm^2) cable with polarized weatherproof DC rated Multicontact connectors; asymmetrical lengths - 1250mm (-) and 800mm (+)		
Junction Box	**U**	Standard junction box with 6-terminal connection block; IP 54, accepts PG 13.5, M20, ½ inch conduit, or cable fittings accepting 6-12mm diameter cable. Terminals accept 2.5 to 10mm^2 (8 to 14 AWG) wire.		
Diodes	**B,S,L,U**	Three 9A, 45V Schottky by-pass diodes included		
Construction	**B,S,L,U**	Front: High-transmission 3mm (1/8th inch) tempered glass; Back: Tedlar; Encapsulant: EVA		
Frame	**B,S,U**	Anodized aluminum alloy type 6063T6 Universal frame; Color: bronze (B); silver (S,U)		

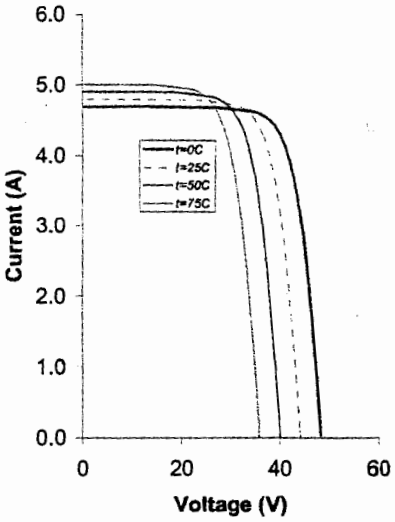
1. Warranty: Power output for 25 years. Freedom from defects in materials and workmanship for 5 years. See our website or your local representative for full terms of these warranties.
2. These data represent the performance of typical BP 3160 products, and are based on measurements made in accordance with ASTM E1036 corrected to SRC (STC.)
3. During the stabilization process that occurs during the first few months of deployment, module power may decrease by up to 3% from typical P_{max}.

10 of 14

Quality and Safety

ESTI	Module power measurements calibrated to World Radiometric Reference through ESTI (European Solar Test Installation at Ispra, Italy)
CE	Manufactured in ISO 9001-certified factories; conforms to European Community Directives 89/33/EEC, 73/23/EEC, 93/68/EEC; certified to IEC 61215
TUV	Framed modules certified by TÜV Rheinland as Safety Class II (IEC 60364) equipment for use in systems up to 1000 VDC
UL	Listed by Underwriter's Laboratories for electrical and fire safety (Class C fire rating)
FM	Approved by Factory Mutual Research in NEC Class 1, Division 2, Groups C & D hazardous locations (U)

BP 3160 I-V Curves

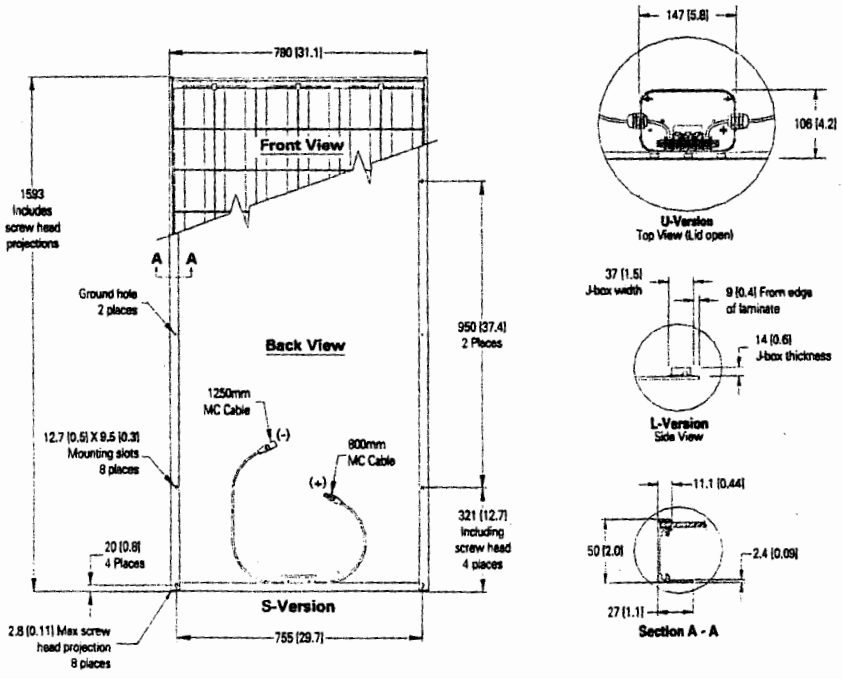


Qualification Test Parameters

Temperature cycling range	-40°C to +85°C (-40°F to 185°F)
Humidity freeze, damp heat	85% RH
Static load front and back (e.g. wind)	50psf (2400 pascals)
Front loading (e.g. snow)	113psf (5400 pascals)
Hailstone impact	25mm (1 inch) at 23 m/s (52mph)

Module Diagram

Dimensions in brackets are in inches. Unbracketed dimensions are in millimeters. Overall tolerances ±3mm (1/8")



ncluded with each module: self-tapping grounding screws, instruction sheet, and warranty document.

ote: This publication summarizes product warranty and specifications, which are subject to change without notice.

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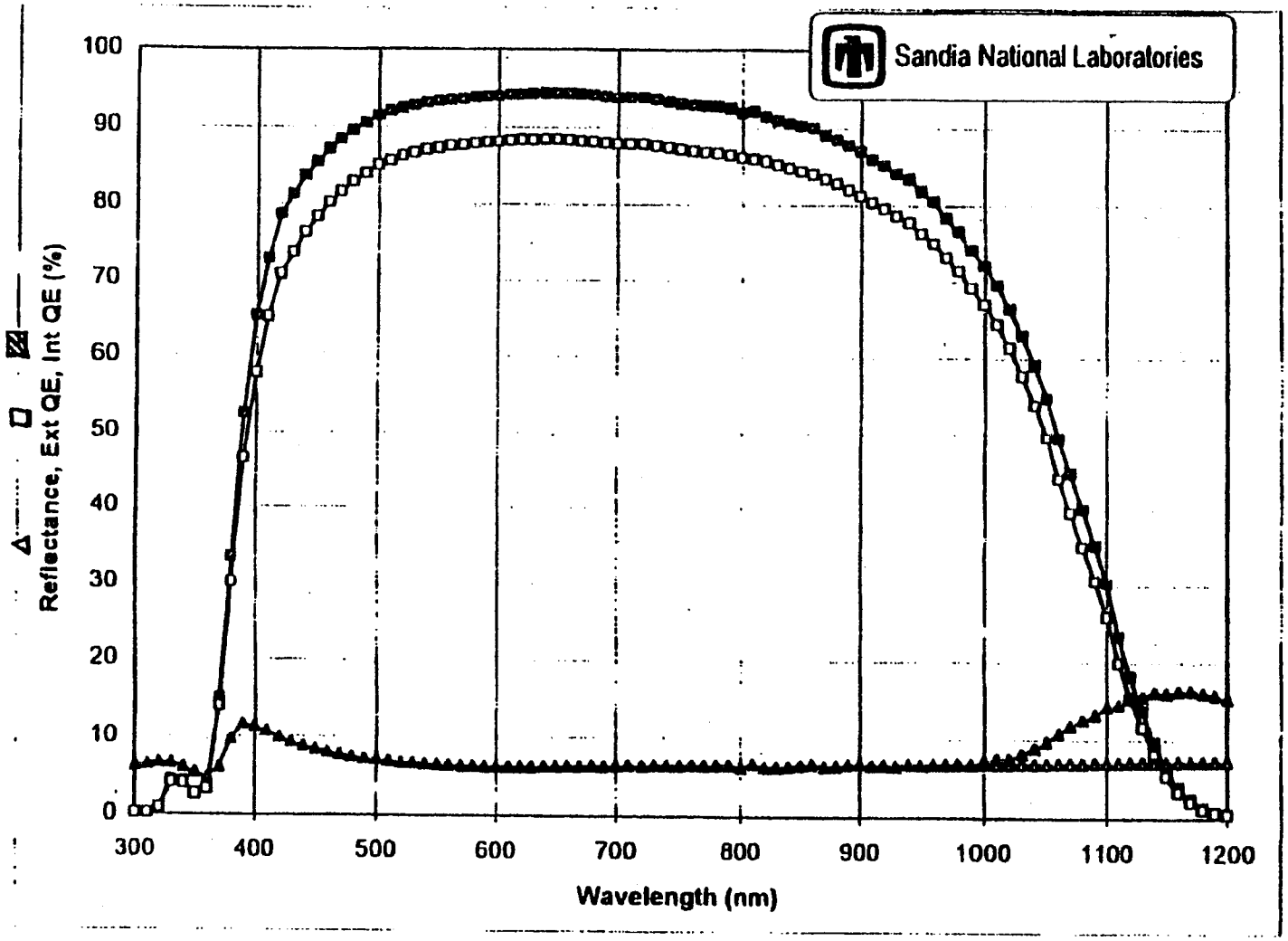
APPENDIX H. SOLAR MODULE SURFACE CHARGE SPECTRAL RESPONSE

SLXPVMAT.XLS



SLX-PVMAT-1 Spot #1 10/19/95
Spectral Response: x:\king\asr\95204-1a.asr Reflectance: x:\king\rfl\95204-1a.rfl
Current Density at 1 kW/m^2 (mA/cm^2): 33.7 (Global), 33.5 (Direct), 29.5 (Space)
Weighted Front Reflectance (%): 6.7 (Global), 6.7 (Direct), 6.8 (Space)

Photovoltaic Device Measurement Laboratory

To: California Coastal Commission
Attention: James Baskin
From: Dr Frank and Julia Mello
Date: March 15, 2004
RE: No Future Construction or Expansion of Bluff or Shoreline Protective Device.

Per our conversation, below details that we shall not construct any type of shoreline protective device on our lot (detailed below) in Point Arena, CA

Lot Description: *27232 Warren Drive, approximately 2 ½ miles southeast of the town of Point Arena, Mendocino County, APNs 27-412-27,-28,-29,-30, and -31*

No Future Construction or Expansion of Bluff or Shoreline Protective Device.

By acceptance of this permit, the applicant agrees, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit, including, but not limited to, the structures, foundations, decks, pathways, driveways, drainage facilities or the sewage disposal system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. The applicant also agrees, on behalf of themselves and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device shall be undertaken. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct or modify such devices.

By acceptance of this permit, the applicant further agrees, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the structures, foundations, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

13 of 14

Continued RE: No Future Construction or Expansion of Bluff or Shoreline Protective Device.

In the event the edge of the bluff recedes to within ten (10) feet of any of the new buildings authorized by the permit, but no government agency has ordered that the structures not be occupied, a geo-technical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the structures are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall be submitted to the Executive Director and shall identify all those immediate or potential future measures that could stabilize the buildings without shore or bluff protection, including but not limited to removal or relocation of portions of the buildings. If the geo-technical report concludes that a building or any portion of the building is unsafe for occupancy, the permittee shall immediately obtain authorization from the Commission to remove the threatened portion of the structure.

PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

Regards,

Dr. Frank C Mello

Julia Bryan Mello

Monday, March 15, 2004

14 of 14

1-MEN-01-308

RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
MAILING ADDRESS:
790 SO. FRANKLIN
FORT BRAGG, CA 95437

TELEPHONE
(707) 964-5379

RECEIVED
SEP 11 2003
CALIFORNIA
COASTAL COMMISSION

September 9, 2003

NOTICE OF FINAL ACTION

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

CASE#: CDP #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. 6
APPLICATION NO.
A-1-MEN-03-062
MELLO
NOTICE OF FINAL LOCAL ACTION (1 of 18)

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 ~~modified to~~ deleted

Note: setbacks per submitted plot plan

Signed: Coastal Permit Administrator

2-4-18

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 18

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 18

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

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

Lot 18,

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.

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 18

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

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*

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

11 of 18

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*

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.

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

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.

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.

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
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 18

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.

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
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EUREKA, CA 95502-4908

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SEP 11 2003

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

Friends of 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. 7

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.

R. D. Lemmill

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 of 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.

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. Additonal 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,

Patricia Schwindt, Treasurer
Moat Creek Managing Agency

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

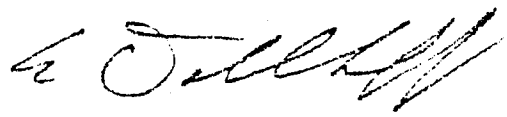
Dear Commissioners and Executive Director,

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

9420

Friends of Schooner Gulch

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

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.

ID #20

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.

11/4/20

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

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.

"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

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.

Thank you for your consideration.

Sincerely,

Peter Reimuller
Secretary:

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

EXHIBIT B

State of California, George Deukmejian, Governor

California Coastal Commission
North Coast District
1656 Union Street, Room 150
Eureka, California 95501
(707) 445-1623

FILED: April 12, 1983
49th DAY: June 8, 1983
180th Day: October 19, 1983
Staff: George Kelsis/ln
Staff Report: April 22, 1983
Hearing Date: May 11, 1983
TC DD

STAFF REPORT: ADMINISTRATIVE PERMIT

PROJECT DESCRIPTION

APPLICANT: Antonio and Charlene Savoca

PERMIT NO.: 1-83-76

PROJECT LOCATION: 30700 Highway One, north of Anchor Bay, Mendocino County

PROJECT DESCRIPTION: Drilling of a domestic water well on an undeveloped blufftop parcel.

LOT AREA 2 acres — ZONING Upland recreation

BLDG. COVERAGE n/a — (LCP) PLAN DESIGNATION Rural Residential - 2

PAVEMENT COVERAGE n/a — PROJECT DENSITY n/a

LANDSCAPE COVERAGE n/a — HEIGHT ABV. FIN. GRADE n/a

LOCAL APPROVALS RECEIVED: Mendocino County Health Department

STAFF NOTES

SITE CHARACTERISTICS: Relatively flat blufftop which descends steeply to shoreline below. The parcel is covered with trees, shrubs and grasses.

SURROUNDING LAND USE: Residential and vacant

COASTAL ACT ISSUES: Public Access

STANDARD CONDITIONS: See attached

SPECIAL CONDITIONS: 1. Prior to transmittal of this permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall include all lands seaward of the toe of the bluff to the mean high tide line (document shall state that the toe of the bluff is understood by both parties to recede over time as a result of natural geologic processes). Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

7 BOOK 1402 PAGE 256

18920

H. Coastal Views: The project is located between the sea and the first public road paralleling the sea. The proposed height of the house is 21' from the ground elevation at the house site. However, the elevation of Bay View Avenue is approximately 4 to 5 feet higher than the house site. Therefore the height of the house from the road will be approximately 16 to 17 feet. The project also proposes that approximately 2 feet be cut from the surface at the northeast corner of the garage. This will result in a lower profile garage. The development as proposed is in keeping with the visual resource policies of the Coastal Act and is compatible with the character of the site and surrounding area.

I. Local Coastal Program: The project as proposed is consistent with existing surrounding land use and development and proposed residential designations in Mendocino County's draft Local Coastal Plan.

J. California Environmental Quality Act: The development's potential significant adverse environmental impacts are adequately mitigated or minimized by the conditions attached to the permit.

STANDARD CONDITIONS: See Attachment 2

SPECIAL CONDITIONS:

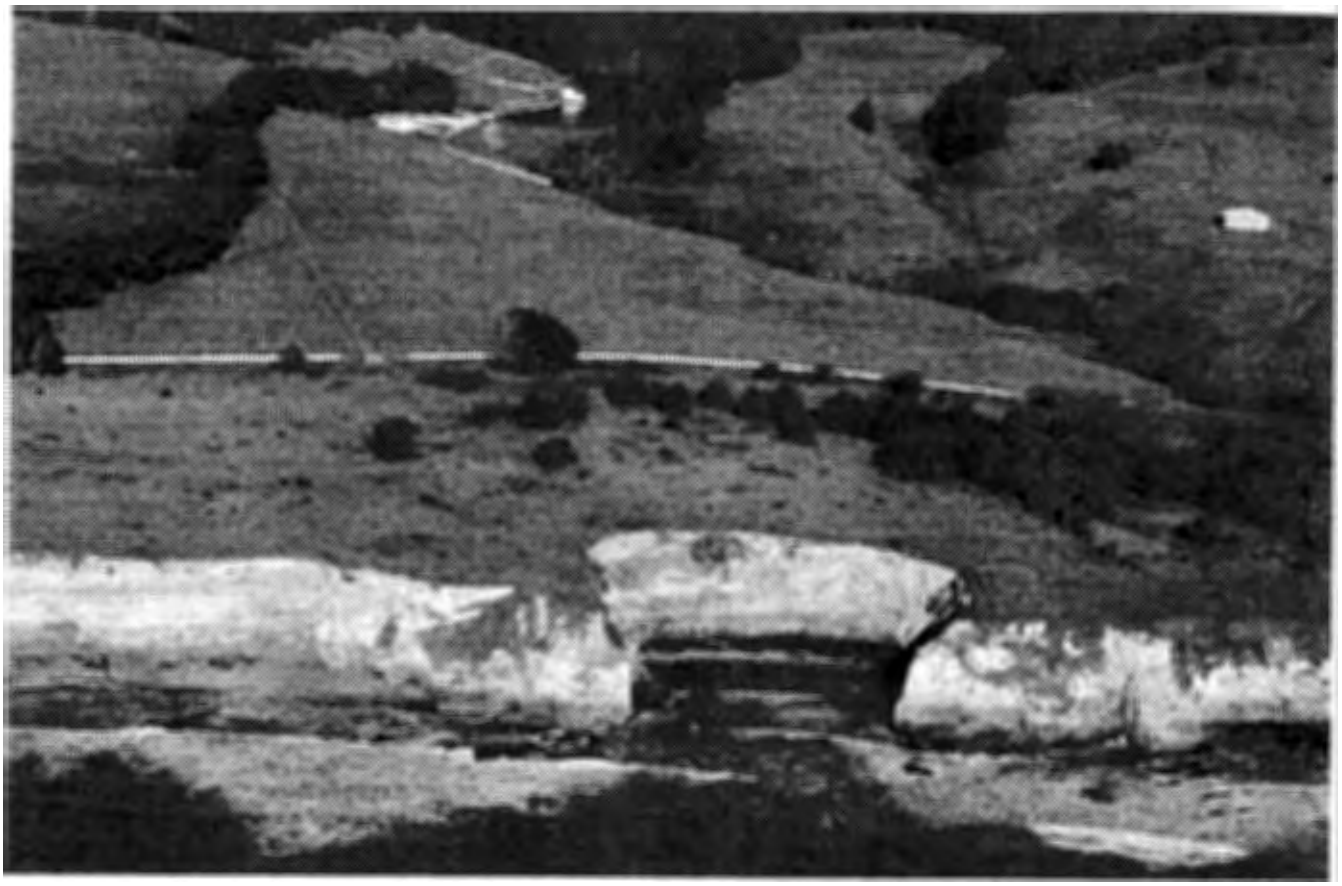
1. Public Access: Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline.

