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Filed:	April 19, 2004
49 th Day:	Waived
Staff:	Randall Stemler
Staff Report:	August 26, 2004
Hearing Date:	September 9, 2004
Commission Action:	

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

APPEAL NO.:	A-1-MEN-04-023
APPLICANTS:	Bill & Janet Pauli
AGENT:	Roff Barnett
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	45100 Chapman Road, along Highway One, approximately one mile south of the town of Mendocino, Mendocino County (APN 119-330-25).
PROJECT DESCRIPTION:	Construct a 3,424-square-foot, one-story, single-family residence with a 1,316-square-foot garage, an 800-square-foot deck, driveway, septic tank, leach field, 2,500-gallon redwood water tank, propane tank and entry gate.
APPELLANT:	Joan Curry
SUBSTANTIVE FILE:	1) Mendocino County General Plan Amendment GP 14-86;

DOCUMENTS

- 2) Mendocino County Boundary Line Adjustment B 91-88 (expired);
- 3) Mendocino County Boundary Line Adjustment B 144-91 (CDP No. 1-92-83);
- 4) Mendocino County CDP No. 52-02; and
- 5) Mendocino County Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

1. Summary of Staff Recommendation: Substantial Issue

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

The development, as approved by the County, consists of a 3,424-square-foot, one-story residence, connected by a breezeway to a 1,316-square-foot attached garage that also houses a 2,500-gallon water tank, pressure tank, and pump. An 800-square-foot deck would be located on the northwest side of the house. The approved project also includes a 400-foot-long driveway, a septic tank and leach field, an underground propane tank, an entry gate, and landscaping.

The view corridor that would be affected by the approved project is very significant. As described above, the public view from the highway includes both white and blue water views across the subject property. This view is spectacular, and includes Mendocino Bay and the mouth of Big River, with beaches, rocky bluffs, trees, and the beautiful view across the bay of the Town of Mendocino with its historic Victorian architecture situated atop the coastal terrace in the distance. For people traveling north, this is the first significant view available of the historic Town of Mendocino and Mendocino Headlands State Park. The certified LUP recognizes Mendocino as a Special Community, and it is a destination point for many people who have driven great distances from locations further south along the coast such as the San Francisco Bay area. No structures currently block views of Mendocino Bay, the Town of Mendocino and Mendocino Headlands State Park through this view corridor. The open, grassy terrace on the applicants' property contributes to the beauty of the scene by providing a fitting foreground for the unique view.

The significant impact of the choice of building location on the property on coastal views was noted by the Commission in the findings the Commission adopted in 1992 for Coastal Development Permit No. 1-92-83, which approved a boundary line adjustment that created the current configuration of the subject property. The findings state in applicable part:

"The prominence of the site is emphasized by this interspersal of open space within a forested area. If a boundary line adjustment were to create a parcel whose only building site

was located at the edge of the bluff or in the center of the property, future construction of a residence could have adverse visual impacts inconsistent with the stringent requirements for development in highly scenic areas... However, the proposed parcel configuration will allow residences to be set back from the bluff and will not concentrate development in the center of the property, and should not create any adverse visual impacts... The appropriate siting and design of future residences to avoid visual impacts on these parcels will not be precluded by the proposed parcel configuration.”

Staff recommends that the Commission find that the project as approved by the County, raises a substantial issue of conformance with the certified LCP with respect to the contentions raised concerning visual resource protection. The approved development would partially block white water and blue water views of Mendocino Bay from Highway One. Accordingly, the approved project raises a substantial issue of conformance with the provisions of LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Code (CZC) Section 20.504.015(C)(1), which require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas, from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. There are alternate locations for siting the residence that would better protect views to and along the ocean and scenic coastal areas by moving the residential development out of the center of the parcel and toward the tree-lined street along the southern property boundary. In so doing, re-siting of the residence would, consistent with the requirements of the certified LCP, maximize open space on the property and address view blockage by protecting ocean views from the highway.

In addition, the approved project raises a substantial issue of conformance with CZC Section 20.504.015(C)(10), which encourages tree planting to screen buildings associated with new development, but prohibits such planting from interfering with coastal/ocean views from public areas. Many of the trees required by the County to screen the approved development would also block views of Mendocino Bay, the Town of Mendocino, and Mendocino Headlands State Park from Highway One.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on pages 6-7.

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

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

The staff has determined that the project, as proposed, is inconsistent with certain visual resource protection policies of the certified LCP. In particular, the residence would partially block views of Mendocino Bay from Highway One inconsistent with LUP Policies 3.5-1, 3.5-3 and provisions of the Planned Unit Development Combining District (PD) zoning code requiring

maximum preservation of open space and protection of views from public roads. However, the imposition of Special Condition No. 2 can eliminate these inconsistencies. Site Plan revisions required pursuant to Special Condition No. 2 require that the proposed development be re-sited to protect ocean views west from Highway One. After visiting the site and viewing the story pole placement indicating the location of the proposed house, staff believes that moving the house approximately 90 feet to the south would eliminate view blockage of Mendocino Bay. With the re-siting requirements of Special Condition No. 2 imposed, staff believes that the proposed size and basic design of the house conforms with LCP policies. Even though the house would be larger than some in the area, with the landscaping requirements of Special Condition No. 2 that portions of the house be screened from view of Highway One, the house would be subordinate to the character of the area as viewed from Highway One. In addition, with the backdrop of trees along Chapman Road and proposed orientation of the house, the proposed house would also be subordinate to the character of its setting as viewed from Mendocino Headlands State Park and the Town of Mendocino. Special Condition No. 3 would further minimize the visual impact of the proposed development consistent with the policies and standards of the LCP by requiring that all building materials be of dark earth toned colors, that non-reflective glass be used for the windows, and that low-wattage exterior lighting be shielded and directionally cast downward to ensure the development will blend with its surroundings. Special Condition No. 4 requires an amendment or additional coastal development permit for any future improvements to the permitted structures to ensure the Commission will be able to review future additions or modifications for conformance with the visual resource protection policies of the certified LCP.

In addition to recommending the specific conditions addressing visual resource protection, staff is recommending that the Commission attach several other special conditions. These conditions include Special Condition No. 1 that a deed restriction be recorded against the subject parcel indicating that the Commission has authorized development subject to specific terms and conditions and notifying any future owners that these special conditions are imposed as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 5 is attached to prohibit bluff or shoreline protective devices from ever being constructed to protect the development approved by this permit and to require removal of the residential development if the structures cannot be occupied due to geologic hazards. Special Condition No. 6 requires that the applicants (1) acknowledge and agree that the site may be subject to geologic hazards, (2) assume the risks of injury and damage from such hazards, and (3) waive any claim of damage or liability against the Commission, officers, agents, and employees for injury or damage from such hazards. Special Condition No. 7 requires conformance of the design and construction plans to the geotechnical report. Special Condition No. 8 requires that all utility lines be installed underground. Finally, Special Condition No. 9 requires that temporary fencing be installed between any construction activity and established ESHA buffers to protect designated environmentally sensitive habitat area. Special Condition No. 10 states that this action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

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

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 18.

STAFF NOTES:

1. Appeal Process

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

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

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

The subject development is appealable to the Commission because the approved development is located (1) between the sea and the first public road paralleling the sea; (2) within 300 feet of the top of the seaward face of a coastal bluff; and (3) within a sensitive coastal resource area. With regard to the appealability of the approved development based on its location in a sensitive coastal resource area, Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "highly scenic areas." The approved development is located within an area designated in the LCP on the certified land use map as a "highly scenic area," and, as such, is appealable to the Commission.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three

Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

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

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

2. Filing of Appeal

The appellant filed an appeal (Exhibit No. 5) with the Commission in a timely manner on April 19, 2004, within 10 working days of receipt by the Commission on April 7, 2004 of the County's Notice of Final Action (Exhibit No. 4).

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On April 27, 2004, prior to the 49th day after the appeal was filed, the applicants submitted a signed waiver of the applicants' right to have a hearing set within 49 days from the date the appeal had been filed.

PART ONE—SUBSTANTIAL ISSUE

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE:

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-04-023 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

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

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-04-023 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS.

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

The project as approved by the County consists of the construction of a 3,424-square-foot, one-story, single-family residence connected by a breezeway to a 1,316-square-foot attached garage that also houses a 2,500-gallon water tank, pressure tank, and pump. An 800-square-foot deck would be located on the northwest side of the house. The project also includes a 400-foot-long driveway, a septic tank and leach field, an underground propane tank, an entry gate, and landscaping. The project site is on a blufftop parcel located on the south side of Mendocino Bay, across from the Town of Mendocino on property bordering Highway One. The appellant's contentions are summarized below, and the full text of the contentions is included as Exhibit No. 5 in the copy of the appeal submittals attached.

The appellant contends that the County's approval of the project is inconsistent with the requirements of Land Use Plan (LUP) Policies 3.5-1 and 3.5-3, and CZC Standard 20.428.005 regarding the protection of visual resources. The appellant asserts that the project is not sited and designed to protect public views and scenic coastal areas, and cites inconsistency of the County's approval with the certified CZC Planned Unit Development Combining District (PD), which sets forth additional limitations and requirements applicable to land within the PD district.

The appellant also asserts that the project as approved by the County, would not be visually compatible with the character of surrounding areas as required by LUP Policy 3.5-1, and would not be subordinate to the character of its setting as required by LUP Policy 3.5-3. The appellant specifically asserts that the approved residential development is not subordinate to the character of its setting because it is too large, and should be reduced by at least 1,500-square-feet to about half the County-approved size. The appellant asserts that neighboring houses are smaller than the approved residence.

B. LOCAL GOVERNMENT ACTION.

On March 25, 2004, the Mendocino County Coastal Permit Administrator approved Coastal Development Permit No. 52-02 for the subject development. The County attached to its coastal development permit fourteen special conditions of approval, included in their entirety in Exhibit No. 4. At the hearing, Special Condition Nos. 8 and 11 were revised as noted on the Coastal Permit Administrator Action Sheet and as contained in the memorandum included on pages 20-21 of Exhibit No. 4. Also, Special Condition No. 9 was deleted at the hearing because the requirements to revise the garage to include the water tank were incorporated into the revised site plan dated March 17, 2004.

Of particular relevance to the visual resource-related contentions of the appeal are Special Condition Nos. 5-8, 10 and 11. Special Condition No. 5 requires the exterior cedar roofing, siding, trim, and decking to be allowed to weather for a minimum of one year before applying any sealer or preservative that might arrest natural weathering and darkening of exposed surfaces. Special Condition No. 6 requires the applicant, prior to issuance of the building permit, to specify dark-colored, non-reflective materials that would blend with the coastal prairie vegetation in the vicinity for exterior items such as window frames, roof vents and flues, exterior doors and garage doors, gutters and downspouts. Special Condition No. 7 requires County approval for any change in approved colors or materials for the life of the project. Special Condition No. 8 requires submittal and approval of a revised landscaping plan. Special Condition No. 9 was deleted at the public hearing. Special Condition No. 10 requires that windows on the northwesterly side of the residence be made of non-reflective glass. Special Condition No. 11 requires that all lighting fixtures, both interior and exterior, be designed, located and/or shielded so that only reflected, non-glaring light is visible from beyond the parcel boundaries, that motion detectors be installed on exterior light fixtures to turn them off when not in use, and that bulbs in exterior fixtures not be greater than 60 watts. In approving the proposed project, the County adopted findings in their staff report that conclude the project is consistent with all certified provisions of the LCP.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on April 7, 2004, (Exhibit No. 4). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals. The project was appealed to

the Commission in a timely manner on April 19, 2004, within 10 working days after receipt by the Commission of the Notice of Final Local Action.

C. **SITE DESCRIPTION.**

The project site is on an approximately 5.7-acre parcel located on a coastal blufftop on the south side of Mendocino Bay, west of Highway One about 1 ¼ miles south of the town of Mendocino, at 45100 Chapman Road, Mendocino County (Exhibit Nos. 1, 2, and 6). The property is bounded on the northwest by the bluff overlooking Mendocino Bay, and on the southeast by Highway One. Other residential parcels neighbor the subject property to the west and north. To the south of the subject property is land of Van Damme Beach State Park, separated from the applicants' parcel by two adjacent private roads including Chapman Road, providing access to residential parcels to the west. Access to the site is from Chapman Road off of Highway One.

The approved residential development site is located on a gently sloping, elevated coastal terrace above Smuggler's Cove, at the southeast end of Mendocino Bay about 75 feet above sea level. The terrace is vegetated primarily by grass and brush in the center of the property, with more than 70 two to four-foot-tall shore pine trees planted by the applicant along the southeast margins of the land, and about 30 other coniferous trees greater than sixteen-feet in height growing primarily along the southwest and south east edges of the property. The trees were planted without benefit of a coastal development permit. Two watercourses and the coastal bluffs make up portions of the boundaries of the applicant's parcel. One small watercourse forms the westerly boundary of the parcel. Another slightly larger and deeper watercourse forms the northeasterly boundary between Highway One and the ocean. The coastal bluff forms the northwesterly boundary along the ocean between the two watercourses. As a condition of approval of the 1992 boundary line adjustment (1-92-83) that created the subject lot, the Commission required that a deed restriction be recorded to establish a minimum area from which all development is prohibited. The area includes environmentally sensitive habitat area (ESHA) along the watercourse forming the western property boundary, a 50-foot-wide buffer around the habitat, and a 55-foot-wide geologic setback from the bluff. Botanical surveys conducted in 1999 and 2002 identified riparian plant communities associated with both of the watercourses and recommended 100-foot buffers to protect the riparian ESHA. Populations of rare or endangered plants have been located on the property, including Mendocino paintbrush individuals growing along the face of the coastal bluff, and an approximately 50-square-foot population of swamp harebell *Campanula californica* located in the northeast quadrant. The paintbrush is protected with a minimum 50-foot buffer imposed by the Commission as a special condition pursuant to Coastal Development Permit No. 1-92-83 for the boundary line adjustment mentioned above. A 100-foot buffer was imposed by the County under their approved CDP No. 52-02 to protect the population of swamp harebell located in 2002.

Generally, the site is very exposed, and the house site would be visible against blue and white water views looking west from the adjacent Highway One, and by distant views from both the town of Mendocino and from Mendocino Headlands State Park south across Mendocino Bay over a mile away. The property is located within a designated highly scenic area.

An archaeological inspection conducted in 2001 located one prehistoric artifact on the subject property. The inspection report concluded that the artifact does not represent a potentially significant archaeological discovery, nor does it suggest the presence of an archaeological site on the property. However, the report recommends that special attention should be paid when ground-disturbing activities are conducted on the property, and a professional archaeologist and the County of Mendocino should be notified if any potential archaeological resources are encountered.

Under the certified LCP, the Land Use Plan classification for the subject property is Rural Residential-Five Acres Minimum-Planned Unit Development. The approved 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 Planned Unit Development combining zone requires that development of the site be sensitive to the unique or highly visible nature of the site, and that there be preservation of open space and protection of views from public roads.

As previously mentioned, in 1992, the Commission approved CDP No. 1-92-83 for the boundary line adjustment that resulted in the current configuration of the subject property. In addition, applications for several other previous proposals have been submitted for development of the subject property. Mendocino County General Plan Amendment GP 14-86 requested that the property, then part of a larger piece including the property to the west, be reclassified to allow a visitor serving facility to be developed overlooking Smuggler's Cove. The General Plan Amendment was approved by the County Board of Supervisors. However, the amendment was ultimately denied by the Commission when submitted for LCP certification as part of the group of amendments encompassed in the second submittal of 1987. Potential visual impacts of future development were the primary grounds for denial. In 1989, the Commission approved CDP No. 1-88-236 for a boundary line adjustment for the subject property, which was very similar to the boundary line adjustment later approved by CDP No. 1-92-83. However, CDP No. 1-88-236 expired in 1991 before the boundary line adjustment was finalized with Mendocino County.

D. PROJECT DESCRIPTION

Approval has been granted by the County for the proposed development, which would consist of the construction of a 16½-foot-high, 3,424-square-foot, single-family residence connected by a breezeway to a 1,316-square-foot attached garage that also houses a 2,500-gallon water tank, pressure tank, and pump (See Exhibit No. 3). A 500-gallon, underground propane would be installed near the water tank. Water would be provided by an on-site well located in the southeast corner of the property. An 800-square-foot deck would be located on the northwest side of the house. The project also includes a 400-foot-long driveway designed to sweep around in a near semi-circle from the entry gate at the southeast corner to the garage, avoiding the approved location for the septic tank and leach field. Landscaping would be provided to visually soften the appearance of the development from the Town of Mendocino and Highway One. The residence would be situated roughly in the center and along the west side of the property, 100

feet back from the riparian habitat associated with the drainage located along the parcel boundary, and slightly more than 100 feet from the coastal bluff edge.

E. SUBSTANTIAL ISSUE ANALYSIS.

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

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

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

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

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

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

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

The single contention raised by the appellant presents potentially valid grounds for appeal in alleging the local approval's inconsistency with policies of the certified LCP. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the

provisions of the LCP regarding visual resource protection, the appeal raises a substantial issue of conformity of the approved project with the certified Mendocino County LCP.

Allegation Raising Substantial Issue Regarding Visual Resource Protection

The appellant contends that the approved project is inconsistent with requirements of Mendocino County LUP Policies 3.5-1 and 3.5-3, and Coastal Zoning Code (CZC) 20.428.005 relating to the protection of visual resources. The appellant asserts that the project is not sited and designed to protect public views and scenic coastal areas, and cites inconsistency of the County's approval with the certified CZC Planned Unit Development Combining District (PD), which sets forth additional limitations and requirements applicable to land within the PD district. The appellant also asserts that the project as approved by the County, would not be visually compatible with the character of surrounding areas as required by LUP Policy 3.5-1, and would not be subordinate to the character of its setting as required by LUP Policy 3.5-3. The appellant specifically asserts that the approved residential development is not subordinate to the character of its setting because it is too large, and should be reduced by at least 1,500-square-feet to about half the County-approved size. The appellant asserts that neighboring houses are smaller than the approved residence.

