

**CALIFORNIA COASTAL COMMISSION**

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# Th13b

Filed:	August 8, 2005
49 <sup>th</sup> Day:	September 26, 2005
Staff:	Ruby Pap
Staff Report:	September 1, 2005
Hearing Date:	September 15, 2005
Commission Action:	

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	A-1-MEN-05-037
APPLICANT:	Bobbie Piety and Yves Panelli
PROJECT LOCATION:	Approximately 2 miles north of Gualala, in the Smugglers Cove Subdivision, on the south side of Pirates Drive (CR 562), 300 feet west of its intersection with Highway One at 47021 Pirates Drive, Mendocino County (APN 144-290-01).
PROJECT DESCRIPTION:	(1) Construction of an approximately 2,275-square-foot single-story single-family residence with an approximately 719-square-foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18'6" above natural grade; (2) Installation of a new driveway and encroachment onto Pirates Drive and a septic disposal system and connection to the North Gualala Water Company. The project includes impacts to rare plant populations and incorporates a rare plant management plan.

APPELLANT:

Ann Zollinger

SUBSTANTIVE FILE:  
DOCUMENTS

1) Mendocino County CDP No. 08-03; and  
2) Mendocino County Local Coastal Program

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed 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 of Mendocino consists of (1) construction of an approximately 2,275-square-foot single-story single family residence with an approximately 719-square-foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18'6" above natural grade; and (2) installation of a new driveway and encroachment onto Pirates Drive and a septic disposal system and connection to the North Gualala Water Company. The project as approved by the County includes impacts to rare plant populations and incorporates a rare plant management plan.

The project site is located approximately 2 miles north of Gualala, in the Smugglers Cove Subdivision, on the south side of Pirates Drive (CR 562), 300 feet west of its intersection with Highway One at 47021 Pirates Drive, in Mendocino County.

The Appellant poses three separate contentions that the County's conditional approval of the project was inconsistent with the policies and standards of the certified LCP regarding: (1) the protection of environmentally sensitive habitat areas (ESHA), namely the class 1b rare plant, coastal bluff morning glory; (2) geologic hazards; and (3) the protection of visual resources.

Staff recommends that the Commission find that all three contentions are valid grounds for an appeal, and that all three contentions raise a substantial issue of conformity of the approved development with the certified LCP. Regarding the first contention, the subject property is covered with the class 1b rare plant, coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*). LCP ESHA policies require that in order to develop within a rare plant environmentally sensitive habitat area, the development must: (1) not significantly degrade the resource; (2) be the least environmentally damaging feasible alternative; and (3) incorporate all feasible mitigation measures capable of reducing or eliminating project impacts to the resource. The approved single-story residence is located on the bluff edge, and would impact an area where a greater proportion of the

coastal bluff morning glory exists. While the approved project includes a mitigation plan, the project location and design raise a substantial issue as to whether they result in the least environmentally damaging alternative. There are several feasible potential alternatives that would be less environmentally damaging, including reducing the footprint and/or size of the residence, and re-locating the residence adjacent to Pirates Drive where there is less abundance of the coastal bluff morning glory. Therefore, staff recommends that the Commission find that the degree of factual and legal support for the County's action is low, and that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Sections 20.496.020 and 20.532.100 concerning permissible development within ESHAs.

Regarding the second contention, staff recommends that the Commission find that the approved project raises a substantial issue of conformance with the geologic hazards policies of the LCP because the project as approved has not been shown to be geologically stable over its economic life (75 years). The project as approved is set back 12 ½ feet from the bluff edge. LCP policies require that the geologic stability of the site be maintained over the development's expected economic life, which is defined as 75 years, and that mitigation measures must be implemented to minimize threats to the development from geologic hazards arising from landslides, erosion, and other geologic events. The geotechnical investigation for the approved project does not provide sufficient information to ensure that the site of the approved development will be stable at the end of its 75-year life because a quantitative slope stability analysis was not conducted. Accordingly, the location of the line representing a minimum factor of safety of 1.5 cannot be established, for current conditions, or for the presumed configuration of the bluff after 75 years of coastal erosion. Furthermore, there is good reason to consider that the site will have stability problems because there are conflicting geologic reports conducted for the subject site and its environs.

Lastly, staff recommends that the Commission find that the third contention, that the approved project would impact the public view shed raises a substantial issue of conformance with the visual resource policies of the LCP because the approved residence would be prominently visible from Cooks Beach, and it appears that it could be sited and/or designed differently to soften its impact on public views, including but not limited to changing the beige color and setting the residence back from the bluff edge.

If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo hearing to a subsequent date to enable the applicant to provide sufficient information for the staff to evaluate and prepare a recommendation as to what, if any development can be approved consistent with the certified LCP and the public access and recreation policies of the Coastal Act. As detailed in Finding E, below, additional information is needed concerning the project's consistency with the ESHA, geologic hazards, and visual resource policies of the LCP.

**The Motion to adopt the Staff Recommendation of Substantial Issue is found on page 5.**

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**STAFF NOTES:**

**1. Appeal Process**

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

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

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

The subject development is appealable to the Commission pursuant to Coastal Act Section 30603(a)(1) & (2) because it is located between the first public road paralleling the sea, and is within 300 feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to the *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 applicant, the appellant and other persons who opposed the application

before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

## **2. Filing of Appeal**

The appellants filed an appeal (see exhibit no. 4) to the Commission in a timely manner on August 8, 2005, within 10 working days of receipt by the Commission on August 5, 2005 of the County's Notice of Final Local Action.

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## **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-05-037 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

### **STAFF RECOMMENDATION:**

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

### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-MEN-05-037 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified

Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### **A. APPELLANTS' CONTENTIONS**

The Commission received an appeal of the County of Mendocino's decision to conditionally approve the development. The appeal was received from Ann Zollinger. The project as approved by the County consists of: (1) construction of an approximately 2,275-square-foot single-story single family residence with an approximately 719-square-foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18'6" above natural grade; and (2) installation of a new driveway and encroachment onto Pirates Drive and a septic disposal system and connection to the North Gualala Water Company. The project as approved by the County includes impacts to rare plant populations and incorporates a rare plant management plan. The appellants' contentions are summarized below, and the full text of the contentions is included as exhibit no. 4.

The appeal raises three contentions alleging inconsistency of the approved project with the County's certified LCP. The appellant's contentions are summarized below, and the full text of the contentions is included as exhibit no.4.

#### **1. Protection of Environmentally Sensitive Areas**

The appeal raises a contention involving inconsistency of the approved project with the County's LCP policies regarding protection of environmentally sensitive habitat areas, namely the class 1b rare plant, coastal bluff morning glory. The project site is covered with this rare plant, and the approved project would adversely impact it, as the current design covers more than 68% of the area, with the house, garage, driveway, and septic system. The appellant further alleges the project as approved is not the least environmentally damaging feasible alternative, and hence is inconsistent with LCP policies regarding development within an ESHA.

#### **2. Geologic Hazards**

The appellant further contends that the approved project is inconsistent with geologic hazards policies of the LCP that require that stability and structural integrity be assured, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The appeal contends that the project as approved threatens the geologic stability of the

site and the surrounding area, and that there are conflicting geologic reports regarding the subject site, which point to erosion on the subject property, and a landslide directly below the proposed building site.

**3. Visual Resources**

Lastly, the appellant contends that the project as approved impacts the public view shed to the coast, inconsistent with LCP policies regarding the protection of visual resources.

**B. LOCAL GOVERNMENT ACTION**

On January 16, 2003, Bobbie Piety and Yves Panelli submitted Coastal Development Permit Application No. 08-03 (CDP #08-03) to the Mendocino County Planning and Building Services Department for a coastal development permit. This application sought authorization to construct an approximately 2,275-square-foot single-story, single-family residence with an approximately 719-square-foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18'6" above natural grade; and install a new driveway and encroachment onto Pirates Drive, a septic disposal system, and a connection to the North Gualala Water Company on a parcel of land approximately 2 miles north of Gualala, in the Smugglers Cove Subdivision, on the south side of Pirates Drive (CR 562), 300 feet west of its intersection with Highway One at 47021 Pirates Drive, in Mendocino County. Following requests for additional information to complete the filing, the County subsequently accepted the application and on September 24, 2003 copies of the application materials were referred to various review agencies requesting comments on the project. Among the review bodies that received a copy of the referral packet was the Gualala Municipal Advisory Council (GMAC).

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

In 1990, the Mendocino County Board of Supervisors established the Gualala Municipal Advisory Council (GMAC) which, among other tasks, was given the mandate to initiate long-range planning efforts to update the Coastal Element of the Mendocino County General Plan as it pertains to the Gualala area. In addition to providing advice regarding long range planning efforts, the GMAC's mandate included the review of new development applications for the Gualala area, with particular emphasis on commercial developments and proposed new development within highly scenic areas.

At its regular meeting on November 6, 2003, the GMAC reviewed and took testimony pertaining to the Piety/Panelli application, voting unanimously to recommend that the Coastal Permit Administrator deny the development, because of concerns over the house's visibility from Cook's beach and the height of the structure, both of which would be solved by moving the house away from the bluff and closer to the street, and because of concerns over conflicting geologic reports on the stability of the bluff where the approved house would be located. The Council stated that if the concerns were satisfied, they would subsequently recommend approval of the project.

Meanwhile, on September 23, 2003 the applicants submitted a botanical report to the County, conducted by Mr. Tom Mahony, Plant Ecologist with Albion Environmental, Inc., that documented the presence of approximately 265 individuals of coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*). Coastal bluff morning glory has no federal or state threatened or endangered status, but is on the California Native Plant Society's (CNPSL List 1B, for plants that are considered rare, threatened, or endangered in California or elsewhere. Normally, impacts to plants on the CNPS list 1B are considered significant by the California Department of Fish and Game (CDFG) under the California Environmental Quality Act (CEQA).

Due to the location of the rare plants and their widespread distribution across the parcel, the applicant could not achieve an environmentally sensitive habitat area (ESHA) buffer, and still be able to develop the site with a residence, as required by the LCP. Therefore, according to LCP policies regarding development within a rare plant ESHA, the project could only be approved if (1) The resource as identified would not be significantly degraded by the proposed development; (2) there is no feasible less environmentally damaging alternative; and (3) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. County staff then consulted with the California Department of Fish and Game (CDFG) on the rare plant issue at the site, and to determine the most appropriate mitigation measures to protect the plants. CDFG responded that the housing pad and infrastructure would need to be reconfigured in the lot's area to cause the least amount of flower disturbance in implementing the project.

A subsequent June 2004 botanical report conducted by Mr. Mahony was submitted to the County. This report provided an analysis of two alternative locations for the project, the abundance and distribution of coastal bluff morning glory on the site, and a determination of which potential building alternative would impact the fewest number of coastal bluff morning-glory plants. According to the results of the Spring 2004 survey, approximately 495 coastal bluff morning glory plants were identified, an increase from the approximately 265 individual plants observed during the preliminary survey. It boiled down the possibilities for development (utilizing the originally proposed house design and size) to two alternatives for the house, access road, and septic leach field. One option would be locating a house near the bluff and a septic leachfield near Pirates Drive, and the second option would be locating a house near Pirates Drive and a septic leachfield near the bluff top edge. An analysis was conducted to determine the location and quantity



of coastal bluff morning glory on the project site, and to determine potential plant impacts that may result from the two potential project alternatives. It was found that alternative two, with the house located near Pirates Drive and the leach field near the bluff edge, would result in the fewest number of permanent impacts to coastal bluff morning glory at the site. However, the applicant did not provide a site plan for this potential alternative.

According to the County staff report and the local record, the applicant has "repeatedly and steadfastly" stated their unwillingness to build in an alternative location, as it would compromise their view. County staff expressed that the project would need to be modified to impact the least number of individual coastal bluff morning glory species in order for the required findings for development within an ESHA be made. Meanwhile, the applicant questioned staff's goal of protecting individual numbers of rare plants and instead wanted staff to look at the project from a rare plant management perspective.

To that end, the applicant secured the services of Mr. Patrick Kobernus with Thomas Reid Associates to develop a comprehensive management plan for the coastal bluff morning glory. Three similar plans were completed, with the final plan dated April 2005. The plan incorporated recommended mitigation measures by CDFG staff and other mitigation measures recommended by Albion Environmental in their botanical reports. The final mitigation plan also stated in its introduction that the methods could be applied to either alternative building location. It also stated that since coastal bluff morning glory is a prostrate perennial wildflower found in coastal prairie habitats, and can be easily be overgrown by brush and exotic species, the best areas for protection and for re-planting would be on the northwest side and center portions of the property, away from the coastal scrub boundary on the ocean side (and away from the proposed building location on the bluff), and within the grassland/coastal prairie vegetation on the street-side of the property. The proposed mitigation measures include protection of existing habitat through fencing, transplantation within temporarily disturbed areas, and long-term maintenance to prevent weeds or brush from overtaking the site. Mowing of the site was included as a management tool, as it had been demonstrated that the plant responds favorably to it. A five-year monitoring plan with success criteria is also proposed, as well as remedial management strategies should success not be achieved to the criteria proposed.

In response to the updated botanical reports and mitigation plan (dated September 2004), Tracie Hughes, from CDFG provided comments in November 17, 2004. In regards to the building site, CDFG recommended that Alternative 2 (locating the house near Pirates Drive and septic leach field near the bluff) would create the least amount of permanent disturbance to the coastal bluff morning glory, and CDFG therefore recommended alternative 2 for the project. Regarding the mitigation plan, CDFG recommended acceptance of the mitigation measures as proposed in the September 2004 mitigation plan, which included seed collection (to be donated to Rancho Santa Ana Botanic garden

along with \$2500 for the preservation of seed), propagation, and replanting, in addition to the fencing, maintenance, and monitoring.

On May 4, 2005, Corrine Gray, from CDFG provided additional comments on the project, with changes to Tracie Hughes's previous recommendations on the mitigation plan, described above. Regarding the building site, Gray stated: "The landowner has chosen Alternative 1 (oceanside, by the bluff) over DFG's recommendations for the implementation of Alternative 2 in our correspondence dated November 17, 2004." She then went on to state that Alternative 1 would be adequately mitigated by the implementation of the final April 2005 Management Plan, developed by Kobernus, as well as additional DFG recommended success criteria.

On May 26, 2005 the Mendocino County Coastal Permit Administrator approved the project as submitted. The permit included conditions requiring that several mitigation measures be implemented to protect coastal bluff morning glory, as stipulated in the management plan, and that annual monitoring reports be submitted for review by the County. In addition, special conditions required that the applicant record a deed restriction identifying the five-year management plan for the protection of coastal bluff morning glory as a requirement for authorization to develop the residential use of the subject parcel. Other special conditions required that the recommendations of the geotechnical consultant be implemented at the site, including site drainage recommendations, and that native vegetation be re-established in all areas of disturbed soil. Further, special conditions required that the applicants execute and record a deed restriction providing that the landowner assume all risks associated with geologic and erosion hazards, that the landowner not construct any bluff or shoreline protective devices, to protect the project from future geologic hazards, that the landowner remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In regards to visual resources, a special condition in the approved permit required that a stand of trees on the southeast of the residence shall be retained and replaced at a 1:1 ratio and that all doors and window frames be a medium to dark earthtone color, and lighting fixtures be down cast and shielded.

