

## CALIFORNIA COASTAL COMMISSION

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# F9a

Date Filed: February 9, 2006  
49th Day: March 30, 2006  
180<sup>th</sup> Day: August 8, 2006  
Staff: Tiffany S. Tauber  
Staff Report: February 17, 2006  
Hearing Date: March 10, 2006  
Commission Action:

## STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-88-040-A1**

APPLICANT: David Wurtman & Flora Jean Chang  
(formerly Ravenna & Nogle)

PROJECT LOCATION: Bluff top parcel west of Highway One,  
approximately one mile south of Albion at 2230  
Highway One North, Albion, Mendocino County  
(APN 123-290-05)

DESCRIPTION OF PROJECT  
PREVIOUSLY APPROVED: Construction of a 2,300-square-foot, 20-foot-high  
single-family residence with an attached garage,  
well, septic system, and driveway.

DESCRIPTION OF  
AMENDMENT REQUEST: Construction of a 2,400-square-foot, 17-foot-high  
single-family residence with an attached 683-  
square-foot garage, septic system, gravel driveway,  
landscaping, and extension of utilities.

GENERAL PLAN DESIGNATION: Rural Residential, 5-acres Planned  
Development

ZONING DESIGNATION: Rural Residential

LOCAL APPROVALS RECEIVED: None Required

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP; CDP File No. 1-88-040

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission approve with conditions, the requested amendment to the coastal development permit originally granted for the construction of a single-family residence on a bluff top parcel west of Highway One, approximately one mile south of Albion, about .25 miles south of Salmon Creek, in a designated “highly scenic” area of Mendocino County.

The original permit approved in 1988 (CDP No. 1-88-040, Ravenna & Nogle), authorized the construction of a 2,300-square-foot, 20-foot-high single-family residence with an attached garage, well, septic system, and driveway. The permit was approved with five Special Conditions addressing visual resource issues and evidence of adequate services and required (1) submittal of photographs, landscape plans, and site elevations to minimize visual impacts of the project, (2) submittal of evidence of a good faith effort to relocate the proposed driveway location over adjacent property, (3) submittal of written evidence of approval of the proposed well from the Mendocino County Department of Public Health, (4) submittal of landscape improvement and tree removal plans, and (5) all utilities be placed underground and any nighttime lighting be of a low intensity and directed downward or towards the structure. The residence was approved with a 50-foot bluff setback. The applicants satisfied the special conditions that were required to be met prior to issuance of the permit, and the permit was issued. The well was installed pursuant to the permit, and thus, the permit is considered vested. However, the house itself and none of the other authorized improvements were ever developed, and the site has remained largely undeveloped for many years. The current applicants purchased the property within the last few years and wish to construct a house with a different design.

The proposed amendment request seeks approval of an approximately 2,400-square-foot, 17-foot-high, single-family residence with an attached 683-square-foot garage, septic system, and gravel driveway. The proposed amendment would site the residence approximately 56 feet from the edge of the bluff in approximately the same footprint as the originally approved residence and be sited and designed in a manner that would not increase the visual impact of the project. The residence as proposed to be amended would be slightly redesigned, and would be (1) located in generally the same footprint as the originally approved residence, (2) approximately the same size, and (3) three feet lower than the original residence. The driveway would be located in the same location as the original approval. Additionally, as part of the amendment request, the applicant proposes to remove four trees along the driveway alignment to create a turnaround area that complies with current California Department of Forestry (CDF) requirements. New

landscaping would be added to further screen parts of the proposed house from view from Highway One.

The primary issues raised by the project as proposed to be amended include the protection of visual resources and geologic hazards. The project also raises standard issues regarding the provision of adequate services for new development and the protection of water quality from construction impacts.

Since approval of the original permit in 1988, the development standards applicable to the site have changed. For example, the Mendocino County Local Coastal Program (LCP) was certified in 1993, and became the new standard of review for coastal development permit applications. In addition, over the last decade, the Commission and the County now often condition new development on bluff top parcels upon requirements that applicants assume the risks of developing in areas subject to bluff retreat and record deed restrictions precluding the construction of future shoreline protective devices to protect new development from geologic hazards. In addition, site conditions have changed, in that additional erosion of the bluff face has occurred and trees on the site have grown substantially, further screening the development site from public vantage points. Furthermore, the current owners wish to build a house of a different design than the house that was originally permitted. As development standards, site conditions, and the proposed project have changed, different special conditions are needed to bring the project into conformance with the certified LCP.

Staff believes that with the attachment of ten new special conditions that would replace the five special conditions of the original permit (CDP No. 1-88-040, Ravenna & Nogle), the project as amended would be consistent with the Mendocino LCP. These recommended conditions would require (1) conformance of the design and construction plans to the geotechnical report, (2) no future bluff or shoreline protective device, (3) recordation of a deed restriction imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property, (4) assumption of risk, waiver of liability and indemnity, (5) conformance of the development with the proposed landscape plan, (6) design restrictions regarding colors, lighting, and underground utilities, (7) conformance of the development with the proposed erosion and runoff control plan, (8) implementation of erosion control along the utility trench alignment, (9) evidence that the property owners affected by the proposed installation of underground utility extensions agree to comply with the requirements of Special Condition No. 8, and (10) submittal of an approved Encroachment Permit issued by CalTrans required to install utilities within areas of CalTrans right-of-way.

As conditioned, staff has determined that the development with the proposed amendment would be consistent with the policies of the certified Mendocino County LCP and the public access policies of the Coastal Act.

**The motion to adopt the staff recommendation of approval with conditions is found on page 5.**

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**STAFF NOTES:**

**1. Procedural Note**

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if: (a) it lessens or avoids the intent of the approved permit; unless (b) the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

The Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the conditionally approved permit. On July 14, 1988, Coastal Permit No. 1-88-040 (Ravenna & Nogle) was approved by the Commission for the construction of a 20-foot-high, 2,300-square-foot single-family residence with an attached garage, well, septic system and driveway. The permit was approved with five special conditions intended to assure consistency with the provisions of the Coastal Act regarding the protection of visual resources, and ensuring approval of the proposed well by the Mendocino County Department of Public Health.

The current amendment request seeks to construct a single-family residence of approximately the same size and in the same general footprint. The proposed amendment would site the residence further away from the bluff edge and would be sited and designed in a manner that would not increase the visual impact of the project. Accordingly, the development as amended would conform to the policies and standards of the certified Mendocino LCP with respect to designing and siting development so as to be compatible with the visual resource and geologic hazard policies.

Therefore, the Executive Director found that the proposed amendment would not conflict with the intent of Coastal Development Permit No. 1-88-040 because with conditions, visual resources would continue to be protected to the same degree under the proposed amendment and the development could be safe from geologic hazards. Since this amendment request would not result in a lessening or avoidance of the intent of the originally approved permit, the Executive Director accepted the amendment request for processing.

**2. Standard of Review**

The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective acceptance of a certified LCP, the standard of review for all coastal permits and permit amendments for

developments located between the first public road and the sea is the certified LCP and the public access policies of the Coastal Act.

**I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

I move that the Commission approve Coastal Development Permit Amendment No. 1-88-040-A1 pursuant to the staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT AMENDMENT:**

The Commission hereby approves the coastal development permit amendment and adopts the findings set forth below on grounds that the development as amended and subject to conditions will be in conformity with the policies of the certified Mendocino County Local Coastal Program, is located between the sea and the nearest public road to the sea, and is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

**II. STANDARD CONDITIONS: (See attached Appendix A)**

**III. SPECIAL CONDITIONS:**

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

- A. All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated March 10, 2005 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE**

**COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.

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

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

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 1-88-040-A1, including, but not limited to, the residence with the attached garage, foundations, well, septic system, and driveway in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code No 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence with the attached garage, septic system, and driveway if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses

whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

**3. Deed Restriction**

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

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

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

**5. Landscaping**

- A. The permittee shall undertake development in accordance with the proposed landscape plan dated January 18, 2006 entitled "CDP Landscape Plan" prepared by Leventhal, Schlosser, Architects. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. No limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning.
- C. All plantings and all existing trees on the parcel be maintained in good growing conditions throughout the life of the project, and to ensure continued compliance with the landscape plan. If any of the existing trees or any of the trees and plants to be planted according to the plan die or are removed for any reason, they shall be immediately replaced in-kind or with other native non-invasive species common to the area that will grow to a similar or greater height.
- D. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed demolition. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- E. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

**6. Design Restrictions**

- A. All exterior siding and roofing of the proposed structure shall be composed of the colors proposed in the application or darker earth tone colors only. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or other approved structures without an amendment to this permit. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare;
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast

downward such that no light will shine beyond the boundaries of the subject parcel; and

C. All utilities serving the proposed project shall be placed underground.

**7. Erosion and Runoff Control Plan**

The permittee shall undertake development in accordance with the approved Erosion and Runoff Control plan dated June 15, 2005 prepared by Leventhal, Schlosser, Architects. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**8. Utility Trenching Erosion Control**

All utility trenching shall be performed consistent with the following provisions:

- A. The contractor shall implement erosion control techniques (such as coir rolls, straw bales, or silt fencing) along the trench alignment prior to ground disturbance; and
- B. Following the completion of trenching, the contractor shall sow the construction corridor and any other disturbed sites, including any construction access routes not following established roadways, with a commercially available seed mixture composed of the same grass species that dominate the trench alignment prior to construction disturbance.

**9. Utility Trenching and Affected Property Owners**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit to the Executive Director evidence that the property owners affected by the proposed installation of underground utility extensions have granted authorization to the applicants to implement the erosion control measures required by Special Condition No. 8.

**10. Caltrans Encroachment Permit**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by CalTrans required to install utilities within areas of CalTrans right-of-way, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by CalTrans. Such changes

shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**IV. FINDINGS AND DECLARATIONS FOR APPROVAL**

The Commission hereby finds and declares:

**1. Site Description**

The subject site is a bluff top parcel located west of Highway One, approximately one mile south of Albion, and approximately 0.25 miles south of Salmon Creek in Mendocino County. (See Exhibit Nos. 1-2). The parcel is an approximately one-acre, rectangular land-locked parcel surrounded on two sides by a 4.5-acre parcel (APN 123-290-04) over which the applicants have an access easement. The applicants also have an access easement to Highway One over APN 123-290-03. (See Exhibit Nos. 3 and 5)

The property and surrounding area is designated as "highly scenic" in the certified Mendocino County LCP. The parcel is located on an open coastal terrace about 160 to 190 feet above sea level and approximately 60 feet west of Highway One. The northeast edge of the property is vegetated with a windrow of shore pines and the remainder of the parcel is vegetated with grasses, brush, and berry vines. The proposed development site is minimally visible from Highway One through a clearing in the trees for motorists traveling south. The proposed development site is not visible while traveling north on Highway One, or from the public access area recently acquired by the Mendocino Land Trust located to the south of the site due to the nature of the topography and intervening dense vegetation. Highway One is at a higher elevation than the subject property, and views across the site from the highway are limited due to the forested landscape between the highway and the subject site.