LCP Policies and Standards:

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

LUP Policy 3.5-3 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 Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies [emphasis added].

CZC Section 20.428.005 states:

The Planned Unit Development Combining District (PD) is intended to require sensitive development of selected sites where standard residential and commercial and industrial design would be inappropriate to the unique or highly visible nature of the site, and to encourage imaginative development incorporating cluster development and the maximization and preservation of open space and views from public roads. Development on parcels entirely within areas of pygmy vegetation shall be reviewed for mitigation measures to prevent impacts to this resource consistent with all applicable policies of the land use plan and development standards of this Division (emphasis added).

Discussion:

The appellant alleges that the approved development is inconsistent with the above-identified LCP provisions. LUP Policy 3.5-1 states that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development 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. Additionally, LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting.

LUP Policy 3.5-3 requires that new development located within areas designated highly scenic must be subordinate to the character of its natural 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.

CZC Chapter 20.428 states that the Planned Unit Development Combining District (PD) is intended to require sensitive development of selected sites where standard residential, commercial, and industrial design would be inappropriate to the unique or highly visible nature of the site. Most of the PD zoning district regulations are intended for commercial projects or

land divisions as Section 20.428.010(A) specifically exempts a single-family residence from requirements that pertain to other development types for securing a use permit and submitting a development plan for review with the use permit application. However, certain requirements of the PD zoning district are applicable to the development of a single-family residence on the subject parcel. Notably, CZC Section 20.428.005 encourages cluster development and the maximization and preservation of open space and views from public roads. The application of the PD Combining District in combination with the highly scenic designation thus heightens the need for the protection of coastal scenic resources.

As approved by the County, the 4,740-square-foot, 16 ½-foot-tall, single-family residence and garage would be sited roughly in the center of the parcel. Regarding the view of the approved development looking southeast from Mendocino Headlands State Park, the approved development would be visible from the Town of Mendocino and Mendocino Headlands State Park, both approximately one mile across Mendocino Bay from the project site. However, from these vantage points, the house would not block ocean views because the location places the development against a backdrop of trees that exist along Chapman Road. While the residence would also be plainly visible to travelers heading south on the highway, it would be seen against a backdrop of trees and would not block views toward the ocean from this direction.

However, the approved location places the development in public view looking west from Highway One, and would briefly block blue and white water views while traveling north on the highway. The location of the residential development on the property as approved by the County has been marked by the applicant with story poles that represent the height and footprint of the County-approved structure. Staff met on-site with the applicant on May 6, 2004 to assess the visual impact of the approved location on public views. Based on this assessment, it is apparent that the approved location of the residence would partially block public blue and white water views from Highway One for those persons traveling north (Exhibit No. 8). When northbound on the highway, the traveler is offered his or her initial view of Mendocino Bay, the Town of Mendocino, and Mendocino Headlands State Park as one approaches the property before the building site comes into view (Exhibit No. 7). When the house site does come into view from behind the trees near the intersection of Chapman Road and Highway One, the upper portions of the house would be silhouetted against the water of Mendocino Bay (Exhibit No. 8). While traveling north on the highway in this location, views of Mendocino Bay, the Town of Mendocino, and Mendocino Headlands State Park are available for a total distance of approximately 500 feet before a tree-covered knoll blocks coastal views again. The view of Mendocino Bay would be partially blocked by the location of the approved residence for a distance of approximately 153 feet, a little less than a third of the view corridor. For those viewers traveling at highway speed and looking to the left, about two seconds of these blue water views would be partially blocked by the approved development. Although the impact to northbound motorists would be of relatively short duration, the impact would be significant as the affected view corridor includes the first significant views of Mendocino Bay, the historic Town of Mendocino, and Mendocino Headlands State Park that are afforded to northbound travelers. Pedestrians and bicyclists would experience ocean view blockage for a much longer period while passing the subject property.

Additionally, the approved project includes a landscaping plan that provides for trees to be planted to help achieve visual screening of the residential development from the Town of Mendocino, and from Mendocino Headlands State Park across the Bay. However, it became evident to staff from viewing the story poles from the highway and reviewing the locations of the required landscaping during the May 6, 2004 site visit with the applicant, that many of the trees approved for planting to achieve visual screening of the residential development would grow up to also block blue water views as well as views of the Town of Mendocino and Mendocino Headlands State Park while looking north from Highway One.

There are alternate locations for siting the residence that would better protect views to and along the ocean and scenic coastal areas by moving the residential development out of the center of the parcel and toward the tree-lined street along the southern property boundary. In so doing, re-siting of the residence would, consistent with the requirements of the certified LCP, maximize open space on the property and address view blockage by protecting ocean views from the highway.

The significant impact of the choice of building location on the property on coastal views was noted by the Commission in the findings the Commission adopted in 1992 for Coastal Development Permit No. 1-92-83, which approved a boundary line adjustment that created the current configuration of the subject property. The findings state in applicable part:

"The prominence of the site is emphasized by this interspersal of open space within a forested area. If a boundary line adjustment were to create a parcel whose only building site was located at the edge of the bluff or in the center of the property, future construction of a residence could have adverse visual impacts inconsistent with the stringent requirements for development in highly scenic areas... However, the proposed parcel configuration will allow residences to be set back from the bluff and will not concentrate development in the center of the property, and should not create any adverse visual impacts... The appropriate siting and design of future residences to avoid visual impacts on these parcels will not be precluded by the proposed parcel configuration."

During the site visit, staff had an opportunity to view a repositioning of story poles by the applicant to investigate whether an alternative location for the house might result in a reduction of white and blue water view blockage (See Exhibit 10). The story poles marking the heights and ends of the house were moved south, closer to Chapman Road showing that an alternative house site eliminating ocean view blockage is possible. Since there is an opportunity to site the residential development closer to Chapman Road that would not block ocean views from the highway, the project as approved by the County raises a substantial issue of conformance with Policy 3.5-1, which states that scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. Furthermore, the project as approved by the County raises a substantial issue of conformance with the Planned Unit Development Combining District designation for the property, which contemplates sensitive

development taking into account the highly visible nature of the site to maximize preservation of open space and protect views from public roads. Contrary to the purpose of this zoning standard, the approved development would site the project more in the center of the property rather than more toward the south boundary where it would maximize open space and protect views of the ocean from the highway.

The view corridor that would be affected by the approved project is very significant (See Exhibits 7-9). As described above, the public view from the highway includes both white and blue water views across the subject property. This view is spectacular, and includes Mendocino Bay and the mouth of Big River, with beaches, rocky bluffs, trees, and the beautiful view across the bay of the Town of Mendocino with its historic Victorian architecture situated atop the coastal terrace in the distance. For people traveling north, this is the first significant view available of the historic Town of Mendocino silhouetted behind Mendocino Headlands State Park. The certified LUP recognizes Mendocino as a Special Community, and it is a destination point for many people who have driven great distances from locations further south along the coast such as the San Francisco Bay area. No other structures currently block views of Mendocino Bay, the Town of Mendocino, or Mendocino Headlands State Park through this view corridor. The open, grassy terrace on the applicants' property contributes to the beauty of the scene by providing a fitting foreground for the unique view.

The majority of appeals from Mendocino County raise issues of visual resource protection, and in acting on these appeals *de novo*, the Commission has denied some projects because of inconsistencies with visual resource protection policies. The protection of visual resources is a major policy of the Coastal Act as set forth in Section 30251, and in certifying LUP Policy 3.5-1, the Commission concurred with the introductory language of that policy that the scenic and visual quality of the Mendocino County coastal area be considered and protected as a resource of public importance. The Commission often conditions permits it approves to require the applicant to relocate, redesign, or screen proposed development specifically to protect views of the ocean and scenic coastal areas. Thus, the appeal raises issues of regional and statewide significance. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding visual resource protection, including LUP policies 3.5-1, 3.5-3, and Coastal Zoning Ordinance Section 20.428.005.

Allegation Not Raising Substantial Issue

One particular concern raised by the appellant as part of her overall contention that the approved project is inconsistent with the visual resource protection policies of the LCP does not raise a substantial issue of conformity of the approved project with the certified LCP. This contention concerns the size of the approved residence. The appellant asserts that inconsistent with LUP Policies 3.5-1 and 3.5-3, the project as approved by the County would not be subordinate to the character of its setting because it is too large, and should be reduced by at least 1,500-square-feet to about half the County-approved size. The appellant asserts that neighboring houses are smaller than the approved residence would be. The appellant is particularly concerned about

views of the approved development from the Town of Mendocino (See Exhibits 11 and 12). These views south across Mendocino Bay toward the applicant's house-site include the neighboring residential developments currently existing immediately west of the applicant's property, as well as the large and very imposing residential structure located further west out toward the point. Additionally, this view south across Mendocino Bay includes residences located east of the subject parcel.

The subject development, approved at a height of only 16½ feet above average natural grade, would be among the shortest residential developments in the scenic neighborhood. Even though the approximately 4,740 square feet of approved residential development on the subject property would be the largest amount of structural square footage in the neighborhood, the facing profile of the development toward the town of Mendocino and the Mendocino Headlands State Park would be approximately 120 lineal feet, placing the approved subject development somewhere in the middle of the range of the other north-facing façades of the neighboring residential developments. With the colors and building materials as approved by the County, the subject development would be among the darkest structures, and would therefore blend with the backdrop of trees growing along the south boundary of the property. Also, the development as approved would not break the horizon as viewed from the Town of Mendocino and Mendocino Headlands State Park.

Therefore, the specific concern raised regarding the size of the approved structure relative to views from the Town of Mendocino and Mendocino Headlands State Park does not raise a substantial issue of conformance with the requirements of LUP Policy 3.5-1 and 3.5-3 that new development be subordinate to the character of its setting. Furthermore, the Commission need not do an exhaustive analysis of why this particular portion of the contention does not raise a substantial issue, because whether or not this particular portion of the contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the protection of views to and along the coast, raise a substantial issue of conformance of the project as approved with the certified LCP.

Conclusion of Part One: Substantial Issue

The Commission finds that as discussed above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with the policies of the certified LCP regarding the protection of visual resources.

PART TWO—DE NOVO ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer

governs, and the Commission must consider the merits of the project with the LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

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

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

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

MOTION: I move that the Commission approve Coastal Development Permit No. A-1-MEN-04-023 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 the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on the 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 the significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have 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.

2. Revised Plans

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-04-023, the applicants shall submit revised plans to the Executive Director for review and approval. The revised plans shall substantially conform with the plans submitted with the application, including the Site Plans as included herein, in Exhibit No. 3; the Landscaping Plan prepared by Tiffany Meyer dated March 2004; and the Site, Landscape and Drainage Plan map prepared by architect Caroline Lapere dated April 29, 2004; except that the plans shall also provide for the following changes to the project:

1) Site Plan Revisions

The revised site plan shall depict the house and garage relocated to the portion of the subject property depicted on Exhibit No. 14 of the staff recommendation as the zone for an alternate house site. The driveway, the underground septic system, and other underground facilities may be located outside of the designated area, provided they do not encroach into the 100-foot ESHA buffer, the setbacks from the bluff and landslides recommended by the geotechnical report, or the yard and road setbacks required by the Coastal Zoning Ordinance. The garage structure may extend from the house at a different angle than as shown on the site plan submitted with the application so long as both the house and garage structures are located in the specified zone.

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 coir roll barriers, or bales of straw placed end-to-end, shall be installed down slope 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 either jute netting, coir fabric, or 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;
 - v. Runoff from impervious surfaces including the residence and garage roof, and driveway shall be collected and conveyed to a drainage sump designed for infiltration in a non-erosive manner. Where gutters and downspouts are used, splash block velocity reducers shall be incorporated, to prevent scour and erosion at the outlet;
 - vi. Contractors shall be informed of the presence of environmentally sensitive habitat on the site and the importance of avoiding disturbance to these areas,

especially with regard to erosion and runoff from the building site.

- vii. All on-site construction debris stockpiles shall be covered and contained at all times

3) Landscape Revisions

- a. The revised landscaping plan shall demonstrate that:

- i. The planting of non-native invasive plants at the project site will be prohibited;
- ii. Native trees and shrubs shall only be planted along the eastern and northern sides of the residential structures in at least 5 or 6 discreet groupings within the portion of the subject property depicted on Exhibit No. 14 of the staff recommendations as the zone for the alternate house site to soften the views of the permitted development from the highway and the Town of Mendocino;
- iii. All plantings shall be maintained in good growing conditions throughout the life of the project and ensure continued compliance with the landscape plan.
- iv. All landscape planting shall be completed within 180 days of occupancy.

- 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, and landscaped yard and play areas, topography of the developed site, and all other landscape features, and
- ii. Appropriately worded landscaping plan notes, declaring that: "No non-native invasive plants shall be planted at the project site;" and
- iii. The landscape plan notes shall provide that all plantings shall be maintained in good growing conditions throughout the life of the project, and 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; and

- iv. A schedule shall be provided for the installation of the landscaping.

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

3. **Design Restriction**

- A. All exterior siding and roofing of the proposed structures shall be composed of the materials and colors proposed in the application or darker earth tone colors only. Exterior items such as window frames, roof vents and flues, exterior doors and garage doors, gutters and downspouts shall be of dark-earth tone colored non-reflective materials. Exterior cedar roofing, siding, trim, and decking shall be allowed to weather for a minimum of one year prior to applying any sealer or preservative that might arrest natural weathering and darkening of the exposed surfaces. As an alternative, a dark stain may be applied at the time of construction. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare; and
- B. 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.

4. **Future Development**

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-04-023. 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-04-023 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. **No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this permit, the applicants 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-04-023, including, but not limited to, the residence with the attached garage, foundations, septic system, utilities, driveway, or appurtenant residential development in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the 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 or under Mendocino County LUP Policy No. 3.4-12, and Mendocino County Coastal Zoning Ordinance No. 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence with the attached garage, foundations, septic system, driveway, and other appurtenant residential development, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

6. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicants acknowledge and agree: (a) that the site may be subject to hazards from waves, storm waves, landslide, bluff retreat, erosion, subsidence, and earth movement; (b) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) 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 (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. **Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**

All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the Engineering Geologic Reconnaissance report dated April 28, 2000, and Geotechnical Investigation Report Addendum No. 1 dated June 27, 2002 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.

8. **Underground Installation of Utility Lines**

All utility lines shall be installed underground.

9. **Temporary Protective Fencing**

Prior to beginning grading or construction activities on the site, the applicant shall install temporary fencing between any construction activity and the 100-foot protective buffers established around identified environmentally sensitive habitat area as depicted on Exhibit No. 14 of the staff recommendation. Temporary fencing shall be installed for a sufficient distance to prevent any disturbance of the buffers, including maneuvering or parking of equipment, or storage of materials. The temporary fencing shall remain in place for the duration of construction and may be removed upon the final building inspection for the residence.

10. **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 declares and finds as follows:

1. Project Description:

As discussed in the Substantial Issue portion of this report, the proposed development consists of the construction of a 3,424-square-foot, one-story, single-family residence connected by a breezeway to a 1,316-square-foot attached garage that also houses a 2,500-gallon water tank, pressure tank, and pump. Water would be provided by an on-site well. An 800-square-foot deck would be located on the northwest side of the house. The project also includes a 400-foot-long driveway, a septic tank and leach field, an underground propane tank, an entry gate, and landscaping.

The Substantial Issue portion of this report is hereby incorporated by reference.

2. Site description:

The Substantial Issue portion of this report is hereby incorporated by reference.

3. Planning and Locating New Development:

LCP Policies

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 system and other known planning factors shall be considered when considering applications for development permits.

CZC Section 20.532.095 sets forth the required findings for all coastal development permits, and states that the proposed development must be in conformity with the certified local coastal program; must be provided with adequate utilities, access roads, drainage and other necessary facilities; must be consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the zoning code and preserve the integrity of the zoning

district; and must not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

The subject property is zoned on the County's Coastal Zoning Map as Rural Residential-5 acre minimum—Planned Unit Development (RR:L-5:PD), meaning that there may be one parcel for every five acres, that approvable development be sensitive to the unique or highly visible nature of the site, and that there be preservation of open space and protected views from public roads. A use permit application and development plan is not required by the PD designation to be submitted for a single-family residence. Single-family residences are a principally permitted use in the Rural Residential zoning district. Setbacks for the subject parcel pursuant to Sections 20.376.030 and 20.376.035 of the Mendocino County Coastal Zoning Code include a 25-foot-wide corridor preservation setback from the center of the Chapman Road private road easement, plus an additional front yard setback of 30 feet, for a total of 55 feet from the center of the road easement, or what amounts to 70 feet from the south property boundary; and a 30-foot side yard setback along the east property boundary parallel to Highway One. CZC Section 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.

Discussion

The proposed residence would be constructed within an existing rural residential area. The proposed single-family residential use is consistent with the Rural Residential zoning for the site. The subject parcel is a legal lot. The proposed height would be 16-½ feet high, consistent with the height standards for the zoning district. The maximum lot coverage allowed on a parcel greater than five acres in size in an RR zone is 10%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 5.74 acres, or 250,034 square feet in size. The proposed residential development on the site would involve approximately 10,400 square feet of coverage, or roughly 4.2% of the lot area. The proposed project therefore complies with lot coverage limits as well as the yard setback requirements.

