

CALIFORNIA COASTAL COMMISSION

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Filed: December 5, 2006
49th Day: January 23, 2007
Staff: Tiffany S. Tauber
Staff Report: December 22, 2006
Hearing Date: January 12, 2007
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

APPEAL NO.: **A-1-MEN-06-047**

APPLICANTS: Kathleen Elliott Lloyd, Irene Elliott, Lynn & Donna Shalley

AGENT: Rick Jurczynski

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: On the north side of Albion Ridge Road, approximately 1/4 mile east of its intersection with Highway One at 33800 Albion Ridge Road (APN 123-170-19).

PROJECT DESCRIPTION: (1) Construct a 2,761-square-foot, two-story single-family residence with a maximum average height of 24 feet above natural grade with an attached 790-square-foot garage for a total of 3,551 square feet, (2) construct a retaining wall and driveway, (3) install a septic system and underground utilities, (4) convert an existing test well to a production well, and (5) grade approximately 30 cubic yards.

APPELLANTS: (1) Rixanne Wehren

(2) Commissioners Mike Reilly & Mary Shallenberger

SUBSTANTIVE FILE: (1) Mendocino County CDP No. 28-2006;
DOCUMENTS (2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

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

The development, as approved by the County, consists of (1) construction of a 2,761-square-foot, two-story single-family residence with a maximum average height of 24 feet above natural grade with an attached 790-square-foot garage for a total of 3,551 square feet, (2) construction of a retaining wall and driveway, (3) installation of a septic system and underground utilities, (4) conversion of an existing test well to a production well, and (5) grading approximately 30 cubic yards.

The subject site is an approximately one-acre parcel located in a designated "highly scenic" area on the top of a ridge above the Albion River on the east side of Highway One. The parcel is planned and zoned Rural Village (RV) in the County's LCP. The subject site is located adjacent to Albion Ridge Road and slopes steeply westward. The parcel sits above the clustered residential village of Albion and is the last undeveloped designated RV parcel in the village. The approved development is highly visible from the Albion River Bridge heading southbound on Highway One. The development is also visible from Albion Ridge Road, a public road.

The appellants both contend that the County's approval of the project is inconsistent with requirements of the Mendocino County LCP relating to the protection of visual resources, including LUP Policies 3.5-1 and 3.5-3 as well as Coastal Zoning Ordinance Sections 20.504.015 and 20.504.020. The appellants assert that as viewed from southbound Highway One, Albion Beach, and Albion Harbor, the approved development would not be within the scope and character of existing development and would not be compatible with or subordinate to the character of its setting as required of new development in highly scenic areas primarily because (1) the approved residence would be significantly larger than the neighboring homes in the Rural Village zoning district, (2) the approved residence would be sited in a prominent location near the crest of the bluff overlooking the town, and (3) the design of the house would stand out with its broad 64-foot width and tall 27-foot height as viewed from Highway One.

The primary issue raised by the appeal is whether the approved development, located in a highly scenic area, would be visually compatible with and subordinate to the character of its setting. Based on Commission staffs' observation of the story poles during a site visit and a review of photographs contained in the local record, it is apparent that the approved development would be highly visible from southbound Highway One across the Albion River Bridge, which is the primary public vantage point. The view traveling over the Albion River Bridge is particularly scenic, as it affords stunning views of Albion Cove to the west, views of the village of Albion to the east, and of Albion Flats and the harbor below. The character of the subject viewshed as seen looking eastward from the Highway One bridge over the Albion River is largely defined by the cluster of modest-sized residences set below the peak of the ridge that rises above the south bank of the river.

As discussed in the County's findings, the average size of surrounding residences that comprise the character of the area is approximately 2,000 square feet. The approved two-story residence is approximately 3,550 square feet, significantly larger than the surrounding average. The prominence of the approved development would also be exacerbated by the fact that the house would be sited near the crest of the bluff where, when viewed from Highway One, would appear to partially rise above the ridge line above the rural village below. Because of its prominent location near the top of the ridge, and because of its significantly larger size and bulk, the approved residence would dominate the view of the village as seen from southbound Highway One.

Therefore, staff recommends that the Commission find that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding visual resource protection, including LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Sections 20.504.015(C)(3), 20.504.020(D), and 20.504.020(C)(1) as a substantial issue is raised as to whether (1) the approved development would be subordinate to the character of its setting, and (2) the scale of the approved development would be consistent with the scope and character of existing development in the surrounding neighborhood.

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

STAFF NOTES:

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the

sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within a sensitive coastal resource area.

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

The approved development is appealable to the Commission for two independent reasons. First, the approved development is appealable to the Commission because the approved development is located within a sensitive coastal resource area. With regard to the appealability of the approved development based on its location in a sensitive coastal resource area, Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "highly scenic areas." The approved development is located within an area designated in the LCP on the certified land use map as a "highly scenic area," and, as such, is appealable to the Commission.

The approved development is also appealable to the Commission because the development is located within 300 feet of the top of the seaward face of a coastal bluff. The site that is the subject of Mendocino County CDP No. 28-2006 is located 300 feet from the top of a bluff that rises above the Albion River estuary. The seaward facing bluff is oriented to the northwest, toward Albion Cove (see photos included as Exhibit No. 6). The portion of the Albion River located at the toe of the bluff below the project site is subject to tidal action. Thus, the toe of the bluff adjacent to this portion of the estuary is subject to associated marine erosion.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

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

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant, and persons who made their views known to the local government

(or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

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

2. Filing of Appeal

Two appeals were filed including an appeal from (1) Rixanne Wehren on December 5, 2006, and (2) Commissioners Mike Reilly and Mary Shallenberger on December 18, 2006. Both appeals were filed in a timely manner within 10 working days of receipt by the Commission of the County's Notice of Final Action on December 4, 2006 (Exhibit No. 9).

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-06-047 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-06-047 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received one appeal from Rixanne Wehren (Appellant 1) and one appeal from Commissioners Mike Reilly and Mary Shallenberger (Appellant 2) of the County of Mendocino's decision to approve the development.

The development, as approved by the County, consists of (1) construction of a 2,761-square-foot, two-story single-family residence with a maximum average height of 24 feet above natural grade with an attached 790-square-foot garage for a total of 3,551 square feet, (2) construction of a retaining wall and driveway, (3) installation of a septic system and underground utilities, (4) conversion of an existing test well to a production well, and (5) grading approximately 30 cubic yards.

The subject site is an approximately one-acre parcel located in a designated "highly scenic" area on the top of a ridge above the Albion River on the east side of Highway One. The parcel is planned and zoned Rural Village (RV) in the County's LCP. The subject site is located adjacent to Albion Ridge Road and slopes steeply westward. The parcel sits above the clustered residential village of Albion and is the last undeveloped designated RV parcel in the village. The approved development is highly visible from the Albion River Bridge heading southbound on Highway One. The development is also visible from Albion Ridge Road, a public road.