Such easement shall be 25 feet wide located along the bluff top as measured inland from the daily bluff edge. As the daily bluff top edge may vary and move inland, the location of this right of way would change over time with the then current bluff edge, but in no case shall it extend any closer than 15 feet from the proposed residence.

This area shall be mapped and attached as an exhibit to the recorded document. The staff recommendation should also be included as an exhibit.

2. Applicant's Assumption of Risk: Prior to the transmittal of a coastal permit and therefore commencement of construction, the applicant shall submit to the Executive Director, a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site is subject to extraordinary hazard from seismic hazards, surface erosion, and wave erosion, and the applicants assume the liability from those hazards; (b) the applicants' unconditionally waive any claim of liability on the part of the Commission or any public agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of seismic shaking and other geologic hazards.

3. Drainage Plans: Prior to the transmittal of this permit and therefore construction, the applicant shall submit to the satisfaction of the Executive Director, a drainage plan that includes a catchment basin that illustrates methods of surface runoff dispersal and that incorporates energy dissipating methods and minimizes erosion.



20 of 20

EXHIBIT NO. 8
APPLICATION NO.
A-1-MEN-03-062
MELLO
EXCERPT PROJECT
GEOLOGIC REPORT
(THOMAS E. COCHRAN RG)
(1 of 4)

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

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.

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.

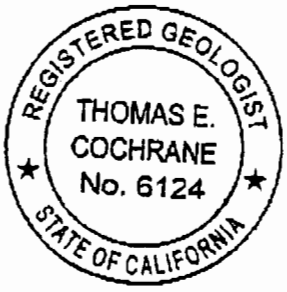
To minimize additional bluff erosion, I would recommend that surface water drainage, as much as possible, be directed behind the house and not into the cove. The house foundation can easily rest on bedrock, found at less than three feet over much of the site.

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,



T E. Cochrane

Thomas E. Cochrane
CA. Registered Geologist-#6124

Attachments:
Photos 1,2,3.
Geologic Site Map

EXHIBIT NO. 9
APPLICATION NO.
A-1-MEN-03-062
COASTAL CONSERVANCY'S BLUFF ANALYSIS GEOLOGIC REPORT (GEO/RESOURCE CONSULTANTS, INC. (1 of 10)

REPORT

1964-100

GEOLOGIC EVALUATION
MOAT CREEK SITE
Point Arena, California

From CDP 23-99

May 1999

Prepared for:
California State Coastal Conservancy
1330 Broadway, 11th Floor
Oakland, California

Geo/Resource Consultants, Inc.
GEOLOGISTS / ENGINEERS / ENVIRONMENTAL SCIENTISTS
505 BEACH STREET, SAN FRANCISCO, CALIFORNIA

Geo/Resource Consultants, Inc.
GEOLOGISTS / ENGINEERS / ENVIRONMENTAL SCIENTISTS

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BLUFF EVALUATION
MOAT CREEK SITE
POINT ARENA, CALIFORNIA

PREPARED FOR:

CALIFORNIA STATE COASTAL CONSERVANCY
1330 BROADWAY, 11TH FLOOR
OAKLAND, CALIFORNIA 94612-2530

PREPARED BY:

GEO/RESOURCE CONSULTANTS, INC.
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(415) 775-3177

JOB NUMBER: 1964-100

MAY, 1999

2910

Geo/Resource Consultants, Inc.
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May 14, 1999
1964-100

California State Coastal Conservancy
1330 Broadway, 11th Floor
Oakland, CA 94612-2530

Attn. Ms. Karen Rust

RE: BLUFF EVALUATION
MOAT CREEK SITE
POINT ARENA, CALIFORNIA

Dear Ms. Rust:

Geo/Resource Consultants (GRC) Inc. is pleased to submit three bound copies of our report on our "Bluff Evaluation, Moat Creek site, Point Arena, California." This evaluation and report are based on our Proposal No. 9901-030. This work is being performed under your Contract No. 96-069. Our report contains the results of our evaluation and our conclusions for the slope stability of the bluff along the edge of the site.

It has been a pleasure to assist you on this project. Please contact us if you have any questions or require additional information.

Respectfully Submitted,
GEO-RESOURCE CONSULTANTS, INC.

Alan D. Tryhorn, C.E.G.
Senior Vice President

Miles Grant, R.G.
Senior Geologist

3910

INTRODUCTION

Geo/Resource Consultants, Inc. (GRC) is pleased to present this report on results of our bluff evaluation of the Moat Creek site. This site is a located in northern California along the coast of the Pacific Ocean approximately 2 miles south of the town of Port Arena. The site consists of a parcel that comprises the bluff area that lies south of Moat Creek, north of Ross Creek, and west of Highway 1. The bluff itself lies at the top of very steep cliffs and at an approximate elevation of 40 feet above the beach below.

Currently, the site is owned by the California State Coastal Conservancy. It is our understanding that the Coastal Conservancy is considering the construction of a trail along a 25-foot right-of-way that runs along the edge of the bluff. This right-of-way was established in January, 1990. The right-of-way was originally surveyed during surveys conducted between 1987 and 1989, the exact date being unknown.

PURPOSE

The purpose of this Bluff evaluation was to provide geologic information useful in siting a paved trail along the bluff top. This information included: a description of the surface geologic features, and to identify the areas of potential erosion and slope instability, particularly with regard to the bluff along the western edge of the site. Issues regarding the future stability of the bluff were also addressed.

SCOPE OF SERVICES

The scope of work for our evaluation specifically included the following tasks:

- Arrange for a boundary survey by a professional surveyor to stake the boundaries of the pathway and conservation easements.
- Aerial photograph interpretation.
- Site visit.
- Preparation of this report presenting the results of our evaluation, a description of surface geologic features, and summarizing our conclusions.

4 of 10

SITE EVALUATION

SITE SURVEY

A survey to establish current position of the right-of-way was performed by E&J Professional Land Surveying on March 18 through 21, 1999. E&J located notes from the original right-of-way survey and restaked the right-of-way based on these notes. In some areas, recent cliff erosion destroyed the western boundary of the right-of-way, in other words, the edge of the bluff where the old markers were placed is now gone. At those locations, the right-of-way was restaked at the edge of the cliff, and the distance between the current edge of the bluff and the location of the old survey monument was recorded and marked on the recent survey map as "retreat." This site survey is presented in Figure 1 at one-half the original scale.

BACKGROUND REVIEW AND AERIAL PHOTOGRAPH ANALYSIS

We located and reviewed several aerial photographs archived at various aerial photography laboratories. We had stereo pairs of the oldest and youngest photographs reproduced at an approximate scale of one inch equal to 200 feet. The oldest photograph is dated July 9, 1964 and was taken by Cartwright Aerial Surveys, Inc. located in Sacramento, California. The youngest photograph was taken on March 25, 1996 by WAC Corporation, Inc. located in Eugene, Oregon.

We compiled a composite drawing showing the shorelines in the two photographs, and the shoreline from the site survey. This resulted in a working drawing showing the shoreline in July 1964, March 1996, and March 1999. We scaled this drawing to measure the amount of cliff erosion over the past 35 years.

SITE CONDITIONS

SITE RECONNAISSANCE

On April 22, 1999 Miles Grant, a geologist with GRC; and Bryan Thurmund, a representative of the Coastal Conservancy, performed a reconnaissance at the subject site. At that time, the general geology was observed, the edge of the bluff was sketched onto the recent site survey by measuring the distance from the mapped stakes to the edge of the cliff, and observations were made regarding

5910

the cause of the accelerated erosion in the horseshoe shaped cove at the southern end of the site (between survey stations 105 and 154, Figure 1).

BEDROCK

The bedrock at the site consists of mudstone that has scattered round concretions that are up to a yard across. This mudstone is typical of upper Miocene deposits found along the coast in northern California. The mudstone is light to medium gray, typically having beds that are 3 to 6 inches thick, slightly weathered, and generally moderately strong (breaking under 4 to 6 hammer blows). In general, the bedding dips toward the ocean. However, the bedding is highly variable, ranging from horizontal to vertical, and often changes from horizontal to 45° over distances of as little as 20 or 30 feet. The bedrock shows obvious signs of soft sediment deformation at several locations.

The bedrock at the north and south ends of the horseshoe cove near the southern end of the site (between survey stations 105 and 154 in Figure 1) dips westward at an approximate angle of 45° and is harder than the bedrock along the rest of the site. This bedrock is darker gray and is strong, taking an average of 8 blows to break it. Further inland, the bedding flattens out abruptly and the beds are soft and friable, such that a single blow of a rock pick penetrates the bedrock 3 to 4 inches. A horizontal unit at the base of the back (east side) of the horseshoe cove is about 10 feet high, and has a very high potential for erosion. This may explain the notable retreat of the cliff in this area.

RECENT SLIDE

A recent slide occurred between survey stations 84 and 86 (Figure 1). In the 1964 photograph, this area is a prominent point. The recent sliding has served to remove this point and to bring the edge of the bluff in line with the top of the bluff in adjacent areas lying to the north and the south (see Figure 1). Due to this sliding, the bluff has retreated as much as 60 feet in this area since 1964. However, since 1996 there has been no further bluff retreat in this area. Therefore, it is unlikely that this previous rapid rate of retreat will continue in the near future.

6910

BLUFF RETREAT

As shown in Figure 1, the rate of bluff retreat varies considerably across the site. The maximum amount of sustained retreat occurs along the back of the horseshoe cove area where it was observed to be between 0.7 feet/year (ft/yr) on the north side, and 1.1 ft/yr on the south. With the exception of the northernmost area where the point fell off in 1998, the northern and southern portions of the site are relatively stable. The bluff retreat in the area in the middle of the site, north of horseshoe cove, has retreated at an average rate of approximately 0.5 ft/yr, with a maximum rate of 1.1 ft/yr.

CONCLUSIONS

Based on the results of our evaluation, it is our conclusion that the northern and southern portions of the bluff at the site are relatively stable. The area in the middle of the site, north of the horseshoe cove, has retreated at an average rate of approximately 0.5 ft/yr, although one part of this area has retreated at an average rate of 1.1 ft/yr. The rear of the horseshoe cove area has retreated at an average rate of 0.7 to 1.1 ft/yr, and this area appears to have maintained this rate over the 35 year study period. The horseshoe cove area has retreated rapidly because these is a thick, soft bedrock unit at the rear of the cove; furthermore, this unit is bedded horizontally, so the rear of the cove is likely to be vulnerable to retreat for some time.

It should be noted that the cliff retreat rates presented are approximate rates as measured from small scale photographs, and are averages over a 35 year span. We do not know if past bluff retreat was due to continual wave erosion, or resulted from individual, severe storm events, although a combination is more likely. Future rates of retreat are therefore difficult to predict. For the purpose of trail siting, the past retreat rates may be used as a general guide for how areas along the bluff may retreat in the future.

LIMITATIONS

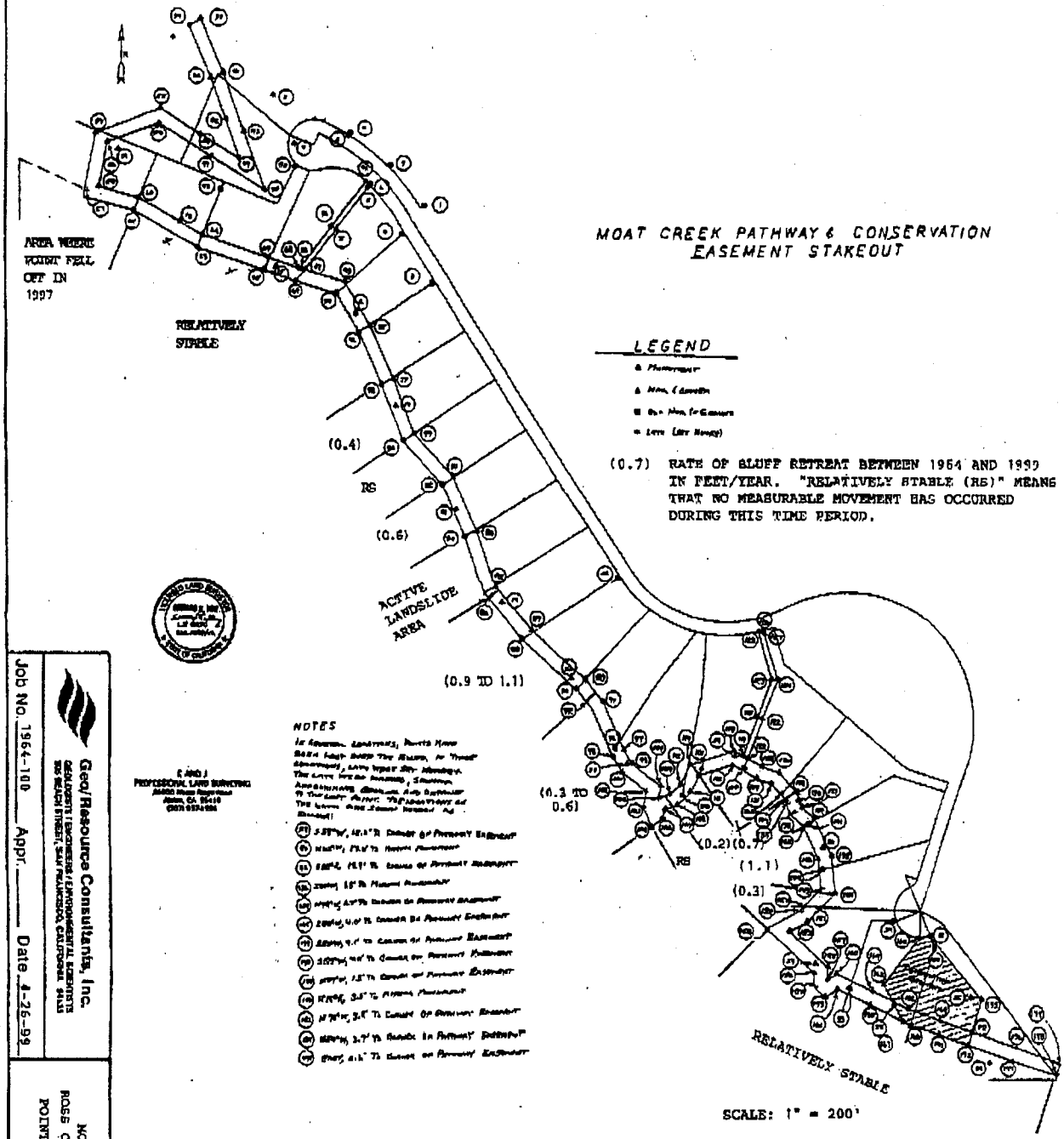
The above services consisted of professional opinions and conclusions by consulting geologists. The only warranty or guarantee made by the consultant in connection with services performed for this project is that such services are performed with the care and skill ordinarily exercised by members of

7910

the profession practicing under similar conditions at the same time and in the same or similar locality. No other warranty, expressed or implied, is made or intended by rendition of consulting services or by furnishing written reports of the findings.

This report is based upon the services we provided in conducting the study for the specific purposes of an evaluation, as described herein. Site data were collected from one site visit and review of historical photographs. No subsurface exploration or testing was performed. California State Coastal Conservancy is entitled to rely on this report only. Note, too, that the report is subject to certain limitations that may or may not be noted in the report itself. In addition, recognize that the passage of time affects the information provided in the report: our opinions relating to site conditions are based upon information that existed at the time our conclusions were formulated. As we are sure you can appreciate, site conditions can change rapidly, such as seasonally, or in some cases, overnight.

8 of 10



MOAT CREEK PATHWAY & CONSERVATION EASEMENT STAKEOUT

LEGEND

(0.7) RATE OF BLUFF RETREAT BETWEEN 1954 AND 1999 IN FEET/YEAR. "RELATIVELY STABLE (RS)" MEANS THAT NO MEASURABLE MOVEMENT HAS OCCURRED DURING THIS TIME PERIOD.