The site is currently undeveloped with the exception of a well that was installed pursuant to the original permit (CDP No. 1-88-040, Ravenna & Nogle) and a prior existing dirt driveway that extends from the development site through the applicants' easement east to Highway One.

**2. Originally Approved Project**

The original permit application was approved by the Commission on April 13, 1988 with revised findings adopted on July 14, 1988. The approved permit authorized the construction of a one-story, 20-foot-high, 2,300-square-foot single-family residence with an attached garage, well, septic system, and driveway. The applicants proposed to locate the house 50 feet from the edge of the bluff consistent with the recommendations of the geological report submitted as a part of the application.

The residence was sited to take advantage of on and off site screening opportunities so as to avoid significant adverse impacts to scenic and coastal resources. Specifically, the house was sited behind an offsite knoll, which would block the view of the single story structure from a portion of Highway One and existing pine trees on the property were found to provide additional year-round screening from Highway One.

The permit was approved with five Special Conditions that required (1) submittal of photographs, landscape plans, and site elevations to minimize visual impacts of the project, (2) submittal of evidence of a good faith effort to relocate the proposed driveway location over adjacent property, (3) submittal of written evidence of approval of the proposed well from the Mendocino County Department of Public Health, (4) submittal of landscape improvement and tree removal plans, and (5) all utilities be placed underground and any nighttime lighting be of a low intensity and directed downward or towards the structure.

The original applicants satisfied the special conditions that were required to be met prior to issuance of the permit, and the permit was issued. The well was installed pursuant to the permit, and thus, the permit is considered vested. However, the house itself and none of the other authorized improvements were ever developed, and the site has remained largely undeveloped for many years. The current applicants purchased the property within the last few years and wish to construct a house with a different design.

Since approval of the original permit in 1988, the development standards applicable to the site have changed. For example, the Mendocino County Local Coastal Program (LCP) was certified in 1993, and became the new standard of review for coastal development permit applications. In addition, over the last decade, the Commission and the County now often condition new development on bluff top parcels upon requirements that applicants assume the risks of developing in areas subject to bluff retreat and record deed restrictions precluding the construction of future shoreline protective devices to protect new development from geologic hazards. In addition, site conditions have changed, in that additional erosion of the bluff face has occurred and trees on the site have grown substantially, further screening the development site from public vantage points. Furthermore, the current owners wish to build a house of a different design than the house that was originally permitted. As development standards, site conditions, and the proposed project have changed, different special conditions are needed to bring the project into conformance with the certified LCP.

### **3. Permit Amendment Description**

The proposed amendment request seeks approval of an approximately 2,400-square-foot, one story, 17-foot-high single-family residence with an attached 683-square foot garage, septic system, and gravel driveway. The proposed amendment would site the residence approximately 56 feet from the edge of the bluff in generally the same footprint as the

originally approved residence. As proposed to be amended, the residence would be three feet lower in height, and would be sited and designed in a manner that would not increase the visual impact of the project. The proposed driveway would also be sited in the same location as approved under the original permit.

The proposed amendment also includes (1) removal of four trees in the northeast corner of the site along the driveway alignment to create a turnaround consistent with California Department of Forestry requirements, (2) a landscaping plan that involves planting two shore pines and one wax myrtle near the north central edge of the site to provide additional visual screening, and (3) an erosion and runoff control plan.

#### 4. Geologic Hazards

##### Summary of LCP Policies

LUP Policy 3.4-1 states the following in applicable part:

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

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

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

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

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation. All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist’s report.*

LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that:

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

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- “(1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.”*

Section 20.500.010 of the Coastal Zoning Code states that development shall:

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

Section 20.500.020(B) of the Coastal Zoning Code states in applicable part:

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

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

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

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

Discussion

The subject property is an approximately one-acre parcel situated on an elevated marine terrace that has a west/northwest-facing approximately 160-foot-high ocean bluff with a moderately steep slope gradient that varies from about 9.5 horizontal to one vertical ratio (9.5H:1V) to 4H:1V toward the northwest. There is an approximately 20 to 40-foot-wide gravel, cobble and boulder beach at the toe of the bluff.

As described above, the proposed amendment involves the construction of a new single-family residence with an attached garage, septic system, and driveway. The residence would be a new structure that Mendocino County LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) require to be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during the economic life span of 75 years. Additionally, these provisions require that the setback be a sufficient distance so as to eliminate the need for shoreline protection devices.

The original permit approved development of a single-family residence set back 50 feet from the bluff edge consistent with recommendations contained in a geologic report submitted with the application. As part of the permit amendment application, the applicant submitted a new, updated geotechnical report prepared by BACE Geotechnical (BACE) dated March 10, 2005 that involved a reconnaissance of the site, research of vertical and oblique historic aerial photographs, subsurface exploration, and specific development recommendations. A supplemental analysis dated August 24, 2005 was prepared by BACE in response to Commission staff's request for additional information including a quantitative slope analysis and bluff retreat rate documentation.

During site visits by BACE in October and December 2004, a landslide block characterized by an approximately 6-inch-high head scarp fracture was observed about 15 to 20 feet from the edge of the bluff. Between site visits conducted by BACE from December 14, 2004 and February 8, 2005, the landslide block on the upper part of the bluff failed and left slide deposits on the lower part of the bluff. Based on a comparison of reconnaissance photos taken at the site before and after the recent failure, the BACE report indicates that the failure appears to have occurred within the upper 40 feet of the bluff and involved the upper, more deeply weathered zone of bedrock. The middle portion of the bluff that has not failed consists of gray sandstone that is less fractured, harder, and less weathered.

The upper portion of the bluff now consists of a debris slide scar where most of the material has slid away and left a fresh, exposure of soil and rock. The bluff at the

property is characterized in the geotechnical report as a debris slide slope, a geomorphic feature typically characterized by steep, partially vegetated slopes that have been sculpted by numerous debris slide events. The vegetated slopes are partially disrupted by shallow, slope creep deposits. The slope creep deposits are relatively shallow masses, up to a few feet in thickness, of soil and broken, weathered rock materials. These deposits can support vegetation, but the deposits can also move slowly, periodically, or rapidly down slope, primarily during, or shortly after periods of rain.

The upper approximately 15 feet of the bluff face in the landslide area is steep, has no vegetation growth, and is vulnerable to surface erosion. According to the geotechnical report, relatively shallow bluff instability and landward erosion of the bluff edge will likely occur at varying, non-uniform rates due to periodic debris slides or infrequent, shallow sliding due to surface runoff. Debris slide material on the lower bluff will continue to erode from wave action and from rainfall on the debris slope. The lower bluffs outside the limits of the debris slide are comprised of generally hard rocks that are resistant to wave erosion, except for erosion within the weaker fracture zones.

Based on the results of site reconnaissance, aerial photograph review, and subsurface investigation, the geologic report estimates an average bluff retreat rate of 2.25 inches per year. However, given the recent landslide block failure on the upper bluff, BACE doubled this estimated retreat rate to 4.5 inches per year to allow for some additional sloughing of the steep, upper bluff. The report concludes that the bluff is not threatened by imminent failure, although continuing erosion will occur. The supplemental analysis also considered the potential for increased erosion as sea level rises due to global warming and concluded that the projected rise (1.6 feet over the next century, or 1.2 feet in the next 75 years) will be a gradual process and will have little effect on present erosion rates since the lower bluffs are comprised of relatively hard rock.

Mendocino County LUP Policy 3.4-7 and CZC Section 20.500.020(B) require that new structures be set back a sufficient distance from the edge of the bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years) and the setback be of sufficient distance to eliminate the need for shoreline protection devices. As discussed above, BACE concluded that the bluff is eroding at an average rate of about 4.5 inches per year. Therefore, over a period of 75 years representing the economic life span of a house, the bluff would erode back approximately 28.13 feet. A safety factor of two was applied to arrive at a recommended 56.25-foot bluff setback. This recommended bluff setback was further substantiated by the supplemental analysis that was prepared by BACE dated August 24, 2005 that included a quantitative slope stability analysis and bluff retreat rate documentation. The proposed site plans show the residence located a minimum of 56.25 feet from the edge of the bluff consistent with this recommendation.

The Commission's staff geologist reviewed the geotechnical data submitted by the applicants' geologist, visited the site, and determined that the proposed bluff retreat rate,

setback, and other recommendations were reasonable. To ensure that the proposed amended residence is developed consistent with the recommended bluff setback as proposed, the Commission attaches Special Condition No. 1, which requires that the final construction plans for the residence adhere to the design recommendations specified in the geotechnical report, and that development is constructed consistent with these recommendations. The condition requires all final design and construction plans for the amended development be consistent with the recommendations contained in the geotechnical report dated March 10, 2005, prepared by BACE Geotechnical Consultants. Therefore, the Commission finds that as conditioned, the proposed development as proposed to be amended would be set back a sufficient distance from the bluff edge to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. In addition to the recommended bluff setback, the geotechnical report sets forth detailed recommendations regarding site grading, foundation support, seismic design criteria, and site drainage to address potential settlement, strong seismic shaking, and the impact of construction on the stability of the site and its ability to support the development as discussed below.

The subject property is within the Coast Ranges geomorphic province, a zone of high seismic activity associated with the active San Andreas Fault system, which passes through the Mendocino County coastal area approximately 7 kilometers west of the site. The project site is subject to strong ground shaking due to future, nearby earthquakes on this fault system during the lifetime of the proposed structure. According to the geotechnical report, the intensity of ground shaking at the site will generally depend on the distance to the causative earthquake epicenter, the magnitude of the shock, and the response characteristics of the underlying earth materials. No evidence of other faulting was observed in the property vicinity, and none of the published references that were reviewed show faults on, or trending towards, the property. The geotechnical report recommends a foundation system of drilled reinforced-concrete piers with interconnecting grade beams, which would allow the proposed residence to gain uniform support within the stronger weathered bedrock underlying the terrace sands, thereby mitigating the detrimental effects of differential settlement and potential liquefaction of native soils during an earthquake.

The geotechnical report further states that because uncontrolled surface water is often the cause of bluff /slope instability and foundation problems, surface flows and subsurface seepage should be intercepted and diverted away from structural improvements, building foundations, and the edge of the bluff. The report recommends that all concentrated flows such as those from roof downspouts, driveways, are drains should, where practical, be collected in a closed pipe and discharged inland, or be uniformly dispersed away from

the structure and bluff edge. The proposed amended site plans show all drainage being directed away from the bluff edge.

The geotechnical report states, "*Before construction, BACE should review the final grading and foundation plans and geotechnical-related specifications for conformance with our recommendations.*" As discussed above, Special Condition No. 1 requires that the final construction plans for the residence adhere to the design recommendations specified in the geotechnical report, and that the proposed amended development is constructed consistent with these recommendations. The condition requires all final design and construction plans for the amended development, including foundations and site drainage, be consistent with the recommendations contained in the geotechnical report dated March 10, 2005, prepared by BACE Geotechnical Consultants. As conditioned, the development as proposed to be amended would include the measures determined by the geologic investigation to be necessary to stabilize the site consistent with LUP Policy 3.4-1.