The Coastal Permit Administrator's decision was subsequently appealed to the Board of Supervisors, who at a hearing on July 26, 2005 unanimously denied the appeal. A timely appeal was filed with the Commission on August 8, 2005, within ten working days of receipt by the Commission of the County's notice of final action on the project on August 5, 2005.

### **C. SITE AND PROJECT DESCRIPTION**

The subject parcel is located in the Smuggler's Cove Subdivision on the west side of Highway One two miles north of Gualala. There are eighteen, ½ to ¼ acre parcels in the subdivision of which only two are still undeveloped, the subject parcel and the adjacent parcel to the southwest. The subject parcel is approximately ½-acre in size. The buildable

area is on the north and central portions of the parcel, within a flat grassland area that is approximately ¼-acre in size. The remainder of the lot drops off steeply to the southeast towards Glennen Gulch, down to the beach and the Pacific Ocean below. A pathway to Cooks Beach for the subdivision residents runs from Pirates Drive along the southwest side of the property, then down the bluff face along the south-southwest side of the property. The cut into the bluff for the path was cut in approximately 12 feet or more in vertical height. The approved residence would be located approximately 12 ½ feet from the bluff edge.

The project as approved by the County includes the construction of an approximately 2,275-square-foot single-story, single-family residence with an approximately 719-square-foot attached garage for a total of approximately 2,944 square feet and a maximum average height of 18'6" above natural grade. A new driveway and encroachment onto Pirates Drive would also be installed, as well as an on-site septic disposal system with a connection to the North Gualala Water Company (exhibit no. 3).

The subject parcel is heavily constrained for residential development due to rare plants and geotechnical issues associated with the coastal bluff edge. The rare CNPS Class 1B plant, coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) is widely distributed throughout the lot, and the approved project incorporates a mitigation and management plan to compensate for the loss of the plant due to the approved project.

Other vegetation on the lot includes a thin bank of riparian vegetation along Glennen Gulch near the southern boundary of the lot, which includes Red Alder and Willow in the canopy and subcanopy, respectively, with a ground layer dominated by herbaceous species common near stream channels including Coltsfoot (*Petasites frigidus*), Thimbleberry (*Rubus parviflorus*), and Lady Fern (*Athyrium filix-femina*). The project provides the 100-foot LCP required ESHA buffer from this riparian plant community.

The proposed single-family residential development is compatible with the Rural Residential zoning district and is designated as a principal permitted use in the Mendocino County Coastal Zoning Code. The approved structure would have a maximum height of approximately 18'6" above average finished grade. The maximum allowable height is 28 feet because the property is not located in a designated highly scenic area (HSA). The development would not exceed the maximum allowable lot coverage (20%), complies with the minimum setback requirements for the district (20 feet in the front and rear, 6 feet on the side yards) and the corridor preservation setback from Pirates Drive.

**D. SUBSTANTIAL ISSUE ANALYSIS**

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

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

All of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises substantial issues related to LCP provisions regarding: (1) the protection of environmentally sensitive areas; (2) geologic hazards; and (3) the protection of visual resources.

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

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

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

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

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

These contentions raised in this appeal allege that the approval of the project by the County raises significant issues related to LCP provisions regarding the protection of rare plant environmentally sensitive habitat areas (ESHA), geologic hazards, and the protection of visual resources. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that all the contentions in the appeal raise a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP provisions regarding ESHAs, geologic hazards, and visual resources.

1. Protection of Environmentally Sensitive Areas

The appellant asserts that the approved project is inconsistent with the County's LCP policies regarding protection of environmentally sensitive habitat areas, namely the class 1b rare plant, coastal bluff morning glory. The project site is covered with this rare plant, and the approved project would adversely impact this plant, as the current design covers more than 68% of the area, including the house, garage, driveway, and septic system. The appellant contends the project as approved is not the least environmentally damaging feasible alternative, and hence is inconsistent with LCP policies regarding development within an ESHA.

Summary of LCP Provisions:

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

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

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

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

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

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

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

*area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area...*

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

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

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

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

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

Discussion:

Coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*) is a perennial herb in the Convolvulaceae family that usually grows on coastal dunes, scrub, and bluffs in Marin, Sonoma, and Mendocino Counties (CNPS 2003). It has no federal or state threatened or endangered status, but is on the California Native Plant Society's (CNPS) List 1B (plants considered rare, threatened, or endangered in California and elsewhere). Normally, impacts to the plants on CNPS List 1B are considered significant by the California Department of Fish and Game (CDFG) under the California Environmental Quality Act (CEQA). The Commission has found, in past decisions, the plant and its habitat to be an environmentally sensitive habitat area (ESHA), including on a project heard on appeal in 2003 in the Gualala area (A-MEN-03-029) for a residence.

On September 23, 2003 the applicants submitted a botanical report to the County, conducted by Mr. Tom Mahony, Plant Ecologist with Albion Environmental, Inc., that documented the presence of approximately 265 individuals of coastal bluff morning glory (Mahony 2003). The wide pattern of occurrence of the plant across the majority of the parcel effectively rendered the whole of the parcel as an environmentally sensitive habitat area (ESHA), and the applicant could not provide an ESHA buffer as required by the LCP, and still be able to develop the site with a residence. Therefore, according to LUP Policy 3.1-7 and CZC Section 20.496.020 regarding development within an ESHA, the project could only be approved if (1) The resource as identified would not be significantly degraded by the proposed development; (2) there is no feasible less environmentally damaging alternative; and (3) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

County staff then consulted with the California Department of Fish and Game on the rare plant issue at the site, and to determine the most appropriate mitigation measures to protect the plants. CDFG responded that the housing pad and infrastructure would need to

be reconfigured in the lot's area so that the least amount of flower disturbance would occur in implementing the project. In response a subsequent botanical report, conducted by Mr. Mahony, dated June 2004, was submitted.

According to the results of the Spring 2004 survey, approximately 495 coastal bluff morning glory plants were identified, an increase from the approximately 265 individual plants observed during the preliminary survey. The survey boiled down the possibilities for development (utilizing the originally proposed house design and size) to two alternatives for the house, access road, and septic leach field. One option would be locating a house near the bluff and a septic leachfield near Pirates Drive (as proposed), and the second option would be locating a house near Pirates Drive and a septic leachfield near the bluff top edge. The applicant did not provide a site plan for 'alternative 2' for the consultant to work with. An analysis was conducted to determine the location and quantity of coastal bluff morning glory on the project site, and to determine potential plant impacts that may result from the two potential project alternatives. It was found that both alternatives would result in temporary and permanent impacts to approximately 360 to 405 individuals of the rare plant ESHA. It was determined that "alternative two," with the house located near Pirates Drive and the leach field near the bluff edge, would result in the fewest number of permanent impacts to coastal bluff morning glory at the site, however. Mr. Mahony concluded that:

"Changes to the alternative 1 site plan (the approved location) and/or development of a specific site plan for alternative 2 may result in changes to impact determinations discussed in this report. The continued presence of coastal bluff morning glory on the Study Area, even after years of mowing and other human disturbance, indicates the resilience of the species. The landowner, Bobbie Piety, has indicated a considerable willingness to ensure a self-sustaining population of coastal bluff morning glory on the Study Area. Other alternatives not considered in this report could be analyzed in the future to determine other potential house and associated infrastructure locations (Mahony 2004)."

According to the County staff report and the local record, the applicants have "repeatedly and steadfastly" stated their unwillingness to build in an alternative location, as it would compromise their view of the ocean. County staff expressed to the applicants that the project would need to be modified to impact the least number of individual coastal bluff morning glory species in order for the required findings for development within an ESHA be made. But the applicants questioned "County staff's goal of protecting individual numbers of rare plants" and instead wanted staff to look at the project from a rare plant management perspective.

To that end, the applicant secured the services of Mr. Patrick Kobernus with Thomas Reid Associates to develop a comprehensive management plan for the coastal bluff morning glory. Three similar plans were completed, with the final plan dated April



2005. The plan incorporated recommended mitigation measures by CDFG staff and other mitigation measures recommended by Albion Environmental in their botanical reports. The final mitigation plan also stated in its introduction that the methods could be applied to either alternative building locations. It also stated that since coastal bluff morning glory is a prostrate perennial wildflower found in coastal prairie habitats, and can be easily be overgrown by brush and exotic species, the best areas for protection and for re-planting would be on the northwest side and center portions of the property, away from the coastal scrub boundary on the ocean side (and away from the proposed building location on the bluff), and within the grassland/coastal prairie vegetation on the street-side of the property. The proposed mitigation measures include protection of existing habitat through fencing, transplantation within temporarily disturbed areas, and long-term maintenance to prevent weeds or brush from overtaking the site. Mowing of the site was included as a management tool, as it had been demonstrated that the plant responds favorably to it. A five-year monitoring plan with success criteria was also included, as well as remedial management strategies, should success not be achieved to the criteria proposed.

In response to the updated botanical reports and mitigation plan (dated September 2004), Tracie Hughes, from CDFG provided comments on November 17, 2004. In regards to the building site, CDFG recommended that Alternative 2 (locating the house near Pirates Drive and septic leach field near the bluff) would create the least amount of permanent disturbance to the coastal bluff morning glory, and they therefore recommended alternative 2 for the project. Regarding the mitigation plan, CDFG recommended acceptance of the mitigation measures as proposed in the September 2004 mitigation plan, which included seed collection (to be donated to Rancho Santa Ana Botanic garden along with \$2500 for the preservation of seed), propagation, and replanting, in addition to the fencing, maintenance, and monitoring (CDFG-County correspondence 2004).

On May 4, 2005, Corrine Gray, from CDFG provided additional comments to the County on the project, with changes to Tracie Hughes's previous recommendations on the mitigation plan, described above. Regarding the building site, Gray stated: "The landowner has chosen Alternative 1 (oceanside, by the bluff) over DFG's recommendations for the implementation of Alternative 2 in our correspondence dated November 17, 2004." She then went on to state that Alternative 1 would be adequately mitigated by the implementation of the final April 2005 Management Plan, developed by Kobernus, as well as additional DFG recommended success criteria. These included that all plantings have a minimum of 80% survival at the end of five years, and if the survival requirements are not met, the landowner would be responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve the requirements, and that replacement plants be monitored with the same survival and growth requirements for five years after planting, and that annual status reports be provided to DFG. In addition, if after five years, 80% survival has not been achieved, additional mitigation and monitoring should be imposed including fencing, the seed collection and donation and propagation mentioned in the previous mitigation plan,

maintenance, and further monitoring and reporting (CDFG-County written correspondence 2005).

In approving the project, the County found the project consistent with provisions of Coastal Zoning Code Section 20.532.100(A)(1) that allow development within an ESHA if it can be demonstrated that: (a) the resource as identified will not be significantly degraded by the proposed development; (b) there is no feasible less environmentally damaging alternative; and (c) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Regarding (b), the County indicates the applicant was unwilling to consider alternatives to the project as proposed, located near the bluff edge, where the largest impact to the existing coastal bluff morning glory would occur. In making the positive finding that the project had no feasible less environmentally damaging alternative, the County Staff Report states:

"Apparently, no permit is required from CDFG for the project since the coastal bluff morning glory has no federal or state threatened or endangered status. Therefore, with the acceptance of the proposed maintenance plan by CDFG, staff was left with the problem of determining whether or not the proposed project alternative, to build the residence by the bluff, could be found consistent with Coastal Zoning Code Section 20.532.100(A)(1). Section 20.496.015(E) of the MCCZC states that if the three required findings cannot be made the development shall be denied."

In deciding to approve the project as proposed, and in making the finding that there is no environmentally less damaging alternative, County staff considered that the coastal bluff morning glory is a resilient species, and that the landowner indicated "considerable willingness to ensure a self-sustaining population of the morning glory on the site"; that CDFG had accepted the proposed mitigation measures; and that in this case, impacts to the rare plant would be unavoidable, even if the project were changed to a smaller house with a smaller septic system.

The above statements in support for the positive findings for Coastal Zoning Code Section 20.532.100 A(1) raise several concerns. Firstly, there may be feasible less environmentally damaging alternatives to the approved project, including building in 'alternative 2' near Pirates Drive and away from the bluff as the Mahony botanical report states, re-designing the structure and leachfield to have a smaller footprint, such as having a smaller residence that is two stories, impacting less area on the ground, and hence impacting less plants, or the "no development" alternative, which would not impact any plants. These latter two alternatives were not analyzed in any detail according to county records, and the first alternative was reportedly refused by the applicant. Secondly, stating that impacts to the rare plant would be unavoidable no matter what, and that a solid mitigation plan had been created and approved by CDFG, does not provide an adequate basis for finding consistency with Section 20.532.100 A(1). The standard requires that (1) the resource will not be significantly degraded, (2) the least

environmentally damaging alternative feasible is chosen, and (3) there are adequate mitigation measures to mitigate the impacts. While a mitigation plan has been approved, as noted above, it has not been established that the least environmentally damaging feasible alternative has been chosen, and that the resource will not be significantly degraded.

Accordingly, the Commission finds that the degree of factual and legal support for the County's action is low, given that the required information necessary to justify development within a ESHA has not been presented, namely that no feasible less environmentally damaging locations has been factually ascertained.

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

b. Geologic Hazards

The appellant contends that the approved project is inconsistent with geologic hazards policies of the LCP that require that stability and structural integrity be assured, and that a project neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The appeal contends that the project as approved threatens the geologic stability of the site and the surrounding area, and that there are conflicting geologic reports regarding the subject site, which point to erosion on the subject property, and a landslide directly below the proposed building site.

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

*civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.*

LUP Policy 3.4-2 states:

*The County shall specify the content of the geologic site investigation report required above. The specific requirements will be based upon the land use and building type as well as by the type and intensity of potential hazards. These site investigation requirements are detailed in Appendix 3.*

LUP Policy 3.4-3 states:

*The County shall review development proposals for compliance with the Alquist-Priolo Special Studies Zone Act (as amended May 4, 1975).*

LUP Policy 3.4-4 states:

*The County shall require that water, sewer, electrical, and other transmission and distribution lines which cross fault lines be subject to additional safety standards beyond those required for normal installations, including emergency shutoff where applicable.*

LUP Policy 3.4-5 states:

*The County shall require that residential, commercial and industrial structures be sited a minimum of 50 feet from a potentially, currently, or historically active fault. Greater setbacks may be required if warranted by local geologic conditions.*

LUP Policy 3.4-7 states:

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

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

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

*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.*

LUP Policy 3.4-8 states:

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

LUP Policy 3.4-9 states:

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

Section 20.500.015 of the Coastal Zoning Code states:

***(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 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.*

*(B) Mitigation Required. Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)*

Sec. 20.500.020, "Geologic Hazards - Siting and Land Use Restrictions," states in applicable part:

***(A) Faults.***

*(1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.* [emphasis added.]