The subject parcel would be served by an on-site surface water source. Sewage would be processed by an on-site septic system. The Mendocino Department of Environmental Health has indicated they could provide coastal development permit clearance. 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.

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.

3. Protection of Visual Resources

a. Protection of Views To and Along the Coast

LCP Policies

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...

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. [Emphasis added]

- ...
- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*
- ...

CZC Section 20.504. 015(A)(2) states:

(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting.

(1) ...

(2) Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

CZC Section 20.504.015(C) states in applicable part:

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista

points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

- (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.*

Discussion

LUP Policy 3.5-1 protects the scenic and visual qualities of Mendocino County coastal areas as a resource of public importance. LUP Policies 3.5-1 and 3.5-3 and CZC Section 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. Views are required to be protected from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. CZC Section 20.504.015(C)(10) encourages tree planting to screen buildings associated with new development, but prohibits such planting from interfering with coastal/ocean views from public areas.

The proposed 4,740-square-foot, 16 ½-foot-tall, single-family residence and garage would be sited roughly in the center of the parcel. Regarding the view of the proposed development looking southeast from Mendocino Headlands State Park, the proposed development would be visible from the Town of Mendocino and Mendocino Headlands State Park, both approximately one mile across Mendocino Bay from the project site. However, from these vantage points, the house would not block ocean views because the location places the development against a backdrop of trees that exist along Chapman Road (See Exhibits 12-13). While the residence would also be plainly visible to travelers heading south on the highway, it would be seen against a backdrop of trees and would not block views toward the ocean from this direction.

However, the proposed location places the development in public view looking west from Highway One, and would partially block blue and white water views while traveling north on the highway (See Exhibit No. 8). The proposed location of the residential development on the property has been marked by the applicant with story poles that represent the height and footprint of the County-approved structure. Staff met on-site with the applicant on May 6, 2004 to assess the visual impact of the approved location on public views. Based on this assessment, it is apparent that the proposed location of the residence would partially block public blue and white water views from Highway One for those persons traveling north (See Exhibit No. 8). When northbound on the highway, the traveler is offered his or her initial view of Mendocino Bay, the Town of Mendocino, and Mendocino headlands State Park as one approaches the property before the building site comes into view (See Exhibit No. 7). When the house site does come into view from behind the trees in the vicinity of the intersection of Chapman Road and Highway One, the upper portions of the house would be silhouetted against the water of Mendocino Bay (See Exhibit No. 8). While traveling north on the highway in this location, views of Mendocino Bay, Town of Mendocino, and Mendocino Headlands State Park are available for a total distance of approximately 500 feet before a tree-covered knoll blocks coastal views again. The view of Mendocino Bay would be partially blocked by the location of the approved residence for a

distance of approximately 153 feet, a little less than a third of the view corridor. For those viewers traveling at highway speed and looking to the left, about two seconds of these blue water views would be partially blocked by the approved development. Although the impact to northbound motorists would be of relatively short duration, the impact would be significant as the affected view corridor includes the first significant views of Mendocino Bay, the historic Town of Mendocino, and Mendocino Headlands State Park that are afforded to northbound travelers. Pedestrians and bicyclists would experience ocean view blockage for a much longer period of time while passing the subject property.

Additionally, the proposed project includes a landscaping plan that provides for trees to be planted to help achieve visual screening of the residential development from the Town of Mendocino, and from Mendocino Headlands State Park across the Bay. However, it became evident to staff from viewing the story poles from the highway and reviewing the locations of the proposed landscaping during the May 6, 2004 site visit with the applicant, that many of the trees that would be planted to achieve visual screening of the residential development would grow up to also block ocean views as well as views of the Town of Mendocino and Mendocino Headlands State Park while looking north from Highway One.

There are alternate locations for siting the residence that would better protect views to and along the ocean and scenic coastal areas by moving the residential development out of the center of the parcel and toward the tree-lined street along the southern property boundary. In so doing, re-siting of the residence would, consistent with the requirements of the certified LCP, maximize open space on the property and address view blockage by protecting views of the ocean and public park from the highway.

The significant impact of the choice of building location on the property on coastal views was noted by the Commission in the findings the Commission adopted in 1992 for Coastal Development Permit No. 1-92-83, which approved a boundary line adjustment that created the current configuration of the subject property. The findings state in applicable part:

"The prominence of the site is emphasized by this interspersal of open space within a forested area. If a boundary line adjustment were to create a parcel whose only building site was located at the edge of the bluff or in the center of the property, future construction of a residence could have adverse visual impacts inconsistent with the stringent requirements for development in highly scenic areas... However, the proposed parcel configuration will allow residences to be set back from the bluff and will not concentrate development in the center of the property, and should not create any adverse visual impacts... The appropriate siting and design of future residences to avoid visual impacts on these parcels will not be precluded by the proposed parcel configuration."

During the site visit, staff had an opportunity to view a repositioning of story poles by the applicant to investigate whether an alternative location for the house might result in a reduction of white and blue water view blockage. The story poles marking the heights and ends of the house were moved south, closer to Chapman Road showing that an alternative house site

eliminating ocean view blockage is possible (See Exhibit 10). Since there is an opportunity to site the residential development closer to Chapman Road that would not block ocean views from the highway, the proposed project is not consistent with Policy 3.5-1, which states that scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. Furthermore, the project is not consistent with the Planned Unit Development Combining District designation for the property, which contemplates sensitive development taking into account the highly visible nature of the site and protecting views from public roads. Contrary to the purpose of this zoning standard, the approved development would site the project more in the center of the property rather than more toward the south boundary where it would protect views of the ocean from the highway.

The view corridor that would be affected by the approved project is very significant. As described above, the public view from the highway includes both white and blue water views across the subject property. This view is spectacular, and includes Mendocino Bay and the mouth of Big River, with beaches, rocky bluffs, trees, and the beautiful view across the bay of the Town of Mendocino with its historic Victorian architecture situated atop the coastal terrace in the distance. For people traveling north, this is the first significant view available of the historic Town of Mendocino silhouetted behind Mendocino Headlands State Park. The certified LUP recognizes Mendocino as a Special Community, and it is a destination point for many people who have driven great distances from locations further south along the coast such as the San Francisco Bay area. No other structures currently block views of Mendocino Bay, the Town of Mendocino, or Headlands State Park through this view corridor. The open, grassy terrace on the applicants' property contributes to the beauty of the scene by providing a fitting foreground for the unique view.

Therefore, the Commission finds that the project as designed and sited is inconsistent with LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1) because the proposed development would block views to the ocean from Highway One and interfere with views of the scenic coastal area. To achieve consistency of the project with Mendocino County LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C)(1), the Commission attaches Special Condition No. 2(A)(1), which requires the applicant to submit, for the Executive Director's review and approval, final site plans reflecting the repositioning of the residential development to the southern portion of the property to eliminate the blockage of blue and white water views from Highway One and avoid interference with the scenic coastal view from Highway One toward the Town of Mendocino. Exhibit No. 14 depicts the zone within which the residence and garage can be relocated. The northern boundary of the zone was established based on Commission staff on-site review of story poles for the proposed and alternate house sites, which determined that any development south of the boundary would not block views of the ocean. Special Condition No. 2(A)(1) would allow for the driveway and below-ground improvements such as the septic system seaward of the boundary, as these improvements would not block views.

As discussed below, Special Condition No. 2(A)(3), requires that certain trees and shrubs be planted along the north and east sides of the residence to soften the appearance of the structures

and ensure that the development will be subordinate to the character of its setting. To ensure consistency of the project with the requirements of CZC Section 20.504.015(C)(10) that trees planted for visual screening purposes not interfere with coastal views and/or ocean views from public areas, Special Condition No. 2(A)(3), requires the applicant to submit, for the Executive Director's review and approval, final landscaping plans showing that the screening vegetation would also be located within the zone of the property where development would not adversely affect views to and along the ocean or interfere with views of the Town of Mendocino or Mendocino Headlands State Park from the highway.

Therefore, the Commission finds that the project as conditioned, is consistent with the requirements of LUP Policies 3.5-1, 3.5-3, and CZC Section 20.504.015(C) that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas as the relocated proposed house would not block views to the ocean, interfere with views from Highway One toward the Town of Mendocino, Mendocino Headlands State Park, or otherwise adversely affect views to and along the ocean and scenic coastal areas.

b. Maximizing Open Space

LCP Policies

LUP Policy 3.5-4 in applicable part states:

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 alternate site exists...

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists... [emphasis added]

CZC Section 20.428.005 states:

The Planned Unit Development Combining District (PD) is intended to require sensitive development of selected sites where standard residential and commercial and industrial design would be inappropriate to the unique or highly visible nature of the site, and to encourage imaginative development incorporating cluster development and the maximization and preservation of open space and views from public roads. Development on parcels entirely within areas of pygmy vegetation shall be reviewed for mitigation measures to prevent impacts to this resource consistent with all applicable policies of the land use plan and development standards of this Division (emphasis added).

Discussion

LUP Policy 3.5-4 requires that development in the middle of large open areas be avoided if an alternate site exists and requires that the visual impacts of development on terraces such as the subject development, be minimized by avoiding development in large open areas if alternate sites exist. CZC Section 20.428.005 requires development maximize and preserve open space and views from public roads.

As described above, the proposed development would be located approximately in the center of the coastal terrace, placing the structures in a very open setting inconsistent with LUP Policy 3.5-4 and CZC Section 20.428.005 that development in open areas be avoided to maximize open space. As discussed previously, an alternate site for the development is available along the southern property line (See Exhibit 10). Building in this alternate site would expand and maximize the open terrace area between the house and the bluff edge. Relocation of the house to this area would expand the width of the open coastal terrace by approximately 100 feet, or roughly by 33 %. Therefore, the Commission imposes Special Condition No. 2, which requires the applicants to revise the development site plan and relocate the proposed residential structures toward the southern property line within the zone depicted for alternate siting in Exhibit No. 14, rather than in the middle of the exposed coastal terrace.

As conditioned, the Commission finds that the proposed development will maximize open space on the coastal terrace consistent with LUP Policies 3.5-4 and CZC Section 20.428.005 of the certified LCP.

c. Consistency with Height Requirements

LCP Policies

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 Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

...

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

CZC Section 20.504.015(C)(2) states:

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

Discussion

LUP Policy 3.5-3 requires that new development west of Highway One in designated highly scenic areas be limited to one-story (above natural grade). CZC Section 20.504.015(C)(2) requires that in highly scenic areas west of Highway 1, new development be limited to eighteen (18) feet above natural grade. Both Policy 3.5-3 and CZC Section 20.504.015(C)(2) would allow an increase in height if the increased height (a) would not affect public views to the ocean or (b) be out of character with surrounding structures. The proposed house would have only one story and a maximum height of 16 ½ feet above average natural grade. Therefore, the Commission finds that the proposed development is consistent with the height limitations of LUP Policy 3.5-3 and CZC Section 20.504.015(C)(2).

d. Ensuring New Development is Compatible and Subordinate to the Character of the Setting

LCP Policies

Policy 3.5-1 states in applicable part:

New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting[emphasis added].

LUP Policy 3.5-3 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 Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1*[emphasis added].

[Note: The foregoing portion of LUP Policy 3.5-3 is implemented verbatim in Coastal Zoning Code Section 20.504.015(A)]

CZC Section 20.504.015(C)(3) in applicable part states:

New development shall be subordinate to the natural setting and minimize reflective surfaces. ...

Discussion

LCP Policies 3.5-1 and 3.5-3 require that new development in highly scenic areas such as the subject property be subordinate to the character of its setting. CZC Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces.

As described above, the project site is on an approximately 5.7-acre parcel located on a coastal blufftop terrace on the south side of Mendocino Bay, west of Highway One about 1 ¼ miles south of the town of Mendocino. The property is bounded on the northwest by the bluff overlooking Mendocino Bay, and on the southeast by Highway One. The western and northeastern parcel boundaries are drainage courses supporting riparian plant communities, with residential parcels beyond. To the south is land of Van Damme Beach State Park. The applicants' property is not readily visible from Van Damme Beach State Park, and is separated from the subject property by two adjacent private roads that provide access to residential parcels to the west, and are thickly planted with trees. Access to the site is from Chapman Road off Highway One. The approved residential development site is located on a gently sloping, elevated coastal terrace above Smuggler's Cove, at the southeast end of Mendocino Bay about 75 feet above sea level. The property is vegetated primarily by grass and brush in the center of the property, with more than 70 two-to-four-foot-tall shore pine trees planted by the applicant along the southeast margins of the land, and about 30 other coniferous trees greater than sixteen-feet in height growing primarily along the southwest and southeast edges of the property. Generally, the site is very exposed, and is visible from Highway One, and from the Town of Mendocino and from Mendocino Headlands State Park by distant views south across Mendocino Bay over a mile away. The property is located within a designated highly scenic area.

The scenic importance of the area is reflected in the fact that the property is zoned PD recognizing the unique and highly visible nature of the site, thus requiring sensitive development to preserve open space and protect views from public roads. Some neighboring properties with residential structures have been successfully developed in a manner that is subordinate to the setting. Other neighboring structures are not as subordinate to the character of their setting.

The natural setting of the surrounding area is distinctive for its openness and proximity to Mendocino Bay providing opportunity for views across the Bay looking north from Highway One, and looking south from the Town of Mendocino and Mendocino Headlands State Park. Views south across the Bay toward the subject parcel highlight breaking waves in the foreground

set against steep bluffs blending into coastal terrace prairie and forested hills in the background. Existing residential structures are visible in the vicinity, and the placement of the story poles indicates that the proposed residential development would also be visible from each of these views. The subject property is an exposed lot, and it should be noted that the buildable area on the subject property would be visible, both from the town of Mendocino and the Mendocino Headlands State Park across the bay, and looking west toward the ocean from Highway One. There are no opportunities to move the residence to areas of the property that would not be visible at all. Additionally, the buildable area for a dwelling and appurtenant development on the parcel is constrained by botanical buffer areas, geologic setbacks, a corridor preservation setback, and front and side yard setbacks.

As discussed in the substantial issue portion of this report, numerous neighboring houses in the vicinity of the applicants' property are within view from the Town of Mendocino and Mendocino Headlands State Park, and to some degree help formulate the character of the area. The closest neighboring structures west of the applicants' property consist of three buildings, including a 22-foot-tall, 2,156-square-foot, single-family residence; a 21-foot-tall, 1,627-square-foot, two-story guesthouse built over a garage; and a 10-foot-tall, 450-square-foot spa building and garage. Together these buildings appear to merge into one apparent residential development in the distant views from the Town of Mendocino and Mendocino Headlands State Park. The facing profile of this residential development from this view covers about 135 lineal feet. The colors and building materials used are dark brown, stained redwood siding and trim, and dark brown roofing. The structures blend well with the background trees on the site.

Further to the west is a much more visually arresting residential structure located near the western-most point of land as seen from the Town of Mendocino and Mendocino Headlands State Park. This single-family structure is an approximately 23-foot-high building as measured from the average natural grade, and has a building coverage of approximately 3,704 square feet. The lineal profile of this residential development as seen from the north presents an approximately 145-foot face. What makes the development dramatically stand out in the view from the Town of Mendocino and Mendocino Headlands State Park is the color scheme and choice of building materials used for construction of the residence. In its findings for its action on the neighboring property to the east, the Commission stresses the importance of approving appropriate color schemes for proposed development. The findings state that a "dark" earth toned color was not specified for this western-most residence, and the Commission noted that the light tan color used for the structure has resulted in the building being quite visible from across the Bay. The Commission concluded from this experience that a darker color would have been much more appropriate. The Commission further concluded in the findings that, in fact, due to the dark backdrop of trees, color is of prime importance and is a major determining factor in whether a structure is visually disruptive when viewed from a distance, or whether it blends with the environment.

To the east of these structures and the subject property, views from the Town of Mendocino and Mendocino Headlands State Park across the Bay include an approximately 21-foot-tall, approximately 2,804-square-foot, two-story, single-family residence that presents an

approximately 60-lineal-foot face. Further to the east an un-conventional-looking 18-foot-tall, 1,118-square-foot geodesic dome is within view that presents an approximately 35-lineal-foot facing view toward the Town of Mendocino and Mendocino Headlands State Park. Both of these residential developments located to the east of the subject property use natural wood shake and/or wood plank siding and wood trim and are therefore rather dark-looking structures. From the standpoint of choice of building materials and colors, they both blend well with their natural background.

The design of the proposed residence reduces visual incongruity with the natural setting and helps blend the proposed residence with the background. For instance, the designed house would rise only 16½ feet from the average natural grade. Additionally, the specified choices of building materials and colors would result in a house that does not stand out. The applicants' use of natural cedar shingle roofing and siding, and cedar trim would blend with the wooded backdrop of the property as seen from the Town of Mendocino and Mendocino Headlands State Park. Furthermore, because of the geographic setting and location of the house on the property relative to the Town of Mendocino and Mendocino Headlands State Park, the residence as proposed would not produce window surface glare that would affect the Town or State Park because the angle of incidence would not reflect the sun's rays in that direction. Therefore, the project, as conditioned, is consistent with the requirements of CZC Section 20.504.015(C)(3) that new development minimize reflective surfaces.

It should be noted that the subject development, proposed at a height of only 16½ feet above average natural grade, would be among the shortest houses in the scenic neighborhood. Even though the approximately 4,740 square feet of approved residential development on the subject property would be the largest amount of structural square footage in the neighborhood, the facing profile of the development toward the town of Mendocino and the Mendocino Headlands State Park would be approximately 120 lineal feet, placing the proposed subject development somewhere in the middle of the range of the other north-facing façades of the neighboring residential developments. With the colors and building materials proposed by the applicants, the subject development would be dark and therefore blend well with the backdrop of trees growing along the south boundary of the property. Also, the development as approved would not break the horizon as viewed from the Town of Mendocino and Mendocino Headlands State Park, as the ridgeline of the house would be much lower than the tree line behind the house.