The appellants' contentions are summarized below; the full texts of the two appeals are included as Exhibit Nos. 7 and 8. The appellants both contend that the County's approval of the project is inconsistent with requirements of the Mendocino County LCP relating to the protection of visual resources, including LUP Policies 3.5-1 and 3.5-3 as well as Coastal Zoning Ordinance Sections 20.504.015 and 20.504.020. The appellants assert that as viewed from southbound Highway One, Albion Beach, and Albion Harbor, the approved development would not be within the scope and character of existing development and would not be compatible with or subordinate to the character of its setting as required of new development in highly scenic areas primarily because (1) the approved residence would be significantly larger than the neighboring homes in the Rural Village zoning district, (2) would be sited in a prominent location near the crest of the

bluff overlooking the town, and (3) the design of the house would stand out with its broad 64-foot width and tall 27-foot height as viewed from Highway One. Appellant 1 also contends that the approved development is inconsistent with CZC Section 20.504.015(C)(10) which encourages that tree planting be used to screen buildings, but only in a manner that does not interfere with coastal and ocean views from public areas. The appellant contends required landscaping will block ocean views through the site from Albion Ridge Road.

B. LOCAL GOVERNMENT ACTION

On November 20, 2006, the Mendocino County Coastal Permit Administrator approved Coastal Development Permit No. 28-2006 for the subject development. The County attached to its coastal development permit five special conditions of approval, included in their entirety in Exhibit No. 9.

Of particular relevance to the visual resource-related contentions of the appeal are Special Condition Nos. 2, 3, and 4. Special Condition No. 2 requires that (1) the applicant submit a landscaping plan designed to soften and partially shield the proposed residence from public view, (2) the existing tree located on the northeasterly portion of the property be maintained and/or replaced in perpetuity, and (3) any screening vegetation that hinders the public view from Albion Ridge Road be trimmed to protect the view. Special Condition No. 3 requires the applicant to submit an exterior lighting plan showing shielded and downcast fixtures. Special Condition No. 4 prohibits changes to the exterior colors or approved lighting fixtures without prior approval by the Coastal Permit Administrator for the life of the project.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on December 4, 2006 (Exhibit No. 9). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals. The project was appealed to the Commission in a timely manner on December 5, 2006 and December 18, 2006, within 10 working days after receipt by the Commission of the Notice of Final Local Action.

C. COMMISSION'S APPEAL JURISDICTION OVER PROJECT

As noted above, the County's action to approve a coastal development permit for the project with conditions was appealed to the Commission on the basis that the project is located (a) within a sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act, and (b) within 300 feet of the top of the seaward face of a coastal bluff pursuant to Section 30603(a)(2).

a) Sensitive Coastal Resource Area

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas. (emphasis added)*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRA in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRA, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRA. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan).) The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRA did not have the effect of preventing local governments from designating SCRA through the LCP process. If the Commission's decision not to designate SCRA rendered the Coastal Act provisions that relate to SCRA moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRA.

Although a city or county is not required to designate SCRA in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRA in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRA, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit (CDP) No. 28-2006 was accepted by the Commission, in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Adopted Land Use Map No. 18 (Albion) designates the area inclusive of the site that is the subject of Mendocino County CDP No. 28-2006 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use

Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. While the Legislature has given local governments wide latitude to develop the content of its LCP, local governments do not have the authority to modify provisions of the Coastal Act, including Section 30603. Local governments may determine, with the approval of the Commission during review of its LCP, what areas, for example, are sensitive coastal resource areas pursuant to Section 30116 or “environmentally sensitive area[s]” pursuant to Section 30107.5. However, local governments may not alter the effect, under the Coastal Act, of that designation. If, as in this case, an area is designated as a highly scenic area and a sensitive coastal resource area in the LCP, other provisions of the LCP cannot change the fact that under Section 30603(a)(3), these designations make coastal development permit approvals in highly scenic areas appealable to the Commission. Section 30005 of the Coastal Act prevents local governments from imposing or enforcing regulations that are in conflict with the Coastal Act. Further, the California Constitution restricts local governments from legislating in conflict with general law. As the County designated “highly scenic areas” in its LCP as a sensitive coastal resource area, then such areas are treated as a sensitive coastal resource area under the Coastal Act and County approvals of coastal development permits within highly scenic areas are appealable under Section 30603(a)(3).

Therefore, for all of the above reasons, the Commission finds that as highly scenic areas designated and mapped in the certified LCP are a sensitive coastal resource area, Mendocino County’s approval of local CDP No. 28-2006 for the applicants’ proposed residential development is appealable to the Commission under Section 30603(a)(3) of the Coastal Act.

b) 300 Feet of the Top of the Seaward Face of a Coastal Bluff

Coastal Act Section 30603(a)(2) includes in the list of appealable development, those developments approved by the local government that are located within 300 feet of the top of the seaward face of any coastal bluff. “Coastal bluffs” are defined in Section 13577(h) of the Commission’s regulations for purposes of the Commission’s appeal jurisdiction, in applicable part, as “those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion.” Section 13577(h) further defines “bluff edge, or line” as “the upper termination of a bluff, cliff, or seacliff.”

The site that is the subject of Mendocino County CDP No. 28-2006 is located 300 feet from the top of a bluff that rises above the Albion River estuary. The seaward facing bluff is oriented to the northwest, toward Albion Cove (see photos included as Exhibit No. 6). The portion of the Albion River located at the toe of the bluff below the project site is subject to tidal action. Thus, the toe of the bluff adjacent to this portion of the estuary is subject to associated marine erosion.

Therefore, the Commission finds that as the approved development is located within 300 feet of the top of the seaward face of a coastal bluff that is subject to marine erosion, Mendocino County's approval of CDP No. 28-2006 for the applicants' proposed residential development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

D. SITE DESCRIPTION

The subject site is an approximately one-acre parcel located in a designated "highly scenic" area on the top of a ridge above the Albion River on the east side of Highway One (Exhibit Nos. 1 & 2). The parcel is planned and zoned Rural Village (RV) in the County's LCP. The subject site is located adjacent to Albion Ridge Road and slopes steeply westward. The parcel sits above the clustered residential village of Albion and is the last undeveloped designated RV parcel in the village.

The site is primarily vegetated with grasses and low shrubs with several clusters of coniferous evergreens scattered along the southern property boundary adjacent to Albion Ridge Road and two clusters at the southwest corner of the parcel. With the exception of these tree clusters, the site is generally very exposed and the house site would be silhouetted against the sky at the peak of the ridge as viewed from southbound Highway One. The approved development is also visible from Albion Ridge Road, a public road.

E. PROJECT DESCRIPTION

The development, as approved by the County, consists of (1) construction of a 2,761-square-foot, two-story single-family residence with a maximum average height of 24 feet above natural grade with an attached 790-square-foot garage for a total of 3,551 square feet, (2) construction of a retaining wall and driveway, (3) installation of a septic system and underground utilities, (4) conversion of an existing test well to a production well, and (5) grading approximately 30 cubic yards (see Exhibit No. 3 & 4).