*(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific*

*safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.*

**(B) Bluffs.**

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

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

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

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

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

**(D) Landslides.**

*(1) New development shall avoid, where feasible, existing and prehistoric landslides. Development in areas where landslides cannot be avoided shall also provide for stabilization measures such as retaining walls, drainage improvements and the like. These measures shall only be allowed following a full environmental, geologic and engineering review pursuant to Chapter 20.532 and upon a finding that no feasible, less environmentally damaging alternative is available.*

Section. 20.532.070, "Geologic Hazards -- Evaluation and Supplemental Application Information" states:

*(A) The extent of additional geotechnical study that must accompany Coastal Development applications depends on the site and type of project as follows:*

**(1) Land Use and Building Type.**

*(a) Type 1: Public, High Occupancy and Critical Use, including: Hospitals, Fire and Police Station, Communication Facilities, Schools, Auditoriums, Theaters, Penal Institutions, High-rise Hotels, Office and Apartment, Buildings (over 3 stories), and Major Utility Facilities.*

*(b) Type 2: Low Occupancy, including: Low-rise Commercial and Office Buildings (one (1) to three (3) stories), Restaurants (except*

*in high-rise category), and Residential (less than eight (8) attached units and less than 3 stories).*

*(c) Type 3: Residential (less than eight (8) attached units), and Manufacturing and Storage/Warehouse except where highly toxic substances are involved which should be evaluated on an individual basis with mandatory geotechnical review.).*

*(d) Type 4: Open Space, Agricultural, Golf Courses, etc.*

**(2) Required Studies.**

*(a) Fault Rupture. Prior to proceedings with any Type 1 development, published geologic information shall be reviewed by an engineering geologist or civil engineer, the site shall be mapped geologically and aerial photographs of the site and vicinity shall be examined for lineaments. Where these methods indicate the possibility of faulting, a thorough investigation is required to determine if the area contains a potential for fault rupture. All applications for development proposals shall be reviewed for compliance with the Alquist-Priolo Special Studies Zone Act pursuant to Subsection (D) below and shall be deemed incomplete until such time as the reviewing geologist report is accepted by the County.*

*(b) Seismic-Related Ground Failure. Site investigation requirements for seismic-related ground failure are described as follows:*

*(i) Land Use/Building Type 2 and 3 within Zone 1 (Low): Current building code requirements must be met, as well as other existing state and local ordinances and regulations. A preliminary geotechnical investigation should be made to determine whether or not the hazards zone indicated by the Land Capabilities/Natural Hazards maps is reflected by site conditions.*

*(ii) Land Use/Building Type 1 within Zone 1 (Low) and Land Use/Building Type 3 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsection (i), above, geotechnical investigation and structural analysis sufficient to determine structural stability of the site for the proposed use is necessary. It may be necessary to extend the investigation beyond site boundaries in order to evaluate the shaking hazard. All critical use structure sites require detailed subsurface investigation.*

*(iii) Land Use/Building Type 1 within Zone 2 (Moderate) and Land Use/Building Type 2 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsections (i) and (ii), above, surface and/or subsurface investigation and analyses sufficient to evaluate the site's potential for liquefaction and related ground failure shall be required.*

*(iv) Land Use/Building Type 1 within Zone 3 (High): In addition to Subsections (i), (ii) and (iii), detailed dynamic ground response analyses must be undertaken.*

*(3) Unspecified land uses shall be evaluated and assigned categories of investigation on an individual basis.*

*(a) Tsunami. Land Use Types 1, 2 and 3 shall not be permitted in tsunami-prone areas. Development of harbors and Type 4 uses should be permitted, provided a tsunami warning plan is established.*

*(b) Landsliding. All development plans shall undergo a preliminary evaluation of landsliding potential. If landslide conditions are found to exist and cannot be avoided, positive stabilization measures shall be taken to mitigate the hazard.*

#### Discussion:

The project site is located on a small headland, on a coastal bluff overlooking Cooks Beach. The headland is a remnant of a gently sloping marine terrace that extends from approximate elevation of 70 feet up to 120 feet above sea level. The subject property is situated on a gently sloping portion of the marine terrace, near the edge of a 75-foot-high bluff. The project as approved would be set back 12 ½ feet from the bluff edge. The steep sided Glennen Gulch ravine is located east of the southwest corner of the property. There is a sand, gravel and cobble beach (Cooks Beach) at the bluff toe. A pathway to Cooks Beach runs from Pirates Drive along the southwest side of the property, then down the bluff face along the south-southwest side of the property. The cut into the bluff for the path was cut in approximately 12 feet or more in vertical height.

BACE Geotechnical Inc. conducted the geotechnical investigation for the approved project, and produced a report dated August 29, 2003. According to BACE, no surface water or evidence of ground water seepage was observed at the site during the investigation. Additionally, no free water was encountered in the test borings. The report specified erosion control/drainage measures that shall be incorporated into the design of the approved project. These measures include directing drainage to the inland side as the house, and as much as practical, conveying drain water to a ditch along side Pirates Drive, including roof and site drainage. In addition, the County staff report states that all



disturbed soil areas should be reseeded and covered with native vegetation to control erosion.

BACE observed no landslides at the site except for some relatively minor sloughing on the outer bluff face. In addition, no evidence of faulting was observed in the project vicinity by BACE and none of the published references that BACE reviewed showed faults on or trending towards the property. The geotechnical report stated that the active San Andreas Fault is located within the canyon of Little North Fork of the Gualala River approximately 2 ½ miles to the northeast.

The Mendocino County LCP requires that a bluff setback for new structures be determined by multiplying the structure life (~75 years) by the retreat rate of the bluff, which shall be determined from historical observation and/or a complete geotechnical investigation (Policy 3.4-4 of the LUP). BACE concluded that the site is geotechnically suitable for the approved project. The bluff appeared to be relatively stable and is protected by the beach from most wave action. Based on the results of an aerial photograph study and reconnaissance, BACE estimated that the bluff is eroding at the relatively low average rate of about one inch per year. Therefore, over a period of 75 years (the economic lifespan of a house), BACE estimated that the bluff would erode back approximately 6 ¼ feet. They then doubled this number as an additional precaution, to reach a bluff setback of 12 ½ feet. The applicants sited the approved 12 ½ feet back from the bluff accordingly.

Prior to the geotechnical investigation by BACE, the site was visited and evaluated by two other geologists, one hired by a neighbor (Jim Glomb), and one hired by the applicant (Thomas E. Cochrane). The Cochrane report was deemed inadequate by the County because the County LCP requires California licensed engineering geologist or a registered civil engineer with soil analysis expertise and, although Cochrane is a California Registered Geologist, he does not hold either of the other licenses. The Glomb report was not commissioned by or submitted by the applicant for their project and hence was not used by the County in its evaluation of the approved project. Nevertheless, the Gualala Municipal Advisory Council (GMAC) voted unanimously to recommend denial of the approved project partly over concerns over conflicting geologic reports on the stability of the bluff where the approved house would be located.

These other geological reports were submitted to the Commission by the County as part of the local record. Jim Glomb conducted a "surfacial geotechnical reconnaissance of the site and surrounding areas" in April 2003, and observed that "exposures in the face of the seacliff display areas of highly fractured rock, downslope creep, incipient slumping and rockfall. A small landslide measuring about 30 feet across and estimated to be 3 feet deep is exposed on the lower portion of the slope...notable off-site features include an actively failing massive landslide at the south end of Cooks beach..."(Glomb 2003).

Thomas Cochrane conducted visited the site in 2002 and 2003, and examined the bluff edge for faulting, potential landslide material, and water seepage. He remarked that the region is highly fractured and faulted, but the subject lot bluff face is "remarkably stable." The faults were considered to be old features with no apparent recent movement, and none appeared to directly affect the subject lot, and that no faults or sea caves would preclude the building from being close to the bluff edge on the subject lot (Cochrane 2002). In a March 1, 2003 addendum to the initial report, Cochrane stated: "Two small adjustment faults adjacent to your lot are noticeable on the bluff edge of the two lots just west of your lot. Some erosion is attacking these two highly fractured zones, but should not greatly affect your property" (Cochrane 2003).

BACE re-evaluated the site in 2005 in response to the local appeal to the Board of Supervisors by the appellant. BACE responded to the issues brought up in the Glomb 2003 report. Among several other comments, BACE stated that "The rock is moderately to occasionally fractured, however, there is little to no evidence of downslope creep, incipient slumping, or rockfall (there is no debris or boulders at the bluff toe)...as shown in Field Photograph A, we could see no evidence of a 'small landslide measuring about 30-feet across..." (Olsborg 2005). In response, the appellant submitted a letter to the Commission on August 11, 2005, stating that BACE's comments regarding the non-existence of the landslide is inaccurate because the photograph of the area he refers to is not the same area, and that BACE never addressed the "severe erosion" under the trees that is shown as sloping on his topographical map.

Based on the three reports, as well as the letters and addendums going back and forth debating the issues described above, it appears that a reasonable amount of uncertainty exists as to whether there exist landslides, faulting, and erosion on or in the vicinity of the subject site. LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020 require that a site for new development remain stable for its expected economic life, which is defined as 75 years. Policy 3.4-1 and Coastal Zoning Code Section 20.500.020 require mitigation measures to minimize threats to the development from geologic hazards arising from landslides, seismic events, beach erosion and other geologic events. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability.

Long-term bluff retreat is measured by examining historic data including vertical aerial photographs and any surveys conducted that identified the bluff edge. Slope stability, on the other hand, is a measure of the resistance of a slope to land sliding, and is assessed by a *quantitative slope stability analysis*. In such an analysis, the forces resisting a potential landslide are first determined. These are essentially the strength of the rocks or soils making up the bluff. Next, the forces driving a potential landslide are determined. These forces are the weight of the rocks as projected along a potential slide surface. The resisting forces are divided by the driving forces to determine the "factor of safety." The process involves determining a setback from the bluff edge where a factor of safety of 1.5 is achieved. The Commission generally defines "stable" with respect to slope stability as

a minimum factor of safety of 1.5 against landsliding. Because none of the geologists involved with the approved project conducted a quantitative slope stability analysis, it is unknown where on the bluff top a 1.5 factor of safety is attained, nor what parts of the bluff top will have a 1.5 factor of safety at the end of 75 years of bluff retreat. In this case, there is good reason to consider that the approved development will have stability problems because of the conflicting geologic reports conducted for the subject site and its environs.

Thus, because based on the existing geotechnical investigations one cannot find that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards have been minimized and mitigated, the degree of legal and factual support for the local government's decision is low. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.4-1 and 3.4-7 and Coastal Zoning Code Sections 20.500.020

c. Visual Resources

The appellant also contends that the project as approved impacts the public view shed, inconsistent with LCP policies regarding the protection of visual resources.

Summary of LCP Provisions:

LUP Policy 3.5-1 states in applicable part:

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

LUP Policy 3.5-5 states:

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

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

Discussion:

The project as approved is not located in a designated highly scenic area (HSA). However, projects located outside of HSAs must still be sited and designed to protect views to and along the ocean and be visually compatible with the character of surrounding areas, and where feasible restore and enhance the visual quality in visually degraded areas, consistent with LUP Policy 3.5-1. The approved single-story residence is located on a blufftop lot overlooking Cooks beach. The residence would be located on the bluff edge, set back 12 ½ feet. It would be clad in a combination of stucco and stone facing, with the side facing the beach stucco painted Weatherbeater "Terrace Stone" KK092, a beige color.

The County staff report for the approved project states that the project would be very similar to the character of the surrounding houses in the subdivision, which are also visible from Cook's beach. Further, the County found that a stand of approximately six trees located on the southeast side of the approved residence would provide screening of the project, and they conditioned the project to retain the trees throughout the life of the project. The County also stated that from Highway One, the project would be viewed through other homes and vegetation between the highway and the project, and the neighboring house to the east, between the highway and the subject parcel, would almost completely block views of the project from the highway.

Commission staff conducted a site view of the approved project in June 2005. Upon viewing the subject site from Cook's beach and from the bluff above at the "Bonham" public access area, staff found that although other neighboring houses were clearly visible from the beach, the placement of this additional house at the bluff edge, with its beige coloring did further impact public views from the beach. It appeared to staff that if the residence were moved back from the bluff edge and if the beige coloring were changed to better blend in with its surroundings, the house would be less prominent, and if appropriate landscaping were installed and trees retained, the public view impacts could be softened. The visual resources affected by the County's approval are significant in that the project as approved would be located prominently within the view of users of a public accessway that begins on the bluff top across the cove and to the south of the approved development and provides public access to Cook's Beach within the cove.

Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.5-1.

**3. Conclusion**

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

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

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

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

**1. Building Site and Design Alternatives Analysis**

As discussed above, CZC Section 20.523.100(A)(1) states that no development shall be allowed within an ESHA unless affirmative findings can be made that: (a) the resource as identified will not be significantly degraded by the proposed development; (b) there is no feasible less environmentally damaging alternative; and (c) all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Because there is no site available on the property where the site improvements could be constructed outside of the rare plant habitat areas, analysis of the presence of feasible less environmentally damaging alternative designs or locations is needed as prescribed in Coastal Zoning Code 20.523.100(A)(1). This analysis should encompass, at a minimum, a review of: (1) the current proposed building site and design, primary and replacement leachfields, and driveway under appeal; (2) the "alternative 2" site described in the current botanical report with a site plan created for the analysis that includes the primary and replacement leachfields and driveway; (3) a

redesign of the residential structure, access driveway, and sewage disposal system to reduce the footprint of the development, such as a two-story structure with an adjacent smaller septic disposal system, and analysis of the impacts to the coastal bluff morning glory associated with this design in the back (northwest), middle, and front (southeast) portions of the lot. The analysis should (a) include a detailed site plan for each alternative, (b) quantify the square footage of coverage and ground disturbance associated with each alternative and include a biological assessment of the potential direct and indirect impacts to the rare plants habitat in each location, detailing the number and/or relative density of plants that would be displaced and the relative compatibility of development in each location with the continuance of such habitat areas by maintaining their functional capacity, their ability to be self-sustaining, and to maintain natural species diversity, (c) compare the relative impacts to the public view shed from Cooks beach associated with each location and design, and (d) discuss all other applicable limitations and restrictions on development that may affect the feasibility of development in the specified locations (i.e., required setbacks from property lines and access drives, the presence of problematic soils and/or geologic instability, preclusions within deed CC&Rs, etc.)

**2. Information Needed to Evaluate Project Consistency With Coastal Act Section 30010**

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

If the project cannot be found consistent with the ESHA policies of the certified Mendocino Local Coastal Program, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission will need to request additional information from the applicant concerning the applicant's reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project. Specifically, in addition to providing the Commission with an analysis of alternatives to the proposed project that would be less environmentally damaging to the coastal bluff morning glory as required by the certified LCP, and detailed above, the landowner must provide the following information for the property that is subject to A-1-MEN-05-037 as well as all property on common contiguous ownership, i.e. any immediately adjacent property also owned by the applicant:

1. When the property was acquired, and from whom;
2. The purchase price paid for the property;
3. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;
4. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
5. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
6. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
7. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
8. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
9. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
10. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
  - property taxes
  - property assessments
  - debt service, including mortgage and interest costs; and
  - operation and management costs; and

11. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

### 3. Geotechnical Analyses

As discussed above, authorization of the placement of the proposed structures on a bluff top lot is contingent on making findings that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards will be minimized and mitigated. Because the existing geotechnical report does not have sufficient information with which to make these findings, a "quantitative slope stability analysis" is needed that determines: (1) the static minimum factor of safety against landsliding of the bluff in its current configuration; (2) assuming that factor of safety obtained in (1) is less than 1.5, the location on the bluff top where a factor of safety of 1.5 is obtained; (3) the pseudostatic minimum factor of safety of the bluff, using a horizontal seismic coefficient of 0.15g; and (4) assuming that the factor of safety in (3) is less than 1.1, the location on the bluff top where a factor of safety of 1.1 is obtained.