Although the design of the house includes many features that help blend the development with its surroundings, additional measures could be taken to make the development more fully subordinate to the character of its setting, as required by LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015.

The proposed project includes landscaping to soften the appearance of the residential structure. With the requirement of Special Condition No.2(A)(1) that the house and landscaping be moved to preserve views to and along the ocean and scenic coastal areas and to maximize terrace open space on the parcel as discussed above, the landscaping needs to be resited and redesigned. To ensure that the landscaping will achieve the purpose of softening the appearance of the

residential structures, Special Condition No. 2(A)(3) requires the applicants to submit a revised landscaping plan prior to issuance of the permit for the review and approval of the Executive Director. As the principal public views of the structure will be from Highway One to the east, and from the Town of Mendocino, Mendocino Headlands, and Mendocino Bay to the north, Special Condition No. 2(A)(3) requires that native trees and shrubs be planted along the eastern and northern sides of the residential structures in at least 5 or 6 discreet groupings. The landscaping must be placed within the same area of the property within which the house must be relocated to ensure that the planted landscaping does not grow up to block or adversely affect views from Highway One. This required landscaping is not intended to form a solid screen, but rather to soften the appearance of the structure. Placing the trees and shrubs in groupings along the exposed facades of the residential structures will break up expanses of the structures with native vegetation that blends with the backdrop of trees on the subject property and adjacent properties.

The applicant has proposed to use natural cedar shingle roofing, siding, and cedar trim. A wood preservative or stain would likely be applied to these materials to increase their longevity. The timing of when such a preservative is applied can make a difference in the apparent color of the siding. If the preservative is applied soon after installation before the wood has had a chance to weather, the wood siding would appear lighter in color than if the siding has had a chance to weather first to a darker color. A darker color would blend better with the dark greens and browns of the trees that form the backdrop to the approved residence site. Therefore, Special Condition No. 3 requires that the exterior cedar roofing, siding, trim, and decking be allowed to weather for a minimum of one year prior to applying any sealer or preservative that might arrest the natural weathering and darkening of the exposed surface. The condition allows the use of a dark stain at the time of construction as an alternative, as a dark stain would achieve the same purpose of darkening the wood.

Although the colors and materials for most of the exterior surfaces of the proposed structures have been specified in the permit application, the colors of certain exterior features such as window frames, roof vents and flues, exterior doors and garage doors, gutters and downspouts have not been specified. To ensure that these features are colored in dark colors consistent with the rest of the exterior features of the structures and do not contrast in a manner that causes the structure to stand out, Special Condition No. 3 requires that these features be of dark-earth tone colored non-reflective materials.

To ensure that the building materials of the development as proposed and conditioned continue to blend in hue and brightness with their surroundings and are subordinate to the character of its setting during the life of the structure, Special Condition No. 3 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 and windows, are required to be non-reflective to minimize glare. Furthermore, Special Condition No. 3 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.

The placement of overhead utility lines to serve the proposed development would detract from views towards the Town and Mendocino Bay as seen from Highway One and would make the appearance of the overall development less subordinate to the character of its coastal terrace setting than if the utility lines were installed underground. To ensure that the placement of utility lines will not keep the development from being subordinate to the character of its setting, the Commission attaches Special Condition No. 8 which requires that all utility lines be installed underground.

To ensure that any future buyers of the property will be aware of the requirements of (1) Special Condition No. 2(A)(3) for submitting a revised landscaping plan, (2) Special Condition Nos. 3 for maintaining the dark colors, prohibiting the use of reflective glass and maintaining a certain kind and array of exterior lighting fixtures, and (3) Special Condition No. 8 that all utility lines must be installed underground, the Commission imposes Special Condition No. 1. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

As conditioned, the development would blend with its surroundings to a high degree and would be subordinate to the character of its setting, consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015.

The Commission does not consider approval of the residential development on the property to set a precedent as to what is a permissible size of house on a highly visible parcel located in a designated highly scenic area in Mendocino County. The finding that the project as conditioned is subordinate to the character of its natural setting is based on the unique setting and characteristics of the site and on the fact that this particular project can be conditioned to mitigate the visual impacts that may result from the project. Because each project is unique, the Commission must consider each proposal for development on parcels in highly scenic areas on a case-by-case basis.

5. Visual Resource Protection Conclusion

Therefore, as presented in the foregoing discussion, the Commission finds that the project as conditioned is consistent with the provisions of LUP Policies 3.5-1 and 3.5-3(1) and CZC Section 20.504.015(C)(1) that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, (2) LUP Policy 3.5-4 and CZC Section 20.428.005 that development on coastal terraces and within PD zoning districts maximize open space, (3) LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015(C)(3) that new development in highly scenic areas to be subordinate to the character of its setting, and (4) LUP Policy 3.5-4 and CZC

Section 20.504.015(C)(2) that new development in highly scenic area be limited to one story and 18 feet in height above natural grade.

4. Geologic Hazards

LCP Provisions

LUP Policy 3.4-1 states:

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

LUP Policy 3.4-7 states that:

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

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.¹ [Emphases added.]

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

LUP Section 3.4-8 states that:

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*
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registered civil engineer pursuant to the site investigation requirements in Chapter 20.532. [Emphasis added.]

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

(B) *Bluffs. ...*

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

(E) *Erosion.*

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

Discussion

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

The parcel involved in the approved residential development includes approximately 225 lineal feet of shoreline bluff. The proposed building site is on a gently-sloping, elevated terrace above Smuggler's Cove, at the south end of Mendocino Bay. Smuggler's Cove is a "U"-shaped feature that opens to the northwest, the prevailing wave direction. The ocean bluff at the property is approximately 75 feet in vertical height with an average slope gradient of approximately one horizontal to one vertical (1H:1V), with local areas that are near vertical. There is a sandy beach at the bluff toe. Waves cross the beach to the bluff toe at high tides and swells, or storms. The elevated terrace has a slope gradient of about 20H:1V to 10H:1V. The terrace is bounded by the

ocean bluff to the northwest, a deep drainage ravine (Brewery Gulch) to the north-northeast, a shallow drainage swale on the west, and Chapman Road on the south. The two drainages run slight to moderate amounts of water. Site vegetation is primarily open prairie with grass and brush, with about 100 trees, 75% planted within the last several years. The bluff faces are mostly bare soil or rock with little or no vegetation. Due to its blufftop setting, CZC Section 20.500.015(A)(2) requires that a geologic investigation be prepared for the proposed development.

A geotechnical report prepared by BACE Geotechnical, and dated April 28, 2000, was submitted with the project application. The report evaluated the soil and geologic conditions at the site to determine project feasibility and provide recommendations for bluff edge setbacks, site grading, drainage, and foundation support for the planned residence. The field exploration consisted of geologic reconnaissance and subsurface exploration. The reconnaissance was augmented by studying aerial photographs dated June 30, 1963 and June 23, 1981. Previous geotechnical studies at the project site were conducted by BACE geotechnical in 1984 and 1986. The current report contains the following statement with respect to the rate of bluff retreat and site stability:

There is an active landslide on the bluff and one possible, dormant landslide on the side of the major drainage ravine at the property. The landslides are comprised of terrace materials and deeply weathered Franciscan rock debris. The landslides are probably caused by the movement of water on top of the contact between the permeable terrace materials and the relatively-impermeable, Franciscan bedrock. The active slide debris is flowing over the lower bluff slopes on the inclined-planer, differentially weathered, rock surfaces. ...Based upon the results of our investigation and review of available seismic data, we conclude that the site is suitable for the proposed development. The main geotechnical constraints that should be considered in the design and construction for this project include bluff stability/retreat rate; weak, near-surface soil; settlement; and strong seismic shaking from future earthquakes. ...The head scarp of the active landslide appears to have eroded back approximately four to five feet since the under-signed's 1984 investigation and report. The bluff toe appears to have eroded back less than the head scarp, about two to three feet. Assuming an on-going retreat rate of five feet in 16 years (0.3 feet per year), the bluff will retreat approximately 23 1/2 feet over the next 75 years (assumed economic lifespan of a house). Since landslide conditions can change with time, we recommend a factor of safety of at least three, which rounds off to a setback of 75 feet from the active landslide. Since the dormant, possible landslide is not subject to wave attack and has shown no activity for the last 16 years, a 50-foot setback for the residence and planned leach field is suitable. The side slopes of the westerly drainage swale should also have a setback due to possible creep effects.

Notwithstanding the inclusion by the consulting geologist of a 3.0 safety factor in the geologist's 50-foot setback recommendation for the house and septic leach field, the applicants more than doubled the recommended setback by proposing to place the residential structures more than 100

feet from the dormant landslide, and very nearly trebling the distance by proposing to place the house and garage more than 200 feet from the active landslide and bluff edge.

Therefore, the Commission finds that the proposed 200-foot setback from the bluff edge and active landslide on the bluff face, and the 100-foot setback from the dormant landslide 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." The Commission further finds that re-siting the house to reduce the visual impacts as required by Special Condition No. 2 would also be consistent with CZC Section 20.500.010 as the required relocation would move the house even farther back from the bluff edge and keep the house no less than approximately 300 feet from the dormant landslide along the western drainage.

Notwithstanding 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 an approximately 75-foot-high uplifted marine terrace blufftop that is actively eroding. Consequently, the house would be located in an area of high geologic hazard.

However, new development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a 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 to 75 feet from the coastal bluff landslides, the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is 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 or landslide 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 BACE Geotechnical states the following:

This geologic investigation and review of the proposed development was performed accordance with the usual and current standards of the profession, as they relate to this and similar localities. No other warranty, either expressed or implied, is provided as to the conclusions and professional advice presented in this report. Our conclusions are based upon reasonable geologic and engineering interpretation of available data.

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 or landslides 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, the Commission finds that the risks of geologic hazard are minimized with the proposed setback from the bluff edge. However, given that the risk cannot be completely eliminated and the geologic report does not assure that shoreline protection will never 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. 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 attach Special Condition Nos. 5 and 6 to ensure that no future shoreline protective device will be constructed as proposed by the applicants.

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

Special Condition No. 6 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the 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 applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 1 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 5 requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, 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. 6 is also required to ensure that the proposed development is consistent with the certified LCP. Special Condition No. 6 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. 1 requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes all of 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) of the Coastal Act and Section 13250 of the Commission's regulations. 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. 4 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. 1 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 1 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The proposed development would entail the construction of a 3,424-square-foot residence connected by a breezeway to a 1,316-square-foot garage, an 800-square-foot deck, and a 400-foot-long driveway and parking area. More than 8,500 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 or into the drainages along the north and west boundaries of the property that could eventually lead to increased erosion or instability of the coastal bluff or creek margins, or to the building foundations if not mitigated. The geologic report prepared for the project recommends that care should be taken to intercept and divert concentrated surface flows and subsurface seepage away from building foundations and bluff edges. The applicant proposes to collect concentrated flows from roof downspouts, area drains and the like in a closed pipe and discharged into a sump well away from the building, ocean bluffs, landslides, or exterior concrete areas as mitigation 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. 2(A)(2) 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 conveyed to a sump 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 runoff from the development from aggravating the landslides, flowing over the bluff edge and contributing to erosion of the coastal bluff, or entering either of the two natural drainages.

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 100 feet of the geologic setback areas for which revegetation would be necessary.

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.

5. Protection of ESHA Resources

LCP Policies

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. ...

...

LUP Policy 3.1-10 states:

Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- *Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*
 - *pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;*
 - *existing agricultural operations;*
 - *removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values [emphasis added].*

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

ESHA- Development Criteria

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

Discussion:

LUP Policy 3.1-7 requires that buffers be established to protect ESHA from significant degradation resulting from future developments on the property. LUP Policy 3.1-10 requires that riparian ESHA be protected against any significant disruption of habitat values. CZC Section 20.496.020 requires that buffers be established to protect the environmentally sensitive habitat from degradation resulting from future developments and be compatible with the continuance of such habitat areas.

As discussed previously, the subject property contains riparian ESHA with riparian plant communities that are associated with two small, unnamed, drainages that form the western and northern property boundaries. Riparian species represented along these drainages include alder, wax myrtle, cascara, twinberry, horsetail, salal, monkey flower, plantain, yarrow, rushes, reeds, sedges, berries, ferns, and associated plant species. The property also contains populations of rare or endangered plants identified as Mendocino paintbrush individuals growing along the face of the coastal bluff, and an approximately 50-square-foot population of swamp harebell located in the northeast quadrant.

Consistent with LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020 the applicant conducted a botanical study to investigate the presence of ESHA resources that exist on the property and prescribe buffers that would need to be established to protect ESHA resources from any development-related disturbance. As mentioned above, 100-foot buffers were established to protect the two small drainages constituting riparian ESHA, as well as 100-foot buffers for each of the two identified rare plant ESHA populations. The applicant has proposed development that would not encroach into these 100-foot buffer areas. These 100-foot buffers are larger than the minimum buffers established to protect the same ESHA resources by deed restriction imposed under CDP No. 1-92-83 as shown on Exhibit Nos. 13 and 14. The zone for re-siting of the residence and garage for visual resource protection as depicted in Exhibit No. 14 and pursuant to Special Condition No. 2 is outside of these ESHA buffer areas.

No invasive exotic vegetation is specifically proposed to be planted as part of the residential development. However, not all of the plant species to be utilized in the landscaping for the proposed development have been specified, and the Commission notes that if invasive exotic vegetation were used as part of the landscaping, these species could easily spread to the riparian ESHA on the property and to adjacent Van Damme Beach State Park neighboring the applicants' property to the south. Such invasive exotic vegetation could out-compete native plants, seriously jeopardizing ESHA resources inconsistent with the provisions of the certified LCP designed to protect ESHA resources including LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020.

Therefore, to ensure consistency of the project with Mendocino County LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020, the Commission attaches Special Condition No. 2(A)(3), which requires the applicant to submit, for the Executive Director's review and approval, final landscape plans that specifically note that no invasive exotic species would be planted as a part of the residential landscaping on the property.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policies 3.1-7, 3.1-10, and CZC Section 20.496.020, as no development is proposed within the ESHA itself, adequate protective buffers have been established as required, and the planting of invasive exotic species would be prohibited.

6. Storm Water Runoff and Water Quality

LCP Provisions

LUP Policy 3.1-25 states:

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

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

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

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

(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...

(D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.

(E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or

recognized authority is given that no increase in erosion will occur... [Emphases added.]

CZC Section 20.492.020 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 dissipaters [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 gently sloping coastal terrace planned and zoned for rural residential development. Runoff from portions of the site flows northerly and westerly into natural drainages that flow to Smuggler's Cove at the south end of Mendocino Bay. Runoff originating from the development site that is allowed to drain off the site to the "creeks" 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 Special Condition No. 2(A)(2) a requirement that the applicants minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 2(A)(2) 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) a physical barrier consisting of silt fencing and/or coir roll barriers, or bales of straw be installed to contain runoff from construction areas; (2) on-site vegetation be maintained to the maximum extent possible during construction; (3) any disturbed areas be replanted with noninvasive native plants obtained from local seed stock immediately following project completion and covered with either jute netting, coir logs, or rice straw; and (4) runoff from impervious surfaces including the residence and garage roof, and driveway shall be collected and conveyed to a drainage sump designed for infiltration. Additionally, Special Condition No. 9 requires that temporary fencing be installed between ESHA buffers and any construction activity to protect ESHA resources.

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 a physical barrier to control runoff during construction, (4) directing runoff from the completed development in a manner that would provide for infiltration into the ground, and (5) requiring temporary fencing to protect ESHA including riparian habitat from significant adverse impact that may result from construction activities. 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 a sump to facilitate infiltration of runoff and minimize erosion and sedimentation from stormwater runoff.

7. Public Access

Section 30210 of the Coastal Act requires that maximum public access be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30210, 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, 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.

Public coastal access is available in the project vicinity. There are approximately 310 acres of land to the south of the applicants' parcel (south of Chapman Road), extending west from Highway One to the shoreline, that are part of Van Damme Beach State Park. A mile to the north, across Mendocino Bay, public access is available to the shoreline at the mouth of Big River and at Mendocino Headlands State Park. Also, land along Big River has recently been acquired for public use. However, no public access exists on the bluff top of the applicants' parcel. A narrow beach exists at the base of the bluff along the northeasterly portion of the parcel, which extends to a few neighboring parcels on either side. This beach can be reached by kayakers or other small recreational craft from Mendocino Bay. However, the beach is not accessible from the blufftop on the subject property due to the steep bluff face.

In the Commission's 1992 findings for approval of CDP No. 1-92-83 for the boundary line adjustment that resulted in the current configuration of the subject property, the Commission noted that an environmental assessment prepared for the proposed parcels identified an access trail leading to the beach. The staff report also noted that this trail was visible on a 1986 Commission aerial photograph. Aerial photos taken in 2001 still show this trail. However, this trail is located on the adjoining parcel that was part of the boundary line adjustment approved in 1992. No information is available on the extent of the public's use of the trail, however, the proposed residential development would not block or interfere in any way with this existing trail since the trail is located hundreds of feet away from the proposed development on a separate parcel.

In reference to the applicants' property, no existing or proposed shoreline access is shown on the certified County LUP maps. In addition, development of the proposed single-family residence would not significantly increase the demand for public access.