The approved residence would be situated near the eastern property boundary at the highest point of the parcel with the primary leach field sited in the middle of the parcel and the replacement leachfield sited near the western, downslope edge of the parcel.

A previous application was submitted for the project site by the same applicant (CDP #88-2003) for the construction of a 4,016-square-foot, two-story, single-family residence with a maximum height of 28 feet from natural grade and an attached garage. This previous application by the same applicant was denied by the County based on the project's adverse impacts to visual resources in a mapped highly scenic area and the project's inconsistency with the LCP requiring that the scale of the development and scope of the project be consistent with the surrounding structures in the Rural Village zone designation. The applicant revised the project by reducing the overall size and height of the residence and submitted the subject permit application (CDP #28-2006) to the County, which was subsequently approved by the County on November 20, 2006 and is the subject of this appeal.

F. SUBSTANTIAL ISSUE ANALYSIS

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

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

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

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

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

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

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

All of the contentions raised by the appellants present potentially valid grounds for appeal in alleging the local approval's inconsistency with policies of the certified LCP. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the provisions of the LCP requiring that development in highly scenic areas be within the scope and character of existing development and compatible with and subordinate to the character of the

setting, the appeal raises a substantial issue of conformity of the approved project with the certified Mendocino County LCP.

1. Allegations Raising Substantial Issue Regarding Visual Resource Protection

Appellant 1 and Appellant 2 both contend that the approved project is inconsistent with requirements of the Mendocino County LCP relating to the protection of visual resources. Specifically, Appellant 1 contends that the approved project is inconsistent with requirements of Mendocino County Coastal Zoning Ordinance Sections 20.504.020(c), 20.504.015(c), and 20.388.005 relating to the protection of visual resources and the specific development criteria for the designated highly scenic area of the Rural Village zoning district. Appellant 1 asserts that as viewed from Highway One, Albion Beach, and Albion Harbor, the approved residence would (1) be nearly twice as big as the neighboring homes in the Rural Village zoning district, (2) would be sited in a prominent location near the crest of the bluff overlooking the town, and (3) the design of the house would stand out with its broad 64-foot width and tall 27-foot height as viewed from Highway One. As a result, the appellant contends that the approved development would not be consistent with the scope and character of existing development as required by CZC Section 20.504.020(C) and would not be compatible with the character of its setting as required of new development in highly scenic areas. Appellant 1 also cites inconsistency of the County's approval with the intent of the Rural Village zoning district to preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages.

Appellant 2 similarly contends that the approved project is inconsistent with requirements of Mendocino County Coastal Zoning Ordinance Sections 20.504.020 and 20.504.015 as well as LUP Policies 3.5-1 and 3.5-3 relating to the protection of visual resources. Appellant 2 contends that the project as approved by the County is inconsistent with LUP Policy 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Sections 20.504.015(C)(3), 20.504.020(D), and 20.504.020(C)(1) as (1) it would not be subordinate to the character of its setting as required of new development in highly scenic areas, and (2) the scale of the approved development would not be consistent with the scope and character of existing development in the surrounding neighborhood.

LCP Policies and Standards:

Policy 3.5-1 states in applicable part:

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

Policy 3.5-3 states in applicable part:

“The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1. ...In addition to other visual policy requirements, new development west of Highway One in designated “highly scenic areas” is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces...”

Coastal Zoning Ordinance Section 20.504.015 states in applicable part (emphasis added):

(C) Development Criteria.

- (1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
- (2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
- (3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

Coastal Zoning Ordinance Section 20.504.020 states in applicable part (emphasis added):

(B) The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C):

(C) Development Criteria.

(1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.

(2) New development shall be sited such that public coastal views are protected.

(3) The location and scale of a proposed structure will not have an adverse effect on nearby historic structures greater than an alternative design providing the same floor area. Historic structure, as used in this subsection, means any structure where the construction date has been identified, its history has been substantiated, and only minor alterations have been made in character with the original architecture.

(4) Building materials and exterior colors shall be compatible with those of existing structures.

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

Coastal Zoning Ordinance Section 20.388.005 states:

RV -- RURAL VILLAGE DISTRICT

Sec. 20.388.005 Intent.

This district is intended to preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages; to provide a variety of community-oriented neighborhood commercial services; and to provide and allow for mixed residential and commercial activities. (Ord. No. 3785 (part), adopted 1991)

Discussion:

The appellants allege that the approved development is inconsistent with the above-identified LCP provisions. LUP Policy 3.5-1 states that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. Additionally, LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting.

LUP Policy 3.5-3 similarly requires that new development located within areas designated highly scenic must be subordinate to the character of its natural setting and requires any development permitted in these areas to provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. CZC Section 20.504.015 reiterates these requirements.

CZC Section 20.504.020, in part, sets forth special protection and development criteria for several communities designated as Coastal Rural Village (CRV), including the village of Albion. The development criteria of CZC Section 20.504.020(C) specifically requires in applicable part that (1) the scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood, and (2) that new development shall be sited such that public coastal views are protected.

The primary issue raised by the appeal is whether the approved development, located in a highly scenic area, would be visually compatible with and subordinate to the character of its setting. As part of the County's review of the application, the applicants installed story poles at the project site, outlining the height and perimeter of the approved house in its exact location. Based on Commission staff observation of the story poles during a site visit and a review of photographs contained in the local record, it is apparent that the approved development would be highly visible from southbound Highway One across the Albion River Bridge, which is the primary public vantage point (see Exhibit Nos. 5 & 6). The development would also be visible from Albion Ridge Road, a public road that runs east-west and intersects Highway One approximately ¼ mile west of the subject site. The view traveling over the Albion River Bridge is particularly scenic, as it affords stunning views of Albion Cove to the west, views of the village of Albion to the east, and of Albion Flats and the harbor below. The character of the subject viewshed as seen looking eastward from the Highway One bridge over the Albion River is largely defined by the cluster of modest-sized residences set below the peak of the ridge that rises above the south bank of the river. This view is described in Section 4.9 of the County's LUP and states, "*Approaching from the north, motorists see one of the coast's most striking townscapes: a wood-trestle bridge in the foreground of a small village that clings to the edge of the hill.*"

As discussed in the County's findings, the average size of surrounding residences that comprise the character of the area is approximately 2,000 square feet. The approved two-story residence is approximately 3,550 square feet, significantly larger than the surrounding average. The approved residence would be sited near the top of the ridge above and separated from the clustered residential village located downslope. Because of its prominent location near the top of the ridge, and because of its significantly larger size and bulk, the approved residence would dominate the view of the village as seen from southbound Highway One. As noted in the County's findings, the approved structure is larger than the surrounding development. The County notes that several homes located east of the subject site in an area designated Rural Residential (RR) are larger than the homes located in the Rural Village below. Several of these homes in the RR zone are visible from Albion Ridge Road, but are out of the viewshed of Highway One. Thus, although the approved residence may be more similar to the character of

some homes along Albion Ridge Road, it is the smaller homes of the village that comprise the significant character of the area as viewed from Highway One. Additionally, the County's findings indicate that the County approved permits for residential development in the RR zone east of the subject site range in size from approximately 1,700 square feet to approximately 2,400 square feet (including garage), still much less than the approved 3,551-square-foot development in the RV zone.