The August 29, 2003 BACE Geotechnical Investigation estimates the average bluff retreat rate as 1"/yr. In order to make the findings described above, additional information is needed as to how this figure was determined, and, assuming that the figure represents a historic long-term average bluff retreat rate, what time interval it represents. In addition, an assessment of the effect of rising sea level on future erosion rates of the bluff is also needed.

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

---

#### Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Project Plans
4. Appeal
5. Notice of Final Action
6. Mendocino County Staff Report
7. Correspondence



**References:**

Cochrane, Thomas E. January 4, 2002. Geologic Report of Lot 1, Smugglers Cove Subdivision, Pirates Drive, Mendocino County, Gualala, California. Prepared for Bobbie Piety by Thomas E. Cochrane, CA Registered Geologist.

Cochrane, Thomas E. March 1, 2003. Addendum to Geologic Report of January 4, 2002 for Property Located at 47021 Pirates Drive, Gualala, CA APN 144-290-01. Prepared for Bobbie Piety by Thomas E. Cochrane, CA Registered Geologist.

Glomb, Jim. April 18, 2003. Geotechnical Evaluation Report for 47021 Pirates Drive, APN 144-290-01, Gualala, CA. Prepared for Joyce Yates by Jim Glomb Geotechnical and Environmental Consulting.

Kobernus, Patrick. April 2005. Management Plan for Coastal Bluff Morning Glory (*Calystegia purpurata* ssp. *saxicola*) for Property at 47021 Pirates Drive. Prepared for Bobbie Piety-Panelli by Thomas Reid Associates, Menlo Park, CA.

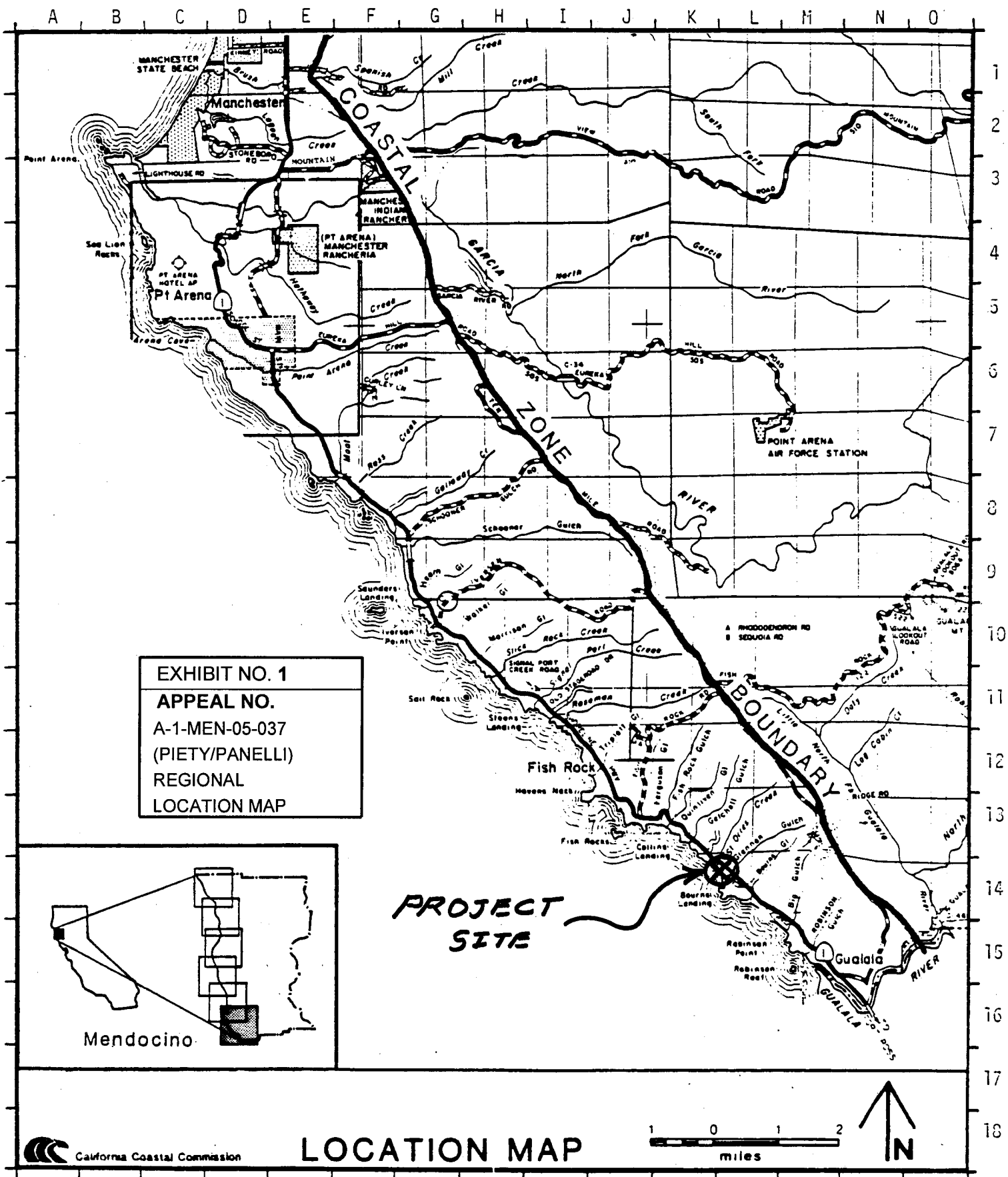
Mahony, Tom. August 2003. Environmentally Sensitive Habitat Area Assessment Under the California Coastal Act and Mendocino County Local Coastal Program. Prepared for Bobbie Piety by Albion Environmental, Inc.

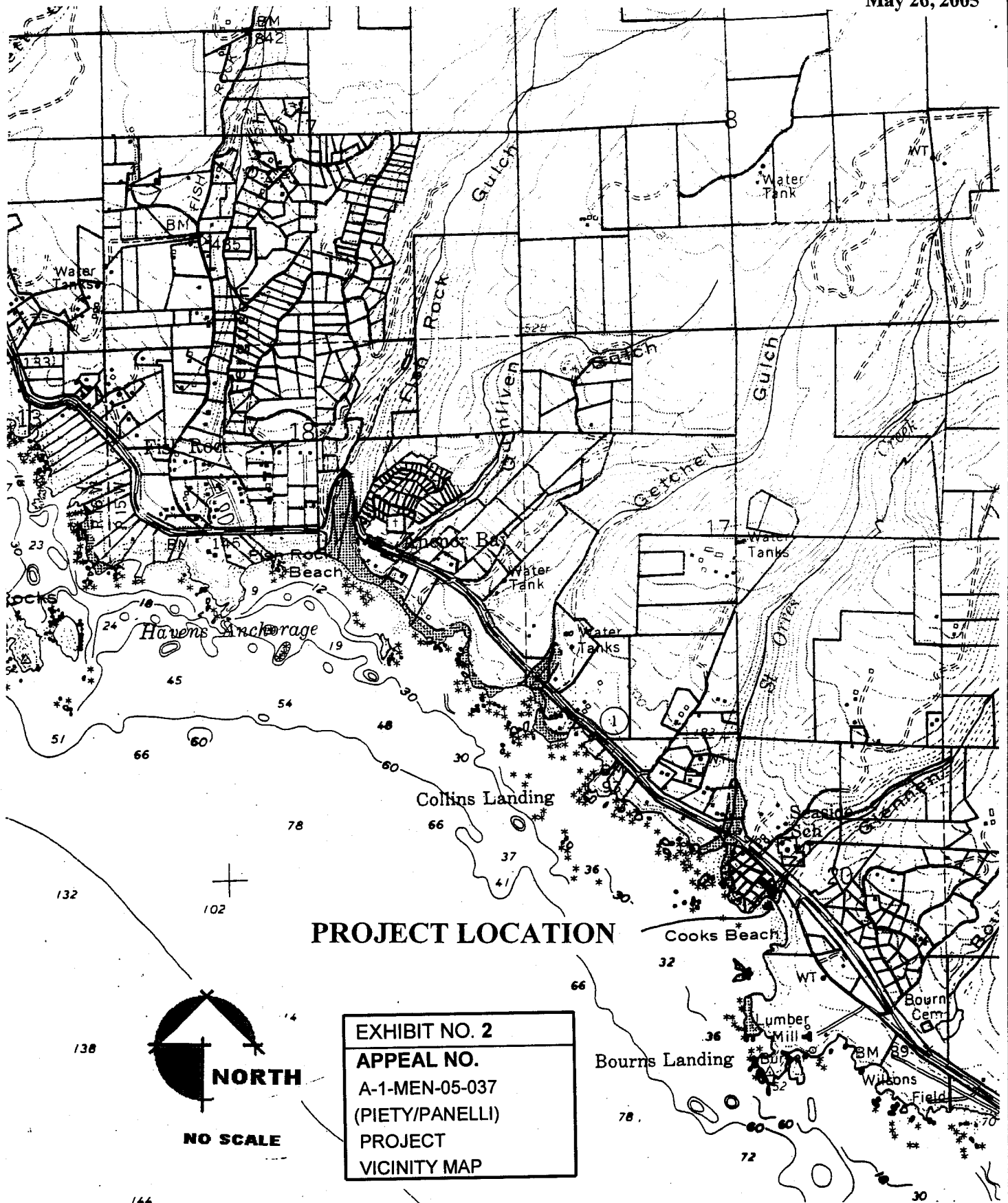
Mahony, Tom. June 2004. Analysis of Coastal Bluff Morning Glory (*calystegia purpurata* ssp. *saxicola*) Population. Prepared for Bobbie Piety by Albion Environmental, Inc.

Olsborg, Erik E. and Bell, Roy A. August 29, 2003. Geotechnical Investigation for Planned Piety Residence 47021 Pirates Drive, Gualala, CA prepared for Ms. Bobbie Piety by BACE Geotechnical, Inc.

Olsborg, Erik E. July 21, 2005. Site Re-Evaluation, Planned Residence, 47021 Pirates Drive, Gualala, Mendocino County, CA. Prepared for Bobbie Piety and Yves Panelli by BACE Geotechnical.

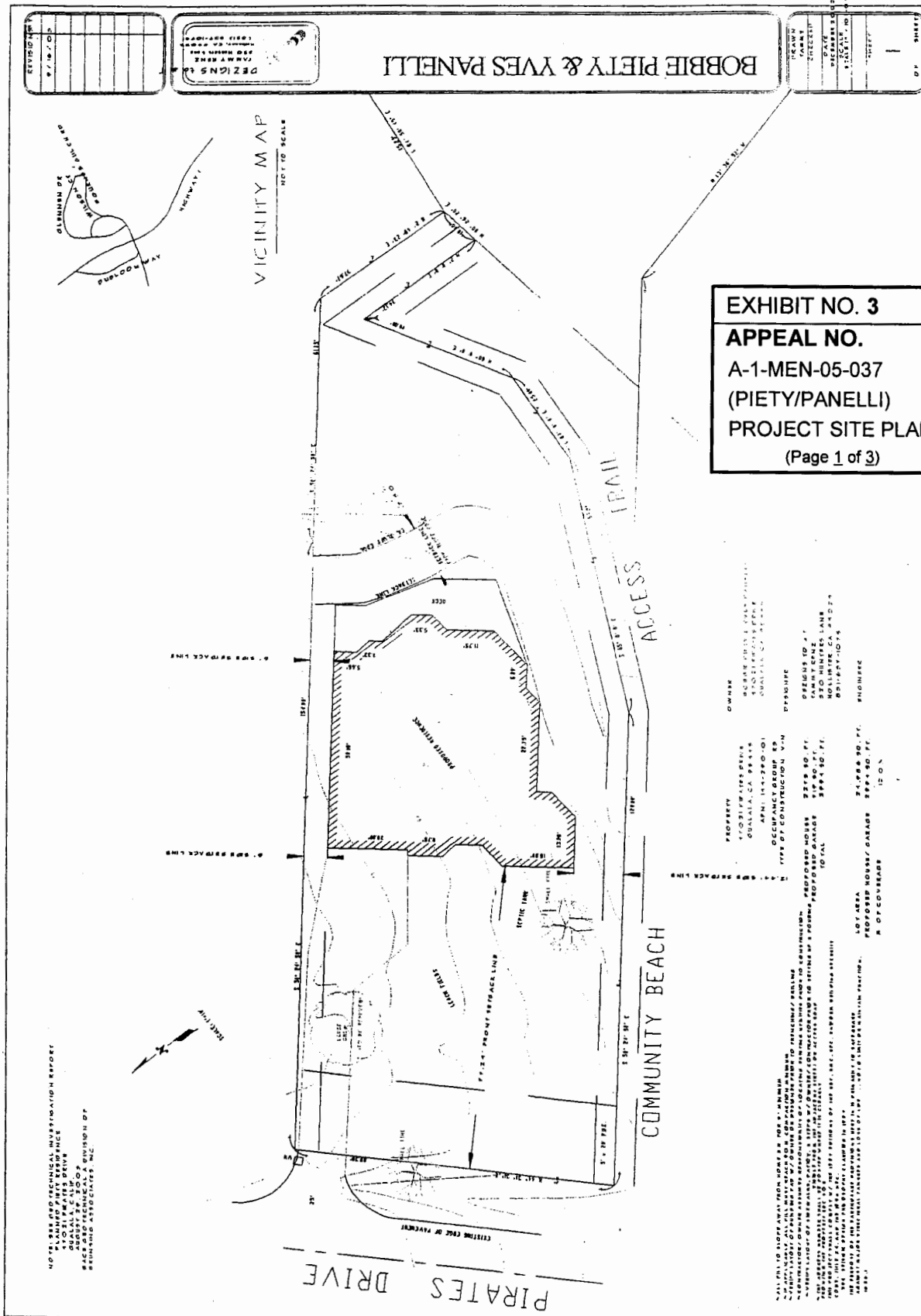






**PROJECT LOCATION**

EXHIBIT NO. 2  
APPEAL NO.  
A-1-MEN-05-037  
(PIETY/PANELLI)  
PROJECT  
VICINITY MAP



## Site Plan

**NO SCALE**

2 of 3

**NORTH**

PER OWNER.