NOTES

C AND J PROFESSIONAL LAND SURVEYING

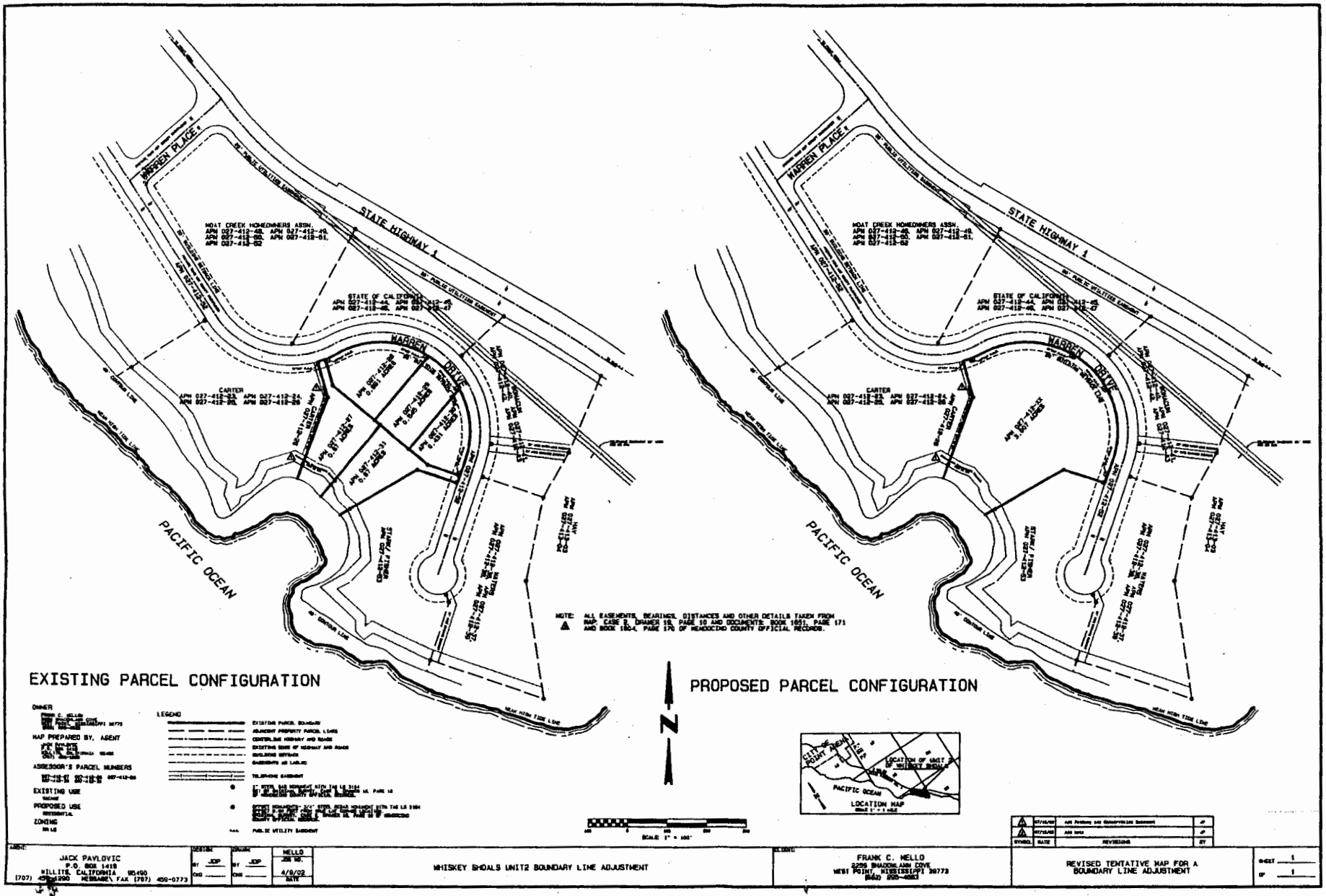
Geo/Resource Consultants, Inc.

Job No. 1964-100 Appr. Date 4-26-99

MOAT CREEK PROJECT
ROSS CREEK TO MOAT CREEK
POINT ARENA, CALIFORNIA

1

9 of 10



from CDB 37-02

10 of 10

BOTANICAL SURVEY

Whiskey Shoals Subdivision
Point Arena, California

Application #27-412-27 / 31

Prepared for
Frank and Julia Mello

Botanical Surveys
DOROTHY SCHERER

Date: July 24, 2002

To: Mendocino County Department of Planning and Building Services
790 South Franklin Street
Fort Bragg, California 95437

From: Dorothy T. Scherer
P.O. Box 737
Point Arena, California 95468
(707) 882-2850

Re: Application #27-412-27/31
Botanical survey required for proposed dwelling on 3+ acres within the Whiskey Shoals Subdivision, three miles south of Point Arena and west of State Highway One; property of Frank and Julia Mello, 2259 Shadow Lawn, West Point, Mississippi, 39773.

I. PROJECT DESCRIPTION: The proposed coastal permit would allow construction of a 2070 square foot, single family dwelling and a future 24' x 30' garage on parcel numbers 27, 28, 29, 30, and 31 at 27232 Warren Drive, Point Arena, California, 95468.

II. AREA DESCRIPTION:

A. The site is on the southern half of coastal terrace and bluff connecting Moat Creek drainage in the north and Ross Creek drainage in the south. These headlands were originally Coastal Terrace Prairie, used for agricultural purposes, and are now dominated by non-native grasses. Development at this time includes the original Whiskey Shoals subdivision map of 51 parcels, and a paved road (Warren Drive) with partially installed water lines along its western side. Parcel #37 is used as a camp. None of the parcels have been developed and it is not expected that installation of water lines will be completed (see Appendix I). The California Coastal Trail accesses the headlands at Moat Creek and crosses the bluff top in a southeasterly direction. The Moat Creek Management Agency, a local group, maintains the trail by mowing and no surface material is applied.

B. The Mello property lies between Warren Drive and the Pacific Ocean and fronts on a horseshoe cove rising 80' – 90' above the coastal strand. The bluff face is crumbly stone, light in color, and drops off vertically from the bluff edge with occasional sections that are less steep. This western edge of the property is traversed by the approximately 8' wide coastal trail. Measurements taken in August, 2001, put the western boundary of the trail between 3' and 10' from the bluff edge. As a whole, the site is level. Uneven terrain in the eastern third along Warren Drive is probably a result of human disturbance. The soil is a medium brown, sandy loam, friable in texture and appears well drained throughout the year. A capped-off water well is on parcel 28 about 55 feet into the property from Warren Drive.

C. Four plant communities are represented and include **Introduced Perennial Grassland; Coastal Bluff Scrub; Northern Bishop Pine Forest;** and **Coyote Brush Series (Northern [Franciscan] Coastal Scrub).** An overview of each community follows with a complete floristic survey in Appendix II.

1. **Introduced Perennial Grassland** occupies most of the site with sweet vernal grass (*Anthoxanthum odoratum*) and velvet grass (*Holcus lanatus*) dominant. Associates include rattlesnake grass (*Briza maxima and B. minor*), blue wildrye (*Elymus glaucus*), foothill sedge (*Carex tumilicola*), bracken (*Pteridium aquilinum*), soft chess (*Bromus hordaceus*), orchard grass (*Dactylis glomerata*), bitter cress (*Apocynum androsaemilifolium*), Douglas iris *(Iris douglasiana*), California poppy (*Eschscholozia californica*), wavy leaf soap plant (*Chloragalum pomeridianum*), checker lily (*Fritillaria affinis*), and a variety of weedy spp.

2. **Coastal Bluff Scrub** is west of the Coastal Trail and scattered into non-native vegetation. Big rattlesnake grass *(Briza maxima)* and English plantain *(Plantago lanceolata*) are dominant. Associates are seaside daisy *(Erigeron glaucus),* thrift *(Armeria maritima),* coast buckwheat *(Eriogonum latifolium),* lupines *(Lupinus variicolor* and *L. bicolor),* beach strawberry *(Fragaria chiloensis),* California phacelia *(Phacelia californica),* rough cat's ear *(Hypochaeris radicata),* and California blackberry *(Rubus ursinus).* During the blooming season other forbs appear including Wight's Indian paintbrush *(Castilleja wightii),* California goldenrod *(Solidago canadensis*), California aster *(Lessingia filanginifolia),* and Ithuriel's spear *(triteleia laxa).*

   Much of the bluff face is vertical and too steep to support vegetation. Where less steep, vegetation thrives and includes coast buckwheat, bluff lettuce *(Dudleya farinosa),* lizard tail *(Eriophyllum staedifolium)*, Indian paintbrush, bracken, bush lupine, plantago spp., rough cat's ear, and grasses. The bluff face is too steep to access and presence of any sensitive plants is not known.

3. The southeast quadrant of the Mello property lies just outside a stand of **Northern Bishop Pine** forest and a portion of this vegetation type extends into the Mello property along its boundary on Warren Drive. Its presence gradually diminishes toward the northeast corner. Bishop pine (*Pinus muricata*) is dominant and associates include California manroot (*Marah fabaceus* and *M. oreganus*), wood rose (*Rosa gymnocarpa*), California blackberry (*Rubus ursinus*) salal (*Gaultheria shallon*), bracken (*Pteridium aquilinum*), a single Douglas-fir (*Pseudotsuga menziesii*), and a single silk tassel (*Garrya elliptica*).

4. **Coyote Series (Northern [Franciscan] Coastal Scrub)** integrades with Bishop Pine Forest. Coyote brush (*Baccharis pilularis*) is dominant along with coffeeberry (*Rhamnus californica*) and the two spp. are scattered into the grassland across the site. Cascara sagrada (*Rhamnus purshiana*) is also part of this scrub community and has hybridized with coffeeberry so that a number of spp. are difficult to distinguish from each other. Associates include purple bush lupine (*Lupinus arboreus*), cow parsnip (*Heracleum pilularis*), California honeysuckle (*Lonicera hispidula*), California blackberry (*Rubus ursinus*), western morninglory (*Calystegia purpurata* ssp. *purpurata*), checkerbloom (*Sidalcea malviflora* ssp. *malviflora*), and California manroot (*Marah facaceus* and *M. oreganus*).

5. Facultative wetland plants are occasionally found throughout the Mello property but are somewhat more numerous in the southeast quadrant. Facultative wetland plants existing in the southeast quadrant include California buttercup (*Ranunculus californicus*), miner's lettuce (*Claytonia perfoliata*), bugle hedge nettle (*Stachys ajugoides* var. *rigida* = *Stachys rigida*), milk maids (*Cardamine californica* var. *undulata*), bitter cress (*C. oligosperma*), cascara sagrada (*Rhamnus purshiana*), and wood rose (*Rosa gymnocarpa*). No obligate wetland plants were found.

III. SURVEY METHODOLOGY AND DATES

A. The site was first visited on June 29, 2001 to locate property lines, determine plant communities, and begin plant identification. Surveys have been conducted by systematically walking the Mello property and adjoining parcels, taking field notes, and collecting plant specimens for further study. Two field consultations were made regarding sensitive plants, a soil inspection during the wet season, and periodic surveying corresponding to blooming. Frank and Julia Mello, living in Mississippi, have not been available for field discussion regarding their development project.

Total time spent in the field: 18½ hours.

Visits were made:

1. Summer and Fall, 2001: June 29, July 12, August 1, October 8

2. Winter and Spring, 2002: January 8, April 1, April 26, May 20, June 25

B. The California Native Plant Society (CNPS) 6th Inventory (online edition) of Rare Plants for Mendocino and Sonoma counties shows 49 species of concern existing on the four plant communities represented on the Mello property. These 49 species were anticipated as being on the site. The full data printout of these plants along with CNPS listing status and periods of bloom is in Appendix II.

C. A second search of the CNPS 6th Inventory (online edition) of Rare Plants shows 24 species of concern within the Point Arena Quad #537B and its surrounding quads (9-quad search). These 24 species were anticipated as being on the site. This full data printout along with CNPS listing status and periods of bloom is in Appendix II.

IV. RESULTS AND DISCUSSION

A. None of the 49 sensitive plants listed by the CNPS 6th Edition Inventory known to occur in Mendocino and Sonoma counties within the four plant communities existing on the Mello property were found on the site.

B. None of the 24 sensitive plants listed by the CNPS 6th Edition Inventory known to exist in the Point Arena quad and surrounding quads were found on the Mello property.

C. Other Sites / Adjoining Sites

1. A known population of the supple daisy (*Erigeron supplex*) exists on the southern end of the headlands and east of the coastal trail where the headlands begin descending toward the cove at Ross Creek. This population is well over 100 feet from the southern boundary of the Mello property and will not be impacted by the proposed development. No *Erigeron supplex* was found on the Mello property or on adjoining parcels. *Erigeron supplex* is CNPS List 1B / RED 3-2-3.

2. Populations of short-leaved evax (*Hesperevax sparsiflora* var. *brevifolia*) were found on points of land at both the northern and southern ends of the horseshoe cove. Both populations are more than 100 feet from the northwest and southwest corners of the Mello property and should not be impacted by the proposed development project. No *Hesperevax sparsiflora* var. *brevifolia* was found on the Mello property. These populations are being reported to the NDDB. *Hesperevax sparsiflora* var. *brevifolia* is CNPS List 1B / RED 2-2-1.

4 of 25

3. Blasdale's bent grass (*Agrostis blasdalei*) often co-exists with *Hesperevax sparsiflora* var. *brevifolia* and is found along ocean bluffs where vegetation is sparse. No *Agrostis blasdalei* was found at the northern or southern points of land or in the sparse vegetation of the coastal trail. These locations remain potential habitat for this sensitive sp. *Agrostis blasdalei* is CNPS List 1B / RED 3-2-3.

4. A population of approximately 25 wallflowers (*Erysium menziesii* ssp. *concinnum*) is on the point of land at the northern end of the horseshoe cove and individual plants have been noted on the northwest side of the coastal trail as it rounds the cove to the south. The coast wallflower is not yet listed as a sensitive plant but expectations are that it will soon become listed[16]. The other 3 ssp. in the Menzies's wallflower complex are already listed and each is CNPS List 1B / RED 3-3-3. None of the 3 listed ssp. were anticipated in the area and none were found. No coast wallflowers were noted on the Mello property but their distance from the boundary line is uncertain.

D. Environmentally Sensitive Habitat Areas (ESHA)

1. Because no obligate wetland plants were found in the southeast corner, it is not a sensitive habitat area requiring protection. The moister soil in this area is probably the result of two factors. The first is that the natural slope in this area is in a south-southeasterly direction. The second factor is that Warren Drive presents a barrier to this natural drainage. The land east of Warren Drive slopes first gently and then descends rapidly to Highway One. A shallow ditch traverses Warren Drive along the Mello property and the only culvert found crossing Warren Drive is near the southeast corner of the site. No development of the southeast quadrant is proposed.

2. **Coyote Brush Series (Northern [Franciscan] Coastal Scrub)** is vegetation that is increasingly considered sensitive but has not been classified as an ESHA.

3. The bluff edge and the bluff face of the horseshoe cove are fragile and subject to erosion from storms and nearly constant winds as well as degradation from human activity.

4. Most of the bluff scrub vegetation is in a band approximately 5' (five feet) wide along the bluff edge of the Mello property. Four coast buckwheat (*Eriogonum latifolium*) plants are located along the north-northeast property line as far as 48' (forth eight feet) from the bluff edge. Another 10 (ten) buckwheat plants are scattered into the northwest quadrant between 6' (six feet) and 47' (forty seven feet) from the bluff edge. Other than coast buckwheat, no other bluff scrub vegetation is growing east of the coastal trail. This profile is continuous all along the headlands of the Whiskey Shoals subdivision. Coast buckwheat is not of itself a sensitive plant and it grows abundantly on both sides of the coastal trail. A single plant was even found at the edge of Warren Drive at the northeast corner of the Mello property. Based on these observations, it is determined that coast buckwheat alone and without the association of other bluff scrub vegetation does not constitute an environmentally sensitive habitat area.

5. **Coastal Bluff Scrub** has been classified as "a series or association considered rare and worthy of consideration" by the California Natural Diversity Database[1] (CNDDB), making the bluff edge and bluff face of the horseshoe cove an Environmentally Sensitive Habitat Area (ESHA).

V. IMPACT ASSESSMENT AND MITIGATION

A. No listed rare and endangered plants were found on the site which would require avoidance or mitigation measures.

B. **Coastal Bluff Scrub** – ESHA

1. The Mendocino County Coastal Zoning Code Section 20.496.020 specifies a minimum of one hundred (100) feet in width as a buffer to protect environmentally sensitive habitat from degradation resulting from development. The buffer area is measured from the outside edge of the ESHA and is not less than fifty (50) feet in width.

2. Because of the fragile nature of the bluff edge and the existence of bluff scrub vegetation in a band up to 5' (five feet) wide along the bluff edge, it is recommended a buffer zone of 105' (one hundred and five feet) be established between the proposed development and the bluff edge. This places the development project, as required, the minimum of 100' (one hundred feet) from the outside edge of the ESHA.

3. An applicant is allowed to demonstrate, after consultation and agreement with the California Department of Fish and Game and County Planning staff, that one hundred (100) feet is not necessary to protect the resources in the habitat area from disruption caused by the proposed development.