The prominence of the approved development would also be exacerbated by the fact that the house would be sited near the crest of the bluff where, when viewed from Highway One, would appear to partially rise above the ridge line above the rural village below. In addition, the side of the house facing the highway would be relatively wide at approximately 64 feet and would appear relatively tall at 27 feet.

The approved project was conditioned by the County to require the applicant to submit a landscaping plan that would be designed to soften and partially shield the residence from the western, northwestern, and eastern views. However, it became evident to Commission staff from viewing the story poles from the highway that although some mature trees surround the site, and the County conditioned the project to require additional landscaping, existing and new trees and vegetation would not effectively soften or screen the design and bulk of the development to a degree that would significantly reduce the prominence of the approved development. The overall bulk of the house and its large size in comparison with the other houses within the viewshed would still be readily apparent. The County also conditioned the project to prohibit any changes to the exterior colors of the development, which as approved would include light brown siding, hunter green trim, and weathered wood composition shakes. Although the approved building materials and exterior colors may be compatible with those of existing structures as required by the applicable development criteria set forth in CZC Section 20.504.020(C)(4), in this case, the scale and bulk of the structure would still visibly exceed that of the structures that comprise the character of the surrounding area.

Many appeals from Mendocino County raise issues of visual resource protection, and in acting on these appeals *de novo*, the Commission has denied some projects because of inconsistencies with visual resource protection policies. The protection of visual resources is required under Section 30251 of the Coastal Act, and in certifying LUP Policy 3.5-1, the Commission concurred with the introductory language of that policy that the scenic and visual quality of the Mendocino County coastal area be considered and protected as a resource of public importance. The Commission often conditions permits it approves to require the applicant to relocate, redesign, or screen proposed development specifically to protect views of the ocean and scenic coastal areas. In addition, the approved development would be prominent from State Highway One, the sole continuous highway through the Mendocino County coastal zone. Highway One brings visitors from throughout the region, state, and world to the coast to enjoy its beauty. Thus, the appeal raises issues of regional and statewide significance.

Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding visual

resource protection, including LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Sections 20.504.015(C)(3), 20.504.020(D), and 20.504.020(C)(1) as the approved development raises a substantial issue as to whether (1) the development would be subordinate to the character of its setting, and (2) the scale of the approved development would be consistent with the scope and character of existing development in the surrounding neighborhood.

2. Allegation Not Raising Substantial Issue

LCP Policy

Coastal Zoning Ordinance Section 20.504.015(C)(10) states:

Section 20.504.015 Highly Scenic Areas

...

(C) Development Criteria.

...

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

Discussion:

One contention raised by Appellant 1 does not raise a substantial issue of conformity of the approved project with the certified LCP. This contention cites CZC Section 20.504.015(C)(10) which encourages that tree planting be used to screen buildings but only in a manner that does not allow trees to interfere with coastal and ocean views from public areas. The appellant asserts that the approved site plan shows five clusters of evergreens to be planted along the southern edge of the parcel adjacent to Albion Ridge Road in a manner that would interfere with the public view of the coast from this portion of Albion Ridge Road. The appellant contends that a landscaping plan could have corrected this oversight, but was not submitted for public review prior to approval of the permit. However, the five clusters of trees shown on the site plan along Albion Ridge Road referred to by the appellant are *existing* trees rather than the approved proposed landscaping. As noted above, the County conditioned the project to require the applicant to submit a landscaping plan for review and approval by the County prior to issuance of the permit. However, this landscaping plan has not yet been prepared or submitted by the applicant. In addition, the special condition requiring the submittal of a landscaping plan specifically states that “any screening vegetation that hinders the public’s view as seen from Albion Ridge Road traveling west shall be trimmed so as to protect the public view.”

Therefore, the contention raised by Appellant 1 regarding the landscaping plan does not raise a substantial issue of conformance with the requirements of CZC Section 20.504.015(C)(10) that

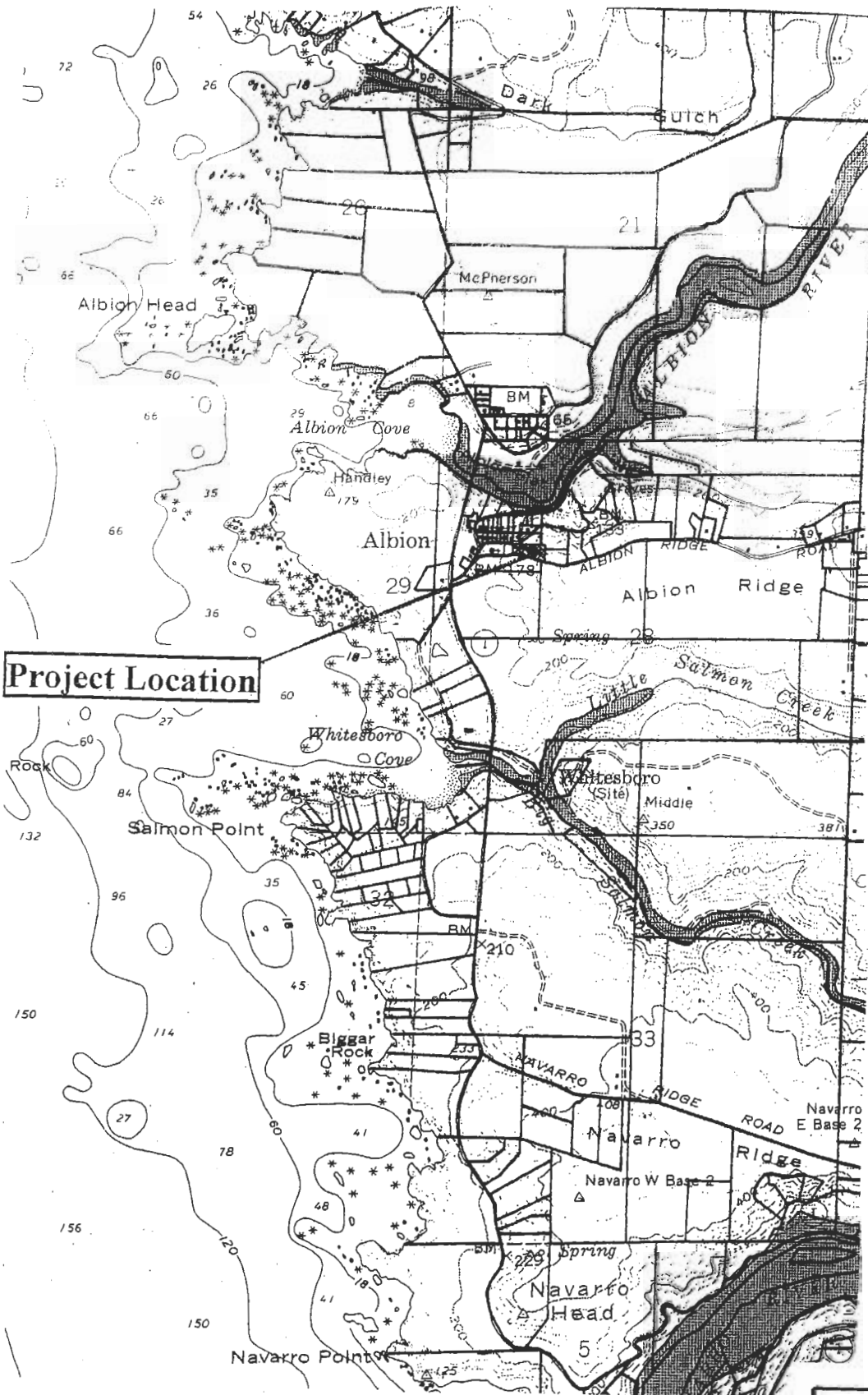
new development shall not allow trees to interfere with coastal and ocean views from public areas. Furthermore, the Commission need not do an exhaustive analysis of why this particular portion of the contention does not raise a substantial issue, because whether or not this particular portion of the contention raises a substantial issue, the result would not affect the Commission's determination that the grounds for appeal raised with respect to the protection of visual resources, raise a substantial issue of conformance of the project as approved with the certified LCP.