- \* ALL UPPER LUNGEN CABINETS TO HAVE GLASS FRONT DOORS
- \* STOVE GRATES FLIPPED
- \* ALL WINDOWS TO HAVE ALCON GAS
- \* ALL DOORS TO HAVE ALCON GAS
- \* NO REVERSE TONN & WINDOW DOORS
- \* 15 - BENTON ST WINDOW TO BE
- \* 10 - REVERSE COATING
- \* PRIMER PANEL DOORS TO HAVE PRIMER
- \* YOUNGBOY SPRING - 15.15



**ANN ZOLLINGER**

**RECEIVED**

AUG 05 2005

CALIFORNIA  
COASTAL COMMISSION

PO Box 1675  
Glen Ellen California 95442  
707 328-3192

Mr. Bob Merrill  
California Coastal Commission  
North Coast  
701 "E" Street, Suite 200  
Eureka CA 95501

August 4, 2005

Dear Mr. Merrill,

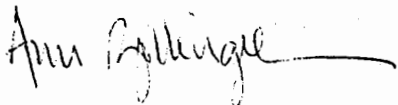
The purpose of this letter is to appeal to the Coastal Commission the decision of the County of Mendocino to approve with special conditions for the property located at 47021 Pirates Drive (APN 144-290-001.) The development being appealed is CDP #08-03 by Bobbie Piety and Yves Panelli, applicants.

I am appealing the decision due to the geological instability of the site and the potential destruction of the site and the surrounding area, the presence and destruction of the Coastal-Bluff Morning Glory that covers the site and other reasons.

I am outlining in slightly greater detail on the appeal form itself some but not all of my concerns and I will be providing additional information to support this appeal request.

Thank you for your time and attention to this matter.

Sincerely,



Ann Zollinger

**EXHIBIT NO. 4**

**APPEAL NO.**

A-1-MEN-05-037

(PIETY/PANELLI)

**APPEAL**

(Page 1 of 5)

8/4/2005 - sent via fax and fed ex.



## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Ann Zollinger

Mailing Address: PO Box 1675

City: Glen Ellen

Zip Code: 95442

Phone: 707 328-3192

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

Mendocino County Dept. of Planning &amp; Building Services - Coastal Planning Div.

2. Brief description of development being appealed:

CDP #08-03

Bobbie Piety &amp; Yves Panelli

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

47021 Pirates Drive (APN 144-290-001)

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

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

**RECEIVED**

AUG 15 2005

CALIFORNIA  
COASTAL COMMISSION

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

2 of 5

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

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

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

6. Date of local government's decision: May 26, 2005, July 26, 2005

7. Local government's file number (if any): CDP 08-03

**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:

Bobbie Piety and Yves Panelli  
809-B Cuesta Drive  
Mountain View CA 94040

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) Julie Verran  
PO Box 382  
Gualala CA 95445

(2) Erik Olsburg  
BACE Geotechnical  
PO Box 749  
Windsor CA 95492

(3) Jim Glomb  
152 Weeks Way  
Sebastopol CA 95472

(4) Gualala Municipal Advisory Council  
PO Box 67  
Gualala CA 95445

3 of 5

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### SECTION IV. Reasons Supporting This Appeal

#### PLEASE 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.
- 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.)
- This 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.

The project sited has conflicting geological reports and issues that have been brought forward (including but not only) to erosion on the subject property, a landslide directly below the proposed building site and inaccuracies and misrepresentations in the report being accepted by the County of Mendocino. As this is a bluff top property, the approval is inconsistent with the Coastal Zoning Code that states "Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." This project threatens not only the geological stability of the site but of the surrounding area.

The project sited is covered with Coastal Bluff Morning Glory. Although a mitigation plan has been proposed, the project as it is currently designed covers more than 68% of the area with the house, garage, deck, and concrete driveway and this percentage does not include the septic system. Per the Coastal Zoning Code there shall be no development in an Environmentally Sensitive Habitat Area unless "There is no feasible less environmentally damaging alternative." Per the staff report the applicant "has repeatedly and steadfastly" stated that they have no interest in exploring any other options.

Other reasons for appealing this project as proposed include but are not limited to issues such as the public viewshed.

Additional information will be provided to support this appeal.

4 of 5

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

**SECTION V. Certification**

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

Ann Billings  
Signature of Appellant(s) or Authorized Agent

Date: August 4, 2005

**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: \_\_\_\_\_



August 2, 2005

### NOTICE OF FINAL ACTION

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

**CASE#:** CDP #08-03  
**OWNERS:** Bobbie Piety & Yves Panelli  
**REQUEST:** Construct an approximately 2,275 square foot single story single family residence with an approximately 719 square foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18' 6" above natural grade. Install a new driveway and encroachment onto Pirates Drive, a septic disposal system and connect to the North Gualala Water Company. The project includes impacts to rare plant populations and incorporates a rare plant management plan.  
**LOCATION:** In the coastal zone, approximately 2 miles N of Gualala, in the Smugglers Cove Subdivision, on the S side of Pirates Drive (CR 562), 300 feet W of its intersection with Highway One at 47021 Pirates Drive (APN 144-290-01).  
**PROJECT COORDINATOR:** Rick Miller

**HEARING DATE:** May 26, 2005

**APPROVING AUTHORITY:** Coastal Permit Administrator

**ACTION:** Approved with Conditions.

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

The project was appealed at the local level. At its July 26, 2005 meeting, the Mendocino County Board of Supervisors voted 5-0 to deny the appeal and uphold the decision of the Coastal Permit Administrator.

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

**EXHIBIT NO. 5**

**APPEAL NO.**

A-1-MEN-05-037

(PIETY/PANELLI)

NOTICE/FINAL ACTION

(Page 1 of 22)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 08-03 HEARING DATE: 5/26/05

OWNER: Piety + Panelli

ENVIRONMENTAL CONSIDERATIONS:

       Categorically Exempt

X Negative Declaration

       EIR

FINDINGS:

X Per staff report

       Modifications and/or additions

RECEIVED  
JUL 08 2005  
BY  
PLANNING & BUILDING SERVICES  
Urb. CA 95402

ACTION:

X Approved

       Denied

       Continued                     

CONDITIONS:

X Per staff report *as modified for condition #5 & #3 in  
memo from R. Miller dated 6/26/05.*

       Modifications and/or additions

Raymond Hall

Signed: Coastal Permit Administrator

2 of 22

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: Coastal Permit Administrator  
FROM: Rick Miller, Project Coordinator *Rick Miller*  
DATE: May 26, 2005  
SUBJECT: CDP 08-03 Piety & Panelli

---

This addendum would revise and add to the staff report already prepared for this project. This addendum answers and clarifies several questions posed by the Coastal Permit Administrator or the applicant after reading the staff report.

Proposed Driveway: On CPA 11 towards the bottom of the page it states "...but the remainder of the driveway surface would be gravel as discussed above as part of the management plan for the rare plant populations." Staff was mistaken and was referring to a different project that has wetland drainage issues. The management plan for this project does not specify a gravel driveway. A paved driveway would be ok with staff and would not be in conflict with the management plan for the protection of the rare plants. The applicant has stated she would prefer to have a plain or stained concrete driveway. Therefore, let the record reflect that the applicant intends to install a concrete driveway, not gravel.

Review of Yearly Management Plan Reports: Task 6 of the Management Plan requires annual reports to County Planning and Building Services. Considerable staff time may be involved in monitoring the ongoing management plan and reviewing the reports. A condition that would reimburse the County for time and resources necessary to oversee the applicant's proposed mitigation plan should be incorporated into the project. Therefore, staff recommends modifying Condition Number 5 as follows:

- \*\* 5. All the mitigation measures established by the Management Plan for Coastal Bluff Morning –Glory dated April 2005 that was prepared by Mr. Patrick Kobernus with Thomas Reid Associates and the additional measures required by DFG representative Corrine Gray from her comments dated May 4, 2005 shall be incorporated into the project. Prior to issuance of the building permit, written verification shall be provided to the Planning Division that the management plan requirements that must be satisfied prior to the commencement of construction activities have been satisfied.

The annual report required by Task 6 of the Management Plan shall be submitted no later than June 30<sup>th</sup> of a given year. The applicant shall compensate the Coastal Permit Administrator who reviews the report at the prevailing hourly rate for the time it takes to review the report, correspond with the DFG (if necessary) and document in the file that the report was prepared, reviewed and accepted.

3 of 22

Site Drainage: Item 3B of the Initial Study Checklist states that there will be a significant effect unless mitigated, yet no mitigation is referenced. It should be noted on the checklist that Condition Number 3 would mitigate the impact to below a level of significance.

Bobbie Piety expressed concern that the wording of Condition Number 3 would not allow the same flexibility in the drainage requirement that the BACE report intended with regard to directing drainage away from the coastal bluff edge. The BACE report states that as much as practical, drainage should be directed to the inland side of the house and into the roadside ditch. Staff has not analyzed any plans to direct drainage into the natural ravine. Therefore, Condition Number 3 should be modified as follows:

- \*\* 3. Native vegetation shall be reestablished on all areas of disturbed soil in conformance with Chapter 20.492 of the Mendocino County Code. Site drainage recommendations of BACE Geotechnical Inc. shall be incorporated into the building permit application. Prior to the issuance of the Coastal Development Permit, a drainage plan shall be prepared and reviewed by BACE Geotechnical Inc. for conformance with their recommendations. No drainage infrastructure shall be placed in the ravine or associated riparian habitat without consultation with the DFG and an amendment to the coastal permit.



**STAFF REPORT FOR STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP 08-03  
May 26, 2005  
Page CPA-1**

**OWNERS/APPLICANTS:** Bobbie Piety & Yves Panelli  
809-B Cuesta Drive #173  
Mountain View, CA 94040

**REQUEST:** Construct an approximately 2,275 square foot single story single family residence with an approximately 719 square foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18' 6" above natural grade. Install a new driveway and encroachment onto Pirates Drive, a septic disposal system and connect to the North Gualala Water Company. The project includes impacts to rare plant populations and incorporates a rare plant management plan.

**LOCATION:** In the coastal zone, approximately 2 miles N of Gualala, in the Smugglers Cove Subdivision, on the S side of Pirates Drive (Cl. 562), 300 feet W of its intersection with Highway One at 47021 Pirates Drive (APN 144-290-01).

**APPEALABLE AREA:** Yes, the subject parcel is located west of 1<sup>st</sup> public road & is a blufftop parcel.

**TOTAL ACREAGE:**  $\frac{1}{2} \pm$  acre.

**GENERAL PLAN:** RR-5 [RR-1]

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

**EXISTING USES:** Undeveloped.

**ADJACENT ZONING:** North, East & West: RR: L-5 [RR]  
South: Ocean

**SURROUNDING LAND USES:** North & East: Residential  
West: Undeveloped  
South: Ocean

**SURROUNDING LOT SIZES:** North:  $\frac{1}{3} \pm$  acre  
East:  $\frac{1}{3} \pm$  acre  
West:  $\frac{1}{2} \pm$  acre  
South: Ocean

**SUPERVISORY DISTRICT:** 5

5 of 22

**OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:** None.

**PROJECT DESCRIPTION:** The applicant would construct an approximately 2,275 square foot single story single family residence with an approximately 719 square foot attached garage for a total of approximately 2,994 square feet and a maximum average height of 18' 6" above natural grade. A new driveway and encroachment onto Pirates Drive would be installed. An on-site septic disposal system would be constructed and a connection to

the North Gualala Water Company would be established to serve the proposed residential development. The project also includes impacts to rare plant populations and incorporates a rare plant management plan.

The subject parcel is approximately one half acre in size. The buildable area is on the north and central portions of the parcel, within a flat grassland area that is approximately a quarter acre in size. The remainder of the lot drops off steeply to the southeast, down to the beach and the Pacific Ocean below.

**PROJECT SUMMARY:** The subject parcel is located in the Smugglers Cove Subdivision on the west side of Highway One. There are 18, half to quarter acre parcels in the subdivision of which only two are still undeveloped (the subject parcel and the adjacent parcel to the southwest). The subject parcel is heavily constrained for residential development due to natural resources (rare plants) and geotechnical issues associated with the coastal bluff edge. The project incorporates a mitigation and management plan to compensate for the loss of a small population of coastal bluff morning-glory (*Calystegia pupurata ssp. Saxicola*). Coastal bluff morning-glory is a perennial herb in the Convolvulaceae family that usually grows on coastal dunes, scrub, and bluffs in Marin, Sonoma, and Mendocino Counties (CNPS 2003). Coastal bluff morning-glory has no federal or state threatened or endangered status, but is on the CNPS List 1B (plants considered rare, threatened, or endangered in California and elsewhere). Normally, impacts to plants on CNPS List 1B are considered significant by the California Department of Fish and Game (CDFG) under the California Environmental Quality Act (CEQA). County staff and the applicant have worked closely with CDFG in reviewing the proposed project over the past two years.

#### ENVIRONMENTAL REVIEW:

Geologic Setting: The project site is located on a coastal bluff overlooking Cooks Beach. Pirates Drive and Doubloon Way serve a cluster of residential properties on a small headland on the southwest side of Highway One. The headland is a remnant of a gently sloping marine terrace that extends from approximate elevation of 70 feet up to 120 feet above sea level. The headland is bordered by the Pacific Ocean on the southwest; by the cove and beach (Cook's Beach) formed by the mouth of the Glennen Gulch on the southeast, and by the cove and beach formed by the mouth of St. Orres Creek on the northwest. The gently to moderately sloping coastal terrace was created by the sea level fluctuations during the Pleistocene Epoch.

The subject property is situated on a gently sloping portion of the marine terrace, near the edge of a 75-foot high bluff. The steep sided Glennen Gulch ravine is located east of the southwest corner of the property. The ocean bluff and ravine adjacent to the property have a slope gradient that varies from about one horizontal to one vertical (1H: 1V), to 1/2H: 1V. There are no sea caves at the property.

There is a sand, gravel and cobble beach (Cooks Beach) at the bluff toe. A pathway to Cooks Beach runs from Pirates Drive along the southwest side of the property, then down the bluff face along the south-southwest side of the property. The cut into the bluff for the path was cut in approximately 12 feet, or more in vertical height, with slope gradients that vary from about 1H to 1 1/2H:1V.

No surface water or evidence of ground water seepage was observed at the site during the BACE Geotechnical Inc. Geotechnical Investigation field exploration on June 2003. Additionally, no free water was encountered in the test borings.

Earth (Item 1E, erosion): The applicant proposes to construct a single-family residence and associated improvements on a half acre blufftop lot. A new driveway and septic disposal system will be constructed. The portion of the property where the development is proposed has a very gentle slope gradient of approximately 10 horizontal to one vertical (10H: 1V) towards the southwest. This upper marine terrace is covered with grass, weeds, brush and some small pine trees. The applicant does not anticipate more than 50 cubic yards of grading would be required for the project. The proposed residence, septic system and driveway would be located on slopes which are less than 20% and the development is not likely to present issues relative to erosion and/or slope failure.

6 of 22

Section 20.492.015 of the Coastal Zoning Code states, in part:

*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.*

A Geotechnical Investigation dated August 29, 2003 has been prepared for the subject parcel by BACE Geotechnical Inc., a division of Brunsing Associates, Inc. The report specifies erosion control/drainage measures that should be incorporated into the design of the project. The report stated that, "Drainage should be directed to the inland side of the house, and as much as practical, drain water should be conducted to the ditch along side Pirates Drive." Therefore, all roof and site drainage should be directed to the roadside ditch along Pirates Drive as recommended. Additionally, all disturbed soil areas should be reseeded and covered with native vegetation as required by Section 20.492.015 of the Coastal Zoning Code. Condition Number 3 is recommended to emphasize that the site drainage recommendations to direct all runoff to the Pirates Drive roadside ditch be incorporated into the project and all exposed soil areas shall be seeded.