Based upon the geologic report prepared by BACE and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard would be minimized if the residence is set back approximately 56.25 feet or more from the bluff edge, and if the design and construction recommendations discussed above are implemented. Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore, cannot always absolutely predict bluff erosion rates.

The BACE Geotechnical Investigation report states that their geological and engineering services and review of the proposed amended development was performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities and specifically states, "*No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in the report.*" This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat. Regarding the recent landslide, the report further states,

"The recent landslide occurred along a pre-existing scarp that had been at an incipient stage of failure for an undermined amount of time. We did not observe evidence of additional headward enlargement of the

landslide (i.e. no other scarps or ground cracks behind the recent headscarp.) We conclude that the risk of gross, deep-seated failure of the bluff has been reduced by recent failure of the unstable landslide block, and bluff instability in the near future will be relatively shallow in nature. However, as with most ocean bluff or hillside sites, some risk of gross instability exists, and must be accepted by the property owner. The current standard of practice in geotechnical engineering makes it possible to identify most areas of existing instability, and/or to make recommendations which lower the risk of instability to levels that are generally acceptable, but cannot make total assurances of mitigating all possible future instability.”

Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and could potentially some day require a bluff or shoreline protective device.

LUP Policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Ordinance state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed amended development could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed amended development and necessitate construction of a seawall to protect it. Therefore, the Commission attaches Special Condition No. 2, which indicates that by acceptance of the permit amendment, the applicants agree that no bluff or shoreline protective devices shall ever be constructed to protect the development approved by this amendment.

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

The Commission also attaches Special Condition No. 3, which requires the applicants to record a deed restriction for the amended project, to impose the special conditions of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the LCP and to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development.

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

Lastly, the Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single-family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicants might propose in the future are normally exempt from the need for a permit or permit amendment. However, in this case because the project site is located within a highly scenic area, future improvements to the approved project are not exempt from permit requirements pursuant to Section 30610(a) and Section 13250(b)(1) of the Commission's regulations. Section 30610(a) requires the Commission to specify by regulation those classes of development, which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. Moreover, Section 13250(b)(1) indicates that improvements to a single-family structure in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future improvements to the approved amended development would not be exempt from coastal development

permit requirements and the County and the Commission will have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard.

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

## **5. Visual Resources**

### Summary of LCP Policies

Section 30251 of the Coastal Act has been specifically incorporated into LUP Policy 3.5-1 of the Mendocino LCP and states in part:

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

LUP Policy 3.5-3 states in applicable part:

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

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

*In addition to other visual policy requirements, new development west of Highway One in designated 'highly scenic areas' is limited to one-story (above natural grade)*

*unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. ...New development should be subordinate to the natural setting and minimize reflective surfaces. ...*

NOTE 1: The LUP Maps designate the area west of Highway One in the project vicinity as highly scenic.

NOTE 2: Coastal Zoning Ordinance 20.504.015(A) reiterates that this section of coastline is a “highly scenic area.”

Zoning Code Section 20.504.015(C)(1) states that:

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

Zoning Code Section 20.504.015(C)(2) states that:

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

Zoning Code Section 20.504.015(C)(3) states that:

*New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

Zoning Code Section 20.504.015 (C)(12) states that:

*Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions...*

### Discussion

Policy 3.5-1 of the County’s LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated “highly scenic areas” should be subordinate to the natural setting. The County’s Zoning Ordinance reiterates these policies. Specifically, Coastal Zoning

Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code requires an 18-foot height limit for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

The subject site is a bluff top parcel located west of Highway One in an area designated as “highly scenic” in the Mendocino County LUP. The parcel is located on an open coastal terrace about 160 to 190 feet above sea level and approximately 60 feet west of Highway One. The northeast edge of the property is vegetated with a windrow of shore pines and the remainder of the parcel is vegetated with grasses, brush, and berry vines.

As noted previously, the original permit approved the development of a 20-foot-high, 2,300-square-foot single-family residence with special conditions to ensure that the residence would not result in adverse impacts to visual resources. The special conditions of the original permit pertaining to the protection of visual resources include: (1) submittal of photographs, landscape plans, and site elevations, (2) submittal of landscape improvement and tree removal plans, and (3) requiring all utilities be placed underground and any nighttime lighting be of a low intensity and directed downward or towards the structure.

The residence as proposed to be amended would be slightly redesigned, but would be (1) located in generally the same footprint as the originally approved residence, (2) approximately the same size, and (3) three feet lower in height than the original residence. The driveway would be located in the same location as the original approval. Additionally, the applicant proposes to remove four trees along the driveway alignment to create a turnaround area that complies with current California Department of Forestry (CDF) requirements.

The applicants submitted elevation and landscape plans as part of the proposed amendment application. In addition, the applicants constructed story poles on the site to assess the visual impact of the project as proposed to be amended. Commission staff visited the site and found that the proposed residence would be slightly visible to motorists heading south on Highway One through a clearing in the vegetation along the northern property boundary. The proposed project would be the first residence visible in an otherwise undeveloped landscape south of the Pacific Reefs residential subdivision. To minimize the visibility of the residence from southbound Highway One, the applicant submitted a landscaping plan that includes planting two shore pines (*Pinus contorta*) and one Pacific wax myrtle (*Myrica californica*) along the north central edge of the property. Both tree species are fast growing, native evergreen trees that reach an average height of

20-30 feet and would fill in the clearing in the existing vegetation in a manner that would adequately screen the residence from public view as seen from southbound Highway One. To ensure that the landscape plan is implemented as proposed, the Commission attaches Special Condition No. 5 that requires the applicant to undertake development in accordance with the proposed landscape plan and prohibits limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan without a permit amendment.

The residence would not be visible from other locations along Highway One due to the distance between the building site and the highway (approximately 60 feet) and because of the dense intervening vegetation. Additionally, the proposed project as amended would not be visible from the Navarro Headlands public access area located approximately half a mile to the south of the project site due to a rise in the topography south of the proposed residence and existing stands of trees that comprise the view shed to the north from this public vantage point. The findings of the original permit state, "...the house has been sited behind an offsite knoll whose height will block the view of the single story structure from a portion of Highway One." As the proposed amended residence would be sited in essentially the same footprint as the originally approved house, and would not be any greater in height as discussed below, the residence would continue to be screened from these public vantage points by the offsite knoll.

The original residence was approved at 20 feet in height prior to certification of the Mendocino LCP that limits the height of structures built in highly scenic areas west of Highway One to eighteen (18)-feet above average natural grade and limits the number of stories to one unless an increase in height would not affect views to the ocean, or be out of character with surrounding structures. The proposed residence as proposed to be amended would be one-story and 17-feet-high, three feet lower than the originally approved residence and consistent with the story and height limitations of LUP Policy 3.5-3, and Coastal Zoning Code Section 20.504.015(C)(2).

The applicant proposes to utilize earth tone and natural materials in the construction of the proposed amended residence including (1) western red cedar siding with clear oil finish, (2) bronze anodized aluminum sash doors and windows, (3) copper flashing, gutters and down spouts, (4) black composition shingle roofing, and (5) clear redwood or cedar decking. The proposed exterior building materials and colors would be subordinate to the natural setting, and would blend in hue and brightness with their surroundings consistent with Coastal Zoning Code Section 20.504.015(C)(3). The Commission finds that if the applicant or future owner(s) choose to change the materials or colors of the residence to brighter, non-earth tone colors or materials, the development may no longer be subordinate to the natural setting and may become increasingly visible from public vantage points. To ensure that the exterior building materials and colors used in the construction of the development as proposed to be amended are compatible with natural-appearing earth tone colors that blend in hue and brightness with their surroundings as proposed, the Commission attaches Special Condition No. 6(A), which requires that all

exterior siding and visible exterior components be made of natural-appearing materials of dark earth tone colors only.

The proposed design of the residence does not raise an issue with the hue and brightness requirement of Coastal Zoning Ordinance Section 20.504.015(C)(3) as discussed above. However, the proposed amended project plans show the majority of the west-facing portion of the residence being constructed largely of glass windows, rather than painted surfaces. The extensive use of glass building materials could result in an adverse visual impact as viewed from the ocean if the building materials were reflective in nature. Therefore, Special Condition No. 6(A) also requires that non-reflective building materials be used in the construction of the proposed residence to minimize glare. Additionally, Special Condition 6(B) requires that exterior lights be shielded and positioned in a manner that will not allow glare beyond the limits of the parcel as required by LUP Policy 3.5-15. As conditioned, the project is consistent with LUP Policy 3.5-4 and 20.504.015(C)(3) requiring building materials to be of non-reflective surfaces and the proposed project would not result in a significant adverse impact to public views as required by LUP Policy 3.5-3 and Zoning Code Section 20.504.015(C)(1).

The applicants propose installing underground utility extensions from an existing PG&E transformer, across two properties to the north of the applicants' property under separate ownership, eastward toward Highway One and a Caltrans right of way, and then continuing westward along the extent of the applicants' proposed driveway to serve the proposed residence. Specifically, the utility connections would be installed underground in an approximately 1.5-foot-wide x 5-foot-deep trench within an existing PG&E easement that would start at the PG&E transformer located on APN 123-300-04 (owned by Glickfeld) and extend approximately four feet northward to APN 123-300-03 (owned by Jones-Rivlin) where it would extend approximately 30 feet eastward to reach a Caltrans right-of-way along Highway One. From there, the trench would extend northward to the applicants' parcel and follow the alignment of the existing driveway easement. Zoning Code Section 20.504.015 (C)(12) requires power distribution lines to be placed underground in designated "highly scenic areas" west of Highway 1. To ensure that the proposed utility extensions would not result in an adverse impact to visual resources and the scenic qualities of the designated "highly scenic" area, Special Condition No. 6(C) requires that utility extensions be placed underground as proposed consistent with Zoning Code Section 20.504.015(C)(12).

Construction of the proposed amended residence would not involve significant grading or alteration of topographic features consistent with the provisions of LUP 3.5-1 that require that permitted development minimize the alteration of natural landforms.

Therefore, the Commission finds that as conditioned, the proposed amendment is consistent with Policies 3.5-1 and 3.5-3 of the LUP and with Section 20.504.015(C) of the Zoning Code, as the amended development would (1) be within applicable height limits for the designated highly scenic area, (2) be sited and designed to protect coastal

views from public areas, (3) be visually compatible with the character of surrounding areas, (4) be subordinate to the character of its setting, (5) place power distribution lines underground, and (6) minimize alteration of natural landforms.

## **6. Water Quality**

### Summary of LCP Provisions

LUP Policy 3.1-25 states:

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

Coastal Zoning Code Section 20.492.020(B) incorporates sedimentation standards and states in part:

*“(B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*

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

### Discussion

The project as proposed to be amended involves the construction of a 2,400-square-foot single-family residence, an attached garage, septic system, and gravel driveway. As discussed previously, the subject parcel is located on a coastal terrace atop a steep coastal bluff. Runoff originating from the development site that is allowed to drain over the bluff edge or drain indirectly to the ocean could contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of marine waters.

LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and

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

As discussed in Section 5. Geologic Hazards above, the geotechnical report recommends that all concentrated flows such as those from roof downspouts, driveways, and drains should, where practical, be collected in a closed pipe and discharged inland, or be uniformly dispersed away from the structure and bluff edge. The proposed amended site plans show all drainage being directed away from the bluff edge. Special Condition No. 1 requires that the final construction plans for the residence adhere to the design recommendations specified in the geotechnical report, and that the proposed amended development be constructed consistent with these recommendations, including that all drainage be directed away from the bluff edge. This condition would ensure the protection of the biological productivity of coastal waters consistent with LUP Policy 3.1-25 in that site drainage would not be directed over the bluff edge in a manner that would adversely affect water quality.

Additionally, the applicants submitted an Erosion and Runoff Control Plan prepared by Leventhal, Schlosser, Architects dated June 15, 2005. The plan provides that (1) straw bales be installed to contain runoff from construction areas, (2) on-site vegetation be maintained to the maximum extent possible during construction, (3) any disturbed areas be replanted or seeded with native vegetation following project completion, (4) runoff from impervious surfaces of the development be collected and directed into pervious areas on the site for infiltration, (5) velocity reducers be used on gutters and roof downspouts, and grading activities be restricted to the drier months between May 1 and October 31. To ensure that the erosion and runoff control measures are implemented as proposed, the Commission imposes Special Condition No. 7, which requires the applicants to undertake development in accordance with the Erosion and Runoff Control Plan prepared by Leventhal, Schlosser, Architects dated June 15, 2005.

The applicants propose installing underground utility extensions that would involve excavating an approximately 1.5-foot-wide x 5-foot-deep trench for a total distance of approximately 85 feet. The proposed alignment would be within an existing PG&E easement that would start at the PG&E transformer located on APN 123-300-04 (owned by Glickfeld) and extend approximately four feet northward to APN 123-300-03 (owned by Jones-Rivlin) where it would extend approximately 30 feet eastward to reach a Caltrans right-of-way along Highway One. From there, the trench would extend northward to the applicants' parcel and follow the alignment of the existing driveway easement. The proposed utility trenching would result in the disturbance of a portion of the vegetated area surrounding the area to be excavated and would result in the potential for sediment to be entrained in surface runoff and potentially be deposited off-site. Sediments entrained in runoff can result in adverse water quality impacts such as increased turbidity and can result in potential adverse impacts to off-site environmentally sensitive habitat areas.

To control sedimentation and minimize the potential for large quantities of sediment to leave the site, the Commission attaches Special Condition No. 8 which requires (1) the implementation of sediment control techniques (such as coir rolls, straw bales, or silt fencing) along the trench alignment prior to ground disturbance, and (2) the disturbed areas be planted with a seed mixture composed of the same species that dominate the affected areas following completion of trenching activities.

As described above, portions of the proposed utility trenching would occur on neighboring properties not owned by the applicants. To ensure that the applicants have the legal ability to construct the utility extensions as proposed and conditioned by the Commission, Special Condition No. 9 requires the applicants to submit evidence that the property owners affected by the proposed utility trenching agree to comply with the requirements of Special Condition No. 8 regarding the implementation of sediment control measures.

Therefore, the Commission finds that as conditioned, the proposed amended development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized. Furthermore, the Commission finds that the proposed amended development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be directed away from the coastal bluff.

## **7. Locating New Development**

### Summary of LCP Provisions

Policy 3.9-1 of the Mendocino County LUP states that new development shall be located in or in close proximity to existing areas able to accommodate it, and shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources. Policy 3.8-1 of the LUP requires consideration of Highway One capacity and availability of water and sewage disposal when considering applications for coastal development permits. The intent of the policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

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

Zoning Code Section 20.376.025 provides for one dwelling unit per residentially designated parcel.

### Discussion

The subject property is designated in the Mendocino County LUP and Coastal Zoning Code as Rural Residential, 5-acres Planned Development. The proposed amendment involves the construction of a single-family residence located in an area planned for single-family residential use. Therefore, the proposed single-family residence is consistent with the LUP and zoning designation for the site.

Development of the site as a single-family residence is envisioned under the certified LCP. The significant cumulative adverse impacts on traffic capacity of Highway One from development approved pursuant to the certified LCP were addressed at the time the LCP was certified. Therefore, as conditioned, the proposed single-family residence is located in an area able to accommodate the proposed development and would not result in adverse impacts to the traffic capacity of Highway One consistent with the applicable provisions of LUP Policy 3.8-1.

The proposed amended development would be served by an existing on site well that was installed pursuant to the original permit (CDP No. 1-88-040, Ravenna & Nogle). The proposed amendment includes the installation of a septic system that has been redesigned from that approved under the original permit to meet current design standards. The Mendocino County Division of Environmental Health has determined that the proposed septic system would have adequate capacity to serve the proposed amended development and has granted its approval.

The applicant has submitted an electrical supply plan that involves extending utility lines underground from an existing PG&E transformer, across two properties to the north of the applicants' property under separate ownership, eastward toward Highway One and a Caltrans right of way, and then continuing westward along the extent of the applicants' proposed driveway to serve the proposed residence. Specifically, the utility connections would be installed underground in an approximately 1.5-foot-wide x 5-foot-deep trench within an existing PG&E easement that would start at the PG&E transformer located on APN 123-300-04 (owned by Glickfeld) and extend approximately four feet northward to APN 123-300-03 (owned by Jones-Rivlin) where it would extend approximately 30 feet eastward to reach a Caltrans right-of-way along Highway One. From there, the trench would extend northward to the applicants' parcel and follow the alignment of the existing driveway easement.

The applicant has submitted a letter from CalTrans indicating that the installation of underground conduits to place utilities in the area of Caltrans right-of-way is feasible and that an Encroachment Permit from Caltrans is required for the installation. The applicant has also submitted a copy of the existing PG&E easement as well as letters signed by both property owners to the north (Glickfeld and Jones-Rivlin) demonstrating permission to trench and install the necessary underground utilities on these neighboring properties. To ensure that the applicants have adequate permission to carry out the proposed development as conditioned, Special Condition No. 9 requires the applicant to submit

evidence that the owners of the properties affected by the proposed utility trenching have granted authorization to the applicants to install the utilities and implement the erosion control measures required by Special Condition No. 8. Special Condition No. 10 requires the applicant to submit a copy of the Encroachment Permit approved by Caltrans prior to issuance of the permit, or evidence that no permit is required.

As discussed above, the proposed development has been conditioned to include mitigation measures, which will minimize all significant adverse environmental impacts. The Commission finds, therefore, that as conditioned, the proposed development with the proposed amendment is consistent with LUP Policies 3.9-1, 3.8-1, and with Zoning Code Sections 20.368.025 and 20.458.010, because there will be only one residential unit on the parcel, there would be adequate services on the site to serve the proposed development, and the project would not contribute to adverse cumulative impacts on highway capacity, scenic values, geologic hazards, water quality, or other coastal resources.

9. **Protection of Environmentally Sensitive Habitat Areas (ESHA)**

Summary of LCP Policies

LUP Policy 3.1-7 in applicable part states:

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

...

LUP Policy 3.1-10 states:

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

- *Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*

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

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

*ESHA- Development Criteria*

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

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

The subject property does not contain any known environmentally sensitive habitat. However, the site is located adjacent to coastal bluffs suitable for the growth of rare plant species and is located within several hundred feet of existing wetland and riparian environmentally sensitive habitat.

The Commission finds that the ESHA located near the site could be adversely affected if non-native, invasive plant species were introduced in landscaping at the site. Introduced invasive exotic plant species could physically spread into the ESHA and displace native riparian and wetland vegetation thereby disrupting the values and functions of the ESHAs. The seeds of exotic invasive plants could also be spread to nearby ESHA by wind dispersal or by birds and other wildlife. The applicant is not proposing to plant any exotic invasive plants as part of the proposed project. However, to ensure that the ESHA near the site is not significantly degraded by any future landscaping that would contain invasive exotic species, the Commission attaches Special Condition No. 5(D) that requires only native and/or non-invasive plant species be planted at the site.

In addition, the Commission notes that certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone,

have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/wildland interface areas. As these target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, the pest control compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. To avoid this potential cumulative impact to environmentally sensitive wildlife species, Special Condition No. 5(E) contains a prohibition on the use of such anticoagulant-based rodenticides.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the habitat area. Therefore, the Commission finds that the project as conditioned is consistent with the ESHA protection policies of the LCP.

## **9. Public Access**

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

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

As described above, the subject parcel is located west of Highway One and sits atop a coastal bluff approximately 160 feet above the ocean. There is no physical access from the subject parcel to the shoreline due to the very steep bluff. There are no trails or other public roads that provide shoreline access within the vicinity of the project and therefore, the proposed amended development would not interfere with existing public access. Furthermore, the proposed amended project would not create any new demand for public access or otherwise create any additional burdens on public access. Public access to the

coast is available nearby at the Navarro Point area recently acquired by the Mendocino Land Trust located approximately half a mile south of the site and along Highway One.

Therefore, the Commission finds that the proposed amended development does not have any significant adverse impact on existing or potential public access, and that the project as proposed, which does not include provision of public access, is consistent with the requirements of the Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the County's certified LCP.

**10. California Environmental Quality Act (CEQA).**

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission incorporates its findings on LCP and Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the development as amended has been conditioned to be found consistent with the policies of the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been required as permit amendment special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the development as amended and conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**Exhibits:**

1. Regional Location Map
2. Vicinity Map
3. Original Site Plan
4. Original Elevations
5. Proposed Amended Site Plan
6. Proposed Landscape Plan
7. Proposed Amended Elevations
8. Proposed Utility Trench Location
9. Original Staff Report 1-88-040

ATTACHMENT A:

STANDARD CONDITIONS

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

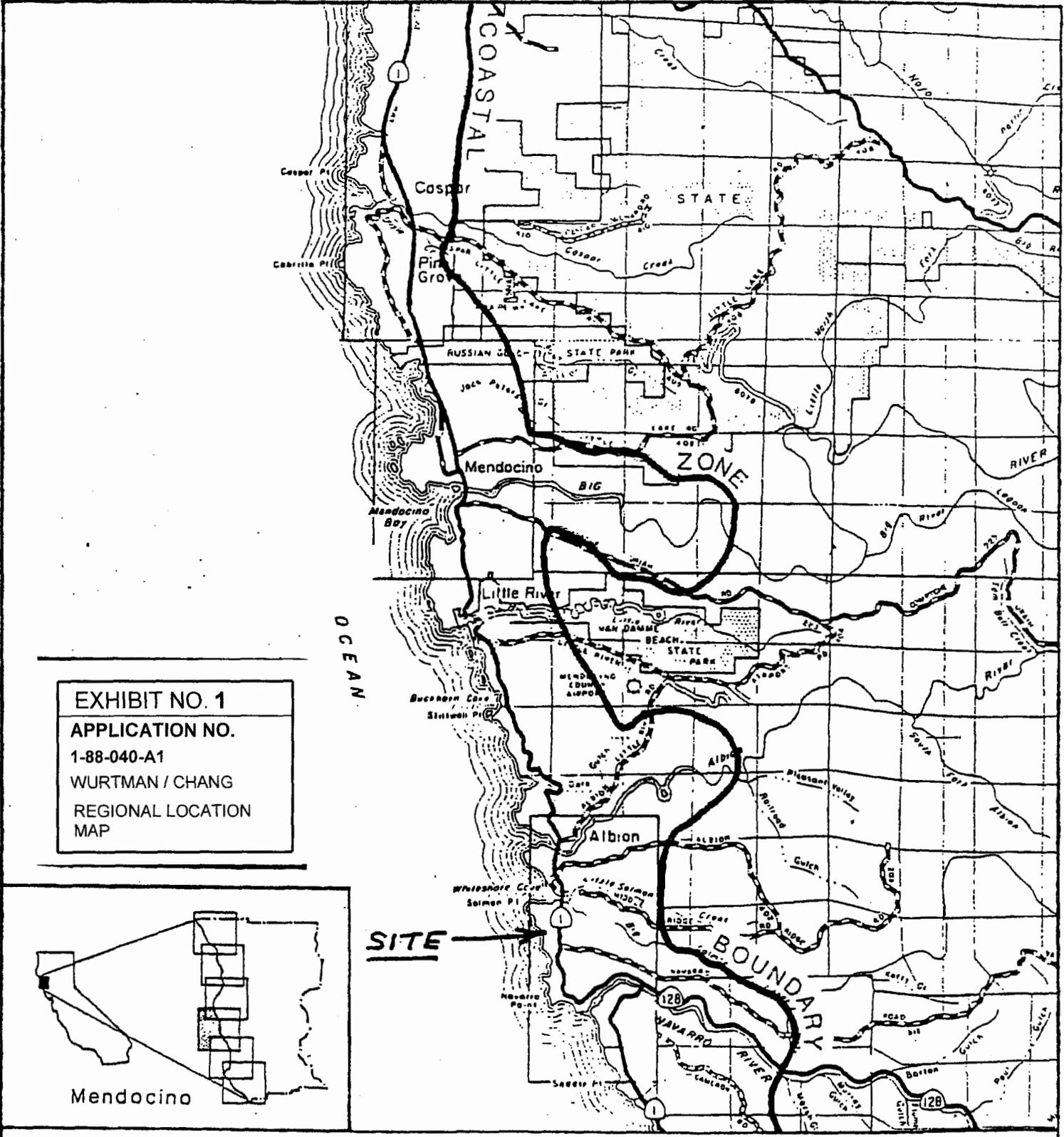
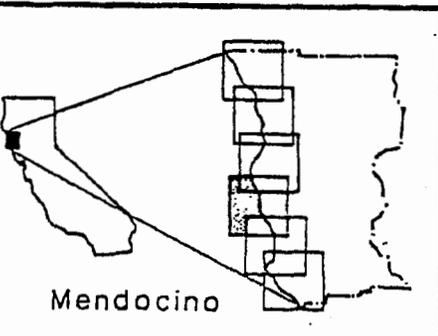
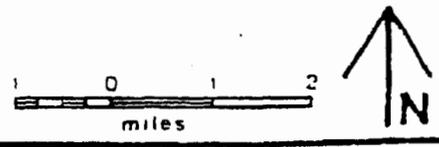
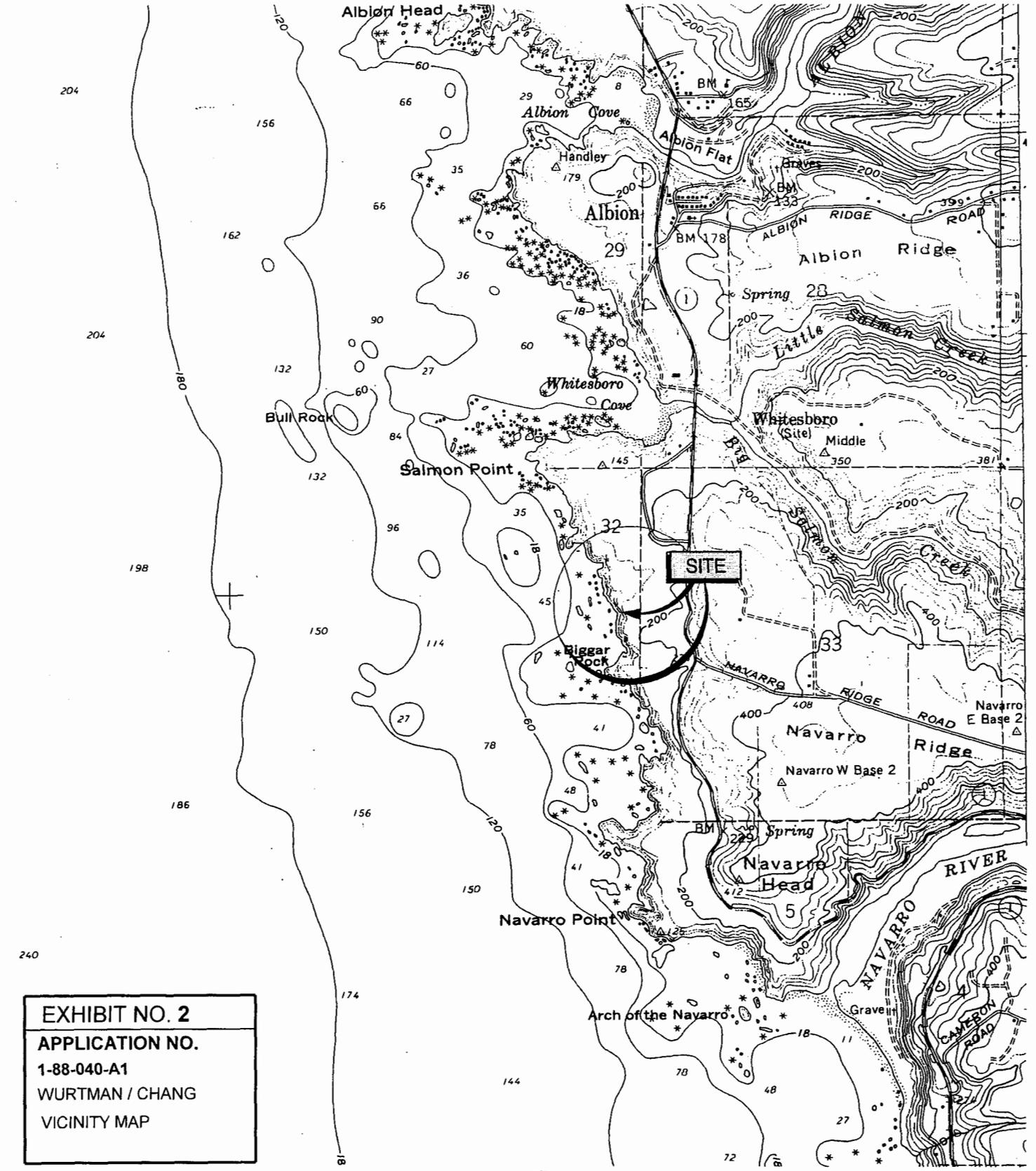


EXHIBIT NO. 1  
 APPLICATION NO.  
 1-88-040-A1  
 WURTMAN / CHANG  
 REGIONAL LOCATION  
 MAP



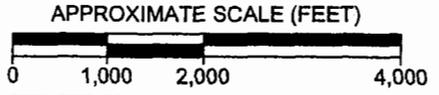
**SITE** →





**EXHIBIT NO. 2**  
**APPLICATION NO.**  
**1-88-040-A1**  
**WURTMAN / CHANG**  
**VICINITY MAP**

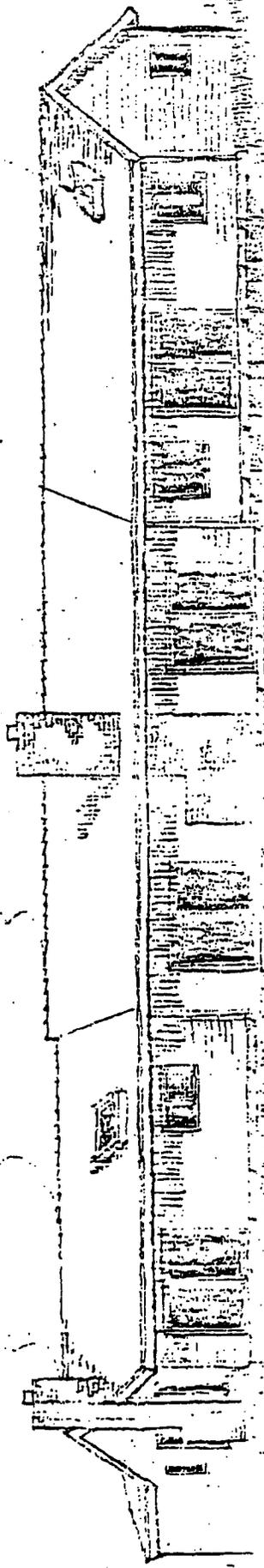
REFERENCE:  
 Albion, 1977, 7.5 Minute Quadrangle.



 <p><b>BACE Geotechnical</b>          a division of          Brunsing Associates, Inc.          (707) 838-0780</p>	Job No.: 11899.2 Appr.: <i>EEO</i> Date: 03/10/05	<p align="center"><b>VICINITY MAP</b></p> <p align="center">PROPOSED WURTMAN RESIDENCE          2230 North Highway One          Albion, Mendocino County, California</p>	<p align="center">PLATE  <b>1</b></p>
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FLIGHT



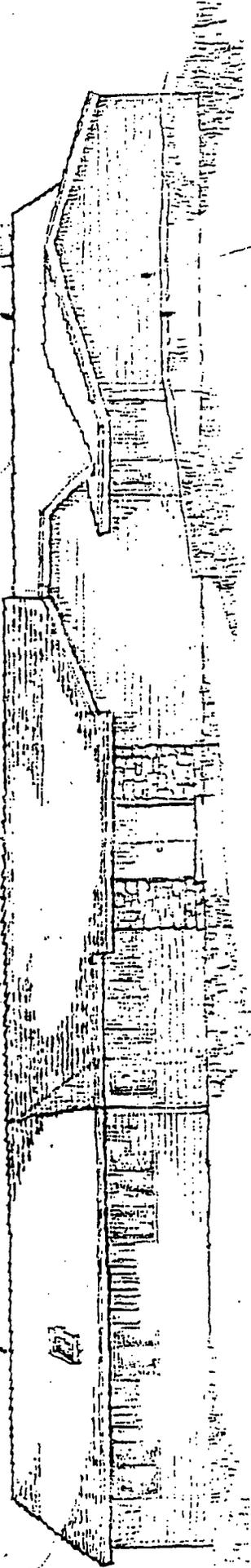
1/8" = 1'-0"