Because the proposed development would not affect existing access to the shoreline, or significantly increase the demand for access to the shoreline, the development would have no significant adverse impact on public access. Therefore, the Commission finds that the proposed development does not have any significant adverse impact on public access, and that the proposed development without new public access is consistent with the coastal access requirements of Coastal Act Sections 30210, 30211, and 30212.

8. VIOLATION: UNPERMITTED DEVELOPMENT

Without benefit of a coastal development permit, development has been undertaken in the past several years, consisting of the planting of trees on the applicants' property located at 45100 Chapman Road, Mendocino, Mendocino County. Such activity is considered development requiring a coastal development permit pursuant to Section 20.308.035(D) of the CZC defining development as "the placement...of any solid material." No coastal development permit has ever been issued authorizing tree planting to occur on the subject property.

Coastal Commission staff became aware of the unpermitted tree planting during site visits conducted in the staff's review of the appeal. In discussions with the applicants, staff informed the applicants that the tree planting constituted development requiring coastal development permit authorization. Staff suggested that if the Commission were to find that the appeal raises a substantial issue of conformance with the certified LCP and considered the appeal de novo, one way to resolve the unpermitted development would be for the applicants to amend their project description for purposes of the Commission's de novo review and include retention of the planted trees, removal of the trees, or some combination of retention and removal. Amending the project description in this manner would enable the Commission to consider the conformance of the tree planting and retention and/or removal of trees with the policies of the certified LCP, and authorize either the removal or retention of the trees.

The applicants declined to amend the project description of this application for purposes of the Commission's de novo review to add retention or removal of the trees. Therefore, the planting of the trees remains unpermitted and will need to be resolved in a different manner.

The Commission notes that the alleged violation is not functionally related to the proposed project. The project as conditioned consists of a 3,424-square-foot, one-story residence, connected by a breezeway to a 1,316-square-foot attached garage that also houses a 2,500-gallon water tank, pressure tank, and pump. An 800-square-foot deck would be located on the northwest side of the house. The approved project also includes a 400-foot-long driveway, a septic tank and leach field, an underground propane tank, an entry gate, and new landscaping to be planted around the residence. The development as conditioned will be located near the southwestern boundary of the parcel. The unpermitted tree planting occurred in different locations than the site of the new residential development, primarily in bands along the southern property line within the setback area for the house and along the side of the property that fronts

onto Highway One. Development of the approved project is not dependent on retention or removal of the unpermitted trees.

Consideration of the application by the Commission has been based solely upon policies of the Mendocino Local Coastal Program and the public access and recreation policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the cited alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

9. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Section 13906 of the Commission's administrative regulations requires Coastal Commission approval of a coastal development permit application to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code 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 impact that the proposed activity may have on the environment.

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

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Site Plans and Elevations
4. Notice of Final Action
5. Appeal
6. Aerial View of Project Vicinity

7. View of Mendocino from Highway One Across Subject Property
8. County-Approved House Site
9. View of Mendocino from Across Site Showing Planted Trees
10. Alternate House Sites
11. Wide Angle View of Site from Town of Mendocino
12. Telephoto View of Site from Town of Mendocino
13. Alternate House Site and Property Constraints
14. Zone for Alternate House Site

ATTACHMENT:

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.

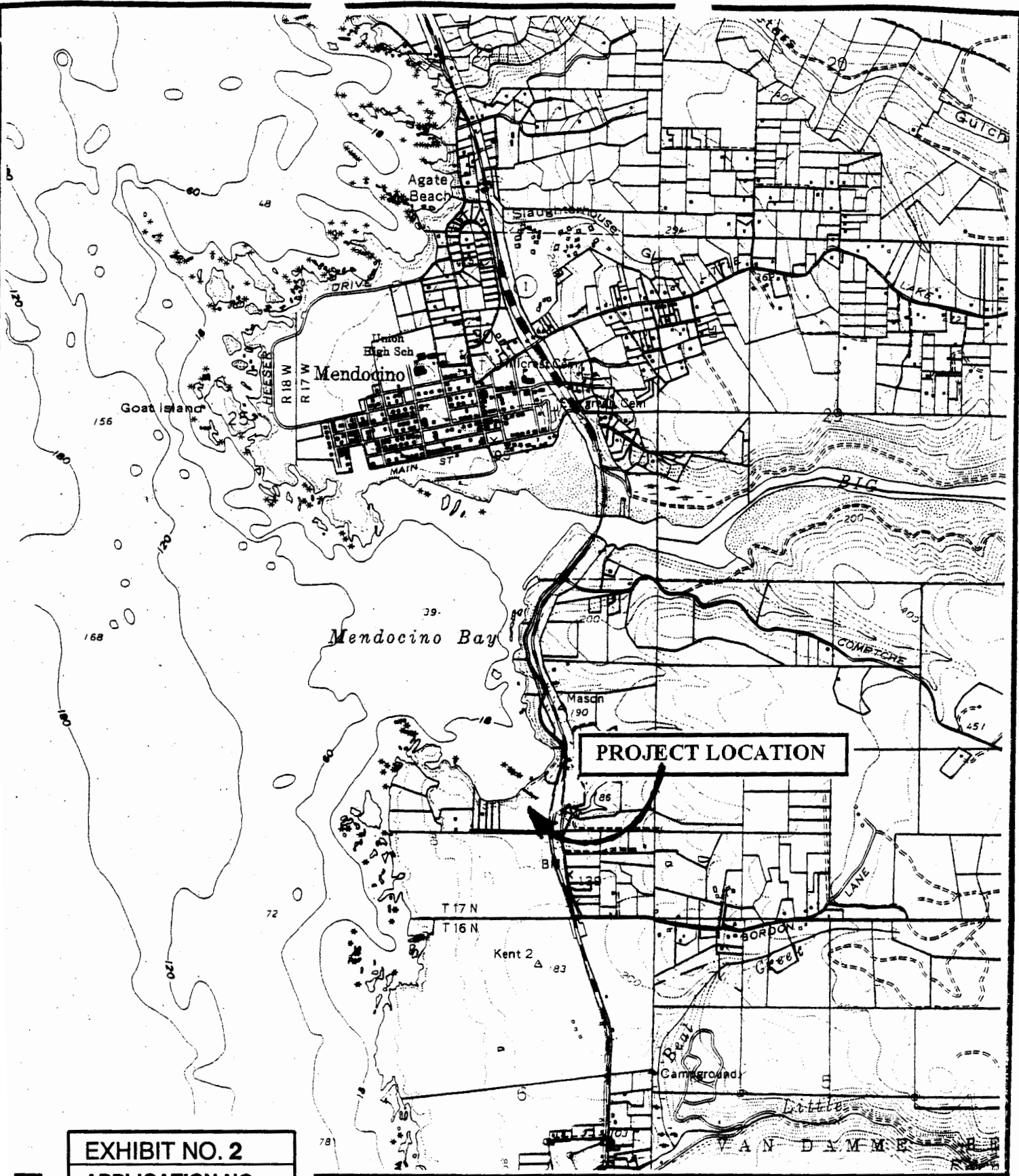


EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-04-023

PAULI

VICINITY MAP

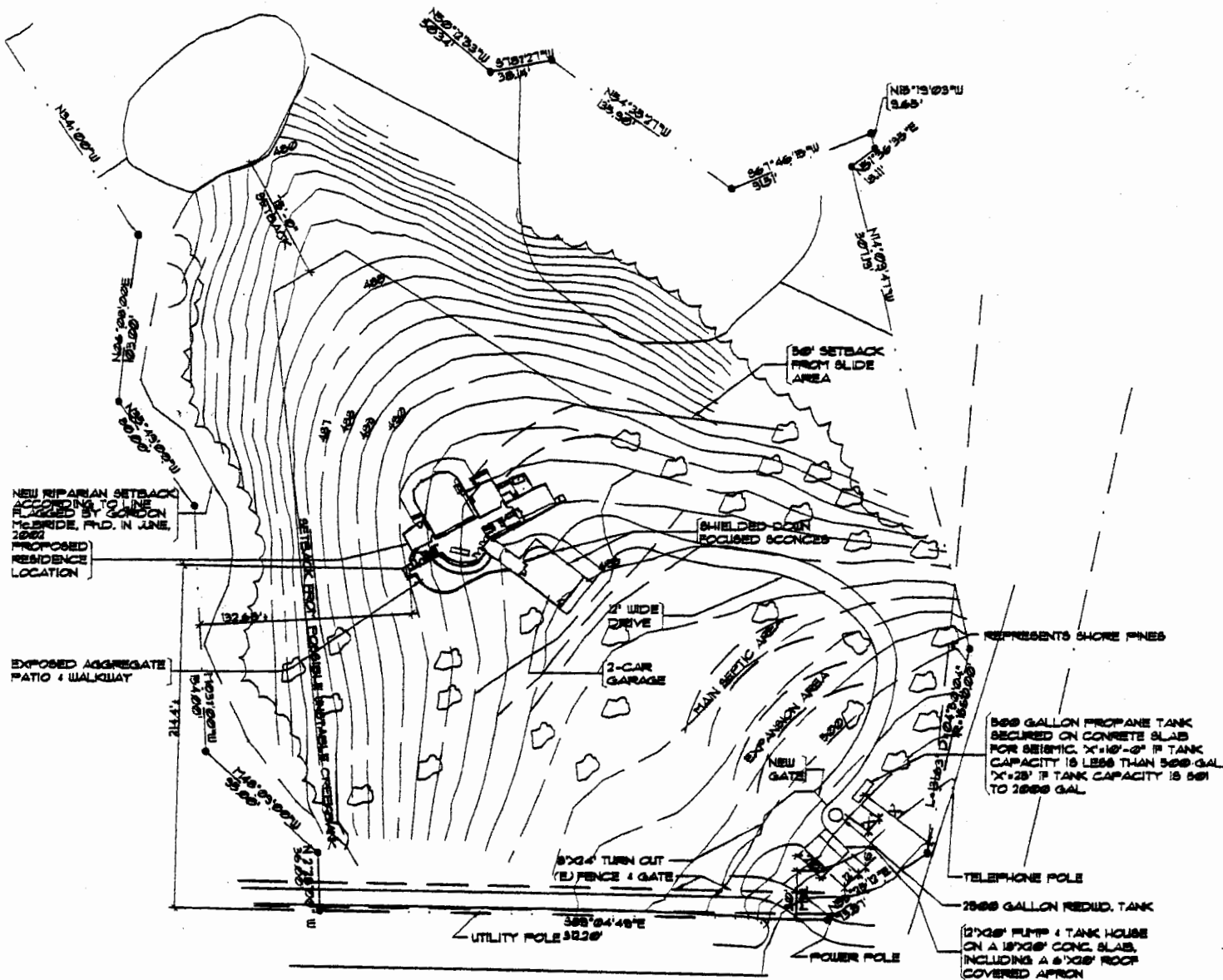
WILLIAM & JANET PAULI

LOCATION MAP

1 INCH = 2000 FEET



NORTH



A SITE PLAN
1"=50'-0"



EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-04-023

PAULI

SITE PLANS AND

ELEVATIONS (1 of 4)

WILLIAM & JANET PAULI

SITE PLAN

SCALE: NONE



NORTH



SCALE: NONE



2 of 4



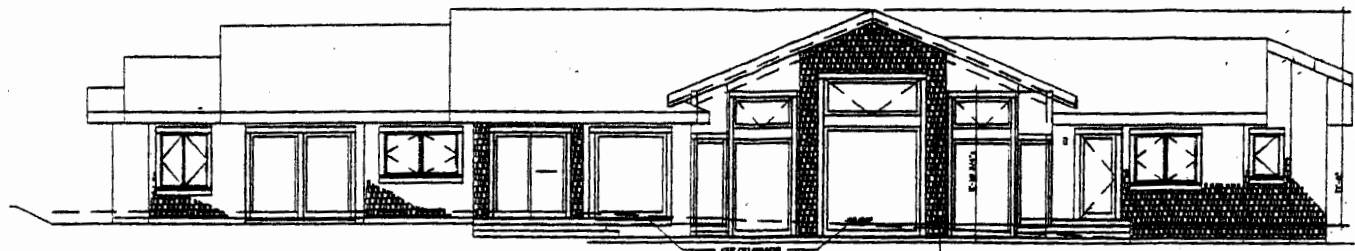
LEGEND

SCALE: NONE

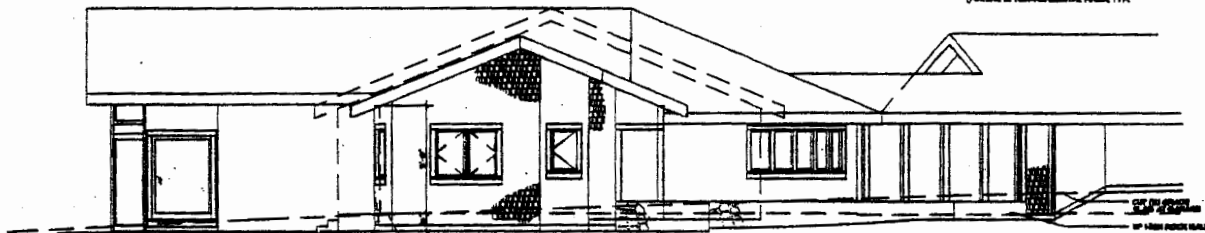


NORTH

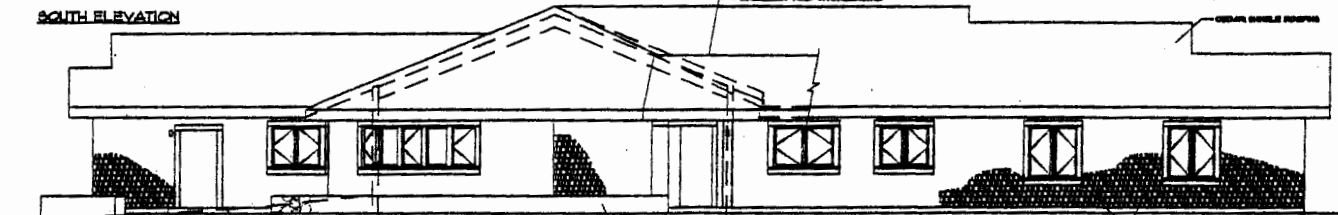
3 of 4



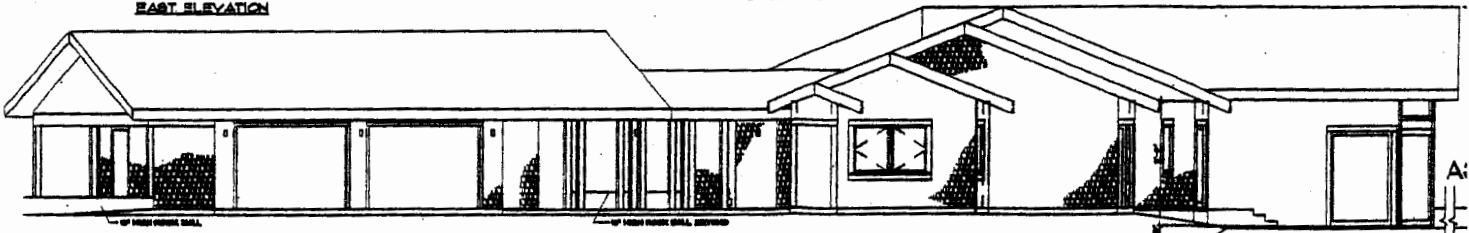
WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION

WILLIAM & JANET PAULI

ELEVATIONS

SCALE: NONE

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RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

1-MEN-03-322
TELEPHONE
(707) 964-5379

April 5, 2004

RECEIVED

APR 07 2004

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDP #52-02
OWNER: William & Janet Pauli
AGENT: Roff Barnett
REQUEST: Construct a 3,424 square foot, one-story single-family residence with a an 816 square foot garage and an 800 square foot wood deck, driveway, septic tank, leachfield, 240 square foot pump and tank house, 2,500-gallon redwood water tank, propane tank and entry gate.
LOCATION: 1+- mile S of Mendocino on the W side of Highway One, on the N side of Chapman Road and Mendocino Bay at 45100 Chapman Road (APN 119-330-25).
PROJECT COORDINATOR: Charles Hudson

HEARING DATE: March 25, 2004

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 4

APPLICATION NO.

A-1-MEN-04-023

PAULI

NOTICE OF FINAL
ACTION (1 of 21)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 52-02 HEARING DATE: 3/25/04

OWNER: Pauli

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

as amended by memo dated March 25, 2004
from Charles Hudson relative to special
conditions 8 & 11.

Debate Cond # 9 as condition

as the condition has been met
with revised site plan dated
March 17, 2004

Reymond Self
Signed: Coastal Permit Administrator

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STATE REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 52-02
February 26, 2004
CPA-1

1-MEN-03-324

OWNER/APPLICANT:	William C. & Janet K. F. Pauli 12507 Hawn Creek Road Potter Valley, CA 94469	RECEIVED FEB 23 2004 CALIFORNIA COASTAL COMMISSION
AGENT:	Roff Barnett P. O. Box 964 Mendocino, CA 95460	
REQUEST:	A 3,424 sq. ft. one-story single-family residence with an 816 sq. ft. garage and 800± sq. ft. wood deck, driveway, septic tank, leach field, 240 sq. ft. pump and tank house, 2500 gallon redwood water tank, propane tank, and entry gate.	
LOCATION:	1± mile south of Mendocino, on the west side of Highway 1, on the north side of Chapman Rd. (Pvt.), on a bluff top lot between Chapman Rd. and Mendocino Bay, at 45100 Chapman Rd., APN 119-330-25	
APPEALABLE AREA:	Yes, bluff top lot.	
PERMIT TYPE:	Standard	
TOTAL ACREAGE:	5.74± acres	
GENERAL PLAN:	RR-5-PD	
ZONING:	RR:L-5:PD	
ADJACENT ZONING:	North: RR:L-5 & Mendocino Bay East: RR:L-5 South: OS West: RR:L-5:PD	
EXISTING USES:	Undeveloped	
SURROUNDING LAND USES:	North: Residential and Mendocino Bay East: Residential South: Public recreation West: Residential	
SUPERVISORIAL DISTRICT:	5	
ENVIRONMENTAL DETERMINATION:	Categorically Exempt: Class 3a	

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OTHER RELATED APPLICATIONS:

General Plan Amendment GP 14-86, submitted by Cummings, requesting that the site be reclassified to allow a visitor serving facility, was recommended for denial by staff and the Planning Commission, but approved by the Board of Supervisors. The amendment was denied by California Coastal Commission when it was submitted for certification as part of the group of amendments encompassed in the second submittal of 1987. Potential visual impacts of future development were the primary grounds for denial.