C. The proposed driveway entering the property from the northeast is through non-native grassland. No sensitive vegetation is present and no specific mitigation is required.

The site of the proposed dwelling with a buffer zone of 100 feet from the bluff scrub vegetation and the future garage will be situated on non-native grassland. No sensitive vegetation is present and no specific mitigation is required.

D. **Coyote Brush Series** should be given consideration as potentially sensitive vegetation and spared as much as possible. Minimal amounts exist where the proposed development is located and areas of greater abundance will not be affected.

E. The footprint of the project does not show where the septic system/leach field will be located. An onsite septic system designed in 1995[4] determined ample room existed for the proposed system. (That report is being submitted as part of the Geologic Report.) Placement of the septic system / leach field is recommended in the ample grassland to the northeast, east, and southeast of the proposed dwelling.

F. General mitigation measures following completion of the project could include revegetation with coyote brush and/or the sod and tussock-forming perennial grasses of Coastal Terrace Prairie. Characteristic species might include Idaho bent grass (*Agrostis idahoensis*), California oatgrass (*Danthonia californica*), and tuffed hairgrass (*Deschampsia caespitosa* ssp. *holiciformis*). Frank Mello has indicated a preference to maintain the site in its natural state and these would be suitable measures in the future.

G. No other avoidance or mitigation measures are recommended based on my judgement as a botanical surveyor.

VI. REFERENCES:

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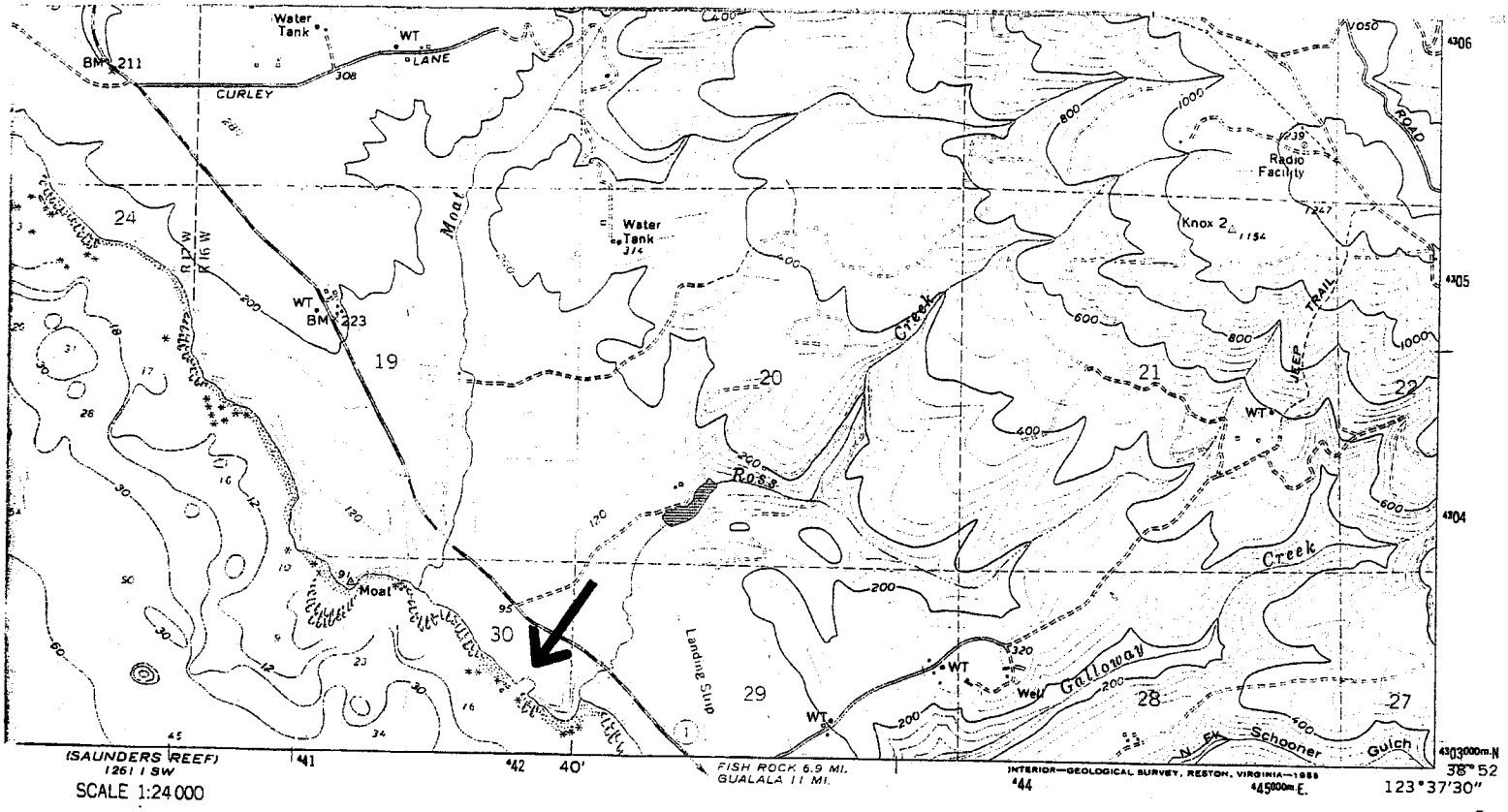
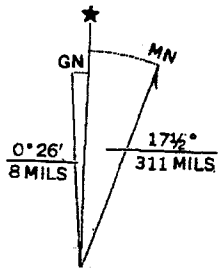
7425

APPENDICES

8 9 25

APPENDIX I – Area Description
Topo Map / Project Location





QUADRANGLE LOCATION

ROAD CLASSIFICATION

Medium-duty ——— Light-duty ———

Unimproved dirt - - - - - -

State Route

POINT ARENA, CALIF.
NW/4 POINT ARENA 15' QUADRANGLE
38123-H6-TF-024

1960
PHOTOREVISED 1978
DMA 1261 I NW—SERIES V895

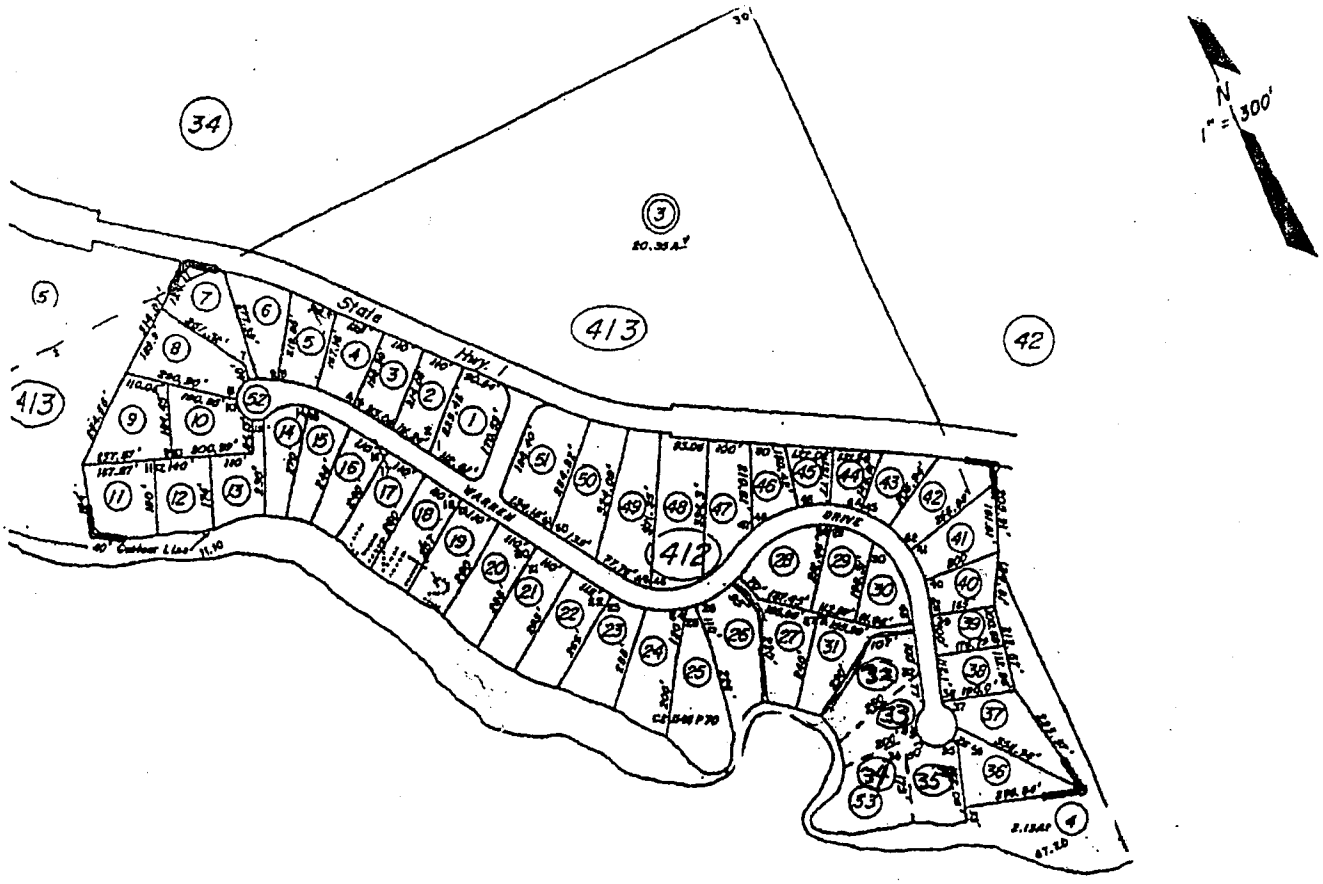
Revisions shown in purple compiled from aerial photographs taken 1976. This information not field checked. Map edited 1978

A2

9425

APPENDIX I – Area Description

Whiskey Shoals Subdivision Map
(Mello Parcels – 27, 28, 29, 20, 31)



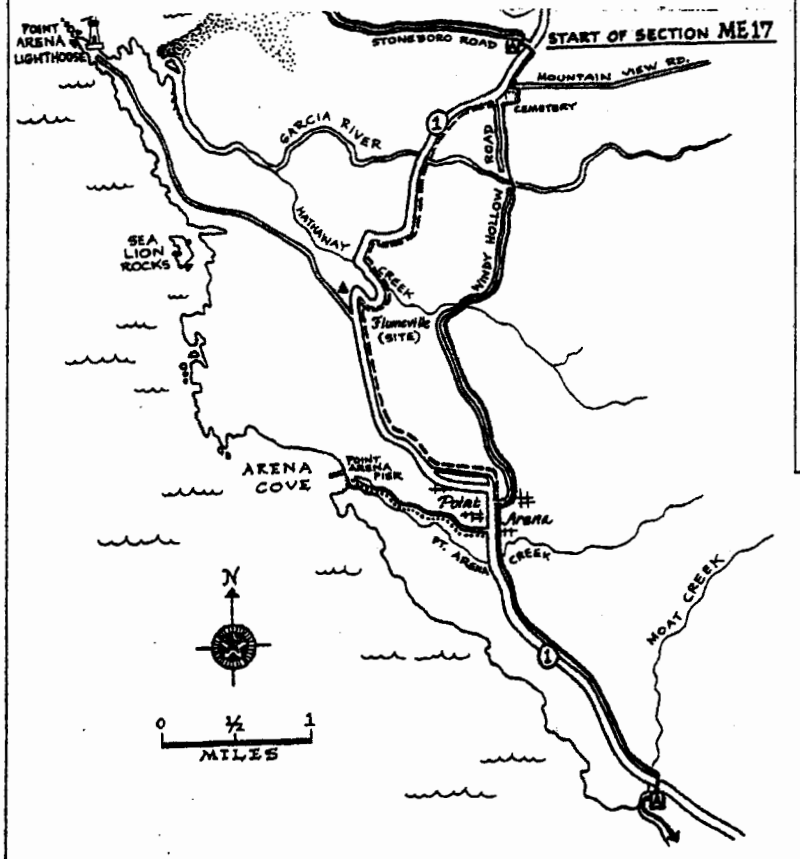
NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map
County of Mendocino, Calif.
March, 1974

10425

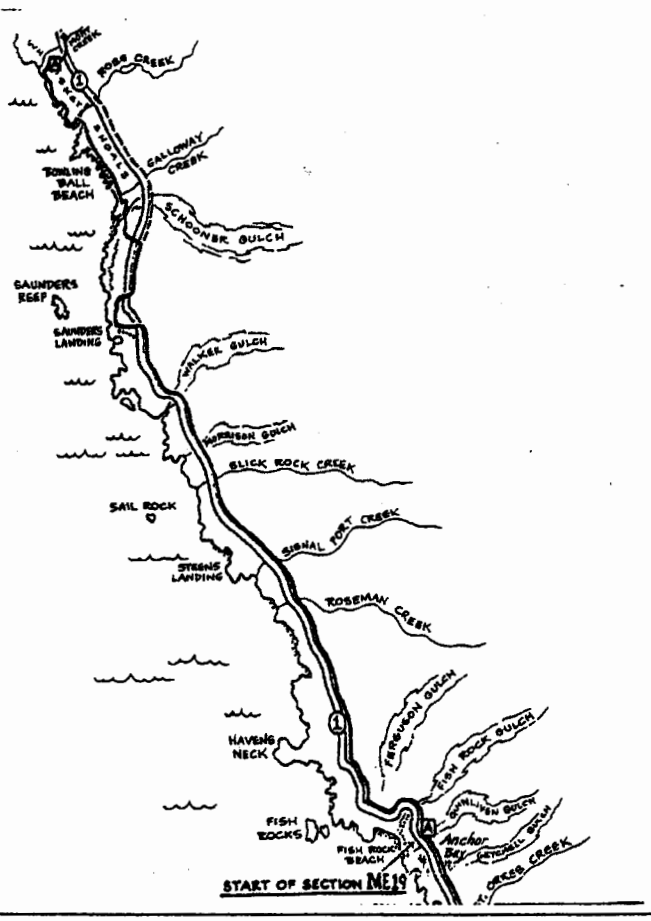
APPENDIX I – Area Description
The California Coastal Trail

Adapted from Hiking The Coastal Trail – Volume One: Oregon to Monterey Bay by Bob Lorentzen and Richard Nichols



(Figure 1)

Section 17:
Stoneboro Rd. to Moat Creek



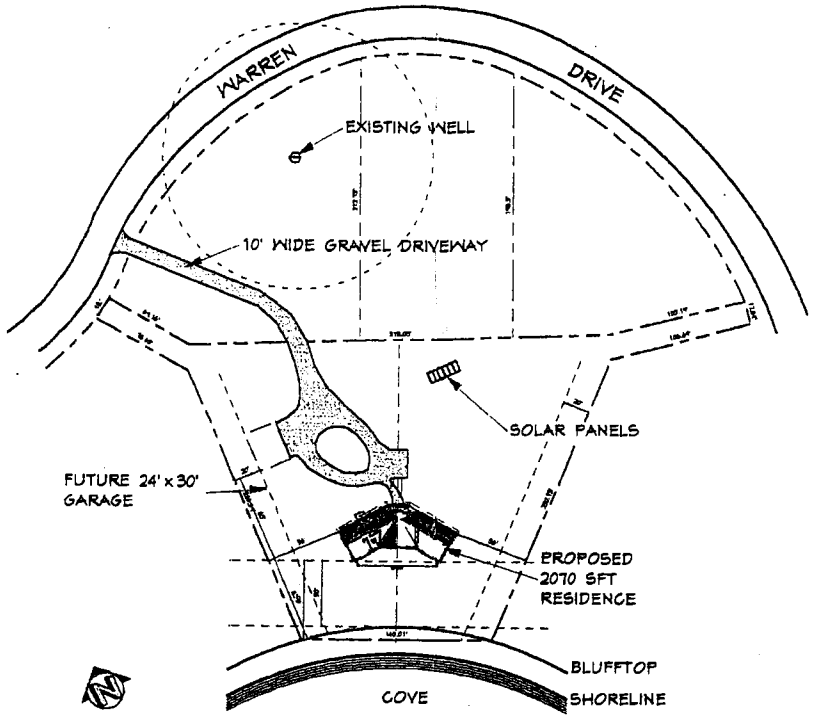
(Figure 2)