Earth (Item 1C) hazards: The applicant proposes to construct a residence on a blufftop lot.

Policy 3.4-1 of the Coastal Element of the General Plan states:

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

No landslides were observed at the site except for some relatively minor sloughing on the outer bluff face. No evidence of faulting was observed in the project vicinity and none of the published references that BACE Geotechnical Inc. reviewed show faults on or trending towards the property. The active San Andreas Fault is located within the canyon of Little North Fork of the Gualala River approximately 2-1/2 miles to the northeast.

Policy 3.4-7 of the Coastal Element of the General Plan states:

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

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

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

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*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report*

BACE Geotechnical Inc. concluded that the site is geotechnically suitable for the planned residential construction. The bluff appeared to be relatively stable and is protected by the beach from most wave action. Based on the results of their aerial photograph study and reconnaissance, they estimate that the bluff is eroding at the relatively low average rate of about one inch per year. Therefore, over a period of 75 years (the economic lifespan of a house per the California Coastal Commission), BACE Geotechnical Inc. estimates that the bluff will erode back approximately 6-1/4 feet. Using a safety factor of two, a suitable bluff setback would be 12-1/2 feet. The project has been designed to comply with the recommended 75-year economic bluff setback of 12-1/2 feet provided by BACE Geotechnical Inc. as shown on the site plan (Exhibit B).

It is the policy of the Coastal Commission and the County to require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development which might fall onto a beach. Condition Number 4 is recommended.

Air (Items 2A-2C, air quality): The project will produce no air emissions or odors and will have no impact on air quality. Construction of the project would not result in substantial air emissions or objectionable odors. The project would not alter air movement, moisture or temperature.

Water (Items 3A & 3C-3I): No watercourses will be altered as a result of the project. The site is not designated as a tsunami hazard zone. The site is not subject to flooding. North Gualala Water Company would provide a domestic water source for the proposed development. No on site water well would be drilled in association with the project. The proposed project would have an incremental, but not significant, effect on groundwater resources.

Water (Items 3B, runoff): The proposed driveway and the residence would alter site drainage flows; however, the project would only displace and potentially concentrate existing surface water flows. To address potential erosion and to prevent bluff erosion, all drainage would be directed to a roadside ditch adjacent to Pirates Drive as discussed above and required by Condition Number 3. The project complies with the provisions of Chapter 20.492 of the Coastal Zoning Code, Grading, Erosion and Runoff, and no adverse impacts are anticipated.

Plant Life (Item 4A-4D, environmentally sensitive habitat areas): Avoidance of impacts to environmentally sensitive habitat areas (ESHAs) is frequently a design consideration for development projects on blufftop parcels. In the Coastal Zoning Code an ESHA is defined to include streams, riparian areas, wetlands, and habitats of rare or endangered plants and animals, all of which commonly occur along the shoreline. The Coastal Program also requires that development include an ESHA protective buffer to provide protection for the resources from development.

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:

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

The subject property is an undeveloped lot on a level marine terrace in an existing residential community, as well as a forested slope descending from the terrace south down to Glennen Gulch. Glennen Gulch flows into the Pacific Ocean at Cooks Beach southeast of the Study Area. The  $\frac{1}{2} \pm$  acre subject property has been surveyed for ESHAs. The results of the surveys determined that the site contains a rare plant population and a thin band of riparian vegetation area associated with Glennen Gulch. No wetlands were located on the parcel as the area is dominated principally by upland-classified plant species and no seeps or other wet areas were observed on the site. A total of three reports have been prepared in conjunction with the project. Mr. Tom Mahony, Plant Ecologist with Albion Environmental, Inc. prepared an initial report dated August 2003 and a more detailed analysis dated June 2004 discussing the distribution of rare plants on the site. Mr. Patrick Kobernus with Thomas Reid Associates prepared a subsequent report dated April 2005 detailing a management plan for rare plants.

Mr. Mahony's August 2003 report explains:

A thin band of riparian vegetation occurs along Glennen Gulch near the southern Study Area boundary (Appendix B, Photograph 3). The riparian vegetation is dominated by red alder and willow in the canopy and subcanopy, respectively, with a ground layer dominated by herbaceous species common near stream channels including coltsfoot (*Petasites frigidus*, NI), thimbleberry (*Rubus parviflorus*, FAC+), and lady fern (*Athyrium filix-femina*, FAC). The riparian vegetation boundary was delineated based on a change in vegetation between species with a strong riparian affinity (such as red alder and willow) and species not typically associated with riparian vegetation in Mendocino County such as Bishop pine.

The project provides the required 100-foot ESHA buffer from the riparian plant community.

According to Mr. Mahony, Coastal bluff morning-glory is a perennial herb in the Convolvulaceae family that usually grows on coastal dunes, scrub, and bluffs in Marin, Sonoma, and Mendocino Counties (CNPS 2003). Coastal bluff morning-glory has no federal or state threatened or endangered status, but is on the CNPS List 1B (plants considered rare, threatened, or endangered in California and elsewhere). Normally, impacts to plants on CNPS List 1B are considered significant by the California Department of Fish and Game (CDFG) under the California Environmental Quality Act (CEQA).

Mr. Mahony's initial 2003 report identified approximately 265 individuals of coastal-bluff morning-glory on the terrace in the northern portion of the parcel. He explained that due to the intergradation common among species of the genus *Calystegia* (Hickman 1993), plants in the genus often have conflicting identifying features that make taxonomic identification problematic. One of the most distinguishing features that separate coastal bluff morning-glory from the closely related, but commonly occurring climbing morning-glory (*Calystegia purpurata* ssp. *purpurata*), is the presence of rounded leaves in the former and pointed leaves in the latter. Leaves from specimens observed on the site ranged from strongly rounded to moderately pointed. Therefore, in order to make a definitive identification, other important characteristics were used, such as the presence of wavy leaf margins, a trailing (not-climbing) growth habit, and a stem less than 1 meter in length. In addition, specimens from the Study Area were compared to voucher specimens in the Jepson Herbaria at U.C. Berkeley, and digital photographs were sent to an expert in *Calystegia* taxa, Richard Brummitt of the Royal Botanical Garden, both of which concurred

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with the *Calystegia purpurata* ssp. *saxicola* identification. Mr. Mahony said that it is likely that while many plants observed on the site were clearly *Calystegia purpurata* ssp. *saxicola*, there was enough variation observed on the property to indicate considerable variability in the subspecies. No other special-status plant surveys were observed during the survey.

Upon determining the wide extent of *Calystegia purpurata* ssp. *saxicola* population across the level area on the parcel which is proposed to support the building site, driveway and septic disposal system, County staff consulted with the California Department of Fish and Game (CDFG) to determine the most appropriate mitigation measures for the protection of the plants. Mr. Liam Davis with CDFG reviewed the August 2003 report and stated in an email dated April 15, 2004, "...the housing pad and other infrastructures described in your report need to be reconfigured in the lot's area which will minimize the least flower disturbance in implementing the project." Therefore, in the subsequent report prepared by Mr. Mahony dated June 2004 he provided an analysis of the location and abundance of coastal bluff morning-glory on the site, and determined which potential building alternative would impact the fewest number of coastal bluff morning-glory plants. The applicant, however, did not develop an alternative plan (new site plan) for the project utilizing an alternative building site for Mr. Mahony to analyze in detail.

In response to consultation with the County and DFG, Mr. Mahony surveyed the subject property again on May 11, 2004 to document the location and approximate number of coastal bluff morning-glories. The survey occurred within the coastal bluff morning glory blooming period (May-August)(CNPS 2004), and much of the population on the subject area was in full bloom at the time of the survey. Transects were walked across the site and the locations and numbers of individual coastal bluff morning-glory plants were recorded on an orthophotograph. Since the population was originally mapped in 2003, emphasis was placed on documenting any changes that may have occurred since the previous survey was conducted. Due to dense concentration of plants in certain areas, and diffuse concentrations in others, individual plants were not mapped. Rather, polygons were delimited around plant clusters and estimates of plant abundance were made for each polygon.

The results of the 2004 spring survey were:

Approximately 495 coastal bluff morning-glory plants were located on the Study Area during the May 11, 2004 plant survey (Appendix A). This number represents an increase from the approximately 265 plants observed on the Study Area by Albion Environmental, Inc. (2003). While the number of individual plants has increased, the relative locations and densities of plant clusters have not changed. The change in absolute plant numbers is likely primarily due to increased visibility of coastal bluff morning-glories (e.g., more plants in bloom, reduced overstory vegetation cover, transect location), as well as vagaries of counting dense concentrations of individual plants. Therefore, in determining plant impacts, emphasis should be placed on comparing relative impacts on different parts of the site.

Due to the location of the rare plants and their widespread distribution across the parcel the applicant could not achieve an ESHA buffer and still develop the site with a residence, as required by Chapter 20.496 of the Coastal Zoning Code. The June 2004 report basically boils down the possibilities for development to two basic alternatives for the house, access road, and septic leach field. One option would be locating a house near the bluff and a septic leachfield near Pirates Drive; and the second option would be locating a house near Pirates Drive and a septic leachfield near the bluff top edge. County staff was sensitive to the reality that the project would result in the unavoidable destruction of a portion of the rare plant populations on the property regardless of which alternative was selected and a mitigation plan would need to be developed and approved by the County and DGF in order to move the project through the permit process. With it not possible to have an ESHA buffer integrated into the proposed residential project, staff began to analyze the project for consistency with the allowable uses in an ESHA.

Coastal Zoning Code Section 20.532.100 (A) (1) states that no development shall be allowed in Environmentally Sensitive Habitat Areas unless the following findings can be made:

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

Mr. Tom Mahony's June 2004 report concluded:

An analysis was conducted to determine the location and quantity of coastal-bluff morning-glory on the Study Area, and to determine potential plant impacts that may result from two potential project alternatives. Both alternatives would result in temporary and permanent impacts to approximately 360 to 405 individuals of coastal bluff morning-glory. Alternative 1 is indicated on the September 16, 2003 site plan prepared by Tammy Renz, and locates the proposed house near the bluff and the septic leachfield near Pirates Drive. Alternative 1 would result in permanent impacts to approximately 230 to 270 individuals of coastal-bluff morning-glory from the house pad and access road, and temporary impacts to approximately 110-135 individuals during septic leachfield installation. Alternative 2 lacks a site plan, and therefore impact determinations could change based on site plan specifics. Alternative 2 would result in permanent impacts to approximately 139 individuals of coastal bluff morning-glory from the house pad and access road, and temporary impacts to approximately 230 to 256 individuals during septic leachfield installation. Based on this analysis, Alternative 2 would result in the fewest number of permanent impacts to coastal bluff morning-glory on the Study Area. Changes in the Alternative 1 site plan and/or development of a specific site plan for Alternative 2 may result in changes to impact determinations discussed in the report. The continued presence of coastal bluff morning glory on the Study Area, even after years of mowing and other human disturbance, indicates the resilience of this species. The landowner, Bobbie Piety, has indicated a considerable willingness to ensure a self-sustaining population of coastal bluff morning-glory on the Study Area. Other alternatives not considered in this report could be analyzed in the future to determine other potential house and associated infrastructure locations.

The applicant has repeatedly and steadfastly stated that they have no desire to explore the option of building the house in the location identified above as Alternative 2, with the house by Pirates Drive and the septic system out by the bluff. Staff expressed the opinion that the project would need to be modified to impact the least number of individual plant species in order for the required findings for development in an ESHA to be made. Meanwhile, the applicant questioned staff's goal of protecting individual number of rare plants and instead wanted staff to look at the project from a rare plant management perspective, putting aside the more mathematical approach to saving individual plants. To that end, the applicant secured the services of Mr. Patrick Kobernus with Thomas Reid Associates to develop a comprehensive management plan for the coastal bluff morning-glory. Mr. Kobernus developed three very similar plans with the final plan having an April 2005 date. The plan incorporated recommended mitigation measures by DFG staff and information compiled in earlier reports prepared by Albion Environmental.

The introduction to the management plan prepared by Mr. Kobernus states:

This management plan will apply to either alternative, since impact to the plants would occur in a similar way, however the property owner wishes to build Alternative 1.

The property gradually shifts from grassland/coastal prairie vegetation on the northwest (street-side) and center sections of the property to coastal scrub vegetation and trees on the southeast (ocean-side), (Figure 2). Coastal bluff morning glory is a prostrate perennial wildflower found in coastal prairie habitats, and can easily be overgrown by brush and exotic species. For this reason, the best areas for protection and for re-planting will be on the northwest side and center portions of the property, away from the scrub boundary. \*

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(\*emphasis added)

Based upon the hardiness of coastal bluff morning-glory, (the plant has recovered well after past ground disturbance on site) it is reasonably expected that this plant could be protected and re-established on site through a combination of protection of existing habitat on site, transplantation within temporarily disturbed areas, and long-term maintenance to prevent weeds or brush from overtaking the site. Critical to the successful management of the site will be some form of weed and brush control. Mowing of the site has demonstrated that coastal bluff morning-glory responds favorably to this management tool (Figures 3 and 4). The landowner has indicated that she is willing conduct each of the protection measures stated above to provide long-term protection of the coastal bluff morning-glory on her property (personal communication, Bobbie Piety).

The management plan provided specifications for fencing the construction site with temporary fencing during construction, transplantation (including the careful removal of slabs of topsoil from the septic leachfield area to be replaced after installation) of existing plants to areas that will be left in a natural state after development of the parcel, a maintenance program of seasonal mowing to eliminate brush completion, monitoring the transplanted plants for a period of five years, a success criteria to be achieved at the end of five years and finally a fluid requirement that if the success criteria is not achieved a new management strategy would be incorporated into the maintenance program. Table 1 of the management plan lays out the steps to be taken by the owner to ensure the management plan is executed properly.

Table 1. Management Plan Schedule of Tasks and Responsible Parties.