NORTHWEST ELEVATION

PERPETUAL ROG  
WOOD SHINGLE RO  
4:1/2 PITCH  
STONE CHIMNEY

8:1/2 PITCH

4:1/2 PITCH



4:1/2 PITCH  
WOOD SHINGLE RO  
STONE CHIMNEY

EAST ELEVATION

EXHIBIT NO. 4  
APPLICATION NO.  
1-88-040-A1  
WURTMAN / CHANG  
ORIGINAL ELEVATIONS





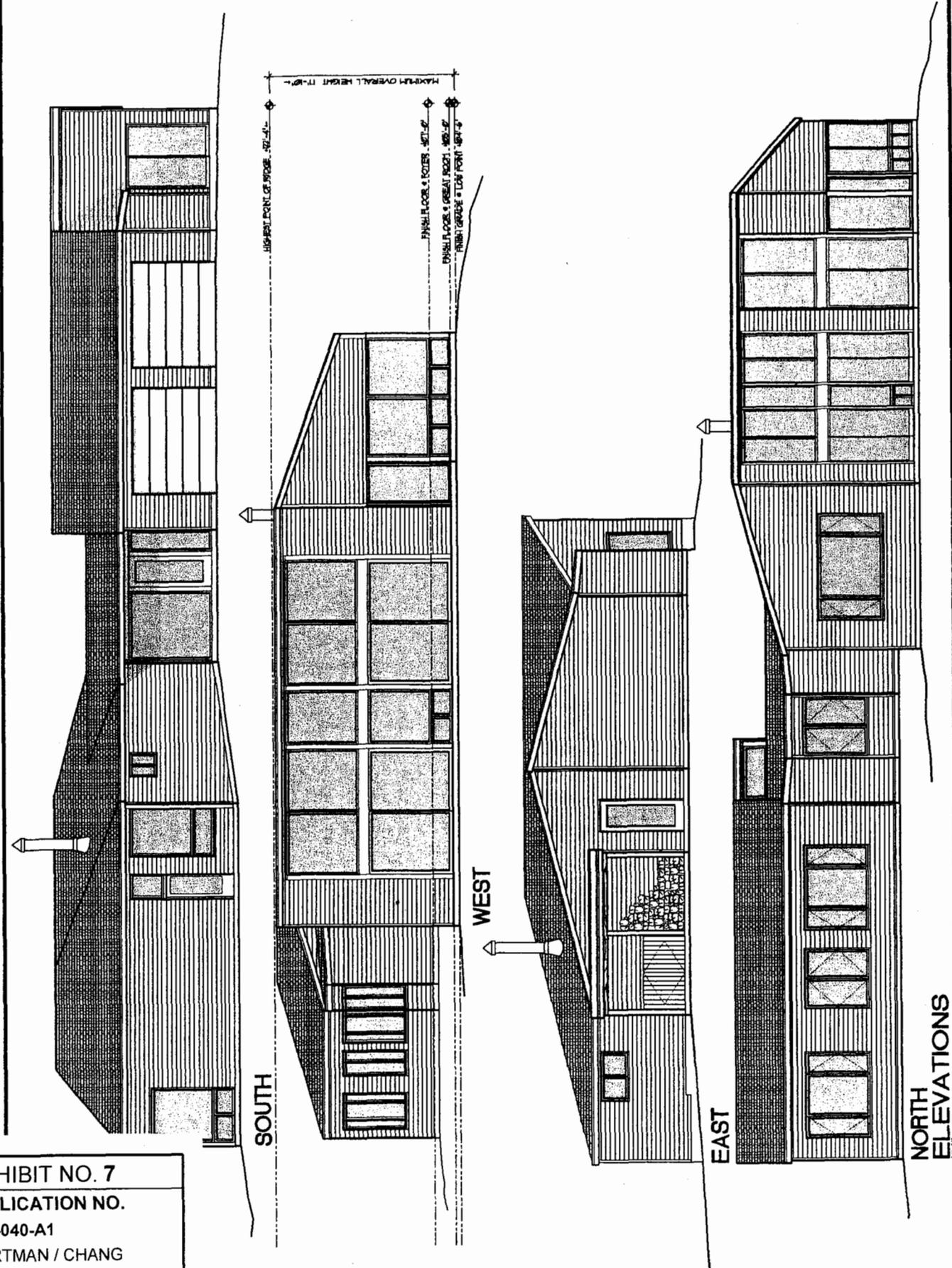
LEVENTHAL, SCHLESBERG, ARCHITECTS  
 1000 WEST 10TH AVENUE, SUITE 200  
 DENVER, COLORADO 80202  
 PHONE: 303.733.1111 FAX: 303.733.1112

ELEVATIONS

New Residence for  
**DAVE AND JEAN WURTMAN / CHANG**  
 2230 NORTH HIGHWAY ONE  
 ABLON, CA 95410

NO.	DATE
1	10/1/00
2	10/1/00
3	10/1/00
4	10/1/00
5	10/1/00
6	10/1/00
7	10/1/00
8	10/1/00
9	10/1/00
10	10/1/00

**A3.1**



**EXHIBIT NO. 7**  
**APPLICATION NO.**  
 1-88-040-A1  
 WURTMAN / CHANG  
 PROPOSED AMENDED  
 ELEVATIONS



CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA  
631 HOWARD STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
(415) 543-8555

FILED March 9, 1988  
49th DAY: April 27, 1988  
180th DAY: August 31, 1988  
Staff: James J. Muth



Project Approved: April 13, 1988  
Comm. Action on Findings: June 8, 1988  
Continued to: July 14, 1988

STAFF REPORT: REVISED FINDINGS  
TO REFLECT COMMISSION ACTION OF July 14, 1988

EXHIBIT NO. 9  
APPLICATION NO.  
1-88-040-A1  
WURTMAN/CHANG  
ORIGINAL STAFF REPORT  
MAP (1 of 14)

PROJECT DESCRIPTION

APPLICANT: Joan Marie Ravenna & Charles K. Nogle

PERMIT NO. 1-88-40

PROJECT LOCATION: 2230 Highway One North, Albion Mendocino County  
APN 123-290-05

PROJECT DESCRIPTION: Construction of a single-family dwelling, with  
attached garage and septic system, well and driveway

LOT AREA One acre ZONING Rural Residential

BLDG. COVERAGE 2,390 sq.ft. (LCP) PLAN DESIGNATION Rural Resident-  
ial-5 acres Planned Development

PAVEMENT COVERAGE 0 PROJECT DENSITY 1 du/acre

LANDSCAPE COVERAGE 0 HEIGHT ABV. FIN. GRADE 20 ft.

LOCAL APPROVALS RECEIVED: Mendocino Co. LUP Consistency Review #87-103, Dept.  
of Health septic approval, CALTRANS encroachment permit approval

SUBSTANTIVE FILE DOCUMENTS: Mendocino LUP, 1-82-110 & 1-87-116 (Ravenna &  
NCR-77-CC-496 (Bier & Brolly), 80-CC-253 (Lillis), 1-81-85 (Campbell), 1-83-29  
(Choe), 1-83-35 (Shandel), 1-84-10 (Roberts), 1-86-14 (Kohler), 1-86-165A  
(Lillis), and 5-88-004 (Lido), 1-82-273A3 (Paoli) and 3-87-43 (Hu).

PREVAILING SIDE: Commissioners Warren, Wright, Howard, MacElvaine, Malcolm,  
McInnis, McMurray, Knapp, and Chairman Wornum.

COMMISSION ACTION

The Commission adopted the following Resolution:

Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for  
the proposed development on the grounds that the development, as conditioned,  
will be in conformity with the provisions of Chapter 3 of the California  
Coastal Act of 1976, will not prejudice the ability of the local government  
having jurisdiction over the area to prepare a Local Coastal Program  
conforming to the provisions of Chapter 3 of the Coastal Act, is located  
between the sea and first public road nearest the shoreline and is in  
conformance with the public access and public recreation policies of Chapter 3  
of the Coastal Act, and will not have any significant adverse impacts on the  
environment within the meaning of the California Environmental Quality Act.

REVISED FINDINGS  
RAVENNA & NOGLE (1-88-40)  
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II. RECOMMENDED CONDITIONS

A. Standard Conditions

See attachment.

B. Special Conditions

~~X~~ Submission of Photographs, Landscape Plans, Site Elevations

PRIOR TO THE TRANSMITTAL OF THE PERMIT and for the purpose of determining special condition #4 (areas of tree removal and landscape improvements) below, and to minimize the visual intrusion of the project from public viewing areas and to open coastal views, the applicant as landowner shall submit to the Executive Director for his review and approval, a set of illustrated photographs, landscape plans, and site elevations.

a. The photographs shall show the site from a series of northernly, easterly and southerly public viewshed vantage points including Highway One as agreed to in consultation with the Executive Director.

b. The landscape site plans shall show, at a suitable scale, all of the following information designed to subordinate the proposed structure:

- all existing property lines landward from the edge of the blufftop;
- the location of the house (with noted property line and blufftop setback distance)
- the location of the proposed well, septic system and reserve area
- the location of the driveway and parking area on the property
- the location and spread of all existing trees on the property
- existing and proposed contour elevations at 2 foot contour intervals
- the area and angles of public viewshed across the property
- graphic notations as to approximately which trees or tree masses will be removed or trimmed because they either block the existing public view and are not necessary to screen the house from public view or would otherwise be removed due to the construction of the project itself, and;
- what additional measures will be taken to screen the house, roof and parking area from public view, including but not limited to, the approximate location/planting size and species type of additional screening plant materials, and/or raised earth berming.

c. Site Elevations, northern, southern and easterly portions of the property shall show, at a suitable scale, all of the following information:

- the length of the property line and existing natural grade along the northern, southern or easterly property line as the case may be landward of the blufftop;
- the house and roof outline as sited on the property behind the property line;

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REVISED FINDINGS  
RAVENNA & NOGLE (1-88-40)  
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- the outline of the height and area of the existing screening vegetation between the house and property line;
- a graphic delineation showing approximately what trees or tree masses, will be removed or trimmed as a result of construction of the project or would otherwise interfere with the public view from the State Highway and is not necessary to otherwise screen the house, roof, and parking area from public view, and;
- a graphic delineation with plan notes as to what additional measures will be taken to screen the house, roof, and parking area from public view including but not limited to the use of non-glare surfaces, and natural siding materials.

2. Relocated Driveway Access

PRIOR TO THE TRANSMITTAL OF THIS PERMIT, the applicant as landowner shall present evidence of a good faith effort in relocating his present driveway access easement over the adjacent property, APN 123-290-04 owned by Shannon so as to share a greater length of driveway and driveway access on APN 123-290-02 owned by Campbell as shown in Exhibit 4. The driveway shall be graded with porous materials such as gravel.

3. County Approval

PRIOR TO THE COMMENCEMENT OF HOUSE CONSTRUCTION, the applicant shall submit written evidence to the Executive Director for his review and approval that the Mendocino County Department of Public Health has approved the proposed well.