Section 18:
Moat Creek to Anchor Bay

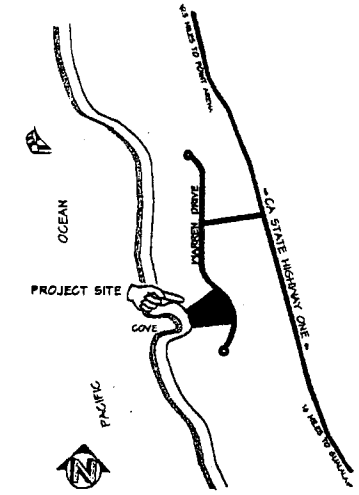
11 of 25

APPENDIX I – Area Description

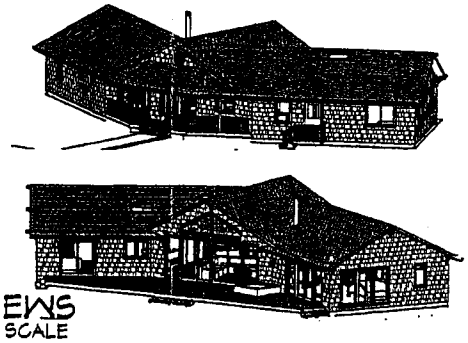
Project Footprint



SITE PLAN



LOCATION MAP
NOT TO SCALE



EXTERIOR VIEWS
NOT TO SCALE

NEW CUSTOM RESIDENCE FOR
FRANK & JULIA MELLO

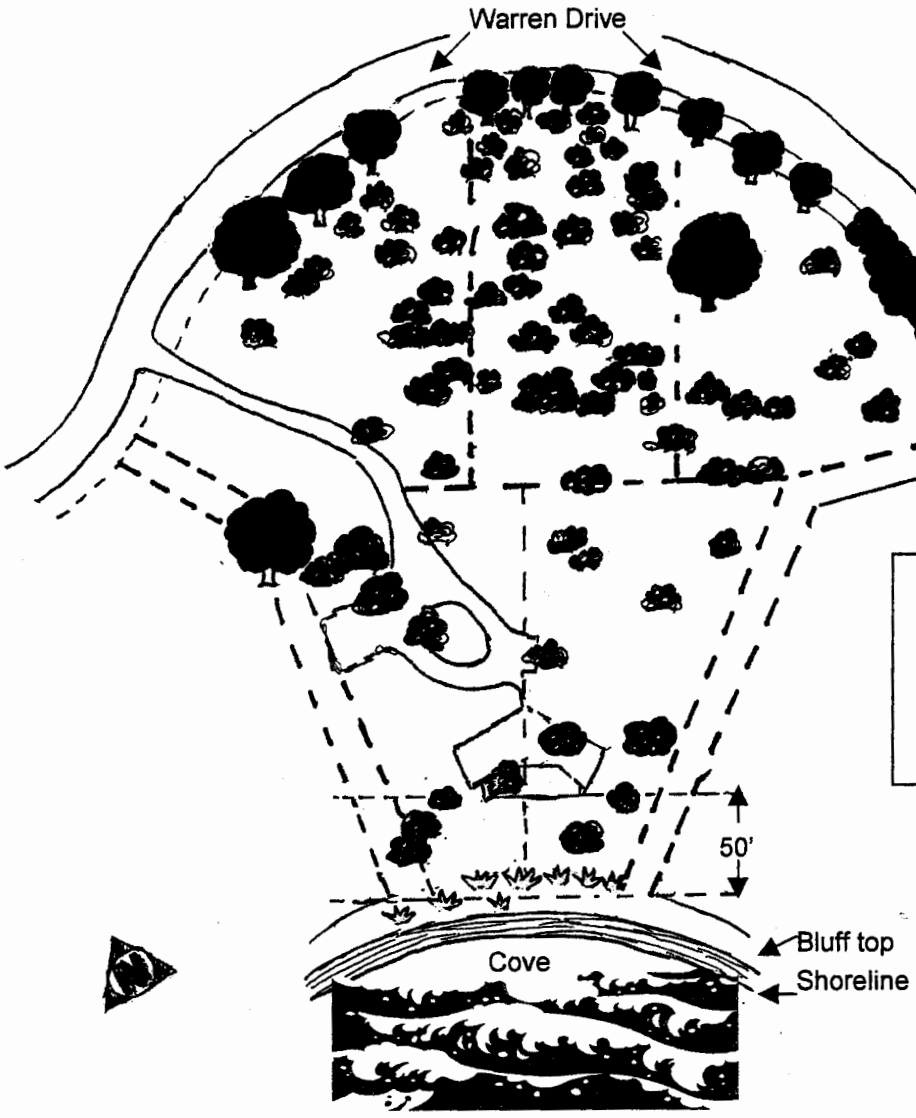
27232 WARREN DRIVE
POINT ARENA, CA
A.P. 027-412-27 / 31

JOB # 85403 08 - 20 - 01
CUSTOM DRAFTING & DESIGN
by John M. Duncan

12 of 25

APPENDIX I – Area Description

Vegetation Map



Proposed footprint of development project.

Note: Map is not to scale

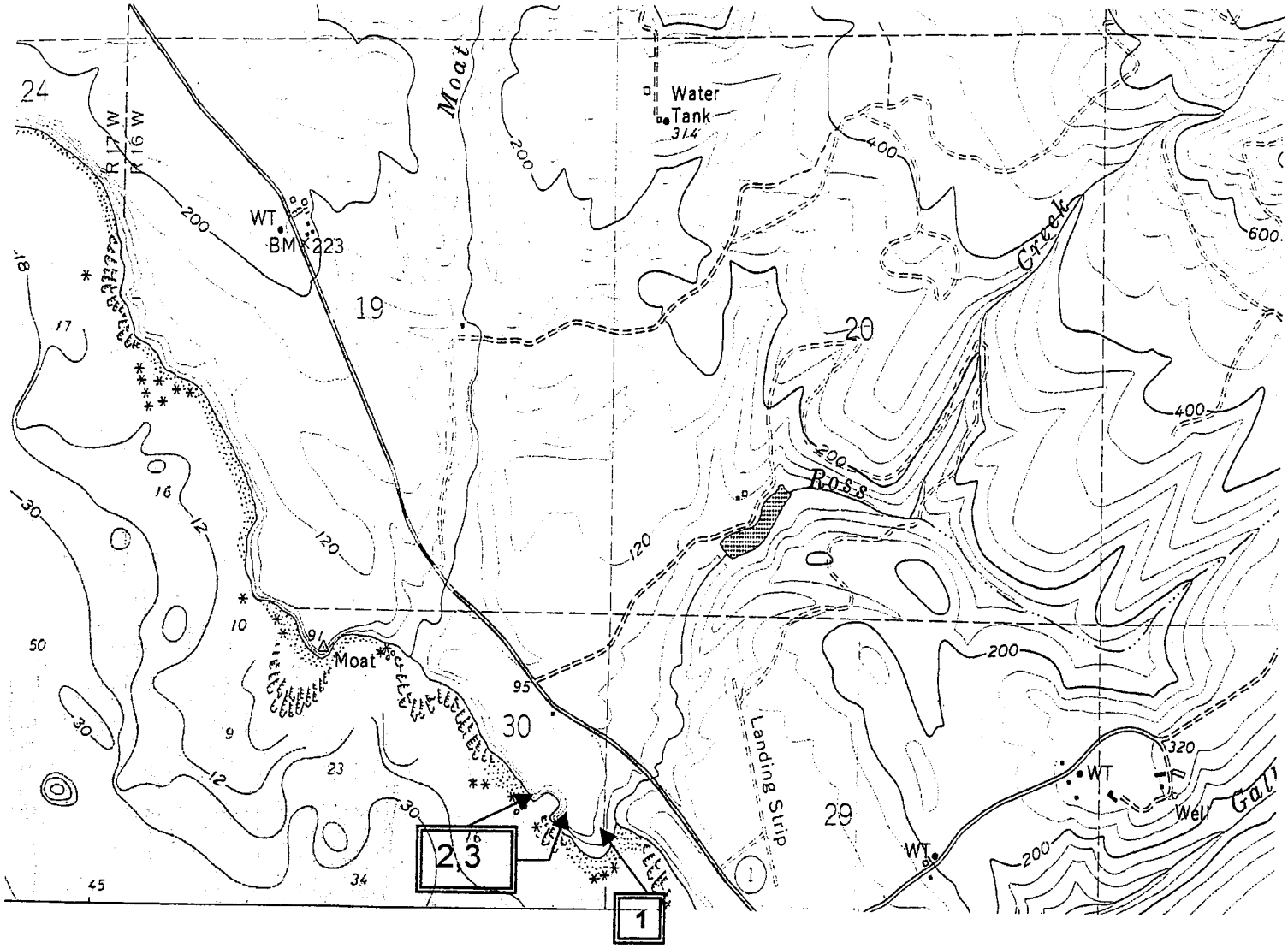
Key:

- Introduced Perennial Grassland (Ground cover)
- * North Coast Bluff Scrub (Ground cover)
- * Coyote Brush Series (Shrub layer)
- * Bishop Pine Forest (Tree canopy)

*Locations and size are approximate. See photos in Appendix III for overview of vegetation.

13 of 25

APPENDIX I – Area Description
Location of Sensitive Plants



1. Supple Daisy (**Erigeron supplex**)
2. Short-leaved evax (**Hesperevax sparsiflora ssp. brevifolia**)
3. Coast wallflower (**Erysium menziesii ssp. concinum**)

14925

APPENDIX II – Botanical Survey

CNPS Inventory – Four Plant Communities

California Native Plant Society

6th Inventory of Rare Plants - online edition

Status: Search Results

Quick Search for:

{county} =~ m/MEN|SON/ and {cnps_list} =~ m/1A|1B|2|3|4/ and {blooms} =~ m/Jan|Feb|Mar|Apr|May|Jun|Jul|/

Tip: cnps_list:3 (note the field name) returns only taxa on List 3. **"List 3"** (quoted) matches the phrase wherev

Hits 1 to 49 of 49

- **To view a record, click the "open" icon.**
- **To save selected records for later study, click the ADD button below the list.**
- **Requests that specify topo quads will include only Lists 1-3.**

check all | check none

action	save	hits	scientific	common	family	CNPS	Blooms
	☐	1	Agrostis blasdalei	Blasdale's bent grass	Poaceae	List 1B	May - July
	☐	1	Amsinckia lunaris	bent-flowered fiddleneck	Boraginaceae	List 1B	Mar - June
	☐	1	Angelica lucida	sea-watch	Apiaceae	List 4	May - Sept
	☐	1	Arabis blepharophylla	coast rock cress	Brassicaceae	List 4	Feb - May
	☐	1	Blennosperma nanum var. robustum	Point Reyes blennosperma	Asteraceae	List 1B	Feb - April
	☐	1	Calamagrostis bolanderi	Bolander's reed grass	Poaceae	List 1B	June - Aug
	☐	1	Calamagrostis crassiglumis	Thurber's reed grass	Poaceae	List 2	May - June
	☐	1	Calamagrostis foliosa	leafy reed grass	Poaceae	List 4	May - Sept,
	☐	1	Calandrinia breweri	Brewer's calandrinia	Portulacaceae	List 4	Mar - June
	☐	1	Calystegia purpurata ssp. saxicola	coastal bluff morning-glory	Convolvulaceae	List 1B	April - May
	☐	1	Campanula californica	swamp harebell	Campanulaceae	List 1B	June - Oct,
	☐	1	Carex comosa	bristly sedge	Cyperaceae	List 2	May - Sept,
	☐	1	Carex saliniformis	deceiving sedge	Cyperaceae	List 1B	June
	☐	1	Castilleja affinis ssp. litoralis	Oregon coast Indian paintbrush	Scrophulariaceae	List 2	April - June
	☐	1	Castilleja mendocinensis	Mendocino coast Indian paintbrush	Scrophulariaceae	List 1B	April - Aug

							Blooms
		1	Ceanothus gloriosus var. gloriosus	Point Reyes ceanothus	Rhamnaceae	List 4	Mar.-May
		1	Chorizanthe cuspidata var. cuspidata	San Francisco Bay spineflower	Polygonaceae	List 1B	April-Aug
		1	Chorizanthe cuspidata var. villosa	woolly-headed spineflower	Polygonaceae	List 1B	May-Aug.
		1	Chorizanthe howellii	Howell's spineflower	Polygonaceae	List 1B	May-July
		1	Chorizanthe valida	Sonoma spineflower	Polygonaceae	List 1B	June-Aug
		1	Cirsium andrewsii	Franciscan thistle	Asteraceae	List 1B	Mar-July
		1	Clarkia amoena ssp. whitneyi	Whitney's farewell-to-spring	Onagraceae	List 1B	June-Aug
		1	Delphinium luteum	yellow larkspur	Ranunculaceae	List 1B	Mar-May
		1	Erigeron supplex	supple daisy	Asteraceae	List 1B	May-July
		1	Eriogonum luteolum var. caninum	Tiburon buckwheat	Polygonaceae	List 3	June-Sept.
		1	Erysimum franciscanum	San Francisco wallflower	Brassicaceae	List 4	Mar.-June
		1	Fritillaria liliacea	fragrant fritillary	Liliaceae	List 1B	Feb.-April
		1	Fritillaria roderickii	Roderick's fritillary	Liliaceae	List 1B	Mar-May
		1	Gilia capitata ssp. chamissonis	dune gilia	Polemoniaceae	List 1B	April-July
		1	Gilia capitata ssp. pacifica	Pacific gilia	Polemoniaceae	List 1B	May-Aug.
		1	Gilia capitata ssp. tomentosa	woolly-headed gilia	Polemoniaceae	List 1B	May-July
		1	Hesperevax sparsiflora var. brevifolia	short-leaved evax	Asteraceae	List 2	Mar.-June
		1	Horkelia marinensis	Point Reyes horkelia	Rosaceae	List 1B	May-Sept.
		1	Lasthenia macrantha ssp. macrantha	perennial goldfields	Asteraceae	List 1B	April-Oct.
		1	Lessingia hololeuca	woolly-headed lessingia	Asteraceae	List 3	June-Oct.
		1	Lilium maritimum	coast lily	Liliaceae	List 1B	May-July
		1	Linanthus grandiflorus	large-flowered linanthus	Polemoniaceae	List 4	April-Aug.
		1	Linanthus rosaceus	rose linanthus	Polemoniaceae	List 1B	April-June
		1	Microseris paludosa	marsh microseris	Asteraceae	List 1B	April-June

							Blooms
		1	**Monardella undulata**	curly-leaved monardella	Lamiaceae	List 4	May - Sept.
		1	**Perideridia gairdneri ssp. gairdneri**	Gairdner's yampah	Apiaceae	List 4	June-Oct.
		1	**Phacelia insularis var. continentis**	North Coast phacelia	Hydrophyllaceae	List 1B	Mar. - May
		1	**Potentilla hickmanii**	Hickman's cinquefoil	Rosaceae	List 1B	April - Aug.
		1	**Sidalcea malachroides**	maple-leaved checkerbloom	Malvaceae	List 1B	April - Aug
		1	**Sidalcea malviflora ssp. purpurea**	purple-stemmed checkerbloom	Malvaceae	List 1B	May
		1	**Stellaria littoralis**	beach starwort	Caryophyllaceae	List 4	Mar. - July
		1	**Trifolium amoenum**	showy Indian clover	Fabaceae	List 1B	April - Aug.
		1	**Veratrum fimbriatum**	fringed false-hellebore	Liliaceae	List 4	July - Sept.
		1	**Viola palustris**	marsh violet	Violaceae	List 2	Mar. - Aug

ADD checked items to Selections

Selections will appear in a new window.

No more hits.

17425

APPENDIX II – Botanical Survey

CNPS Inventory – Nine Quad Search

California Native Plant Society

6th Inventory of Rare Plants - online edition

Status: Search Results

Quick Search for:

{quad} =~ m/537B|552C|552D|537A|537C|537D/ Search

Tip: Having trouble with a multi-word search? Try a single word, e.g. **ginger** or **cobra**.... all tips and help.
search history

Your Quad Selection: Point Arena (537B), Mallo Pass Creek (552C), Cold Spring (552D), Eureka Hill (537A), Saunders Reef (537C), Gualala (537D)

Hits 1 to 24 of 24

- **To view a record, click the "open" icon.**
- **To save selected records for later study, click the ADD button below the list.**
- **Requests that specify topo quads will include only Lists 1-3.**

check all | check none

action	save	hits	scientific	common	family	CNPS	Blooms
	☐	1	Abronia umbellata ssp. breviflora	pink sand-verbena	Nyctaginaceae	List 1B	June-Oct.
	☐	1	Agrostis blasdalei	Blasdale's bent grass	Poaceae	List 1B	May-July
	☐	1	Calamagrostis bolanderi	Bolander's reed grass	Poaceae	List 1B	June-Aug
	☐	1	Calystegia purpurata ssp. saxicola	coastal bluff morning-glory	Convolvulaceae	List 1B	April-May
	☐	1	Campanula californica	swamp harebell	Campanulaceae	List 1B	June-Oct.
	☐	1	Carex californica	California sedge	Cyperaceae	List 2	June-Oct.
	☐	1	Carex lyngbyei	Lyngbye's sedge	Cyperaceae	List 2	May-Aug.
	☐	1	Carex saliniformis	deceiving sedge	Cyperaceae	List 1B	June
	☐	1	Castilleja mendocinensis	Mendocino coast Indian paintbrush	Scrophulariaceae	List 1B	April-Aug
	☐	1	Cupressus goveniana ssp. pigmaea	pygmy cypress	Cupressaceae	List 1B	May-July
	☐	1	Erigeron supplex	supple daisy	Asteraceae	List 1B	May-July
	☐	1	Fritillaria roderickii	Roderick's fritillary	Liliaceae	List 1B	Mar.-May
	☐	1	Gilia capitata ssp. pacifica	Pacific gilia	Polemoniaceae	List 1B	May-Aug.