Boundary Line Adjustment B 91-88, expired.

Boundary Line Adjustment B 144-91, submitted by Cummings, requesting an adjustment of the boundary line between parcels of 1.0 acre and 8.4 acres to create parcels of 3.7 and 5.7 acres, was approved by the County. The application was submitted to the Coastal Commission as Application No. 1-92-83, and was approved subject to recordation of a deed restriction establishing buffer areas adjacent to environmentally sensitive habitat areas and the coastal bluff. The 5.7 acre parcel is the subject of CDP 52-02.

PROJECT DESCRIPTION: This application is for a single family residence and associated development. The applicant proposes to construct a 3,424 square foot, one-story residence, connected to an 816 square foot garage by a covered breezeway. An 800 square foot wood deck is proposed on the northwest side of the house. The project also includes a 400 foot long driveway, a septic tank and leach field, a 240 square foot pump and tank house, a 2500 gallon redwood tank, a propane tank, an entry gate, and landscaping. Fifty cubic yards or less of grading is proposed to prepare the site for the development.

The building site is on a blufftop parcel on the south side of Mendocino Bay, across from the Town of Mendocino. The parcel is bounded on the northwest by the bluff overlooking Mendocino Bay. The western and northeastern parcel boundaries are drainage courses supporting riparian plant communities, with residential parcels beyond. To the south is land of Van Damme Beach State Park, separated from the applicant's parcel by two adjacent private roads providing access to residential parcels to the west. Highway 1 forms the southeast boundary of the parcel. The building site is on a coastal terrace with a gentle slope toward the northwest, at an elevation of approximately 75 feet above sea level. The site is within a designated highly scenic area, and the residence will be visible from the town of Mendocino, from Mendocino Headlands State Park, and from Highway 1.

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, and zoned, as Rural Residential-Five Acres Minimum-Planned Unit Development. 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 Planned Unit Development combining zone requires that development of the site be sensitive to the unique or highly visible nature of the site, and that there be preservation of open space and views from public roads. A use permit application and development plan is not required to be submitted for a single family residence.

Sections 20.376.030 and 20.376.035 of the Coastal Zoning Code require yard setbacks of 30 feet from all property lines for parcels in an RR:L-5 zone. In addition, Sections 20.444.014(C) and 20.444.020 require corridor preservation setbacks along any public or private road that has the potential to serve five or more parcels. There is a 30 foot wide private road easement along the south boundary of the applicant's parcel

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that serves five parcels; therefore, a corridor preservation setback of 25 feet from the centerline is required, plus the front yard setback of 30 feet, for a total required setback of 55 feet from the center of the easement, or 70 feet from the south property line. The Code calls for a corridor preservation setback of 40 feet along Highway 1, however the minimum width of Highway 1 adjacent to the applicant's parcel exceeds 80 feet, therefore the corridor preservation setback is not applicable. Only the 30 foot front yard setback is required along Highway 1. The residence and garage are more than 100 feet from all property lines, and comply with setback requirements. The initial location shown for the pump house and tank in the southeast corner of the parcel did not comply with the setback required along the private easement. The applicant has submitted a revised plot plan detail showing the pump house and tank relocated northerly, outside all setback areas.

Buildings within designated highly scenic areas west of Highway 1 are limited to a single story not exceeding 18 feet in height. Policy 3.5-3 of the Coastal Plan states, in part: *"...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."* Section 20.376.045 of the Code is similar, but adds the 18 foot limit, giving the height limit as: *"Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures."* Building height is defined in Section 20.308.025(L) of the Code as: *"...the vertical distance from the average ground level of the building to the highest point of the roofridge or parapet wall."*

The plans submitted with the application indicate that the natural grade is to be cut by two to three feet at the building site. The floor level of the garage is to be slightly more than 2.5 feet below the highest point of the natural grade within the house footprint, which occurs at the southerly corner of the garage. The lower floor level of the living area of the house is to be about one-half foot below the lowest point of the natural grade within the house footprint, which occurs at the westerly corner of the house. The result is that the height of the house, measured from the average finished grade, will be approximately 19 feet-8 inches. But when the building height is calculated from the average elevation of the natural grade at the building perimeter, the height is approximately 16 feet-6 inches.

Maximum lot coverage allowed on a parcel greater than 5 acres in size in an RR zone is 10%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 5.74 acres, or 250,034 square feet. The Site Plan shows approximately 10,400 square feet of coverage, or roughly 4.2%. The project complies with lot coverage limits.

Public Access: The parcel is located between the Highway 1 and the shoreline. A narrow beach exists at the base of the bluff along the northwesterly portion of the parcel. The beach extends to a few neighboring parcels on either side but is not accessible from any public beach due to vertical rock cliffs dropping straight into the ocean on either side. No existing or proposed shoreline access is shown on the applicant's parcel on the Coastal Plan Maps.

In the staff report prepared by the Coastal Commission staff for the boundary line adjustment between the project site and the parcel to the west (CDP# 1-92-83), it is noted that an environmental assessment prepared for the parcels identified an access trail leading to the beach. The report also noted that the trail was visible on a 1986 aerial photo, but that there was no information available on the extent of the public's use of the trail. The boundary line adjustment was found to be consistent with public access policies and approved, with a finding that future development on the site would need to be reviewed for possible interference with existing or potential public access. A map accompanying the Commission's

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staff report shows the location of the trail to be west of the watercourse which forms the westerly boundary of the current project site. Staff is unaware of any public access across the parcel subject to the current application.

Public coastal access is available in the vicinity. There are approximately 310 acres of land to the south of the applicant's parcel (south of Chapman Road), extending from Highway 1 to the shoreline, that are part of Van Damme Beach State Park. A mile to the north, across Mendocino Bay, public access is available to the shoreline at the mouth of Big River and at Mendocino Headlands State Park. Also, land along Big River has recently been acquired for public use.

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

Hazards: The applicant's parcel is a blufftop lot with a steep bluff approximately 75 feet high between the building site and the shoreline. The proposed residence is shown on the Site Plan to be approximately 200 feet back from the top of the bluff, with other development located farther back. Additional trees are proposed to be planted between the residence and the bluff, extending to within 140 feet of the top of the bluff. The project site is also bounded on the west by a shallow drainage course, and on the northeast by a deeper drainage ravine.

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 3.4-9 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 report prepared in 2000 by BACE Geotechnical, a division of Brunsing Associates, Inc., presents the results of a geotechnical investigation conducted by the firm. The report incorporates material from an

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earlier geotechnical investigation done in the 1980s, aerial photos taken in 1963 and 1981, and more recent field work. The site conditions, conclusions, and recommendations are presented in the report dated April 20, 2000. The report states that there is an active landslide on the shoreline bluff and one possible dormant landslide along the larger drainage ravine. Bluff retreat over the next 75 years is estimated to be approximately 23 ½ feet. Incorporating a safety factor of three, the report recommends a bluff setback of 75 feet. The report also recommends a 50 foot setback from the dormant landslide, and a setback of roughly 65 feet at the minimum from the westerly drainage. In addition, the report contains recommendations for site preparation and foundation design. Storm runoff is recommended to be collected in a closed pipe and discharged away from the building, ocean bluffs, or landslides. Special Condition Number 1 is recommended to require that the proposed residence and associated development be designed, constructed, and maintained consistent with the recommendations in the BACE Geotechnical report.

As a condition of approval of development within 100 feet of a shoreline 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 recommended.

The property is in an area that has a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The Department of Forestry has submitted recommended conditions of approval (CDF# 186-02) for address standards, and defensible space standards. Special Condition Number 2 is recommended to achieve compliance with the fire safe standards recommended by the Department of Forestry.

Grading, Erosion and Runoff: The application indicates that grading of less than 50 cubic yards will occur in conjunction with the proposed development. An area of approximately two-thirds of an acre will be subject to grading, with the maximum cut depth estimated to be approximately six to ten feet. In part, the excavation is necessary to comply with the recommendations of the geotechnical consultant that weak near-surface soils be replaced with properly compacted fill to support foundations and slabs. The grading will also lower the site slightly allowing a taller structure. Impervious surfaces such as roofs and driveways may result in concentrations of runoff which could possible cause erosion. Areas of freshly disturbed soils may also be subject to erosion during heavy rainfall prior to reestablishment of vegetative cover.

Chapter 20.492 of the Coastal Zoning Code requires that all applications for coastal development permits be reviewed for potential impacts related to grading, erosion, and runoff. Soil disturbance is to be kept to a minimum. Construction equipment is to be confined to the actual area to be disturbed. Vegetation on disturbed areas is to be reestablished as soon as possible. Erosion control measures are to be implemented as necessary until revegetation is accomplished. Runoff is to be infiltrated or safely conducted to suitable watercourses.

A Drainage Plan submitted with the application addresses runoff and erosion issues. The plan specifies that existing vegetation will be maintained to the maximum extent possible, that disturbed areas will be replanted upon completion of work, that runoff from roofs and the driveway will go into a separate drainage sump, that sand bags or hay bales will be installed around the perimeter of the work area to contain sediment, and that all on-site debris stockpiles will be covered and contained at all times. Special

70921

Conditions Number 3 and 4 are recommended to achieve mitigation of potential grading, erosion and runoff impacts.

Visual Resources: The project site is a bluff top parcel located directly across Mendocino Bay from the Town of Mendocino, where it is clearly visible from the town and from Mendocino Headlands State Park. The parcel is also adjacent to and visible from Highway 1, more to northbound travelers than to those headed south, but clearly visible from either direction.

As viewed from the Town of Mendocino and the headlands, the site appears as a grass-covered terrace above a dark earth and rock coastal bluff, with a backdrop of dark colored trees. There are several houses visible, both to the east and west of the applicant's parcel. To the east they include the dome-shaped house belonging to King, the site of the proposed Edge Wireless cellular antenna (CDU 1-03), and the Temple residence for which a permit for an addition was recently approved (CDP 105-02). Residences to the west of the applicant's parcel include those on the former Sherwood parcels that were the subject of Coastal Commission Permit No. 1-90-12, and the Lambie residence (CC 1-88-166).

When traveling south on Highway 1, the building site does not become visible until one is nearly at the northeasterly boundary of the parcel. From that point until one is opposite the site, the house will be visible, lower than the highway, against a backdrop of trees. When northbound on the highway, one initially gets a distant view of Mendocino across the site before the building site comes into view. When the house site comes into view from behind the trees in the vicinity of the intersection of Chapman Road and Highway 1, the upper portions of the house will be silhouetted against the water of Mendocino Bay. As one travels north, the higher ground and trees of Chapman Point will become the backdrop for the house.

From the State Park lands to the south of Chapman Road, views of the house will be blocked by the trees growing on park land along the south side of Chapman Road and in the northeasterly corner of the park property.

The parcel is located in an area designated as "highly scenic" on the County's Land Use Maps. The parcel is also subject to the provisions of the Planned Unit Development Combining District of the Coastal Zoning Code.

Coastal Plan 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.

Coastal Plan Policy 3.5-3 states, in part:

Any development permitted in [designated 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.

8921

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. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to the natural setting and minimize reflective surfaces.

Section 20.504.015 (C) (2) of the Coastal Zoning Code states:

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

Chapter 20.428 of the Coastal Zoning Code sets forth the additional limitations and requirements applicable to land within the PD—Planned Unit Development Combining District. Much of the PD Combining District is not applicable to the development of a single family residence, being intended for commercial projects or land divisions. Section 20.428.010(A) exempts a single family residence from the need for a use permit and accompanying development plan. The requirements applicable to development of a single family residence are found in Section 20.428.005:

The Planned Unit Development Combining District (PD) is intended to require sensitive development of selected sites where standard residential...design would be inappropriate to the unique or highly visible nature of the site, and to encourage imaginative development incorporating cluster development and the maximization and preservation of open space and views from public roads.

The effect of the PD Combining District in combination with the highly scenic designation is to require an even greater level of sensitivity to the visual impacts of the proposed development than would be required by the highly scenic designation alone.

In the case of the parcel subject to this application, there is little opportunity to reduce the visual impact of the development through choice of location on the parcel. The buildable area of the site is constrained by botanical buffer areas, geotechnical setbacks, a corridor preservation setback, and yard setbacks. A dwelling in any location on the parcel is going to be visible, both from across the bay and from the highway. A change in location on the site would not be perceptible from Mendocino. From Highway 1, visibility increases for travelers in one direction as it decreases for travelers in the other direction if the structure is moved northerly or southerly within the buildable area. The best opportunities for mitigation of visual impacts would be in the choice of exterior colors and materials, effective placement of landscaping, and clustering or combination of structures.

The residence complies with the 18 foot height limit for highly scenic areas west of Highway 1. In fact, by virtue of the applicant's proposal to lower the grade in the building area, the height of the building will be about 16.6 feet above the natural grade.

Section 20.504.015 (C) (3) of the Coastal Zoning Code states:

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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.

Exterior building materials and colors are specified as follows:

Roofing:	Cedar shingle roofing.
Siding:	Cedar shingle siding.
Trim:	Cedar 2x6 or 2x8.
Deck:	Cedar wood.
Exterior doors:	Not specified.
Garage door:	Not specified.
Exterior lights:	Low-wattage, down-focused, with non-reflective finish.

The roofing, siding, trim, and deck are specified to be natural cedar, and a sample shingle has been submitted with the application showing a medium brown weathered surface. The application does not specify whether a sealer or other finish is to be applied. Given the exceptionally high visual sensitivity of the site, it is imperative that the exterior surfaces of the house be of dark tones that will recede as much as possible into the colors of the surrounding vegetation. Special Condition Number 5 is recommended to require that the exterior cedar shingles, trim, and deck be left untreated for a year to allow natural weathering to take place before applying any sealer or preservative coating, or that a dark stain be applied to achieve a dark exterior color.

Not all exterior materials and colors are specified in the application. Other exterior surfaces and materials such as window frames, roof vents and flues, exterior doors and garage doors must also be of dark colored, non-reflective materials. Special Condition Number 6 is recommended to require that such items be shown to be in compliance prior to issuance of the building permit.

Special Condition Number 7 is recommended to require that building materials and colors will not be changed without prior approval of the Coastal Permit Administrator.

Coastal Plan 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 has submitted a Topographic Map showing existing and proposed trees on the site. The map shows older trees ranging from 6 to 16 feet in height, trees planted in 1998 currently 3 to 4 feet tall, trees planted in 1999 currently 2 ½ to 3 feet tall, trees planted in 2000, currently 2 to 2 ½ feet tall, and 10 additional proposed trees. The existing trees are predominantly located along the Highway 1 frontage and in the southwesterly corner of the property. Some of the older trees extend northerly along the westerly drainage course. The proposed new trees are to be planted between the residence and the bluff to provide some screening of the residence from across the bay.

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A Landscape Plan has also been submitted, primarily showing landscaping on the south side of the residence, west of the garage, within an area bounded by a 4 foot tall grape stake fence. The landscaping proposed includes shrubs, flowering plants, groundcover, and a few trees. The location of the proposed landscaping would provide some screening of the residence from the private easement along the south edge of the applicant's parcel, but would not have much effect on public views of the residence.

Because of the high visibility of the site, staff would recommend that additional trees or shrubs be planted in the vicinity of the house and garage, where they would provide screening from Highway 1. Plants chosen should be native species with the potential to match the height of the house, but not to become so tall as to block views from the highway to Mendocino Bay. Special Condition Number 8 is recommended to require that a revised landscape plan be submitted showing additional landscaping to provide partial screening of the house and garage from Highway 1.

The project includes a pump and tank house, a redwood water tank and a propane tank, all to be located in the southeast corner of the parcel. The pump and tank house is to be 240 square feet, with its roof extending over an adjacent 120 square foot slab. The 2500 gallon redwood water tank is shown to be 8 feet in diameter, and will be approximately 7 feet tall. Notes on the Site Plan include provisions for two sizes of propane tank: less than 500 gallons, or less than 2000 gallons. As originally submitted, these items were to be located approximately 30 feet from the south and east property lines. During the course of reviewing the application it was determined that a corridor preservation setback along the easement at the south edge of the parcel necessitated a 70 foot setback from the south property line, and the pump and tank house and redwood tank had to be relocated northerly to be out of the setback. These structures would have been visible from Highway 1 in their original location, and will be more visible in the location required to avoid the setback. In consideration of the requirements of the PD Combining District for clustering of buildings and preservation of open space, staff would recommend that the pump and tank house and the redwood tank be incorporated into the design of the garage, which would have the effect of clustering the development, reducing visual impacts, and preserving open space. Special Condition Number 9 is recommended to require that a revised plan and elevations for the garage be submitted for the review and approval of the Coastal Permit Administrator, incorporating the tank and pump house and redwood tank within the garage structure, prior to the issuance of the Coastal Development Permit. The propane tank shall be painted a dark color to blend with its surroundings, or shall be placed underground.