4. Areas of Tree Removal and Landscape Improvements

PRIOR TO THE OCCUPANCY OF THE HOUSE, but after the house has been framed and enclosed, all landscape improvements necessary to screen the house from existing or potential public views and the removal or trimming of all existing trees on the property which are not otherwise necessary to screen the proposed project from public view, shall be determined by the applicant and Coastal Commission staff during an on-site review. The applicant shall then draw up plans reflecting this determination and submit the plans to the Executive Director for his review and approval. Once the plans have been approved by the Executive Director, evidence of plan implementation shall be submitted to the Executive Director for his review and approval prior to occupancy.

5. Underground Utilities and Night Lighting

All utilities serving the proposed project shall be placed underground and any nighttime lighting shall be of a low intensity and directed downward or towards the structure.

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REVISED FINDINGS  
RAVENNA & NOGLE (1-88-40)  
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### III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

#### A. BACKGROUND

##### 1. PROJECT AND SITE DESCRIPTION

The applicants propose to construct a 2,300 square foot, 20 foot high single family residence with attached garage, well, septic system and driveway located on a blufftop parcel west of Highway One, approximately one mile south of Albion, about .25 miles south of Salmon Creek. (See Exhibits #1 and #2.) The one acre parcel has been designated on the County's certified Land Use Plan Map with an "RR-5-PD", Rural Residential, five acres minimum, Planned Development. The planned development designation controls internal circulation and access to Highway One. (See Exhibit #3). The parcel is surrounded on two sides by a 4.5 acre parcel, APN 123-290-04 owned by Shannon. The applicants have an access easement over Shannon's property as shown in Exhibit #4. Both the applicant and Shannon have an access easement to Highway One over land owned by Campbell, APN 123-290-03.

The blufftop parcel is located on an open coastal terrace about 160 to 190 above sea level and 40 to 60 feet below Highway One. (See Exhibit #5.) The proposed house is located 50 feet back from the edge of the bluff. Pine trees, about 18 to 24 feet in height, are planted along the easterly and southernly boundaries of the property. Other pine trees exist to the east and north of the parcel on APN 123-290-04. The remainder of the parcel is vegetated with grasses, brush and berry vines. The plot plan, building elevations, and floor plans are shown as Exhibits #6, 7 and 8 respectively.

##### 2. COASTAL PERMIT AND LAND USE PLAN HISTORY

In 1982, the Commission denied Ravenna & Nogle a coastal development permit (1-82-110) for a single family home. At that time the Commission found that approval of the project would significantly impact scenic resources of the Mendocino Coast by creating a precedent for buildout of 11 to 14 adjacent vacant parcels, causing adverse cumulative impacts. It would also prejudice preparation of the County's LCP because there was an impending TDC (transfer of development credits) program which would be incorporated into the County's coastal Land Use Plan, if feasible.

In November of 1987 substantially the same coastal development permit proposal (1-87-116, Ravenna & Nogle), was again denied by the Commission for the same reasons as in 1982. In February of 1988, the Commission granted a reconsideration to the Ravenna & Nogle permit (now 1-88-40).

Mendocino County Land Use Policy 3.5-12 (quoted in full below) proposes a transfer of development program for 17 parcels illustrated on Exhibit #9. This area has had a series of coastal development permit applications for various single-family homes. Throughout these permit decisions, the two common denominators have been whether permit approval would: (a) create

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adverse impacts, either individually or cumulatively, on scenic coastal resources; and (b) prejudice preparation of the County's LCP. Applications denied include Bier & Broolly (NCR-77-C-496), Ravenna & Nogle (1-82-110), Choe (1-83-29), and Shandel (1-83-35). One application for Campbell (1-81-85) was approved.

Other applications such as Lillis (80-C-253, 1-86-165A), Roberts (1-84-10), and Kohler, were located to the north of the TDC Area (Exhibit 10), and were approved with a variety of conditions including resiting, lowering of building profiles, and landscaping.

The Coastal Commission has a long history of concern for development within the Navarro Headlands area. In adopting a suggested modification to the County's Land Use Plan they found:

"The Commission's denial findings identified another highly scenic area which was accorded inadequate protections by the LUP. This is Navarro Headland, a highly scenic area between Salmon Creek and the Navarro River, where the LUP provides for fourteen residences, driveways, and related development. The plan densities (RR-5, 10, 40) would not allow further subdivisions in this area. This fourteen-lot area stretches for about 1.3 miles and varies in lot size from one to 38 acres. One small home was constructed before the passage of Proposition 20. No other structures are in the area. South of the area is the scenic recreational area of the Navarro River estuary and beaches. To the north is Pacific Reefs Subdivision with 24 lots, of which about 25 percent is developed."

"In numerous permit decisions, the Commission has found that this area possesses extremely high visual resource values of public importance (1-83-29, 1-83-35, 1-82-110). In denying application 1-82-110 (Ravenna-Nogle) for a single-family residence, the Commission found that this area 'is perhaps the most scenic of the entire Mendocino Coast, and to travelers emerging from the dense redwood forest of Highway 128, the fog, wind, winding road, grassy inaccessibility.' The Commission also found that 'the area north of the Navarro River is even more visually significant than the Whiskey Shoals area.' (Whiskey Shoals is a 71-lot subdivision purchased by the Coastal Conservancy, in part, to protect a highly visual section of the southern Mendocino Coast.) The Commission concluded that the residence could not be visually subordinated and that cumulative visual impacts from buildout of the other parcels in the area would adversely affect scenic resources. In another action (1-84-10, Roberts) the Commission specifically found that concentrating development adjacent to the existing Pacific Reefs Subdivision was consistent with visual resource protection."

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"Not only is the natural beauty of this rocky, open headland important, but its location on the Mendocino coastline adds to its significance. The area is adjacent to the Navarro River where Highway 128 intersects with Highway One. Highway 128 is heavily used and is the only State highway connecting the inland area to the Mendocino central and southern coastal areas. For these reasons, the Commission designated this area for priority one acquisition to the State Parks Commission for Proposition 18 parks' acquisition. The Parks Commission, noting the area was suitable for inclusion into its system, placed the area in a lower priority."

"Although the Commission continues to consider Navarro Headland as one of the most visually significant areas in Mendocino County, in reviewing a proposed land use plan the Commission must also recognize and account for the reality of the several separate ownerships in this area. The Commission has been informed that one of these parcels has been purchased by the Coastal Conservancy, and the possibility of further such public purchases exists. Thus, suggested modification 60 (Policy 3.5-12 quoted below) urges continuance of this effort as a means of avoiding the adverse visual impacts of full buildout on the Headland. The modification sets the stage for creation of a restoration plan - possible with the assistance of the Conservancy - which will provide for overall planning and development of the area. The plan will provide for clustering development in the northernmost area, where it will least impact viewshed values. For owners willing to participate in such a relocation of development potential, density bonuses may be provided as an incentive. This plan in cooperation with the State Coastal Conservancy could be prepared and submitted for Commission approval in conjunction with the implementation phase of the LCP."

"Although the Commission declines to require a program to relocate development potential in this area, the Commission strongly favors such a program to fully preserve scenic values at Navarro Headland. Even so, until the restoration plan becomes a reality, the LUP must provide for existing parcels. Modification 60, while allowing development, would require its clustering to best preserve open space. This control, together with the highly scenic area criteria and other development policies of this plan, can be executed to reduce adverse visual impacts to a level acceptable in light of Section 30250 and 30251 requirements."

Policy 3.5-12 of the County's certified LUP states:

"Development of the fourteen parcels between a portion of that area south of Salmon Creek and the Navarro River should be clustered to provide a maximum amount of permanent open space for the western portion of the headlands area. The Coastal Conservancy should be requested to provide assistance in implementing a restoration plan for those property owners willing to participate in such a plan. The restoration plan should consider the inclusion of all such parcels in one plan at one time. All

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development on the parcels should be clustered to the north and provide for the maximum amount of permanent open space along the western and southern portions of the property. The restoration plan may provide up to densities identified on the LUP maps. However, the plan shall provide incentives for concentrating future development in the northern most section by allowing for increased densities in this location for its current owners and for other owners who voluntarily transfer development to this location."

This policy refers to the 14 parcel area, shown on Exhibit #9 and includes all of the lots west of the dotted line. The project site is located within the northern part of this area.

In the course of evaluating this present permit, staff contacted public and private non-profit agencies to determine whether acquisition of the applicant's parcel is feasible at this time. Past Commission permit decisions within this area have turned, in part, on the feasibility of public acquisition and thereby avoiding adverse development impacts to this highly scenic area. This feasibility determination depends, to some extent, on the willingness of the landowner.

In recent telephone conversations with Mr. Ray Hall, Planning Director of the Mendocino County Planning Department, he stated that he has received no direction from the Board of Supervisors, and that he would like to see completion of the Point Cabrillo Amendment [also spelled out in the Mendocino LUP as is the Navarro Headlands Project] before they start working with the Coastal Conservancy on the Navarro Head Project.

A recent memorandum from the Coastal Conservancy states in part that:

"Further staff analysis of the Navarro Headlands area indicated that there was little support among property owners for Conservancy assistance. In addition, the market value of the viewshed parcels is quite substantial and there does not appear to be any feasible transfer of development 'receiver' site that would meet landowner financial expectations. Under these circumstances, the County's basic policy -- that transfers of development and participation in Conservancy projects should be voluntary -- cannot be met.

For these reasons, and because of the many competing requests for Conservancy assistance, the Conservancy staff is not engaged in any [further] project development at Navarro Headlands."

B. ACCESS

The proposed project is located between the first public road and the sea, therefore an access finding must be made under the Coastal Act.

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Section 30210 of the Coastal Act states:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

Section 30212 of the Coastal Act states in pertinent part:

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

(2) adequate access exists nearby, or,"

The closest available existing access nearby is located at Salmon Creek about .25 miles to the north which provides beach access. Additional access is available one mile to the north at the Albion River Mouth and one mile South at the Navarro River. However, there is presently no public vertical access to the Navarro Headlands area. The Commission required under 1-81-85 (Campbell) that a 10 foot wide lateral and vertical access easement 108 feet north of the applicant's property be dedicated. This easement offer has not yet been accepted, and therefore does not fall under the exception that adequate access exists nearby. Similarly, the County's LUP calls for vertical access to the headlands at a point 250 feet to the south of the applicant's property as shown on Exhibit #3.

Coastal Act Chapter 3 policies provide strong protection for public access and therefore dictate that the Commission give very careful review to any proposal including the need for public access. The County's Land Use Maps identify all possible accessways to be required; the subject parcel's access dedication areas were not so identified on the certified LUP maps.

When the Mendocino County LUP access policies were considered for certification, the Commission recognized that Section 30212 of the Act allowed some development projects to go forward without requirements for public access if adequate access was available in close proximity. Thus, the Commission certified the Mendocino County LUP access policies previously cited in this report, finding them consistent with Section 30212 of the Act.

The Commission therefore finds that adequate access exists nearby, 1/4 mile north at Salmon Creek, one mile north at the Albion River and one mile south at the Navarro River. Potential access exists 250 feet to the south as proposed in the certified Mendocino LUP. In addition, the Commission finds that the proposed development will not result in any adverse impacts, either individual or cumulative, on existing or proposed public access. The proposed development is therefore consistent with the public access policies of the Coastal Act.