							Blooms
		1	**Glyceria grandis**	American manna grass	Poaceae	List 2	June - Aug.
		1	**Hesperevax sparsiflora var. brevifolia**	short-leaved evax	Asteraceae	List 2	Mar. - June
		1	**Horkelia marinensis**	Point Reyes horkelia	Rosaceae	List 1B	May - Sept.
		1	**Horkelia tenuiloba**	thin-lobed horkelia	Rosaceae	List 1B	May - July
		1	**Lasthenia conjugens**	Contra Costa goldfields	Asteraceae	List 1B	Mar. - June
		1	**Lasthenia macrantha ssp. bakeri**	Baker's goldfields	Asteraceae	List 1B	April - Oct.
		1	**Lasthenia macrantha ssp. macrantha**	perennial goldfields	Asteraceae	List 1B	April - Oct.
		1	**Lilium maritimum**	coast lily	Liliaceae	List 1B	May - July
		1	**Sidalcea calycosa ssp. rhizomata**	Point Reyes checkerbloom	Malvaceae	List 1B	April - Sept.
		1	**Sidalcea malachroides**	maple-leaved checkerbloom	Malvaceae	List 1B	April - Aug
		1	**Sidalcea malviflora ssp. purpurea**	purple-stemmed checkerbloom	Malvaceae	List 1B	May

ADD checked items to Selections

Selections will appear in a new window.

No more hits.

1995

APPENDIX II – Floristic Survey
Mello Project
July 2001 – July 2002

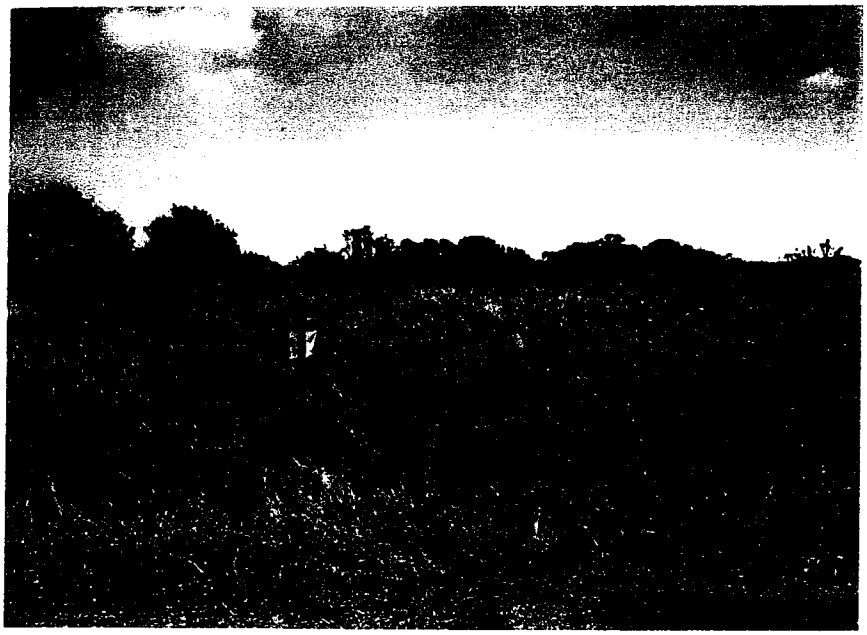
* = Non-native

	Botanical Name	Common Name
	Pteriduim aquilinum var. ***pubescens***	bracken, brake
	Pinus muricata	bishop pine
	Pseudotsuga menziesii var. ***menziesii***	Douglas-fir
*	***Apium graveolens***	celery
	Heracleum lanatum	cow parsnip
	Sanicula crassicaulis	yellow sanicle
	Apocynum androsaemilifolium	bitter dogbane
	Achillea millefolium	coastal yarrow
	Anaphalis margaritacea	pearly everlasting
	Baccharis pilularis	coyote brush
*	***Bellis perennis***	English daisy
*	***Carduus pycnocephalus***	Italian thistle
*	***Carduus tenuiflorus***	slender-flowered thistle
*	***Cirsium vulgare***	bull thistle
*	***Erechtides glomerata***	coast fireweed
*	***Erechtides minima***	Australian fireweed
	Erigeron glaucus	seaside daisy
	Eriophyllum staechadifolium	lizard tail
	Gnaphalium sp.	cudweed
*	***Hypochaeris radicata***	rough cat's ear
	Lessingia filaginifolia var. ***californica***	California – aster
*	***Madia sativa***	coast tarweed
	Solidago canadensis ssp. ***elongata***	California goldenrod
*	***Sonchus asper***	prickly sow thistle
*	***Sonchus oleraceus***	common sow thistle
	Cardamine californica var. ***sinuata***	California honeysuckle
	Cardamine oligosperma	bitter cress
	Calystegia purpurata ssp. ***purpurata***	western morninglory
	Dudleya farinosa	bluff lettuce, live forever
	Marah fabaceus	California manroot, wild cucumber
	Marah oreganus	coast manroot, wild cucumber
	Gaultheria shallon	salal
	Lotus purshianus var. ***purshianus***	Spanish lotus
	Lupinus arboreus	purple bush lupine
	Lupinus bicolor	miniature lupine
	Lupinus variicolor	varied-color lupine
*	***Trifolium dubium***	shamrock, little hop clover
*	***Vicia lathyroides***	
*	***Vicia lutea***	yellow vetch

20 of 25

	Botanical Name	Common Name
*	***Vicia sativa*** ssp. ***nigra***	common vetch, narrow-leaved vetch
*	***Vicia sativa*** ssp. ***sativa***	common vetch, spring vetch
	Garrya elliptica	coast silk-tassel tree
*	***Geranium dissectum***	cut-leaved geranium
	Phacelia californica	California phacelia
	Stachys ajugoides var. ***rigida (= Stachys rigida)***	bugle hedge nettle
*	***Linum bienne***	narrow-leaved flax
	Sidalcea malviflora ssp. ***malviflora***	cheese mallow, checkerbloom
	Eschscholzia californica	California poppy
*	***Plantago lanceolata***	English plantain
	Armeria maritima ssp. ***californica***	thrift, sea-pink
	Eriogonum latifolium	coast buckwheat
*	***Rumex acetosella***	sheep sorrel
	Claytonia perfoliata	miner's lettuce
*	***Anagallis arvensis***	scarlet pimpernel
	Ranunculus californicus	California buttercup
	Rhamnus californica ssp. ***californica***	California coffeeberry
	Rhamnus purshiana	cascara sagrada
	Fragaria chiloensis	beach strawberry
	Rosa gymnocarpa	wood rose
	Rubus ursinus	California blackberry
	Galium aparine	goose grass
	Castilleja wightii	Wight's Indian paintbrush
	Solanum americanum	small-flowered nightshade
	Carex tumilicola	foothill sedge
	Iris douglasiana	Douglas iris
	Sisyrinchium bellum	blue-eyed grass
	Chlorogalum pomeridianum var. ***pomeridianum***	wavy leaf soap plant
	Fritillaria affinis	checker lily
*	***Aira caryophyllea***	silver European hairgrass
*	***Anthoxanthum odoratum***	sweet vernal grass
*	***Avena fatua***	wild oat
*	***Briza maxima***	quaking grass, big rattlesnake grass
*	***Briza minor***	quaking grass, little rattlesnake grass
*	***Bromus diandrus***	ripgut grass
*	***Bromus hordaceus***	cheat grass, soft chess
*	***Cynosurus echinatus***	hedgehog, dogtail
*	***Dactylis glomerata***	orchard grass
	Elymus glaucus	blue wildrye
	Festuca rubra	red fescue
*	***Holcus lanatus***	velvet grass
*	***Lolium perenne***	perennial ryegrass

APPENDIX III – Site Photographs



(Figure 1)

View from Warren Drive into Mello property toward the southwest.

Horizon and foreground: **Coyote Brush Series**; **Introduced Perennial Grassland**

Left middle ground: cascara sagrada (*Rhamus purshiana*)

August 2001

(Figure 2)

View above; closeup:

cascara sagrada (*Rhamus purshiana*); coyote brush (*Baccharis pilularis*); capped well.

August 2001

22 of 25

(Figure 3)

View toward southeast across proposed development site.

Background, right: headlands above Bowling Ball Beach.

Background, left: Bishop pine (*Pinus muricata*) on parcel #32, south of property.

Middle ground and foreground: non-native grass and coyote brush (*Baccharis pilularis*).

August, 2001

(Figure 4)

Southeast corner of Mello property.

Background, right: Bishop pine (*Pinus muricata*) on parcel #32.

Middle ground left: Bishop pine (*Pinus muricata*) on Mello property along Warren Drive.

Foreground: non-native grassland

Middle ground, right: coyote brush (*Baccharis pilularis*).

August 2001

(Figure 5)

View from area of northwest boundary across proposed development site toward south-southeast.

Right: California Coastal Trail; bluff scrub vegetation along trail and on bluff face.

August, 2001

(Figure 6)

Same view as above, 10 months later.

Background, right: headlands above Bowling Ball Beach. Bluff scrub vegetation includes: coast buckwheat *(Eriogonum latifolium)*, Indian paintbrush (*Castilleja* sp.), live forever (*Dudley farinosa*), and lizard tail (*Eriophyllum staedifolium*).

Warning sign posted on bluff edge. See Figures 7 and 8.

June, 2002

24 of 25

(Figure 7)

Western end of Mello property

Foreground: stake for proposed dwelling; abundant sweet vernal grass (*Anthoxanthum odoratum*) and velvet grass (*Holcus lanatum*).

Left background: warning sign posted.

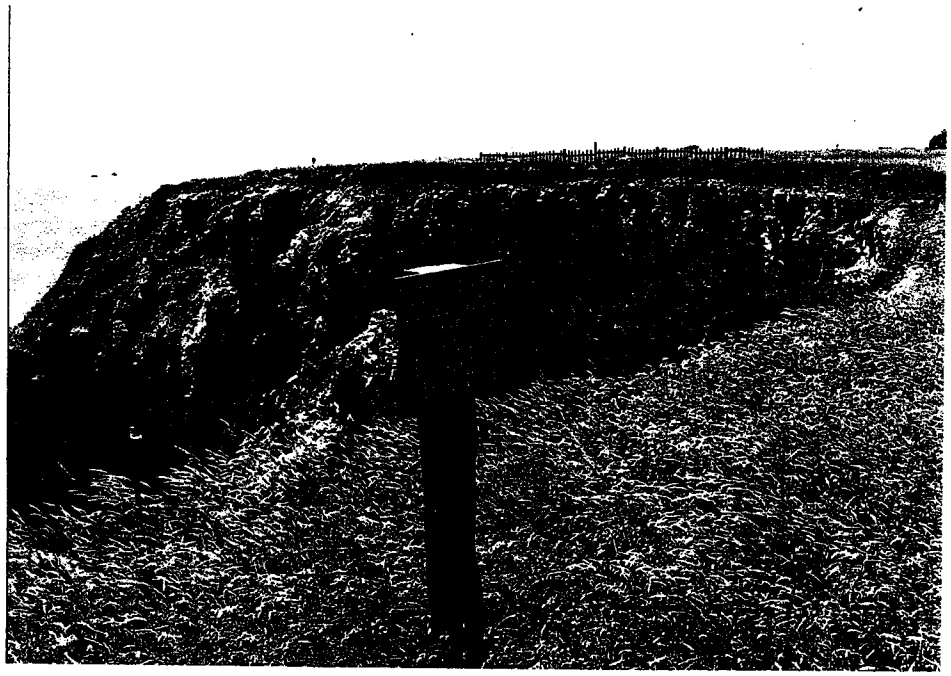
June, 2002

(Figure 8)

View from inside of cove toward northwest point of cove. Bluff scrub vegetation edge of bluff and bluff face. Vegetation cascading on bluff face to northwest is silk tassel (*Garrya elliptica*).

Warning signs, protective fencing and other coastal trail upgrades by Moat Creek Management Agency completed late spring, 2002.

June 2002



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.

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.

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 1900; 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.

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.

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Buffering Analysis for Pelagic Cormorants on the California Mendocino County Coast

April 5, 2004

Nancy Lang, Ph.D.
Frank Mello, Ph.D.

Summary and Recommendations:
This study recommends that human presence in coastal residences buffered to a width of 50 feet or more setback from the bluff edge to a western most part of the residence pose no significant risk to the nesting habitat of Pelagic Cormorants (PC) or other Cormorant species as long as the residence is well insulated for sound proof. A more imminent treat to PC would be consistent presence of human activity along the bluff edge and above PC cliff nest locations (Mello, 2002). The positions of nest along the steep cliff help in insulating them from sound with the exception of human activity along the bluff edge. Human (from trail or residence) activity should be discouraged along with any outside residence construction during the nesting months of March through May.

Introduction:
An analysis of scientific data was conducted to evaluate what environmental conditions would impact the breeding habitat of PC (Phalacrocorax Pelagicus). There are over 130,000 PC in North America with a majority in Alaska. Local bird populations fluctuate movement among breeding and diurnal roost sites. PC are migratory birds (granholm, 2004). In Mendocino County PC nest during the months of March through May. The birds normally migrate south during the winter months to as far as Baja, CA, and migrate north during the summer months to as far as Alaska (Robertson, 1974). They diurnally roost and nest on shore cliffs while feeding in shallow coastal waters (Robertson, 1974).

Results and Conclusions:

Analysis of data indicates that the following conditions can negatively impact the nesting habitat or survivability of PC (in order of importance):

1. Availability of food (Sydeman, 2004)
2. Predation by commercial and recreational fishermen (Anon, 2000)
3. Disease (AquaNIC, 2004)
4. Contamination of marine foodstuffs (Hobson, 1997)
5. Cormorant slaughter through depredation permits by the U.S. Fish and Wildlife Service attributed to protecting the aquaculture industry (AquaNIC, 2004). Because Cormorants are protected by the Migratory Bird Act, their nests and eggs cannot be disturbed, and birds cannot be captured or killed unless a depredation permit is obtained from the U.S. Fish and Wildlife Service.
6. Nest robbing varmints such as predatory birds and snakes, etc.
7. Disturbance to colonies by humans and animals (Hobson, 1997)

8. Severe weather/El Nino (Syedman, 2004)
9. Gillnet entanglement (Hobson, 1997)
10. Oil spills (Hobson, 1997)

Generally the main impact on PC habitat and survivability is food supply and its contamination, disease and predation. Disturbance by humans is rare as most nesting sights are isolated and hard to reach. Based on the variables that impact PC habitat, very little impact would be attributed to a residential structure as long as their is no significant noise. Certainly a setback buffer of 50' to 100' would insure that no disturbance to PC nests occur (Mello, 2002). Additionally since the nests are generally located around the middle of the cliff (or about30-40' from the bluff edge), this further assures that disturbance does not occur (Mello, 2002). The two activities that would negatively impact PC nesting habitat would be persistent presence of humans and their pets at the bluff edge and any significant noise attributed to residence construction. It is strongly recommended that human activity along the bluff edge above nesting habitat during the months of March through May be discouraged. Additionally, exterior residence construction should be discouraged during the months of March through May.

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EXHIBIT NO. 12
APPLICATION NO.
A-1-MEN-03-062
ALTERNATIVE BUILDING SITE SCENARIOS (FRANK C. MELLO PhD) (1 of 5)

B. BRYAN PRESERVE

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March 30, 2004

RECEIVED
APR 0 1 2004
CALIFORNIA COASTAL COMMISSION

James Baskin
California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501-1865

Dear Jim: A-1-MEN-03-062

I did receive your summary of the March appeal hearing. Based on your document requests and discussions with Bob Merrill I offer the following information:

1. Highly Scenic Site Building Site Alternatives Analyses
   See attached for **Table 1**. This table describes the current proposed building site and design under appeal. Also attached is **Table 2** which is an alternative relocation/and or redesign of the residential structures to a location near the center point of the arc of major vegetation along the parcel's road frontage. Because of our relocation proposal in **Table 2** we do not believe that any relocation into the northeastern quadrant of the property (your request of identified as alternative 4) is necessary or required because of our proposal in Table 2 is a.) Setback more than far enough to be filtered by Bishop Pine trees and can not be seen from any southern exposure (Schooner Gulch State Beach, Saunders Reef/Bowling Ball Beach Vista Point, etc.), b.) based on our botanical study that was conducted (refer to **Appendix 1**), this particular area is heavily laden with Coyote Brush (Northern Franciscan Coastal Shrub) which our Botanist has described as potentially sensitive vegetation and should be spared from disturbance, and c) even though the California Department of Forestry and Fire Protection requires a minimum of 30' setback between building structures and trees, they stress that we place the proposed structure more in the center of the property so that the structures are as far away from highly flammable trees, such as Bishop Pines (especially during very dry years without rain). The CDF recommends that we mow between the structures and highly flammable pine trees. We do not want to have to mow in order to not harm any sensitive vegetation and thus recommend that we not be near Bishop Pine trees which will reduce the need to mow. Keep in mind that during the residential structure's 75 year economic lifespan, the Bishop Pine trees could grow to over 4 times their current size. With that occurring, we do not want to be closer to these fast growing trees in the future for obvious fire liability reasons.

Additionally we do not want to be continuously trimming these trees whereby we reduce their filtering and screening benefits or over trim them to a point that they are excessively stressed and ultimately killed especially during dry years. Please note that when the Bishop Pine trees were planted in 1960-70's (by we assume Billy Hay); they were planted too close to Warren Drive. Because of this they have overgrown onto the road. They will have to be trimmed back significantly in order to clear the road. This action will certainly contribute to the trees demise if they have to be significantly cut back on two sides. With this in mind we do not recommend moving the proposed development into the northwestern quadrant (your item #3 alternate request) for all of the same reasons (i.e., moving the garage for the same reasons as the last option). Regarding all options any northern view of the proposed structure from Highway One will be eliminated by us filtering the area with Leland Cypress after the driveway is completed. Additionally as has been proposed all along, we will provide Leland Cypress landscape screening on the northern and southern sides of the house. In addition to the low profile of the proposed house, this action will certainly reduce any view of the structure from any direction.