#	Task	Time of Year	Responsibility
1	Surveyors need to mark the edge of final approved grading area so that it is unmistakable which plants are in the construction zone and which are outside of it.	<i>-Prior to any construction or disturbance to site--</i>	Licensed land surveyor
2	Conduct a plant count for all coastal bluff morning-glory plants within areas to be disturbed in final approved grading plan for the site. If necessary mow vegetation around plants for easier visibility.	May/June	Restoration Contractor/ Biological Monitor
3	Prior to any construction or disturbance on site, the trenching locations for the septic leach field should be marked, and all Calystegia plants within the trenching and construction areas should be identified with flagging for removal. Prior to trenching and construction, slabs of the topsoil containing the Calystegia should be carefully removed by with hand tools. The slabs of topsoil (4-6" deep) may be removed along with the plants from the trenching locations only. The Calystegia should be carefully set aside in a designated protected location during construction and the leach field trenching. When the work is completed, the topsoil and plants should be returned to their original location in the septic leach field, and in a new designated location on the property for Calystegia restoration. The topsoil and Calystegia plants should be sufficiently watered (but not over-watered) to avoid stressing the plants, both during the trenching operation and for some time after the plants have been placed back into their original location. Site preparation including mowing should be done to clear the thatch and weedy vegetation from the new site before planting	Anytime, but may be best to transplant during fall dormancy period (Sept - Nov.)	Restoration Contractor/ Biological Monitor
4	The property should be evaluated at time of transplantation, and on an annual basis during the flowering period of the species for 5 successive years. Plant survival should be evaluated and photo-documentation should be conducted. Plant vigor should be evaluated and noted.	May/June	Biological Monitor

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5	Maintenance of the site shall consist of mowing 3x per year at the appropriate season to reduce competition from annual grasses and brush. Mowing should be done twice in early spring, and once in the fall, after blooming and seed dispersal. Care should be taken to avoid directly impacting the Calystegia.	March & August	Restoration Contractor
6	The biological monitor will submit an annual report to CDFG and the County of Mendocino (in June) for 5 years. A final report will be submitted at the completion of the 5-year period.	June	Biological Monitor

In response to the proposed management plan, Tracie Hughes with the California Department of Fish and Game provided Mendocino County with the following comment (in pertinent part) dated November 17, 2004:

The Department of Fish and Game (DFG) recieved the botanical analysis reports and mitigation strategy report for coastal bluff morning glory (*Calystegia purpurata* ssp. *saxicola*), which you sent for the above property. Liam Davis and Tracie Hughes (DFG) attended a site visit with you in the April of 2004, after receiving the first botanical analysis of the property; Environmentally Sensitive Habitat Area Assessment by Tom Mahony of Albion Environmental, Inc. (August 2003). As a follow up to the site visit, DFG provided recommendations to the county regarding the ESHA and the Calystegia population.

A second botanical report, Analysis of Coastal Bluff Morning-Glory (Tom Mahony, June 2004) was then prepared for the property. The report includes a quoted recommendation from DFG: "...the housing pad and other infrastructures described in your report need to be reconfigured in the lot's area which will minimize the least flower disturbance in implementing the project." The analysis explores two alternatives in which the property can be configured, and what impacts it may have to the coastal bluff morning glory population. Alternative 1: Locating house near bluff and septic leach field near Pirates Drive, would permanently impact approximately 230-270 individuals and temporarily impact approximately 110-135 individuals. Alternative 2: Locating house near Pirates Drive and septic leach field near bluff, would permanently impact approximately 139 individuals and temporarily impact 230-256 individuals. DFG is most concerned with the permanent impacts, since these are associated with a permanent loss of habitat. It appears that Alternative 2 will create the least amount of permanent disturbance to the coastal bluff morning glory population. Therefore, for the protection of the species which is currently listed CNPS 1B, DFG would recommend Alternative 2 for the project.

Regarding the Mitigation Plan for Coastal Bluff Morning-Glory (Patrick Kobernus, September 2004), DFG recommends acceptance of the mitigation measures as proposed by the project proponent's consultant. These mitigations are applicable to either Alternative 1 or 2, and include fencing, seed collection (donation to Rancho Santa Ana Botanic Garden along with \$2500 for preservation of seed), propagation and replanting, maintenance (seasonally appropriate mowing 3X per year), and monitoring survival rates (follow-up report at post-project year 1 and year 3).

The final version of the maintenance plan did not include provisions for seed collection, donation of funds to the Rancho Santa Ana Botanic Garden or propagation. The final version of the management plan relies more heavily on the protection of existing plant material and topsoil for transplantation on site. For example, the Coastal bluff morning-glory plants located in the area where the septic disposal system would be installed would be saved by a combination of simple avoidance and careful hand removal of topsoil where the leach field trenches are dug. The removed topsoil would then be replaced upon completion of the leach field.

Since Tracy Hughes' (DFG) November 17, 2004 comment was provided, Corrine Medlin Gray, Environmental Scientist for DFG revisited the proposed alternatives for development and the management plan prepared by Mr. Kobernus. DFG has now accepted the project proposed by the applicant with a few additional requirements.

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Corrine Gray with the California Department of Fish and Game provided Mendocino County with the following comment (in pertinent part) dated May 4, 2005:

The Department has reviewed the additional materials and determined that impacts associated with Alternative 1 will be adequately mitigated by the implementation of the mitigation measures proposed in the April 2005 Management Plan and the following success criteria. To ensure a successful revegetation effort, all plantings shall have a minimum of 80% survival at the end of 5 years. If these survival requirements are not met, the landowner is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. An annual status report on the mitigation shall be provided to the Department of Fish and Game by December 31 of each year. This report shall include the survival, percent cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included. If after five years it is determined that the population has not achieved 80% survival, additional mitigation and monitoring will be imposed upon the project including fencing, seed collection (donation to Rancho Santa Ana Botanic Garden along with \$2500 for preservation of seed), propagation and replanting, maintenance, and further monitoring and reporting.

Apparently, no permit is required from CDFG for the project since Coastal bluff morning-glory has no federal or state threatened or endangered status. Therefore, with the acceptance of the proposed maintenance plan by CDFG, staff was left with the problem of determining whether or not the proposed project alternative, to build the residence by the bluff, could be found consistent with Coastal Zoning Code Section 20.532.100 (A) (1). Section 20.496.015 (E) of the MCCZC states that if the three required findings cannot be made the development shall be denied.

County staff considered the following issues in determining a recommendation for the project.

1. Mr. Mahony, Plant Ecologist with Albion Environmental, Inc. stated in the 2004 report that, "The continued presence of coastal bluff morning glory on the Study Area, even after years of mowing and other human disturbance, indicates the resilience of this species. The landowner, Bobbie Piety, has indicated a considerable willingness to ensure a self-sustaining population of coastal bluff morning-glory on the Study Area."
2. CDFG has accepted the mitigation measures proposed by Mr. Patrick Kobernus with Thomas Reid Associates and has added additional requirements for a minimum of 80% survival at the end of 5 years. The applicant is comfortable with the requirements from CDFG that would be incorporated into the coastal permit.
3. In this particular situation, no development of the property could occur without impacts to rare plants. For instance, even a smaller one-bedroom house and septic system would directly impact the coastal bluff morning-glory population growing on the property.

Staff recommends the addition of Condition Number 5 to require a deed restriction be recorded referencing the mitigation plan and limiting future development of the site. Condition Number 6 would incorporate the recommendations of the Management Plan for Coastal Bluff Morning-Glory prepared by Patrick Kobernus, Thomas Reid Associates, dated April 2005 and the additional requirement recommended by Corrine Gray with the California Department of Fish and Game into the project.

Animal Life (Items 5A-5C, diversity): The project will not impact the diversity of wildlife species inhabiting the site. No rare or endangered animal species are known on the site. No new species of animals will be introduced.

Animal Life (Item 5D, habitat): A small amount of natural habitat will be lost as a result of the proposed project as discussed above under Plant Life. However, the area proposed for this development does not provide unique or

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rare habitat for animals. The total area affected is not significant when considered in relation to the surrounding vicinity. The subject parcel is located within a mostly developed subdivision of half-acre residential parcels.

Noise (Item 6A & 6B): The only noise generated by the project will be that of construction activity associated with the residential development, which will be of limited duration. Noise impacts will not be significant.

Light and Glare (Item 7): Five exterior lighting fixtures would be installed on the residence. Sec. 20.504.035 of the Coastal Zoning Code (Exterior Lighting Regulations) states:

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

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

*(5) No lights shall be installed so that they distract motorists.*

The lights would be energy efficient fluorescents. The lights would be shielded and downcast to prevent light and glare from being shed beyond parcel boundaries. The proposed exterior lighting would be in compliance with Sec. 20.504.035 of the Coastal Zoning Code.

Land Use (Item 8): The proposed single-family residential development is compatible with the Rural Residential zoning district and is designated as a principal permitted use per Chapter 20.376 of the Coastal Zoning Code. The structure would have a maximum height of approximately 18' - 6" above average finished grade. The maximum allowable height is 28 feet because the property is not located in a designated highly scenic area. The development would not exceed the maximum allowable lot coverage (20%), complies with the minimum setback requirements for the district (20 feet in the front and rear, 6 feet on the side yards) and the corridor preservation setback from Pirates Drive.

Natural Resources (Item 9): The project will not consume any significant quantities of natural resources beyond what is normally associated with the construction and use of a single-family residence.

Population (Item 10): The project would not affect the location, distribution, density or growth rate of human population. The proposed single-family residence is the principal permitted use for the rural residential zoning district. Other single-family residences surround the area.

Housing (Item 11): The project will provide one additional single-family residence in a largely built out subdivision. The project would not impact existing houses or create the demand for new housing.

Transportation/Circulation (Item 12C, roads): As part of the project a new encroachment onto Pirates Drive (CR 562) will be constructed. Mendocino County Department of Transportation has recommended that a standard private driveway approach be constructed according to County standards. The encroachment would need to be A/C overlay to match the public street but the remainder of the driveway surface would be gravel as discussed above as part of the management plan for the rare plant populations. Condition Number 7 is recommended to require that the work proposed within the County right-of-way be completed in accordance with encroachment procedures administered by the Department of Transportation.

The project would contribute incrementally to traffic on local and regional roadways. The cumulative effects of traffic resulting from development of a residence on this site were considered when the Coastal Element land use designations were assigned. No adverse impacts would occur.

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Public Services (Item 13, fire protection): The property is in an area with a moderate fire hazard severity rating as determined by the California Department of Forestry and Fire Protection, and is in a State Responsibility Area for fire safety review. Recommended conditions of approval from CDF (CDF 678-02, January 9, 2003) recommending compliance with CDF address, driveway and maintaining defensible space standards were received with the application. Condition Number 8 is recommended to achieve compliance with the fire safe standards recommended by the Department of Forestry.

Energy (Item 14): There will be no significant consumption of energy as a result of the proposed project beyond the normal consumption of a single-family residence. As with all new residences in California, the project will need to comply with the energy conservation requirements of Title 24 prior to obtaining a building permit.

Utilities (Item 15): The North Gualala Water Company would provide water for the project. The project is within the service area of the North Gualala Water Company who provided a "no comment" response to our referral dated September 25, 2003. The water main is shown on the site plan to be at the north property corner adjacent to the proposed driveway. Staff assumes that once water connection costs have been paid, domestic water would be provided to serve the project. The residence would be supported by an on-site septic disposal system designed to accommodate a two-bedroom house. Due to space constraints on the parcel, aerobic treatment has been incorporated into the design. The primary system would be a pressurized Highline, incorporating secondary effluent treatment. The replacement field would also be a Highline leachfield system. The plan indicates that both the replacement and primary fields would be installed at the same time and would be fed by an automatic distributing valve. Telephone and electrical utilities already exist at the property and would be extended to serve the residence.

Human Health (Item 16): The proposed residential project would not pose a health hazard.

Aesthetics (Item 17, views and appearance): The property is not located in a designated highly scenic area according to the Coastal Plan Map. However, analysis of aesthetic issues relating to appearance and views to and along the ocean are required for all development in the coastal zone. The importance of aesthetics is evidenced by policies in the County's Coastal Element which apply to all areas in the coastal zone regardless of location in a designated highly scenic area.

Coastal Plan Policy 3.5-1 of the Mendocino County Coastal Element states in pertinent part:

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

The project is very similar to the character of the surrounding houses in the subdivision. The single story residence would have a maximum height of 18' - 6" above average natural grade. The proposed residence would have a copper roof panels installed which are anticipated to quickly develop a patina in the sea salt air. The residence would be clad in a combination of stucco and stone facing. The elevation facing Pirates Drive would be covered in the stone (sample in the file). Both side elevations and the elevation facing away from the street and towards the bluff would be stucco painted Weatherbeater "Terrace Stone" KK092, a beige color (sample in the file). There would be no exterior trim on the doors and windows. Staff is unsure of the proposed garage door or window frame colors. The window frame colors and the proposed garage door colors should be selected to blend in with the surrounding natural environment so the use of white should be avoided. Staff recommends the addition of Condition Number 9 to ensure that the building materials and colors will not be changed without prior approval of the Coastal Permit Administrator and that no white doors (including large garage door facing the street) or window frames would be installed.

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Story poles were erected on the parcel to display the potential visibility of the project to public views. The public views in the immediate area include Highway One and Cooks Beach. There is an access trail on the west side of the property that is deeded for use by owners in the subdivision. The project would not be totally invisible from Highway One, but it would be viewed through other homes and vegetation between the highway and the project. The neighboring house to the east, between the highway and the subject parcel, would almost completely block views of the project from the highway. The project would be visible from Cooks Beach, immediately south of the project location. Most of the houses on the south side of Pirates Drive are visible from the beach. The proposed structure would be no more visible than surrounding houses on the south side of Pirates Drive. It would be difficult to state that the limited visibility of the residences has a significant negative impact on the views to or along the ocean. The proposed building has been designed to be a single story and the maximum height of the building would be 18' - 6" above average natural grade. The stand of approximately six trees located on the southeast side of the residence (shown on the site plan) should be retained for the life of the project because they provide screening of the project from public views. Condition Number 9 would require that the trees be preserved. Staff finds the aesthetic of the proposed project impact on public views to be at a level below significance and consistent with the neighborhood.

Public Access & Recreation (Item 18): The project site is located west of Highway 1 and is a blufftop parcel but it is not designated as a potential public access trail location on the LUP maps. The only evidence of prescriptive access on the site is deeded access to other owners of property within the subdivision. The project would not have a significant impact on the existing trail from Pirates Drive to the beach (the trail is intended for use by owners in the Smugglers Cove Subdivision). The residence would be set back from the trail a sufficient distance so as not to interfere with pedestrian traffic. The applicant had originally proposed constructing a stucco retaining/privacy wall along the upland side of the trail to provide for a physical barrier between the project and the existing trail. Staff explained that the privacy wall was not in compliance with setback requirements for development in relation to the bluff edge. Accordingly, the privacy wall was dropped from the project.

Cultural Resources (Item 19): This project was referred to the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University (SSU) for an archaeological records search. SSU responded that the site has a probability of containing archaeological resources and further investigation was recommended. The Mendocino County Archaeological Commission responded that a survey was required. Subsequently, Thad M. Van Bueren, M.A. prepared an investigation and report. The survey revealed no evidence of any archeological or other historical resources on the site. The Mendocino County Archaeological Commission accepted the report at their March 10, 2004 hearing. Nonetheless, the applicant is advised by Condition Number 10 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

**ENVIRONMENTAL RECOMMENDATION:** Although the construction of a residence would normally be categorically exempt from the California Environmental Quality Act (Class 3(a)), this location is particularly sensitive because of the distribution of a rare plant population. However, no significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Negative Declaration is recommended.

**ZONING REQUIREMENTS:** The project complies with the zoning requirements for the Rural Residential (RR) District set forth in Chapter 20.376 and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

**GENERAL PLAN CONSISTENCY RECOMMENDATION:** The proposed project is consistent with applicable goals and policies of the General Plan.

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**RECOMMENDED MOTION:**

**General Plan Consistency Finding:** As discussed under pertinent sections of this report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

**Environmental Findings:** The Coastal Permit Administrator finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval so that no significant adverse environmental impacts will result from this project; therefore, a Negative Declaration is adopted.