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C. NEW DEVELOPMENT

Section 30250 of the Coastal Act states in pertinent part:

"(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

Although the applicant's property is located in close proximity (a few hundred feet to the south) of the Pacific Reefs Subdivision which has a community water supply, the 5 acre minimum lot sizes for the area are intended to be developed with individual wells and septic systems. Septic system permit approval for the proposed project has been received from the County Health Department. However, a local well permit approval has not been received. Since development of the parcel is contingent upon groundwater availability and a well to support the proposed project, evidence of County Health Department well permit approval is required as a prior to permit issuance condition in special condition #3. Only as so conditioned, can the project be found consistent with Section 30250, as all necessary services are available to the site.

D. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states in pertinent part that new development shall minimize risks to life and property in area of high geologic, flood, and fire hazard.

The proposed house is setback 50 feet from the edge of the bluff consistent with the recommendations of the geological report submitted as a part of the application. No impairment to the bluff's stability or structural integrity is anticipated as a result of the proposed project. Therefore, the Commission finds the project as proposed in conformance with Coastal Act Section 30253.

E. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states in part:

"The scenic and visual qualities of 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.

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Consistency with Section 30251 of the Coastal Act is the central issue presented by this proposed project. Previous decisions of the Commission give guidance as to the important public scenic elements of this area as viewed from the State Highway, its turnouts, and for the larger area of concern, from the public beach at the mouth of the Navarro River. The visual importance of this area and site are thoroughly discussed in the Adopted Findings quoted above for the adoption of the Mendocino LUP. Although the standard of review is the Coastal Act, applicable portions of the County's certified plan relating to visual resource protection provide an additional measure of guidance to conditions for mitigation.

1. SUBMISSION OF PHOTOGRAPHS, LANDSCAPE PLANS, AND SITE ELEVATIONS,

Development within highly scenic coastal areas requires sensitive design and siting mitigation measures. Additional information is necessary over and above the standard plot plan so that adverse impacts to scenic resources can either be avoided or mitigated. Therefore, the requirements of special conditions #1, calling for the submission of photographs, landscape plans, and site elevations are necessary to provide a meaningful basis for review. Information of this type was also requested in the County's LCP consistency review.

2. SUBORDINATION OF THE HOUSE TO THE CHARACTER OF THE LANDSCAPE

The applicant is proposing to construct a standard wood frame, one-story residence with a pitched roof which is twenty feet high at its highest point. Exhibit #6, shows that the house sits more or less at natural grade within a 107+ ft. by 230+ ft. buildable area, minus required building setback distances from the property line.

It is clear that the applicant does not have the same degree of flexibility in siting his home as the surrounding property owners have on their larger sites, as shown in Exhibit #9. As shown in Exhibits #5 and #6, the house siting area on the applicant's lot is actually quite limited. This is due to a combination of factors. First, unlike surrounding lots, this pre-existing, one acre lot is small compared to its 5 acre minimum lot size land use plan designation. The buildable area on the lot is made still smaller since one-third of the lot consists of an unbuildable bluff face. Secondly, there is the required space for and minimum separation distances between well and septic system areas and required property line and blufftop setback distances. Thirdly, in order to reduce the building height and mitigate adverse impacts to scenic and visual resources, the 2,300 sq. ft. house is limited to a single story structure. The combination of these three factors significantly reduces house siting flexibility on this particular parcel.

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However, notwithstanding this limited house siting flexibility, the proposed house site does take advantage of on and off site screening opportunities so as to avoid significant adverse impacts to scenic and coastal resources. As shown on Exhibit #5, the house has been sited behind an offsite knoll whose height will block the view of the single story structure from a portion of Highway One. Also some of the existing 18 to 24 foot high Bull Pine trees on the applicant's property can be used to provide additional, year round screening of the 20 foot high structure from Highway One views to the sea.

The Commission therefore finds that the proposed house, as sited and designed, is consistent with Section 30251 of the Coastal Act in that the house has been sited and designed to protect views to and along the ocean, that the house will be visually compatible with and subordinate to the character of the surrounding landscape, that the project will minimize the alteration of natural landforms.

### 3. AREAS OF TREE REMOVAL AND LANDSCAPE IMPROVEMENTS

County 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."

In approving the location of the house site, the Commission found that some of the existing Bull Pine trees on the applicant's property should be retained since they serve the valuable purpose of screening the house from Highway One public views. However, where such trees are not necessary to screen the house from public view, the Commission finds that these trees should be removed or thinned as they (1) block the public view to the sea from Highway One; (2) are not necessary for erosion control since there are no steep slopes; (3) do nothing to relieve the rigid, man-made geometry of line trees and create a more natural appearance on the landscape; and (4) do not create a backdrop whereby scenic views are enhanced on one side and less scenic areas are screened on the other side. It is only by removing or thinning these trees that the Commission finds consistency with Section 30251 of the Coastal Act and implementation of Mendocino County LUP policy 3.5-5.

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The Commission finds that retained trees on the applicant's property may not fully screen the house from public view and that additional landscape screening improvements on the applicant's property may be necessary. In determining what areas on the property may need additional landscape screening, the applicant shall consider both existing public views to his house and potential public views to his house. The potential public views of the applicant's house relate to those existing Bull Pine trees which are not on the applicant's property and are located on adjacent properties between the applicant's lot and Highway One. Since these trees are not on the applicant's property, they are not subject to his ownership or control and the applicant is not required to remove or thin any of these trees. However, by the same token, these trees are potentially subject to future removal under subsequent coastal development permitting decisions. Consequently, these trees cannot be considered as permanent elements of the landscape and relied upon to screen the applicant's house from potential public views from Highway One. The Commission finds that any additional landscape screening will serve the valuable purpose of completing the screening of the house from existing and potential public views. It is only through these landscape screening improvements that the Commission finds consistency with Section 30251 of the Coastal Act and implementation of Mendocino County LUP policy 3.5-5.

Finally, since the house siting issue has been resolved, the house itself, rather than a temporary pole structure, can be used to determine which areas on the applicant's property require subsequent tree removal or tree thinning and which areas on the applicant's property may require additional landscape screening improvements. Consequently, these determinations will be "approximately" made prior to the transmittal of the permit as stated in special condition #1 and then later "definitively" determined under special condition #4 after the transmittal of the permit and the house has been framed and enclosed but prior to the occupancy of the house.

#### 4. FUTURE DEVELOPMENT

Future ancillary development such as new tree plantings, terrain alterations, fences, house additions, antennae, satellite dishes, accessory structures and the like may degrade the scope and quality of the public view. This concern extends even to the treatment of the landscape plantings. Special care should be taken to select the right type of plants particularly if they are highly ornamental and not native to the area. Highly clipped and manicured hedges are not appropriate. Green lawns in the summer months, induced by water, should not be within the public viewshed in a normally brown summer landscape. The telltale signs of human presence must be kept to a minimum within highly scenic areas since these minor, but cumulative impacts, may degrade the overall quality of the natural landscape.

The Commission finds that future ancillary development does have the potential to degrade the overall quality of the natural landscape in a manner inconsistent with Section 30251 of the Coastal Act. However, the project parcel is presently subject to Coastal Commission permitting jurisdiction and, once certified into the County's LCP, will still be within the Commission's

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permit appeals area jurisdiction. Therefore, because of present permit review and future permit appeals oversight, the Commission found that no specific deed restrictions regarding future development proposals or open space scenic easements were necessary to ensure the protection of visual and scenic coastal resources consistent with Section 30251 of the Coastal Act.

5. REQUIREMENT TO EXPLORE THE FEASIBILITY OF RELOCATED DRIVEWAY EASEMENTS FOR SHARED ACCESS TO HIGHWAY ONE.

County LUP policy 3.5-9 states:

"The location of all new access roads and driveways in rural areas shall be reviewed prior to any grading work to ensure safe location and minimum visual disturbance. Direct access to Highway One shall not be permitted where it is feasible to connect to an existing or proposed public road or to combine access points for two or more parcels."

In addition, the "PD" (Planned Development) land use plan designation within this area calls for shared access to Highway One and internal circulation among these lots.

Both the applicant and the adjacent owner, Shannon, have the right to use Campbell's encroachment area to access Highway One as shown in Exhibit #4. However, this would result in two long driveways and would not minimize visual disturbance of the area. There is the possibility that three or more homes within this area could use the same extended driveway as shown in Exhibit #4. Special condition #2, requires the applicant to present evidence of a good faith effort to explore this possibility so as to reduce the visual impact of unnecessary driveways and hence conform to the visual subordination requirements of the Coastal Act. In any case the driveway shall be of porous materials such as gravel to allow water percolation and to blend into the surroundings.

The Commission finds that the applicant's good faith effort to relocate his driveway for shared access is consistent with Section 30251 of the Coastal Act and implements the intent of County LUP policy #3.5-9.

6. UNDERGROUND UTILITIES AND CONDITIONS ON NIGHT LIGHTING

Special condition #5 requires that all utilities serving the proposed project be placed underground and any nighttime lighting be of a low intensity and directed downward or towards the structure so as to avoid unintended adverse impacts to scenic resources as required by the visual subordination requirements of the Coastal Act. This condition was also placed on Campbell, 1-81-85 and is reflected in County LUP policies 3.5-8 and 3.5-15.

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7. COUNTY APPROVAL OF THE WELL.

Special condition #3 acknowledges that the applicant will need to submit written evidence to the Executive Director prior to the commencement of house construction that the Mendocino County Department of Public Health has approved the proposed well. The Commission finds that this special condition is necessary to achieve conformance with Section 30250 of the Coastal Act regarding new development and services necessary to support that development.

F. APPROVAL WILL NOT PREJUDICE MENDOCINO COUNTY'S PREPARATION AND IMPLEMENTATION OF FUTURE LCP.

Section 30604 of the Coastal Act mandates permit issuance if the project is consistent with Chapter 3 of the Coastal Act. As conditioned herein, approval of the project is consistent with the new development, geologic hazards, access, and visual resource policies of the Coastal Act. In addition, the infeasibility of public acquisition of this parcel will not contravene the intent of County LUP policy 3.5-12, calling for the transfer of development density, since the project location is located within the northern part of this highly scenic area - the area intended for density transfer and clustering from the southern part of this highly scenic area as shown on Exhibit #9. The Commission therefore finds that approval of this permit will not prejudice local government's ability to implement a certifiable LCP and that the conditions herein should be used as guidance in developing the County's zoning ordinances or implementation program.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Coastal Commission's permit process has been designated as the functional equivalent of C.E.Q.A.; thus, in reviewing permit applications, the Commission must consider the provisions of C.E.Q.A. One of the central C.E.Q.A. provisions is the consideration of less environmentally damaging alternatives and the consideration of proper mitigation measures to lessen significant environmental impacts. The Commission finds that the proposed project, as conditioned, is consistent with these C.E.Q.A. provisions, as discussed in the findings above.

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