Conclusion

The foregoing contentions raised by the appellants have been evaluated against the claim that the approved development raises a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP in that a substantial issue is raised as to whether (1) the approved development would be subordinate to the character of its setting, and (2) the scale of the development would be consistent with the scope and character of existing development in the surrounding neighborhood as required by LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Sections 20.504.015(C)(3), 20.504.020(D), and 20.504.020(C)(1).

Exhibits:

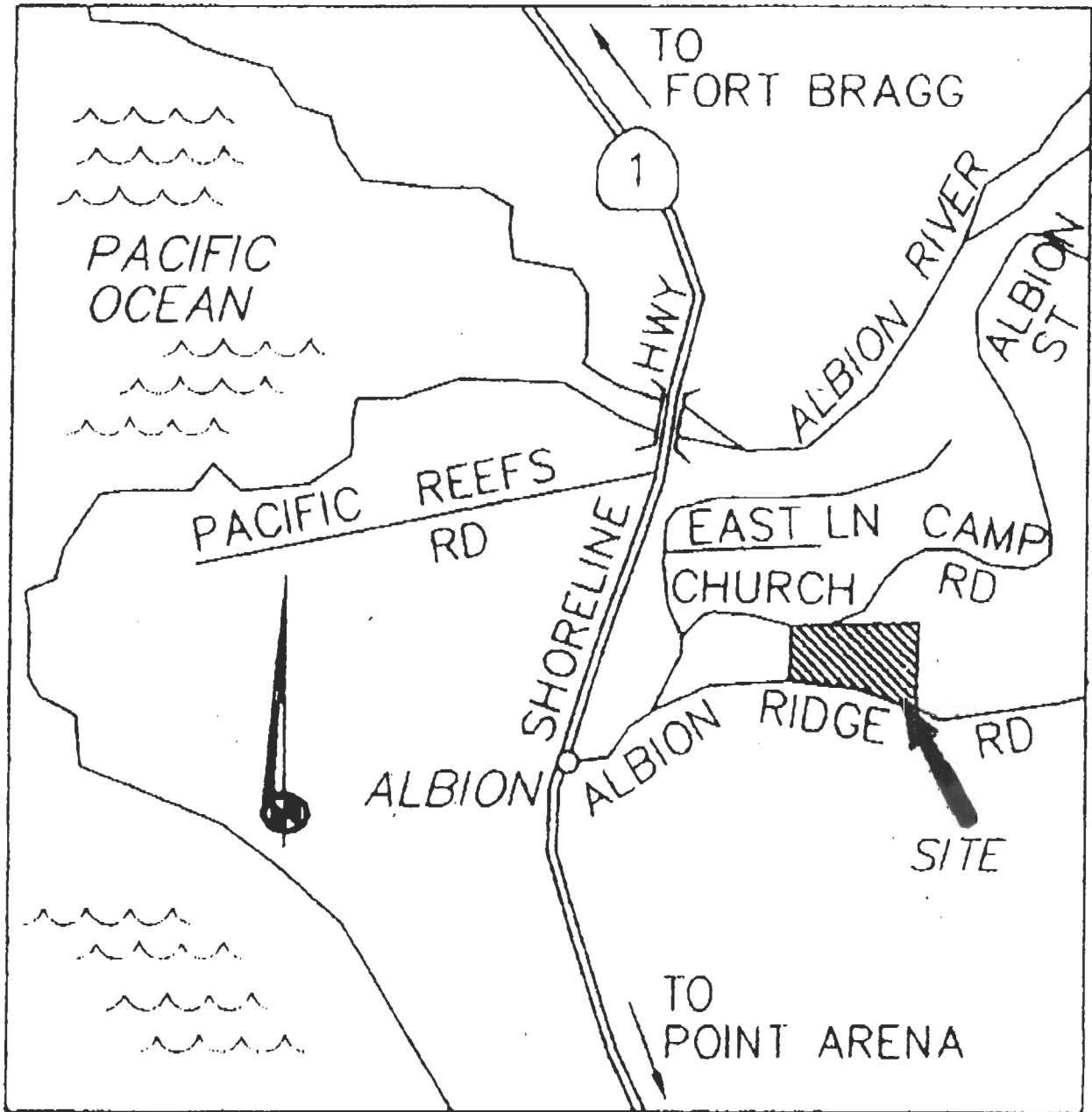
1. Regional Location Map
2. Vicinity Map
3. Approved Site Plan
4. Approved Elevations & Floor Plans
5. Photo Simulation of Approved Development prepared by Applicant
6. Site Photos
7. Appeal (Commissioners Reilly & Shallenberger)
8. Appeal (Rixanne Wehren)
9. Notice of Final Local Action & County Findings
10. Correspondence



Project Location

EXHIBIT A

EXHIBIT NO. 1
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
REGIONAL LOCATION MAP



VICINITY MAP

N.T.S.