2. Demonstration of Proof of Water

Based on your request I have directed my Contractor, Don Teutsch of Point Arena, to call the leading expert in the area to complete this testing and to get the information to the Mendocino County Public Department's Division of Environmental Health (DEH). This should be completed in the next several weeks.

3. Demonstration of Adequate Sewage Disposal

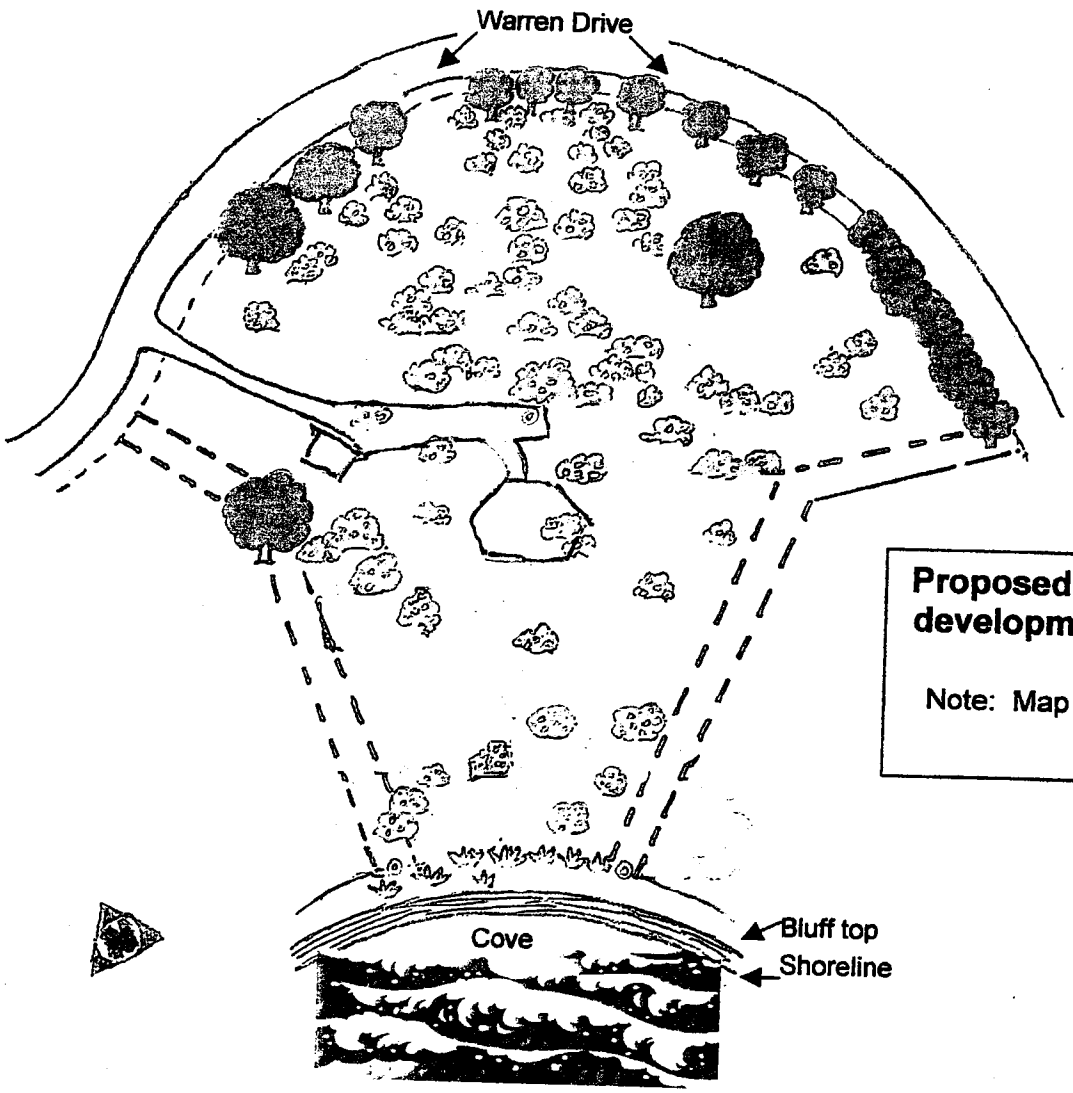
Based on your request I have directed my Contractor, Don Teutsch, to have Dave Miller (Septic System design specialist) retest the site and submit data to DEA. Dave has conducted these test twice before but will redo them to meet the 1998 standards. This should be completed in the next several weeks.

4. Buffers for Environmentally Sensitive Habitat Areas

I have read through your document requiring more information. Thus I have consulted with a representative of the California Department Fish and Game. I and Dr. Nancy Lang [former ornithologist and curator for the San Francisco Zoo] are compiling more data to substantiate that our proposed 142' + ESHA buffer width is more than adequate to protect this wonderful Rookery in our Pacific Ocean cove. In brief, Pelagic Cormorants are migratory birds (Granholm, 2004). I have not generally noticed any birds roosting on the subject cliffs during the summer and winter months. The birds normally migrate south during the winter months to as far as Baja, CA, and migrate north during the summer months to as far as Alaska. Thus, other than their normal nesting period on these cliff rookeries during March to June, they are not in the area to be affected. As we have stipulated, the house will have a low occupancy rate year round, will be well insulated (6" studs for optimal insulation and low

APPENDIX I – Area Description

Vegetation Map



Proposed footprint of development project.

Note: Map is not to scale

Key:

Introduced Perennial Grassland (Ground cover)

* North Coast Bluff Scrub (Ground cover)

* Coyote Brush Series (Shrub layer)

* Bishop Pine Forest (Tree canopy)

*Locations and size are approximate. See photos in Appendix III for overview of vegetation.

© 1" steel monument — DIFFICULT 3/84

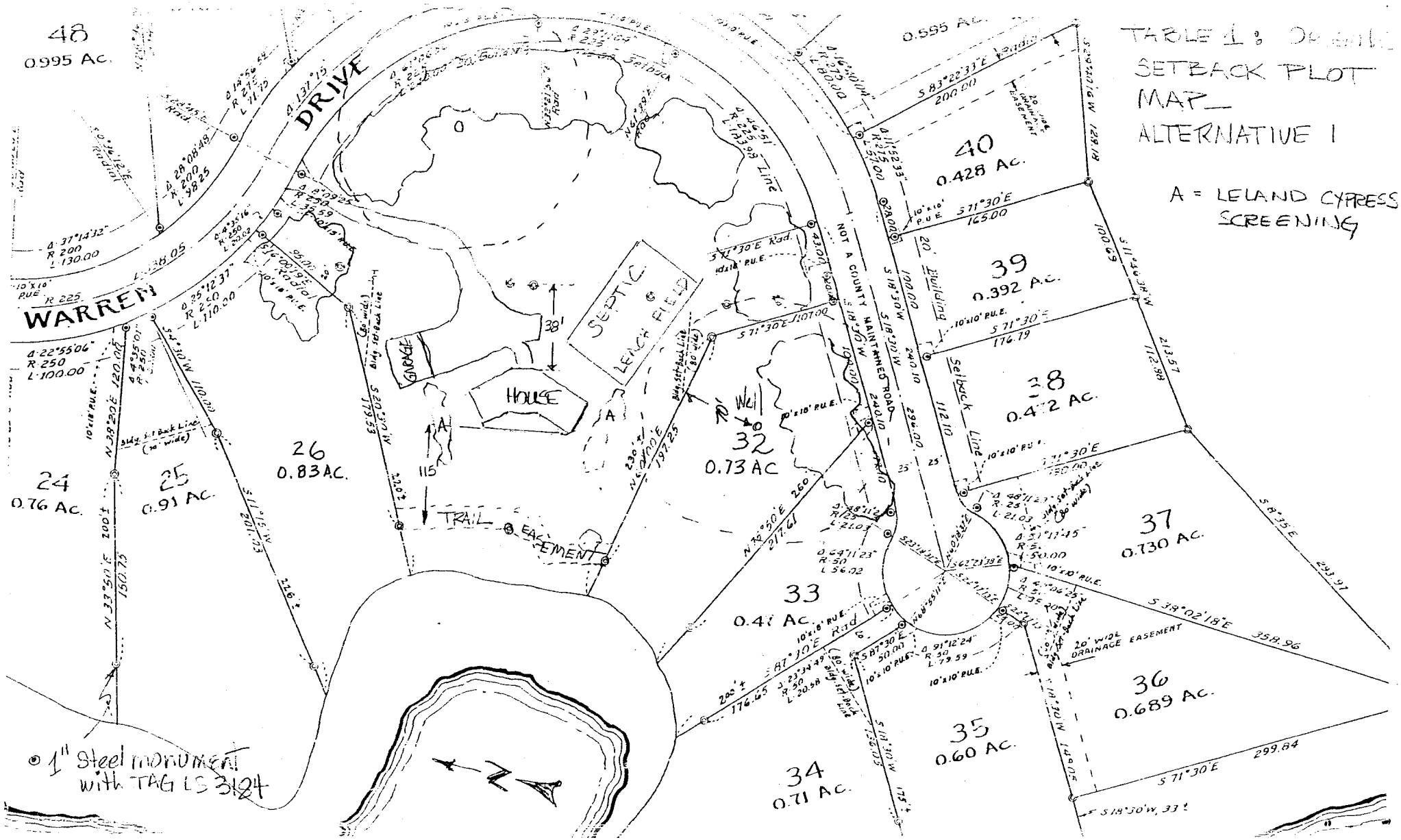


TABLE 1 & DRAINAGE SETBACK PLOT MAP ALTERNATIVE 1
A = LELAND CYPRESS SCREENING
48
0.995 Ac.
DRIVE
WARREN
40
0.428 Ac.
39
0.392 Ac.
38
0.472 Ac.
37
0.730 Ac.
36
0.689 Ac.
35
0.60 Ac.
34
0.71 Ac.
33
0.41 Ac.
32
0.73 Ac.
26
0.83 Ac.
25
0.91 Ac.
24
0.76 Ac.
HOUSE
GARAGE
SEPTIC & LEACH FIELD
TRAIL EASEMENT
NOT A COUNTY MAINTAINED ROAD
Setback Line
20' Building
20' WIDE DRAINAGE EASEMENT
10'x10' P.U.E.
1" steel monument with TAG LS 3124

5 & 5

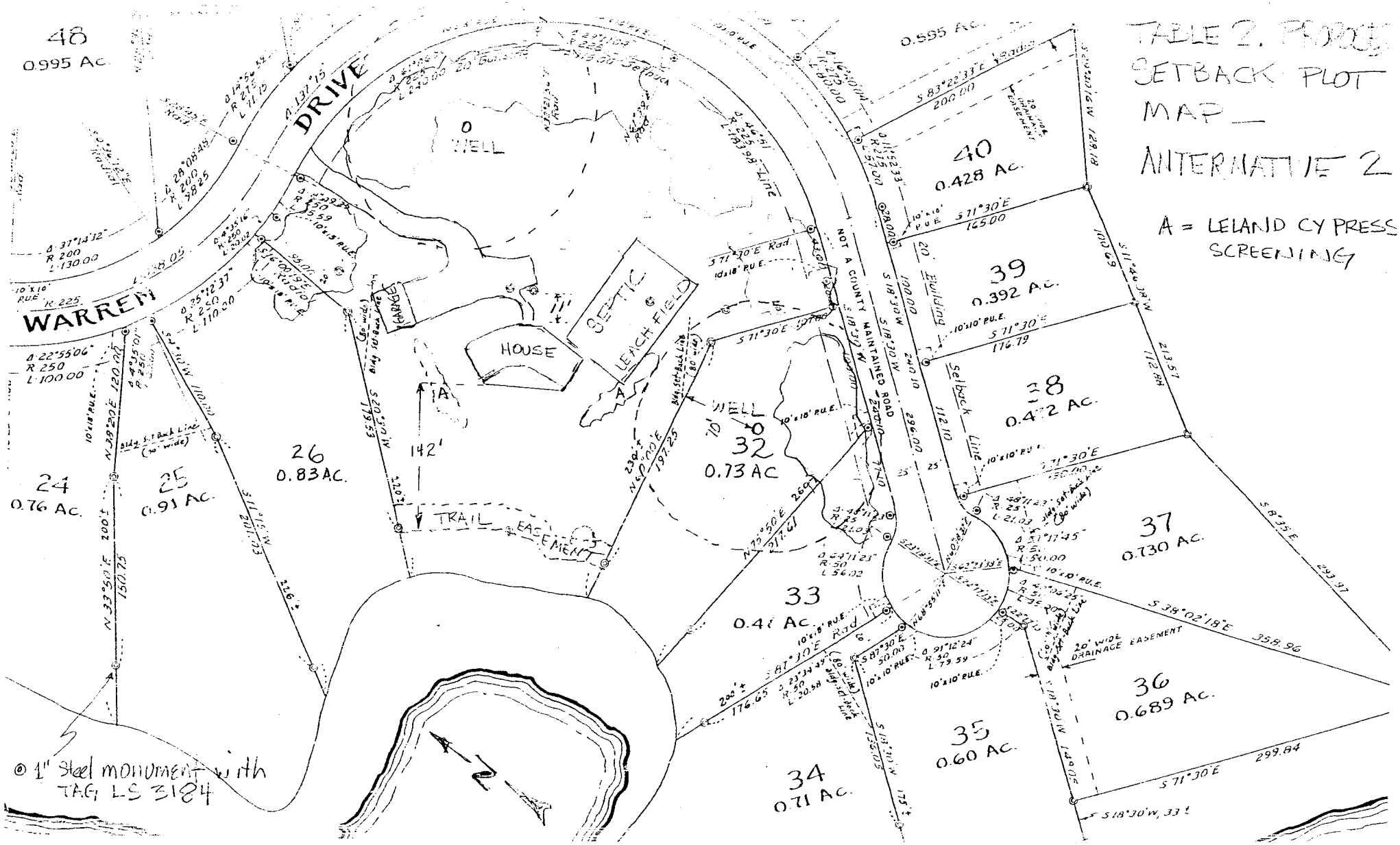


TABLE 2. PROJECT SETBACK PLOT MAP — ALTERNATIVE 2
A = LELAND CY PRESS SCREENING
48
0.995 Ac.
DRIVE
WARREN
WELL
HOUSE
SEPTIC & LEACH FIELD
HARD
NOT A COUNTY MAINTAINED ROAD
TRAIL EASEMENT
142'
40
0.428 Ac.
39
0.392 Ac.
38
0.472 Ac.
37
0.730 Ac.
36
0.689 Ac.
35
0.60 Ac.
34
0.71 Ac.
33
0.48 Ac.
32
0.73 Ac.
26
0.83 Ac.
25
0.91 Ac.
24
0.76 Ac.
20' WIDE DRAINAGE EASEMENT
Setback Line
Building
@ 1" Steel monument with TAG LS 3184

Frank Mello 5/18/2004

EXHIBIT NO. 13
APPLICATION NO.
A-1-MEN-03-062
REDUCED-WIDTH BUFFER ADEQUACY EVALUATION (FRANK C. MELLO PhD, NANCY ANNE LANG PhD)
(1 of 3)

Please refer to Mello (2003) titled Nesting and Habitat of Pelagic Mendocino County, California in 2002; Lang and Mello (2004) tit Analysis for Pelagic Cormorants on the California Mendocino Cc Scherer (2002) titled a Botanical Survey of the Whiskey Shoals Point Arena, California. This information is from Sec. 20.496.020 ESHA -- Development Criteria:

(A) Buffer Areas. and (1) Width. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. Given the fact that all roosting and nesting cormorants are down about half of the cliff face on the bluff, this distance is about 35 feet. That in combination with a minimum of 50 foot setback equals about 80 foot buffer. Since our project recommends that a 142' setback from the western most part of the proposed structure to the bluff edge plus the 35 feet down the cliff equals a total setback or buffer of about 177 feet. Assuming 75 foot of erosion over a 75 year period leaves about 102 feet of setback or buffer. Pelagic Cormorants have never been seen roosting or nesting any higher than about half way up the bluff.

(a) Biological Significance of Adjacent Lands. These lands are not generally significant because of Cormorants do not roost on flat adjacent lands.

(b) Sensitivity of Species to Disturbance.

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

As we understand, migratory fish are not affected by this project. Regarding migratory wildlife, namely Pelagic Cormorants, I offer the impact of our development would bring on Pelagic Cormorants:

1. **Light** We (I and Dr. Lang) believe that the project setback/buffer is adequate enough as not to provide any significant negative impact due to light. The Cormorants, roost, nest and spend all of their activity at least half way down the bluff cliff. We plan on using low watt, low glare and down flow lighting that will not project out toward the ocean. Additionally basic laws of physics demonstrate that indirect light rays do no appreciatively bend where light from the house will project to the bluff edge and down the bluff. Light rays would bend and project down the bluff if objects were in their presence to reflect light. In this case there are no objects present to deflect light down the bluff.
2. **Noise** The project will be built with 2x6 construction with R19 insulation. This construction will insure that noise will not come from the home. There will be no outside stereo speakers which will cause noise. The setback/buffer will be adequate to muffle sound based on known documentation. The basic laws of physics indicate that sound waves do not oppressively bend unless they bounce off cliffs, etc. In light of our house will be sitting directly facing the ocean and in the middle of the western cove. This enhancement of sound waves down the bluff edge should not occur. Only noise from the bluff edge and directed downward should pose a problem to Cormorants.