The elevation drawings for the residence show several large windows on the side of the house facing Mendocino Bay and the Town of Mendocino (the side titled "West Elevation" on the elevation drawings). The windows around the living area facing the Town are placed at several different angles. The possibility exists that glaring reflections of sunlight could be visible from the Town late in the day during summer months when the sun is near the horizon in the northwest. Special Condition Number 10 is recommended to require that non-reflective glass be used to reduce the potential of glare visible from the State Park and the Town of Mendocino.

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.

The drawings show nine exterior light fixtures on the house, five on the garage and three on the pump and tank house. The fixtures are specified to be low-wattage and down-focused. Given the highly visible

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location of the project, and the additional need to mitigate visual impacts due to the PD Combining Zone, Special Condition Number 11 is recommended to require that all lights on the site, both exterior and interior, shall be shielded or located so that only non-glaring reflected light is visible from beyond the parcel boundaries.

Section 20.504.015(C) (12) of the Coastal Zoning Code states:

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.

The applicant's parcel and adjacent lands west of the highway are designated highly scenic. Therefore, Special Condition Number 12 is recommended to require that utility lines be installed underground.

Natural Resources: Two watercourses and the coastal bluff make up portions of the boundaries of the applicant's parcel. One small watercourse forms the westerly boundary of the parcel. Another slightly larger and deeper watercourse forms the northeasterly boundary between Highway 1 and the ocean. The coastal bluff forms the northwesterly boundary along the ocean between the two watercourses.

As a condition of approval of the Cummings boundary line adjustment approved by the Coastal Commission in 1992, the Commission required that a deed restriction be recorded to establish an area from which all development is prohibited. The area includes the environmentally sensitive habitat area along the watercourse forming the boundary between the parcel of this application and the parcel to the west (also owned by the applicant), a 50 foot wide buffer around the habitat, and a 55 foot wide geologic setback from the bluff. As proposed, the application complies with the recorded deed restriction.

Botanical surveys conducted in 1999 and 2002 by Gordon McBride reconfirmed that there are riparian plant communities associated with both of the watercourses. He also found populations of two rare or endangered plants on the site.

Section 20.308.040 of the Coastal Zoning Code defines environmentally sensitive habitat area as:

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

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

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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.

The botanical survey prepared by Dr. McBride was based on visits to the site in 1999, and in May, June, and July, of 2002. The survey states that the boundaries of the riparian community along the watercourse forming the west boundary of the parcel were flagged. A riparian community along the deeper watercourse along the northeasterly boundary was not flagged because it was confined to the flood plain in the bottom of the ravine. Possible Mendocino paintbrush plants were noted on the bluff but could not be reached for positive identification. A small population of Campanula californica (swamp harebell) was found in the northeastern portion of the site. Dr. McBride visited the site again in February, 2003, to search for additional species that were not in bloom during earlier visits, but they were not found to be present. Dr. McBride recommended that 100 foot buffer setbacks be maintained from the edges of the riparian vegetation along the two watercourses, from the Mendocino paintbrush plants on the bluff face, and from the swamp harebell population.

Based on the most recent Site Plan, received on May 16, 2003, by the Planning and Building Department, the proposed development will comply with the environmentally sensitive habitat area setback buffers recommended by Dr. McBride, with the possible exception of grading proposed to the northeast of the residence, which may encroach within the 100 foot buffer around the swamp harebell population. From the Site Plan, it appears that it would be possible to avoid grading within the buffer area with no impact on the project, or, if need be, the residence could be moved slightly to the south to provide additional clearance between the development area and the buffer. Special Conditions Number 13 and 14 are recommended to protect the environmentally sensitive habitat areas on the site. Special Condition Number 3, recommended to mitigate impacts resulting from grading and runoff, will also assist in the protection of environmentally sensitive habitat areas and their buffers.

Archaeological/Cultural Resources: An archaeological inspection of the property and the adjacent parcel to the west, also owned by the applicant, was conducted by Max A. Neri. Mr. Neri's report, dated July 16, 2001, reveals that two prehistoric artifacts were found, one on each parcel. The report concludes that the two artifacts do not represent potentially significant archaeological discoveries, nor do they suggest the presence of an archaeological site on the property. Mr. Neri recommends that special attention be paid when ground-disturbing operations are being conducted on the property, and that a professional archaeologist and the County of Mendocino be notified if any potential archaeological resources are encountered. Standard Condition Number 8 is recommended, advising the applicant of the requirements of the County's Archaeological Ordinance (Chapter 22.12 of the Mendocino County Code) 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 as shown in the 1982 Coastal Groundwater Study prepared by the Department of Water Resources. Water is to be provided from a well on the parcel, for which a permit will be required from the Division of Environmental Health.

Sewage disposal is to be by a private leach field system. The Department of Environmental Health commented that the applicant will be required to obtain a septic permit. Standard Condition Number 4 requires that all applicable County permits be obtained.

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Transportation/Circulation: Access to the parcel is provided by a private road constructed within a 30 foot wide easement along the southern edge of the parcel. The easement connects to Highway 1 and also provides access for four other residential parcels to the west. The road constructed within the easement shares an existing improved encroachment onto Highway 1 with Chapman Road, which lies immediately south of and parallel to the easement, and provides access to five parcels on Chapman Point. The Mendocino County Department of Transportation had no comment on the application. No response was received from Caltrans. The project will contribute incrementally to traffic volumes on local and regional roadways, however, the impacts were considered when the Coastal Plan land use designations were assigned to the site.

Zoning Requirements: With the recommended conditions, the project complies with the zoning requirements for the RR:L-5:PD Zoning District set forth in Chapters 20.376 and 20.428, 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

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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 to be 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 such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and

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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 proposed residence and associated development shall be designed, constructed and maintained consistent with the recommendations of the BACE Geotechnical Investigation report dated April 28, 2000.
2. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 186-02) or other alternatives acceptable to the Department of Forestry. Prior to the final inspection of the building permit, written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
3. All measures for the control of erosion and runoff noted on the Drainage Plan received December 31, 2002, by the Department of Planning and Building shall be implemented as part of the project. The roof and driveway runoff sump shall be constructed outside of any environmentally sensitive habitat area buffers, in a location and design consistent with geotechnical limitations of the site. Construction drawings for the sump shall be submitted along with the application for the building permit for the residence. Vegetation used for soil stabilization shall be native, non-invasive species.
4. Surplus soil excavated from the building area shall be removed from the site to an appropriate location for disposal.
5. Exterior cedar roofing, siding, trim and decking shall be allowed to weather for a minimum of one year prior to applying any sealer or preservative that might arrest natural weathering and darkening of the exposed surfaces. As an alternative, a dark stain may be applied at the time of construction. If the latter option is chosen, a sample shall be provided to the Department of Planning and Building Services for review and approval by the Coastal Permit Administrator prior to issuance of the building permit.
6. Prior to the issuance of the building permit the applicant shall specify that exterior items such as window frames, roof vents and flues, exterior doors and garage doors, gutters, and downspouts shall be of dark-colored non-reflective materials. The colors shall be reviewed for consistency with Policy 3.5-1 of the Coastal Element and Sec. 20.504.015 (C) of the Coastal Zoning Code. Specifically, the colors shall be dark earthtones which will blend with the coastal prairie vegetation in the vicinity. Tan, beige or other light colors will not be approved.
7. 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.

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8. Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, a revised landscaping plan specifying the planting and maintenance of native trees such as shore pines on the northwesterly and easterly sides of the house and garage for the purpose of softening the view of the structures when seen from public viewpoints in the Town of Mendocino and along 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 of 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.

9. Prior to issuance of the Coastal Development, a revised plan and elevations for the garage shall be submitted for the review and approval of the Coastal Permit Administrator, incorporating the tank and pump house and redwood tank. 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 propane tank. The colors selected shall be dark in hue and selected to be subordinate to and compatible with the vegetation in the vicinity. The tank shall be painted prior to the final building inspection. As an alternative, the propane tank may be placed underground.
10. Plans submitted with the application for the building permit shall specify that windows on the northwesterly side (West Elevation) of the residence shall be made of non-reflective glass.
11. All lighting fixtures, both interior and exterior, shall be designed, located and/or shielded so that only reflected, non-glaring light is visible from beyond the parcel boundaries.
12. All utility lines shall be installed underground.
13. Prior to beginning grading or construction activities on the site, the applicant shall install temporary fencing marking the boundaries of the 100 foot buffer areas surrounding the environmentally sensitive habitat area buffers identified by Dr. McBride in his botanical survey dated September 9, 2002. Temporary fencing shall be installed for a sufficient distance to prevent any disturbance of the buffers, including maneuvering or parking of equipment, or storage of materials. The temporary fencing shall remain in place for the duration of construction and may be removed upon the final building inspection for the residence.
14. The sensitive plant communities (environmentally sensitive habitat areas) on the parcel shall be protected from any disturbance in perpetuity. No development shall be placed within the 100 foot buffers surrounding the environmentally sensitive habitat areas without approval or modification of a coastal development permit.

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STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 52-02
February 26, 2004
CPA-16

Staff Report Prepared By:

Feb. 16, 2004
Date

Charles N. Hudson
Charles N. Hudson
Senior Planner

Attachments: Exhibit A: Location Map
Exhibit B: Site Plan
Exhibit C: Residence Floor Plan
Exhibit D: Garage Floor Plan
Exhibit E: Elevations
Exhibit F: Pump and Tank House
Exhibit G: Tree Plan
Exhibit H: Revised Location for Pump and Tank House and Redwood Tank

Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

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

SUMMARY OF REFERRAL AGENCY COMMENTS:

Planning - Ukiah	Doesn't have current AP#.
Department of Transportation	No comment.
Environmental Health - Fort Bragg	Septic permit required, then DEH can clear.
Building Inspection - Fort Bragg	No comment.
Assessor	No response.
Department of Fish & Game	No response.
Caltrans	No response.
Native Plant Society	No response.
Coastal Commission	No response.
Dept. of Parks & Recreation	Plans are acceptable. Recommend non-reflective glass & vegetative screening using non-invasive native species.
Mendocino Fire District	No response.

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MEMORANDUM

TO: Raymond Hall, Coastal Permit Administrator
FROM: Charles N. Hudson, Senior Planner *Charles N. Hudson*
DATE: March 25, 2004
SUBJECT: CDP 52-02, Pauli, revised conditions

Revise Special Conditions 8 and 11 to read as follows

8. ~~Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, a revised landscaping plan specifying the planting and maintenance of native trees such as shore pines on the northwesterly and easterly sides of the house and garage for the purpose of softening the view of the structures when seen from public viewpoints in the Town of Mendocino and along 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 of 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.~~

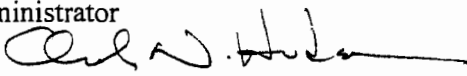
Prior to final signoff of the building permit or occupancy of the residence, whichever comes first, the trees shown on the Landscape Plan, as modified at the March 25, 2004 Coastal Permit Administrator hearing, shall be planted. The trees shall be maintained, and replaced if necessary, in accordance with the terms of the Landscaping Plan, in perpetuity.

11. All lighting fixtures, both interior and exterior, shall be designed, located and/or shielded so that only reflected, non-glaring light is visible from beyond the parcel boundaries. Motion detectors shall be installed on exterior light fixtures to turn them off when not in use. Bulbs in exterior fixtures shall not be greater than 60 watts.

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Mendocino County Dept. of Planning & Building Services
Coastal Planning Division
790 South Franklin Street
Fort Bragg, CA 95437
707 964-5379 (tel) • 707 961-2427 (fax)

MEMORANDUM

TO: Raymond Hall, Coastal Permit Administrator
FROM: Charles N. Hudson, Senior Planner 
DATE: March 24, 2004
SUBJECT: CDP 52-02, Pauli, revised plans

At the Coastal Permit Administrator hearing on February 26, 2004, at the applicant's request, the Pauli's application for a single family residence on the south side of Mendocino Bay was continued until March 25, 2004, so that revised drawings could be prepared incorporating changes recommended in the staff report. Revised drawings and a Landscaping Plan were received on March 17, 2004. Following is a summary of the changes submitted, and staff recommendations.

1. The Site Plan shows the following revisions:
 - a. The 2500 gallon redwood tank and 12' by 20' pump and tank house have been removed from the southeast corner of the parcel.
 - b. The above-ground LPG tank is changed to an underground tank.
 - c. A 20' by 25' parallelogrammetric extension has been added to the southeast end of the garage to house the tanks and pump formerly located at the southeast corner of the property.
2. The Floor Plan for the residence remains unchanged.
3. The Garage Floor Plan shows the new 20' by 25' parallelogrammetric extension housing the 2500 gallon water tank, a pressure tank, and a pump.
4. The Exterior Elevations have been revised to show the new garage extension.
5. The Drainage Plan has been revised to show the elimination of the pump house and tank at the southeast corner of the parcel, and the extension of the garage.
6. The Landscape Plan has been revised to show locations of 10 proposed new trees northeast and east of the building site. The locations shown on the Landscape Plan appear to be instead of, rather than in addition to, the tree locations shown on the prior tree plan received August 13, 2003, which showed 10 trees to the north and northwest of the proposed building site.
7. A three page Landscaping Plan prepared by Tiffany Meyer, describing the plan, vegetation selection, establishment and maintenance and location was submitted. The plan states that

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approximately nine shore pines will be planted. A schedule for planting, fertilizing, and watering is included.

Staff Comments:

1. The relocation of the tanks and pump into an extension of the garage generally accomplishes the objective of Special Condition Number 9 recommended in the staff report, although the garage extension appears to be more than twice the size necessary to house those items. Also, instead of being a straight extension of the garage, the extension is a parallelogram angled at 11.25 degrees from the axis of the garage. It is not apparent why this angle was introduced and staff is concerned that it would tend to attract the attention of passersby due to it being slightly unusual. The ridge of the garage roof, which will be visible from Highway 1, will have a slight bend part way along its length. The slight angles of the exterior walls will not be clearly apparent, but will be noticeable, causing a viewer to take a second look to try to understand what he is seeing. It is recommended that the extension be reduced from 20 feet to about 10 feet, eliminating the wall between the garage and the utility room extension if necessary to gain clearance around the 2500 gallon tank, and be made a straight extension of the axis of the garage.
2. The Landscape Plan eliminates the westernmost five proposed trees that were shown on a drawing received on August 13, 2003 (Exhibit G of the staff report). These trees had been added for the purpose of softening the view of the residence from the Town of Mendocino and the Mendocino Headlands. On the revised Landscape Plan, there are now no new trees proposed between the house and the Town of Mendocino or the Headlands. It was the intention of Special Condition Number 8, which calls for trees "...on the northwesterly and easterly sides of the house and garage for the purpose of softening the view of the structures when seen from public viewpoints in the Town of Mendocino and along Highway 1" that additional trees be added between Highway 1 and the buildings, not that proposed trees be relocated from one side of the house to another. It is recommended that the Landscape Plan be amended at the CPA hearing to include additional trees between the house and the Town of Mendocino and the Headlands.
3. With the changes recommended above, Special Conditions Number 8 and 9 in the staff report will be satisfied.
4. Special Condition Number 3 could be revised to specify the date received of the latest set of drawings (March 17, 2004, instead of December 31, 2002). This change is not critical because there are no changes to the drainage specifications on the revised drawing.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECEIVED



APR 19 2004

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

John Curry
P.O. Box 457
Mendocino, Ca 95460 707 937-1649
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Mendocino County, Planning & Building Services

2. Brief description of development being appealed: 3424 sq ft residence with 816 garage + pump + tank house attached for approximately 5000 sq ft presentation to public view

3. Development's location (street address, assessor's parcel no., cross-street, etc.): 45100 Chapman Rd, Mendocino
APN 119-330-25

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: ✓
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-04-023DATE FILED: 4/19/04DISTRICT: North Coast

EXHIBIT NO. 5

APPLICATION NO.

A-1-MEN-04-023

PAULI

APPEAL (1 of 4)

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

a. ☒ Planning director/Zoning Administrator c. ☐ Planning Commission

b. ☐ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: 3/25/04

7. Local government's file number (if any): CJP #52-02

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Wm + Janet Pauli
12507 HAWK CREEK Rd.
Potter Valley, Ca 94469

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

(1) Grail Dawson
Po Box 19
Mendocino, Ca 95460

(2) Helen Herbert
Po Box 1531
Mendocino, Ca 95460

(3) Leonard Dill
Mendocino, Ca 95460

(4) Kathleen Cameron
Po Box 438
Mendocino, Ca 95460

(5) Clare Labell
Po Box 223, Mendocino, Ca 95460

SECTION IV. Reasons Supporting This Appeal

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

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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.)

Visual Impacts as required by PD Combining District + Hiking
Scenic Conservation cannot be met by current plan/designed
(Coastal Plan Policy 3.5-1 + 3.5-3) both stipulate the scenic +
visual qualities of Mendocino County Coastal Zone SHALL be considered
+ protected as a resource of public importance." SHALL be protected,
not may or will be but SHALL
Chapter 20 428 of Coastal Zone Code stipulates requirements for a PD
which project does not meet.

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/or knowledge.



Signature of Appellant(s) or
Authorized Agent

Date April 15, 2004

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

SECTION VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

3 of 4

April 15, 2004

Mr. Robert Merrill
California Coastal Commission
North Coast Office
PO Box 4908
Eureka, CA 95502-4908

RECEIVED

APR 19 2004

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Merrill: RE: CDP #52-03 Pauli

Enclosed is my appeal of the above CDP on the basis of the visual effect on both the Town of Mendocino, designated as "special" by the Coastal Act, and on the Mendocino Headlands State Park. In 1987 a proposed project on this property was denied on the basis of potential visual impacts of future development.