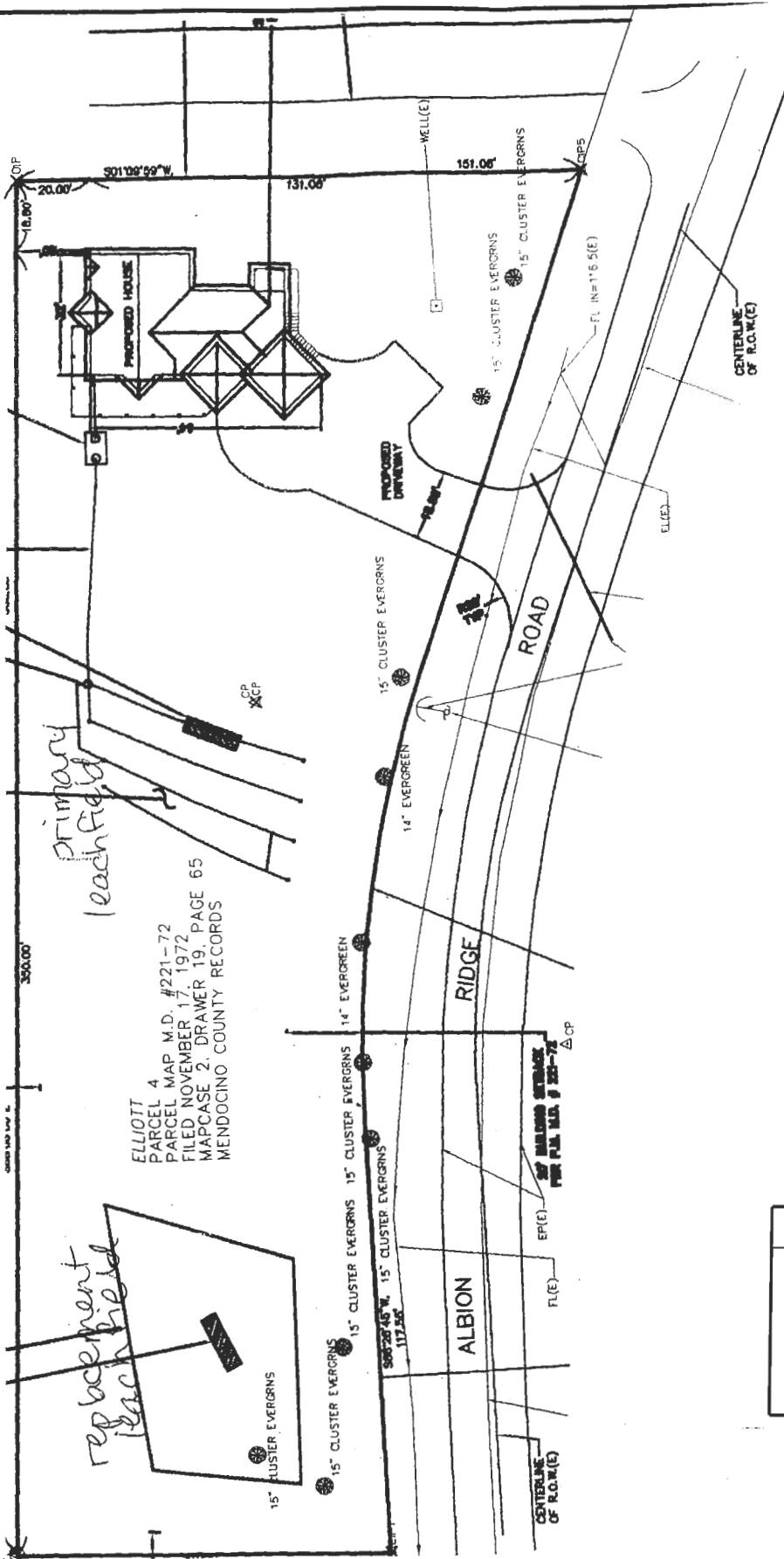
EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-06-047

LLOYD, ELLIOTT & SHALLEY

VICINITY MAP



ELLIOTT 4
PARCEL MAP M.D. #221-72
FILED NOVEMBER 17, 1972
MAPCASE 2, DRAWER 19, PAGE 65
MENDOCINO COUNTY RECORDS

Primary
Leach Field

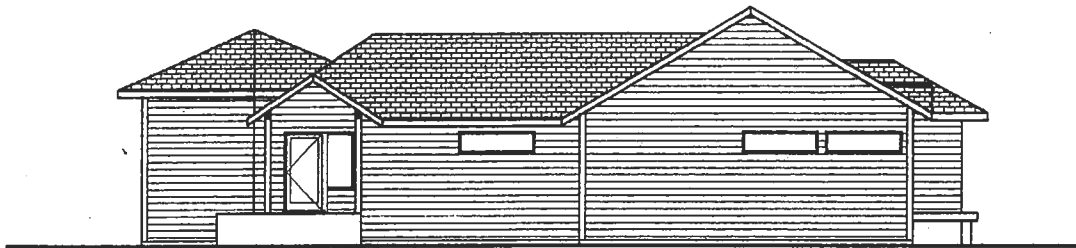
Replacement
Leach Field

EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
APPROVED SITE PLAN



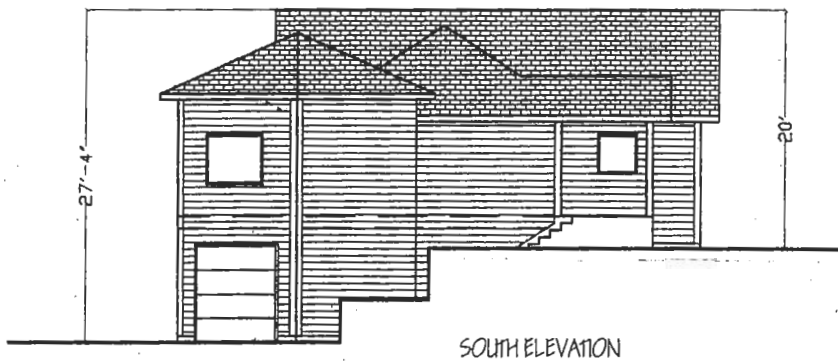
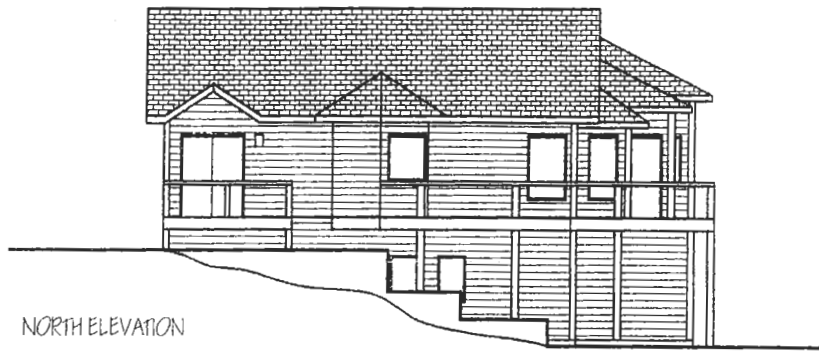


WEST ELEVATION - (Elevation visible from Hwy One)