**Department of Fish and Game Finding:** The Coastal Permit Administrator finds that because the project would result in the loss of a small population of coastal bluff morning-glory (*Calystegia purpurata* ssp. *Saxicola*), the de minimis finding can not be made for this project. The project is, therefore, subject to the Fish and Game fee of \$1,275.00.

**Coastal Development Permit Findings:** 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.

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 zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
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.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. Environmentally Sensitive Habitat Areas.
  - (a) The resource as identified will not be significantly degraded by the proposed development.
  - (b) There is no feasible less environmentally damaging alternative.
  - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

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**Project Findings:** The Coastal Permit Administrator, making the above findings, approves #CDP 08-03 subject to the conditions of approval recommended by staff.

**RECOMMENDED CONDITIONS:**

- \*\* 1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$1,275.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to June 10, 2005. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
2. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
- \*\* 3. Native vegetation shall be reestablished on all areas of disturbed soil in conformance with Chapter 20.492 of the Mendocino County Code. Site drainage recommendations of BACE Geotechnical Inc. to direct surface runoff to the roadside ditch along Pirates Drive and away from the coastal bluff edge shall be incorporated into the building permit application.
- \*\* 4. Prior to the issuance of the Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which shall provide that:
- a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
  - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project, including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
  - c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
  - d. The landowner shall not construct any bluff or shoreline protective devices to protect the improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
  - e. The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage,

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foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

- f. The document shall run with the land, bind all successors and assignees, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

\*\* 5. All the mitigation measures established by the Management Plan for Coastal Bluff Morning – Glory dated April 2005 that was prepared by Mr. Patrick Kobernus with Thomas Reid Associates and the additional measures required by DFG representative Corrine Gray from her comments dated May 4, 2005 shall be incorporated into the project. Prior to issuance of the building permit, written verification shall be provided to the Planning Division that the management plan requirements that must be satisfied prior to the commencement of construction activities have been satisfied.

\*\* 6. Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator which identifies that a five year management plan for the protection of coastal bluff morning-glory (*Calystegia purpurata ssp. Saxicola*) population is a requirement for authorization to develop the residential use on the subject parcel. The deed restriction shall reference Mendocino County CDP 08-03 so that a future owner could obtain information from the case file.

Due to the presence of the rare plants any future development on the subject parcel shall be subject to the review and approval by the Coastal Permit Administrator for the life of the project.

\*\* 7. Prior to the issuance of the building permit or the commencement of construction activities, and pursuant to encroachment permit procedures administered by the Mendocino County Department of Transportation; the applicant shall construct appropriate improvements to protect the County road during the construction phase of the project. Prior to final occupancy, the applicant shall complete, to the satisfaction of the Department of Transportation, a standard private driveway approach onto Pirates Drive (CR 562), to a minimum width of ten (10) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with comparable surfacing on the County road. A copy of the encroachment permit shall be submitted to the Planning Division along with the building permit for the residence.

\*\* 8. The applicant shall comply with those recommendations in the California Department of Forestry Conditions of Approval (CDF# 678-02) 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.

\*\* 9. All exterior building materials and finishes shall match those specified in the coastal development permit application. All the doors and window frames shall be a medium to dark earthtone. 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. Exterior lighting fixtures shall match the downcast and shielded fixtures presented in the permit application.

The stand of approximately six trees located on the southeast side of the residence (shown on the site plan) shall be retained for the life of the project. In the event these trees should become sick or die they shall be replaced at a 1:1 ratio in approximately the same location on the property.

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- \*\* 10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
- \*\* 11. It shall be the responsibility of the applicant to ensure that contractors engaged to perform work on the site are aware of the conditions of this permit and that all work performed is in compliance with applicable conditions.
12. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
13. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Coastal Permit Administrator.
14. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
15. This permit shall be subject to revocation or modification by the Coastal Permit Administrator upon a finding of any one or more of the following grounds:
- a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted has been violated.
  - c. The use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.
- Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.
16. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

May 6, 2005

DATE



Rick Miller  
Planner III

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Attachments: Exhibit A- Location Map  
 Exhibit B- Site Plan  
 Exhibit C- Floor Plan  
 Exhibit D- Elevations

### Negative Declaration

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: \$715 (For an appeal to the Mendocino County Board of Supervisors.)

\*\* Indicates conditions relating to Environmental Considerations - deletion of these conditions may effect the issuance of a Negative Declaration.

### SUMMARY OF COMMENTS:

Department of Transportation	Required installation of a standard residential driveway encroachment.
Environmental Health – Fort Bragg	Approved the septic disposal system and cleared the permit.
Building Inspection – Fort Bragg	No comment.
Archaeological Commission	Survey accepted at their March 10, 2004 hearing.
Assessor	No response.
DF&G	Tracy Hughes comments dated November 17, 2004. Corrine Gray comments dated May 4, 2005.
CDF	CDF #678-02, January 9, 2003.
Coastal Commission	No response.
North Gualala Water District	No comment.
Planning Division - Ukiah	No response.
Pint Arena City Hall	No response.
GMAC	Held a public hearing on the project at their regularly scheduled meeting on November 6, 2003 and unanimously agreed to recommend denial of the project. They outlined three objections to the project. Pertinent parts of the comments are included below and staff responses are in <i>italics</i> . One, "the height of the house exceeds the maximum allowed. However, moving the house closer to the street would solve this." <i>Please refer to the Land Use section of the report for the maximum height limit for the zoning district (28 feet).</i> Two, "The house is visible from most of the beach. Several other houses in this development are also visible, but they all pre-date the current rules concerning public visibility. Again, moving the house closer to the street might result in an acceptable position" <i>Please refer to the Aesthetics section of the report for a detailed discussion on the visual resources policies applicable to the project.</i> Third, "There are several geologist reports with conflicting conclusions. If it is determined that the bluff is unstable, then the house would have to be moved closer to the street." <i>The applicants' neighbor at the time (Steven Yates) submitted a report prepared by Jim Glomb which confused the GMAC. The report from Mr. Glomb was generic and not specific to the subject parcel. The report made generalized recommendations about geologic conditions in the Gualala area. Also, the applicants had a registered geologist (Mr. Thomas E. Cochrane) provide some background geological findings about the subject parcel but the reports were determined to be inadequate for the purposes of determining the necessary bluff top setback because technically the preparer of the report did not meet County LCP requirements that the report be prepared by a registered civil engineer or an engineering geologist. Furthermore, the reports failed to accurately identify the blufftop edge or provide a setback for the economic lifespan of a new structure. Finally, the applicants obtained an appropriate report from BACE Geotechnical Inc. dated August 29, 2003. Staff relied on this report to make Geologic Setting and Earth sections of the report.</i>

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**ANN ZOLLINGER**

PO Box 1675  
Glen Ellen California 95442  
707 328-3192

**RECEIVED**

AUG 15 2005

CALIFORNIA  
COASTAL COMMISSION

Mr. Bob Merrill  
California Coastal Commission  
North Coast  
701 "E" Street, Suite 200  
Eureka CA 95501

August 11, 2005

Re: A-1-MEN-05-037

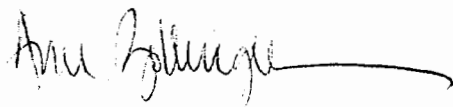
Dear Mr. Merrill,

I received today the Commission Notification of Appeal with the tentative hearing dates of September 14-16, 2005. If it is possible I would like to ask that the date be set at a later time. Information was given to the Mendocino County Board of Supervisors that I did not see until 5 days after the Hearing. Much of the information presented by Mr. Bacik and Mr. Olsburg is either misleading or incorrect. To cite two critical examples, Mr. Olsburg states that the landslide that is referred to in the other geologist's report prepared by Mr. Glomb is not there but the photograph of the area he refers to is not the same area. Additionally, he never addressed the severe erosion under the trees that is shown as sloping on his topographical map.

I am in the process of hiring a surveyor, an attorney and another geologist. Needless to say finding the correct individuals is a time consuming project.

Although I will be supplying other information to support the appeal request, I am enclosing a letter to Dr. David Colfax which outlines further some of my concerns.

Sincerely,



Ann Zollinger

**EXHIBIT NO. 6**

**APPEAL NO.**

A-1-MEN-05-037

(PIETY/PANELLI)

**CORRESPONDENCE**

(Page 1 of 5)

To: Ms. Jeanine Nagel

463-4592

Dr. David Colfax  
Mendocino County  
Board of Supervisors  
501 Low Gap Road  
Ukiah CA 95482

RECEIVED

August 1, 2005

smt via fax 463-4245

AUG 15 2005

CALIFORNIA  
COASTAL COMMISSION

Dear Dr. Colfax,

The purpose of this letter is to outline my concerns over the response of the Board of Supervisors last week to my appeal concerning the property on Pirates Drive in Gualala. The Board had apparently pre-determined its decision prior to the meeting, I can only assume based on the letter sent to the Board by Mr. Frank Shaw Bacik, counsel for the applicants. I picked up a copy of this letter last Friday and was unaware of its contents prior to that time.

**Credibility of the Appellant**

Mr. Bacik sets the tone for his entire presentation with a blatant misrepresentation of my character. Mr. Bacik states "Sabotage and obstruction of respondents' project for her own self interest is Ms. Zollinger's true agenda. This point should be kept in mind by the Board in regard to every argument Ms. Zollinger makes and/or every piece of "evidence" she introduces." I have attempted until this time to appeal only the issues that I outlined but Mr. Basik seems to feel that falsely bashing my character is an acceptable issue to raise before the Board.

I have never met Mr. Bacik. I have only had three short conversations with Ms. Piety. I introduced myself to her briefly before the meeting with the Coastal Permit Administrator. After the meeting when I was discussing my options with the staff planner, Ms. Peity was standing at the counter for the end the conversation. Her comment to me was that I "should be careful for what I wish for." My final conversation with Ms. Peity was when she called me to inform me that my property was not part of the Smuggler's Cove subdivision and she forbade me from using the path used by the others to the beach.

I did in a letter to Ms. Piety express my true intention in obtaining a second home in that area. I have vacationed there with my children for over ten years. I did offer to purchase her property and "as I have young children, my intention would be to build much further back on the lot for obvious reasons and a small cottage would more than fulfill our needs." From the above statement and the fact that I have always known that a house would be built on the adjacent lot demonstrates that I do not "merely wish to create an easement for ocean views for which she (I) never paid."

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## Background

It appears from Mr. Bacik's letter and the letters from the neighbors that there may have been a personal issue between Ms. Piety and the Yates. I cannot speak to this.

When Ms. Piety declined my offer to purchase her home, I did decide to proceed with the purchase of the Yates' house. We spoke to Rick Miller prior to the purchase of our home. He stated that we would definitely have a neighbor but that the house would not be out on the bluff. The next time we spoke to him he was very distraught and said that he could not discuss this application as Ms. Piety had not only threatened to sue the County but him personally.

I was also in receipt from the Yates of the GMAC recommendations and of the report from Jim Glomb. There are still issues in both of these documents that are of great concern that have not been addressed.

## Issues Raised on Appeal

### **1. Coastal-Bluff Morning-Glory**

Ms. Piety has obviously done a lot of work to mitigate the harm that will be done to this plant by any development of the site. She went to such great lengths to appease the California Department of Fish and Game and according to Rick Miller she finally wore them down.

It is still apparent to any lay person that a smaller home and septic system would have a lesser impact. The current project would impact more than 65% of the site versus 35% by a smaller home. The Coastal Zoning Code Section 20.532.100(A)(1) states that no development shall be allowed in Environmentally Sensitive Habitat Areas unless the following findings can be made: "2. There is no feasible less environmentally damaging alternative." Quite simply, there is.

### **2. Bluff Retreat**

This issue is without a doubt my greatest concern.

Again, Mr. Bacik misrepresents that facts and what I wrote. For example he states "her (my) assertion that there is a "massive landslide" at the base of the bluff below respondents' property." This is a false statement. The landslide is at the base of the property (not on the applicant's property.) The massive landslide is near by on Cook's Beach. This landslide below the subject property is still not addressed in the additional report by BACE as what they photographed and reported on is in a different location.

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The erosion under the trees and the inaccuracy of the BACE report was also not addressed and is of great concern. It is difficult to describe this site verbally. The area with the trees that per the drawing provided by Mr. Olsberg is directly below the proposed house. Per that drawing the area in question has retreated at least five feet in the last two years.

Mr. Bacik states that "just to be safe, respondents are planning to drill piers into the cliffs to support their home." This foundation system was recommended due to weak near surface soils on the property and is recommended when a standard spread footing is not suitable. Although this foundation helps to protect their home, it does nothing to protect the bluff or my home.

I have no confidence in the BACE report. First and foremost, I was told by Rick Miller that Ms. Piety was referred to BACE by the County because the first reports done for Ms. Piety were incomplete in the County's opinion. Mr. Miller told me that the County likes the way BACE writes their reports. I was also told by the geologist that I would like to hire that he has testified in two lawsuits against BACE. As I have previously said, when I attempted to discuss my concerns with Mr. Olsborg he just told me to sue him.

It is my belief that a false impression has been given of this property and its safety issues. I am currently hiring a surveyor to create an accurate drawing of this parcel and the surrounding area which will help to create a very different view of the problems.

### **3. Aesthetics**

I believe that the Gualala Municipal Advisory Council was clear in its recommendation. Additionally, there is a new overlook and public access to the beach.

### **Conclusion**

Mr. Raymond Hall, the Coastal Permit Administrator, had a long conversation with Mr. Bacik in the corridor prior to the Board of Supervisors meeting. During that conversation I overheard him checking to make sure that Mr. Olsburg was there and going over much of Mr. Bacik's presentation.

Mr. Bacik represented that because of the septic location, this was the only location for the house. In his letter he states that Mr. Rittiman said that it was the "best" location but in fact the option of a smaller house and a smaller septic system was never investigated.

The County referred the applicant to BACE Geotechnical. There are inaccuracies in the report. The County has a direct conflict of interest because of

the referral. I have been prevented by Ms. Piety from getting another opinion in the form of an independent geologist not related to the County or the applicant.

The Board of Supervisors did not question one issue of this appeal. Not one supervisor looked at the additional BACE report submitted at the meeting. Mr. Olsburg did not address my concerns but rather pontificated about his own credentials. The County of Mendocino has an obvious conflict of interest having recommended Mr. Olsburg and his firm to Ms. Piety and has not shown any interest in the discrepancies in his report. The only comment made by any Supervisor was a sarcastic play on words which I for one not only did not find amusing but rather insulting.

I believe that the only prudent action that the Board could have taken would have been to allow me to get an independent unbiased geologist's report.

I was obviously naïve going into this meeting thinking that I would receive a fair and unbiased hearing of the issues from the Board of Supervisors. This was not the case. I am currently in the process of interviewing and hiring an attorney and a surveyor. I am also willing to hire a geologist. I am disappointed that the Board voted to error on the side of lies and misrepresentations based on character bashing rather than facts and questions. Per your conversation with my partner, Jeff Irvine, I am also sending a copy of this letter to County Counsel.

Sincerely,

Ann Zollinger  
PO Box 1675  
Glen Ellen CA 95442  
707 328-3192

cc. Jeanine Nadel, County Counsel  
Raymond Hall, Coastal Permit Administrator

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