3. **Vibration** There is no scientific reason for having any vibration attributed to persons walking around or in the house. And since autos are only allowed on the eastern side of the property, this allows for considerable setback/buffer for no vibration. Lastly we have already committed to not conducting any outside construction during the months that Cormorants are nesting.

4. **Human Activity** This activity means the visual presence of humans and animals along the bluff edge and looking down the bluff edge. We or any occupants do not plan on going near the bluff edge and creating a visual appearance for obvious safety and liability reasons. There are numerous signs and a fence discouraging visitors from being too close to the bluff edge.

(c) Susceptibility of Parcel to Erosion. It has been well documented that the project under review with the proposed setback/buffer does not pose any threat to cliff erosion because all of the natural flora ground cover will not be disturbed. Any water drainage from the house will go down gutters and will be drained away from the bluff edge. The only activity that offers a treat to bluff cliff is mowing of an access path which has left the earth bare and subject to erosion because of lack of root structure from native flora. This problem is well documented. This example has destroyed allot of the rare and endangered plant species on the bluff.

(d) Use of Natural Topographic Features to Locate Development. The subject development plot is flat so no action required.

(e) Use of Existing Cultural Features to Locate Buffer Zones. None apply.

(f) Lot Configuration and Location of Existing

We wish to address further conclusions on this topic as it impacts the setback/buffering of ESHA or Pelagic Cormorants. It is well documented that we plan on leaving the buffer zone between our house the bluff edge in a natural state, i.e., **not mowed,** minimizing any light and glare (note again the we will have tinted glass with modified blinds especially facing the west when the sun comes down, there will certainly not be any outbuilding, play structures, recreation equipment, etc. We do not plan on doing any landscaping unless it is required for "filtering".

(g) Type and scale of Development Proposed. There is currently no development in the area with the exception of a house to the north. However, there are several projects that are beginning to obtain building permits. In any regard, this house is of modest size (2300 sq. ft.) with a garage located further back from the house. The house has met all requirements with regard to height, profile lighting and insulation (sound) restrictions. In fact the house exterior will be built with 2x6 construction which will provide unusually high degree of sound construction and sound barrier qualities. Tinted glass and shades will also be used.

(2) Configuration. The proposed buffer is 142'. However with regard the Pelagic Cormorant roosting and nesting activity the proposed buffer is about 177' from the western part of the house to the roosting or nesting sight.

(3) Land Division. In compliance.

(4) Permit Development.

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity. **In compliance**

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. **In compliance since we meet the buffer zone requirements.**

(c) Development shall be sited and designed to prevent impact which would degrade adjacent habitat areas. **In compliance**

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity. **In compliance**

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. **Not applicable**

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alternation of natural landforms. **In compliance based on considerable documentation and the fact that house will have no landscaping and solar electric power.**

(g) Where riparian vegetation is lost due to development, such vegetation shall replace at a minimum ratio of 1:1 to restore the protective values of the buffer area. **Agree and will be in compliance**

(h) Above ground structures shall allow peak surface water flows from a 100 year flood to pass with no significant impediment. **Will be in compliance**

(i) Hydraulic capacity, surface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic shall be protected. **Will comply**

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. **Since the land slopes away from the bluff and the fact that the house will have gutters and gutter drainage away from the house and the bluff, we will be in compliance.**

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. **Agree**

County of Mendocino
Department of Environmental Health

Memo

To: Jim Baskin, California Coastal Commission

From: Jim Ehlers, Mendocino County Department of Environmental Health, Fort Bragg

CC:

Date: 6/4/2004

Re: 27232 Warren Drive, Point Arena, Frank Mello MEN-03-062

I have just reviewed the update for Dr. Mello's septic system submitted by David Miller. I can approve this update for the septic system to serve Dr. Mello's residence.

Enclosures:

Portions of David Miller's Site Evaluation Report

EXHIBIT NO. 14
APPLICATION NO.
A-1-MEN-03-062
MELLO
REVIEWING AGENCY
CORRESPONDENCE
(1 of 5)

PC:

MENDOCINO COUNTY Environmental Health

Site Evaluation Report

Site Address: 27232 Warren Drive Site Evaluator: David Miller
City: Point Arena APN: 027-412-27
Owner Name: Frank Mello Land Div. # :
Mailing Address: 3925 Douglastakel Home phone: 662-494-5575
City: West Point Work phone: 662-295-5573 Cell
State, Zip: MS 39773
Location Description: See Map
Project Description(# of bedrooms): Three
Water Source: Well Distance to Wastewater System:

	Initial Area	Expansion Area
Profile #	E-2	E-1
Slope (%)		
Effective Soil Depth (IN)	32	26
Absorption System Type	Trench	ATU-Drip tubing
Distribution Method	Pressure	Pressure
Soil Suitability Class	2B	2B
Soil Perc Rate (MPI)	—	—
Design App. Rate (G/SF/D)	0.6	0.6
Design Flow (G/D)	450	450
Absorption Area (SF)	750	750
Linear Area (SF/LF)	5	—
Total Trench (LF)	150	375
Trench Depth (IN)	12	Surface
Trench Width (IN)	36	—
Effective Absorption Depth (IN)	12	—

Tanks:	Septic Tank	Pump Tank	Treatment Tank
Volume (GAL)	1200	1000	
Construction Material	Concrete	Concrete	

Trench Calculation: Design Flow ÷ Design App. Rate ÷ Linear Area = Total Trench(LF)
450 ÷ 0.6 ÷ 5 = 150 Feet
Requested Waiver:(attach justification) Depth of Soil 24" Below Trench
Special Design Features: Pressure Distribution

Site Evaluator's Statement: I hereby certify that I have examined the above designated site using approved procedures, and that to the best of my information, knowledge and belief it complies with all State and County requirements for an On-site Sewage System at the time of this evaluation.

Date: May 29 2004 **Signed:** David Miller

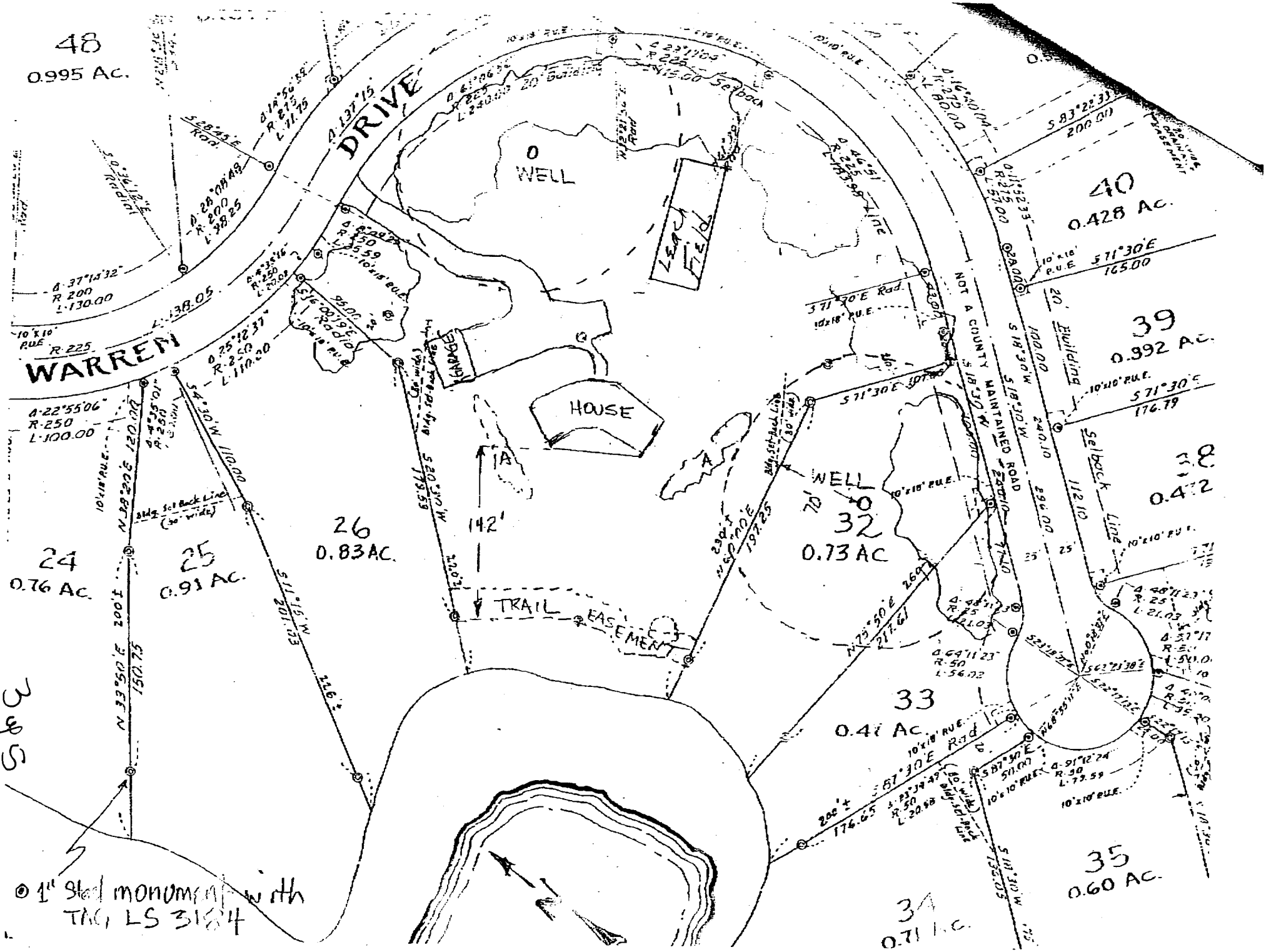
U:\Report Forms\DataEntry-with Dates.wpd

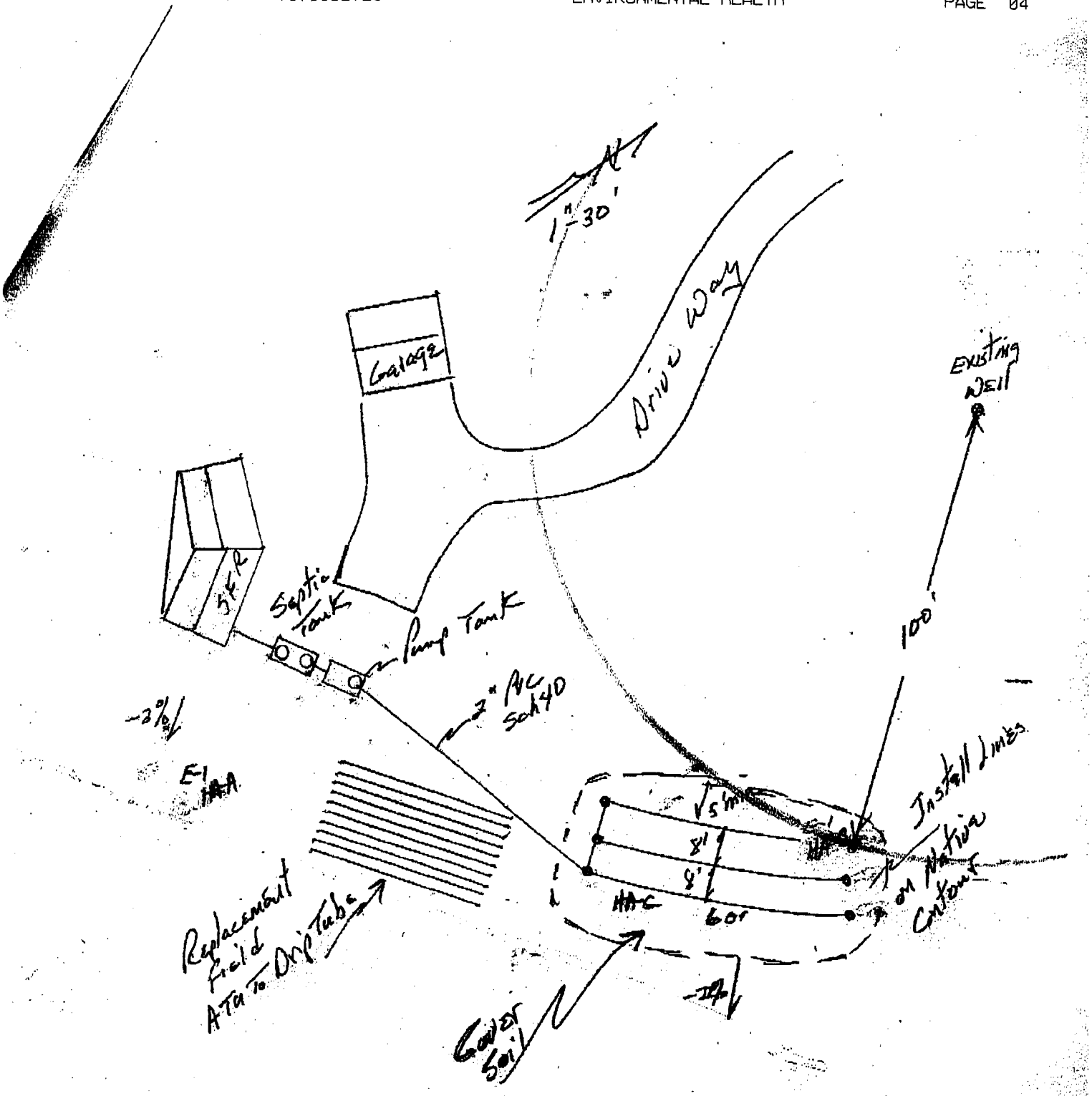
REGISTERED ENVIRONMENTAL HEALTH SPECIALIST
DAVID R. MILLER
No. 3798
12/31/04
STATE OF CALIFORNIA

ENTERED 23942

295

ENVIRONMENTAL HEALTH





27232 Warren Drive
AP# 027-412-27

405

Jim Baskin

From: Carl Wilcox [CWilcox@dfg.ca.gov]
Sent: Wednesday, April 28, 2004 6:36 PM
To: jmello@direcway.com
Cc: Jbaskin@coastal.ca.gov
Subject: Re: Pelagic Cormorant Analysis

Mr. Mello, I have reviewed the subject Analysis and they supplimental project plans and site photos. The setbacks that are incorporated into your proposed residential project should adequately protect the Cormorants nesting on the bluff face. If you have questions don't hesitate to contact me.

Carl Wilcox
Habitat Conservation Manager
Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599
707-944-5525
fax 707-944-5563
CWilcox@dfg.ca.gov

>>> "J. Mello" <jmello@direcway.com> 04/12/04 02:18PM >>>
Please read the attached and email or call me with any questions.
Thanks. Frank Mello

595

B. BRYAN PRESERVE

Committed to the Preservation and Breeding of African Hoof Stock
www.bbryanpreserve.com

Dr. Frank C Mello, Ph.D
Judy Bryan Mello
3925 Douglas Lake Rd
West Point, MS 39773

662-494-5575 - Home
662-295-5575 - Mobile
662-492-8982 - Fax
fmello@bbryanpreserve.com

June 10, 2004

RECEIVED
JUN 10 2004
CALIFORNIA
COASTAL COMMISSION

James Baskin
California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501-1865

Dear Jim: A-1-MEN-03-062

I am sorry for not getting this information to you earlier. Unfortunately I was readmitted into the hospital again for more surgery due to my accident. This has been a tough year. I must have nine lives. In any regard, I am responding to your mention that property easement may be discussed at the next California Coastal Commission hearing. I have attached the study Mr. Frank Zotter Jr., Chief Mendocino County Counsel, conducted on "Conversion of Fixed Easement to a Floating Easement". Mr. Zotter's study evaluated -- can the County or State impose a "floating easement" that would move landward as the bluff face retreats and the present area where the public easement is located becomes inaccessible? Mr. Zotter's conclusion is no. California law is clear that the original location of an easement established by a grant (as was done with the California Conservancy) cannot be changed later even if physical changes to the land make continued used of the easement impossible. California law also docs not recognize a "floating easement". Our outside legal counsel agrees with this study, and does not recommend any change in our property deed description as it pertains to easements for legal and liability reasons. We stand by our attorney's recommendation. Additionally, we have been in contact with the Pacific Legal Foundation in Sacramento, California, and they agree with this conclusion. Mr. David Bremer, Pacific Legal Foundation, states that State law would have to be amended in order to change this opinion and they would aggressively fight any activity of this sort.

We hope this information helps clear up any easement issues with our property. Thank you for all of your help and we look forward to attending the California Coastal Commission hearing in Costa Mesa, California on July 14-16, 2004.

Sincerely,

Frank Mello, Ph.D.

EXHIBIT NO. 15
APPLICATION NO.
A-1-MEN-03-062
MELLO
GENERAL CORRESPONDENCE
(1 of 7)

MENDOCINO COUNTY MEMORANDUM

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

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

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[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.

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]

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[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).

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/ss

ROBERT BISSELL

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

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

Commission:

I am writing to you as a supporter of the appeal by Friends of Schooner Gulch with regard to 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 risingseas due to global warming. It will establish statewide policy regarding our newly emerging appreciation of future erosion problems.

45760 PACIFIC WOODS RD, PO BOX 235, GUALALA, CA 95445

6 of 7

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,

Robert Bissell

CC: Friends of Schooner Gulch, Peter Reimuller, P. O. Box 4, Point Arena, CA 95468