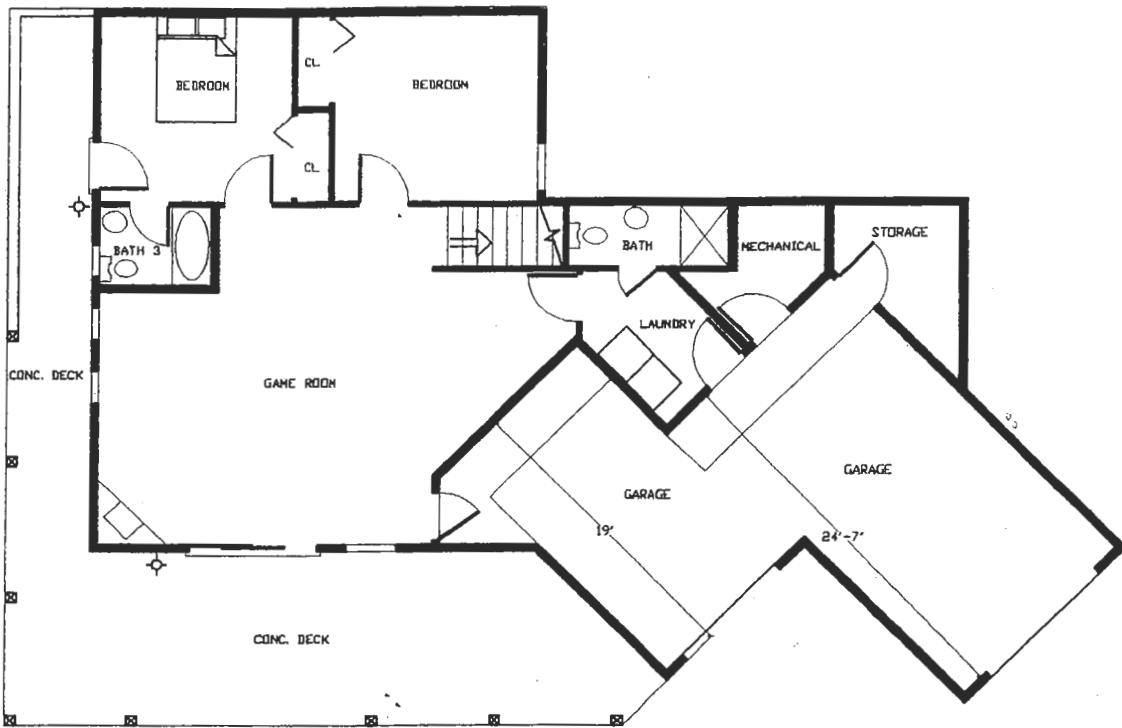


EAST ELEVATION

EXHIBIT NO. 4
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
APPROVED ELEVATIONS & FLOOR PLANS (1 of 4)