Policies 3.5-1 and 3.5-3 require / demand special consideration not only for a highly scenic designation but additional sensitivity to a PD combining district. Since the Pauli parcel carries both designations which require a higher sensitivity for any development and which state the views SHALL be protected there is no way the structures as proposed meet such criteria. With the exception of the MacIver house on the Point, the other 5 are between 1637 sq ft. and 3348 sq ft.

The Pauli House should be reduced by at least 1500 sq ft and redesigned so it is subordinate to the site as required.

With the reduction in size and redesign it could be a viable development.

Sincerely yours,



Joan Curry
PO 457
Mendocino, CA 95460

4 of 4



EXHIBIT NO. 6
APPLICATION NO.
A-1-MEN-04-023
PAULI

**AERIAL VIEW OF
PROJECT VICINITY**

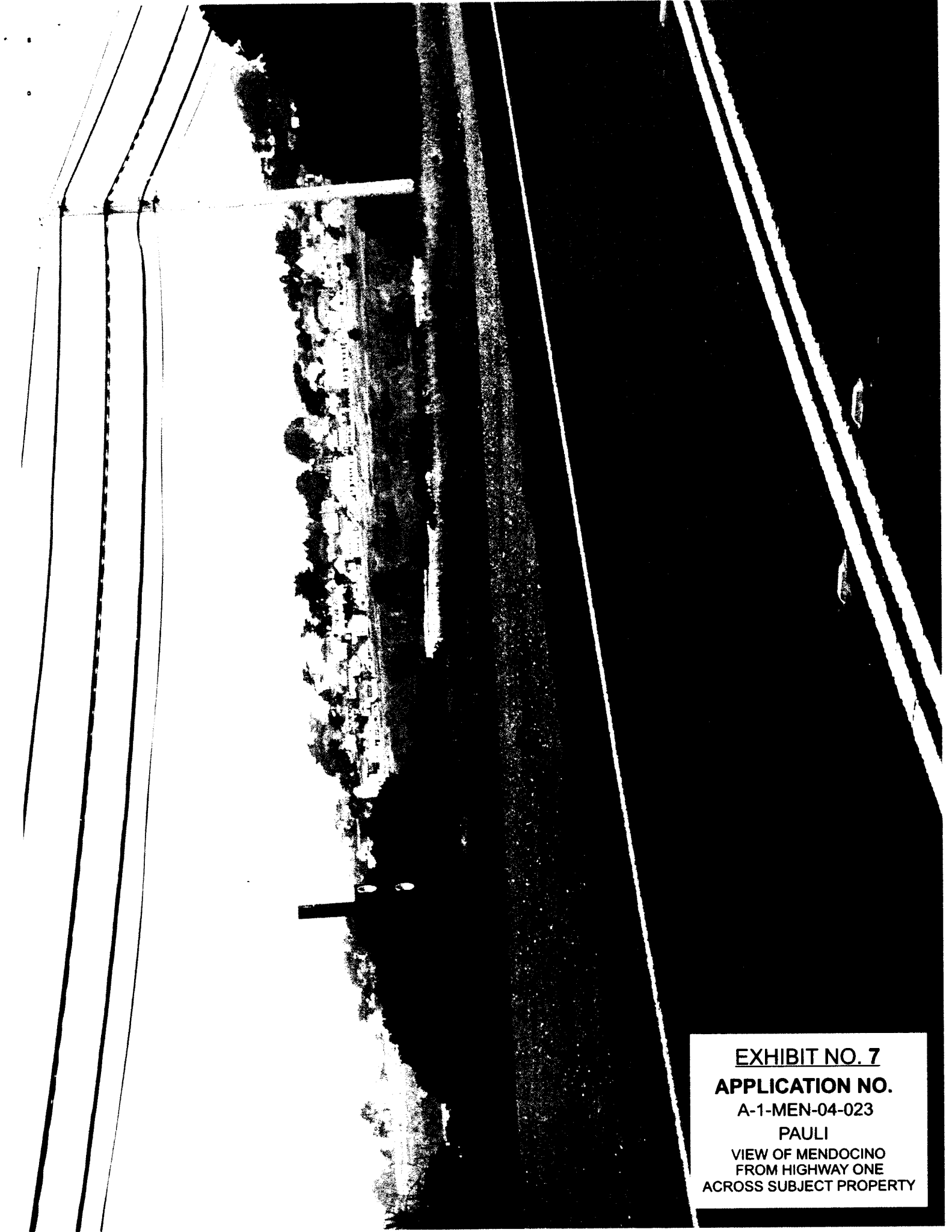


EXHIBIT NO. 7
APPLICATION NO.
A-1-MEN-04-023
PAULI
VIEW OF MENDOCINO
FROM HIGHWAY ONE
ACROSS SUBJECT PROPERTY



EXHIBIT NO. 8
APPLICATION NO.
A-I-MEN-04-023
PAULI
COUNTY-APPROVED
HOUSE SITE

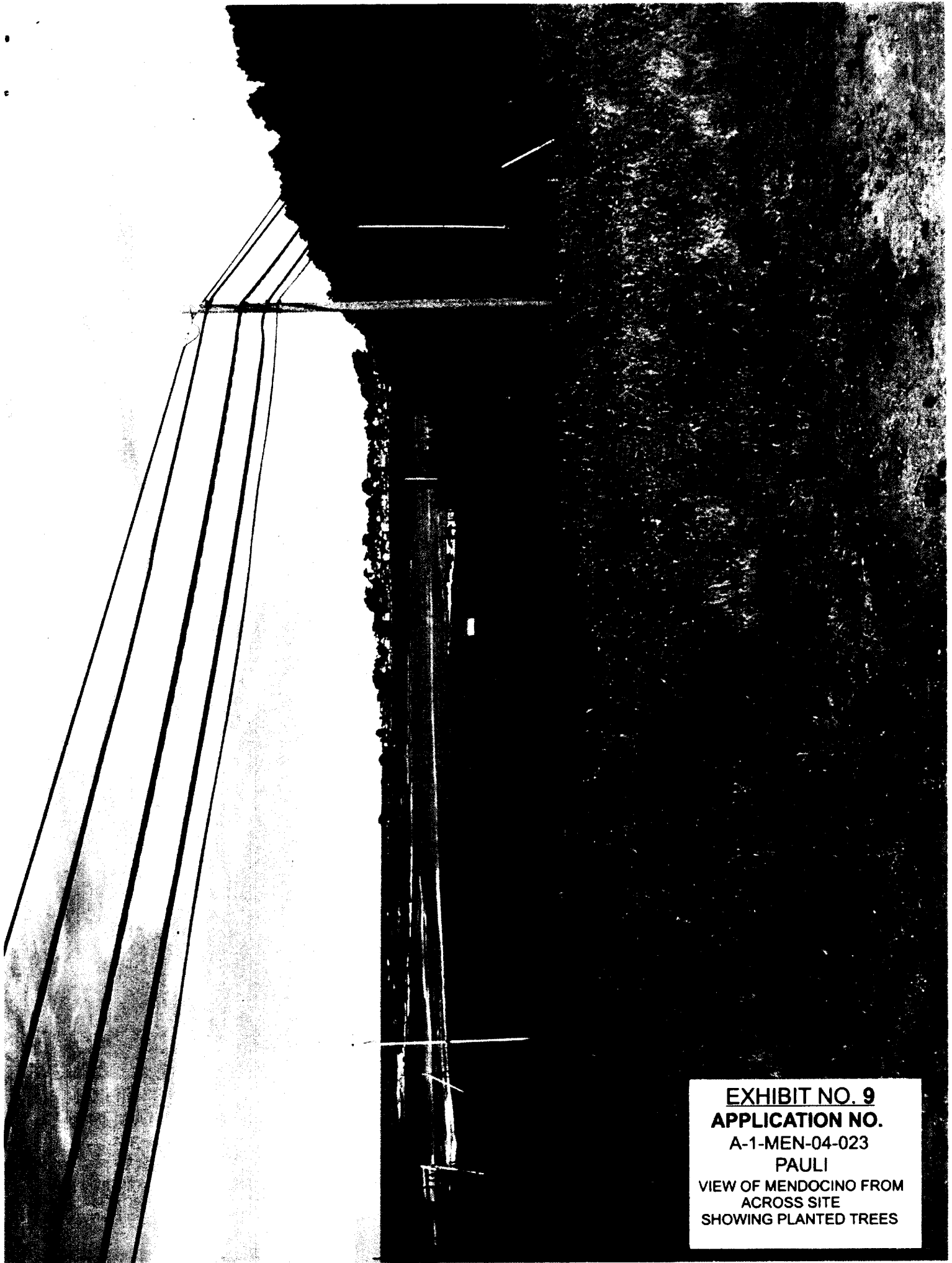
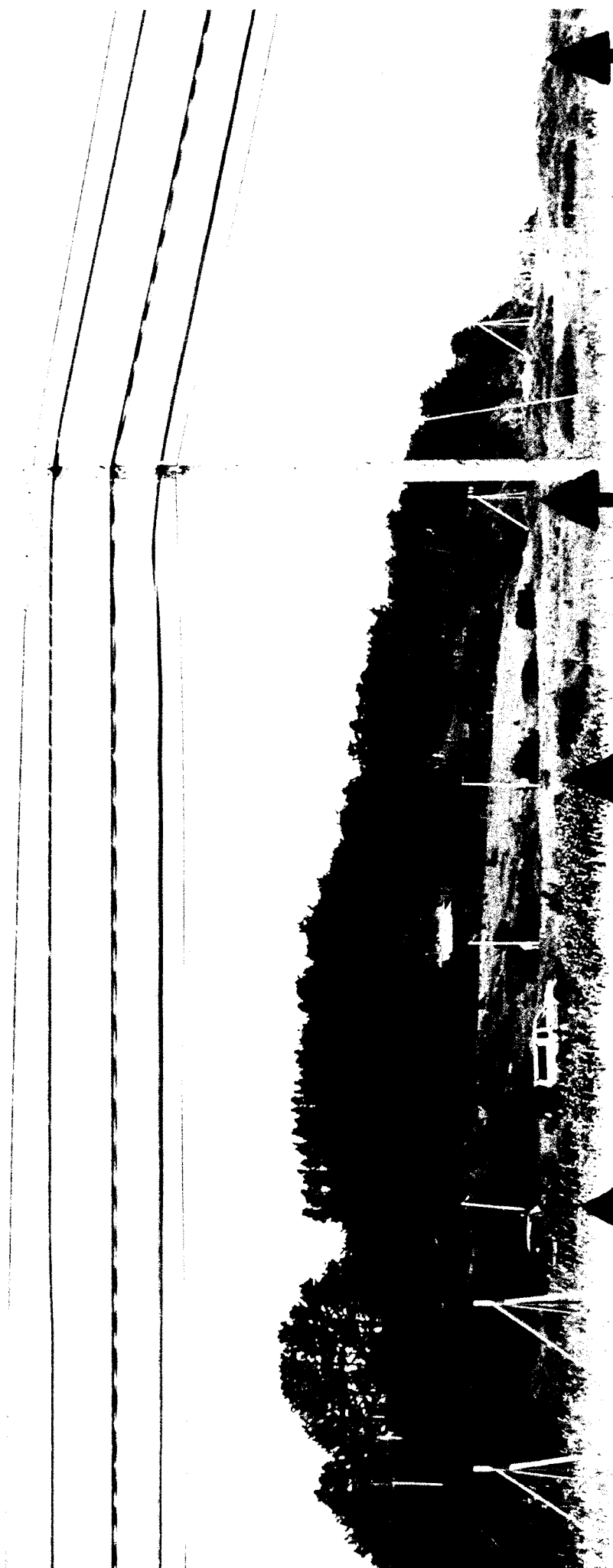


EXHIBIT NO. 9
APPLICATION NO.
A-1-MEN-04-023
PAULI
VIEW OF MENDOCINO FROM
ACROSS SITE
SHOWING PLANTED TREES



HOUSE
SITE
LOCATION

ALTERNATE
HOUSE SITE
LOCATION

EXHIBIT NO. 10
APPLICATION NO.
A-1-MEN-O4-023
PAULI
ALTERNATE
HOUSE SITES



EXHIBIT NO. 11

APPLICATION NO.

A-1-MEN-04-023

PAULI

WIDE ANGLE VIEW OF SITE
FROM TOWN OF MENDOCINO



EXHIBIT NO. 12

APPLICATION NO.

A-1-MEN-04-023

PAULI

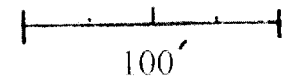
**TELEPHOTO VIEW OF SITE
FROM TOWN OF MENDOCINO**

Size Legend for Elmia contorta Trees

ALTERNATE HOUSE SITE AND PROPERTY CONSTRAINTS

- ▲ PLANTED IN 2002, CURRENTLY 24-30" TALL
- PLANTED IN 1999, CURRENTLY 30-36" TALL
- PLANTED IN 1999, CURRENTLY 36-48" TALL
- OLDER TREES 2-10' IN HEIGHT
- ✱ PROPOSED TREES AROUND BUILDING SITE

- Alternate House Site
- ESHA Boundary
- Geologic Setback
- Open Space Deed Restricted Per CDP 1-92-83
- 100-foot ESHA Buffers
- Yard Setbacks

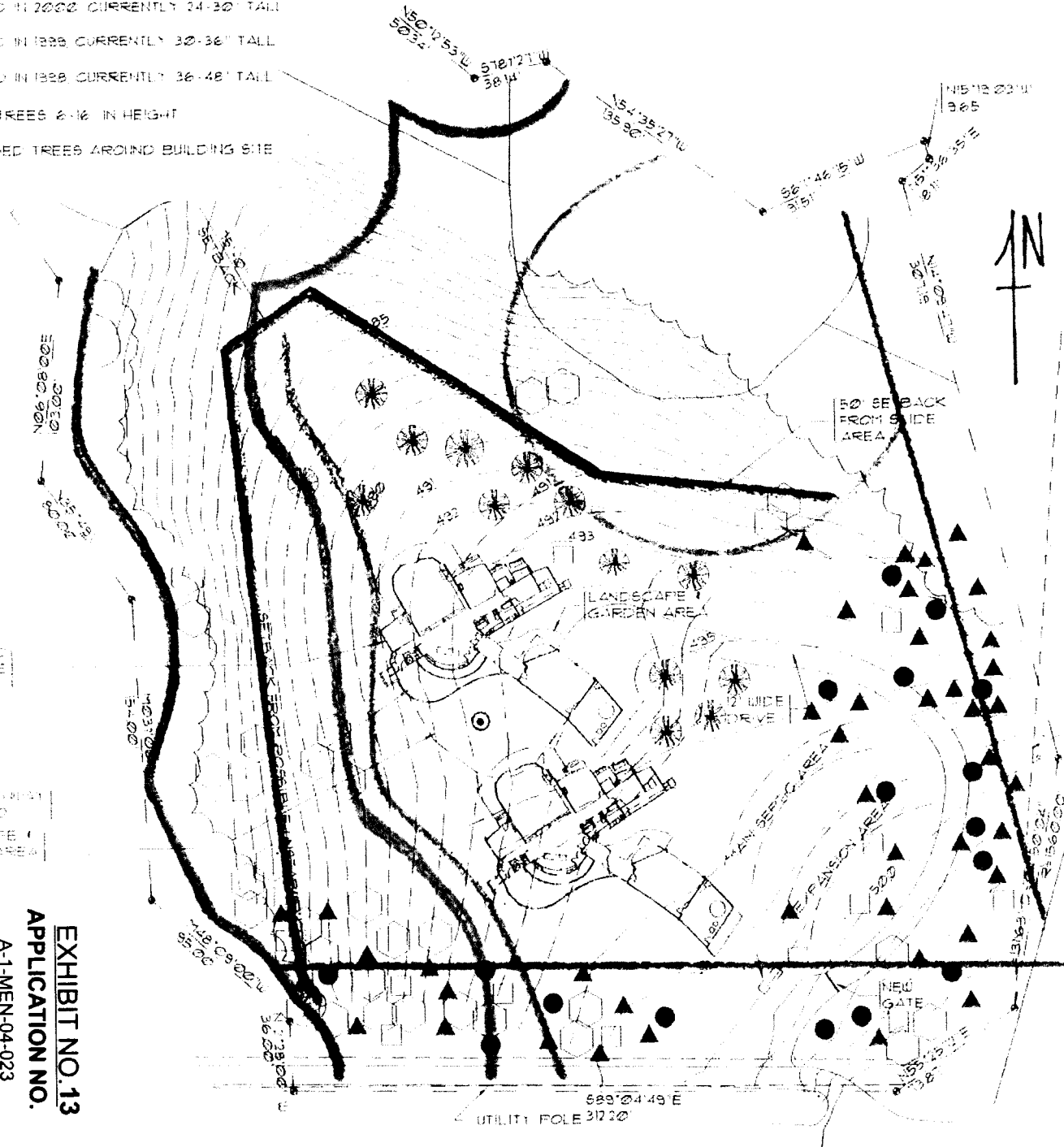


PROPOSED RESIDENCE LOCATION

ROCK PATHWAY AND PATIO
LANDSCAPE GARDEN AREA

ALTERNATE HOUSE SITE
AND PROPERTY CONSTRAINTS

EXHIBIT NO. 13
APPLICATION NO.
A-1-MEN-04-023
PAULI



PROPERTY CONSTRAINTS