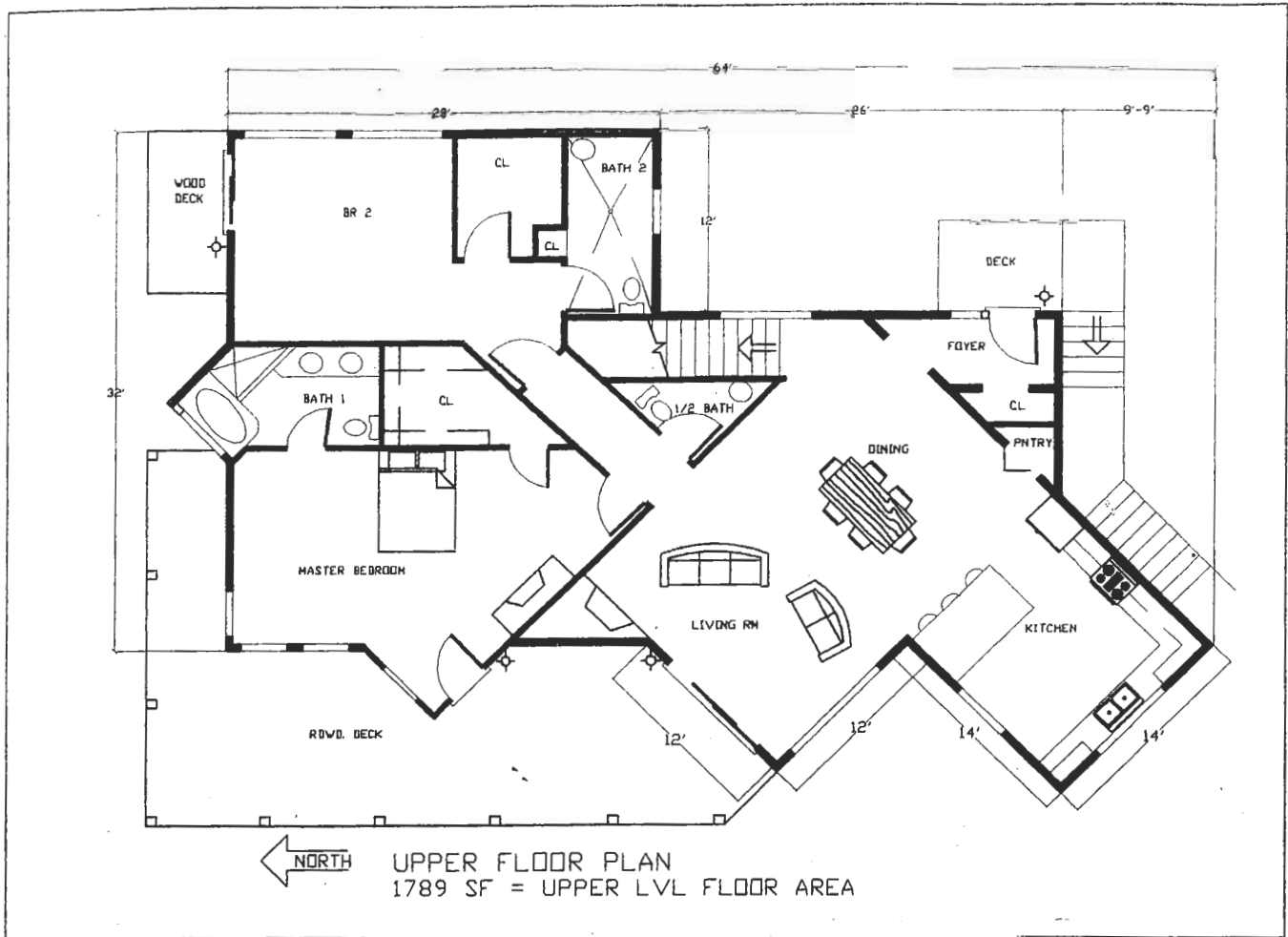


204

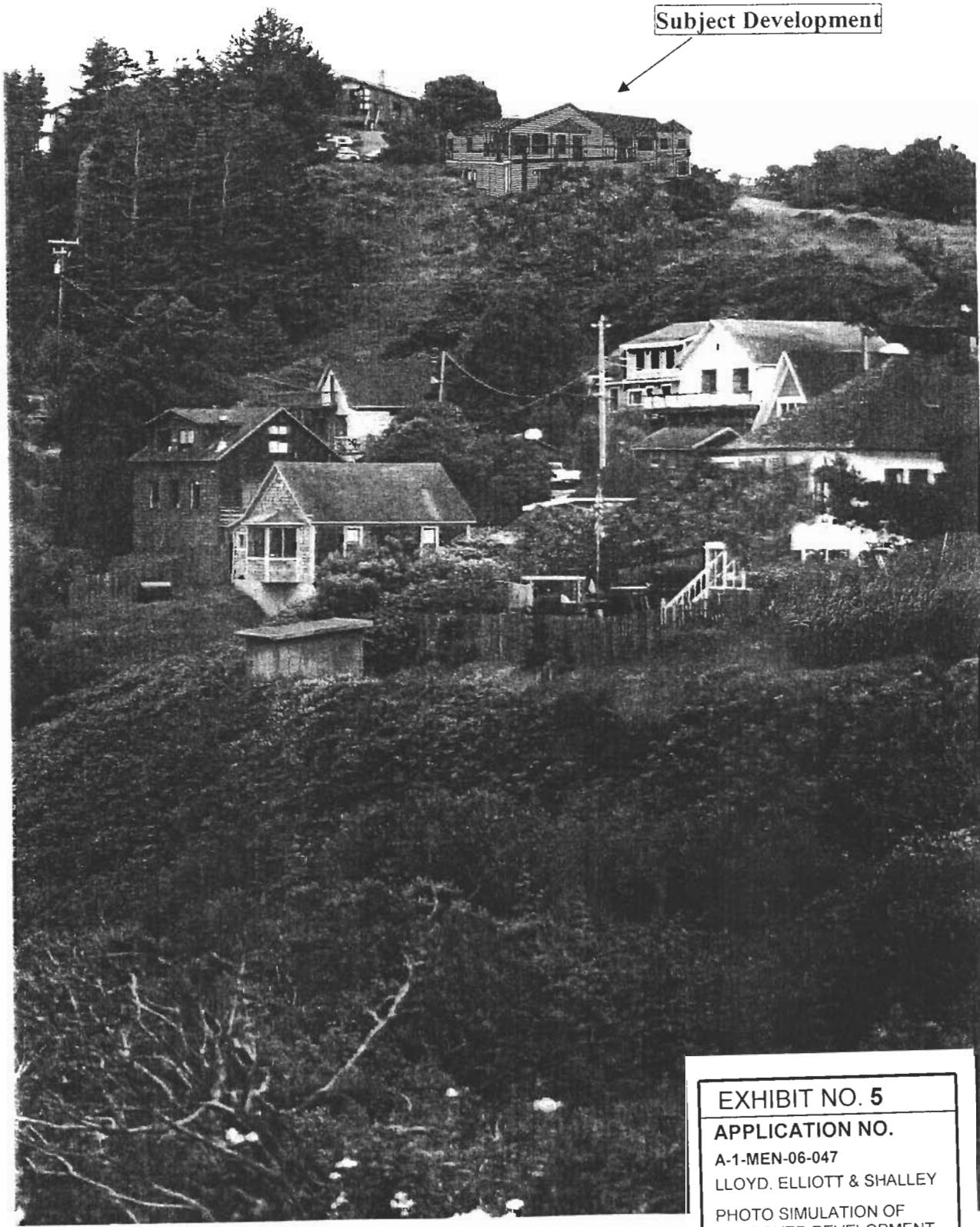


LOWER FLOOR PLAN
972 SF = LOWER LVL LIVING AREA
790 SF = GAR/MECH/STORAGE FLOOR AREA

304

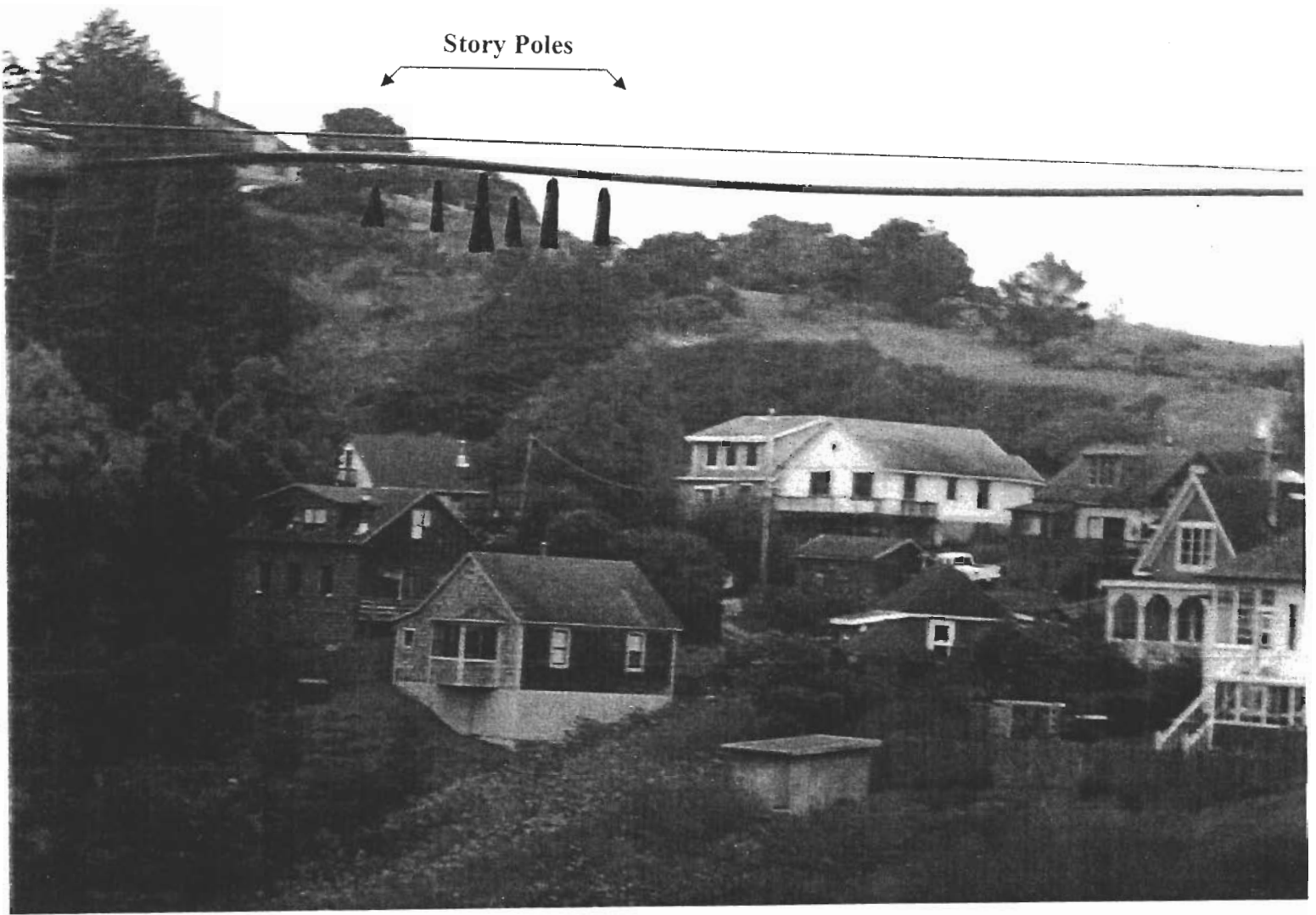


4 of 4



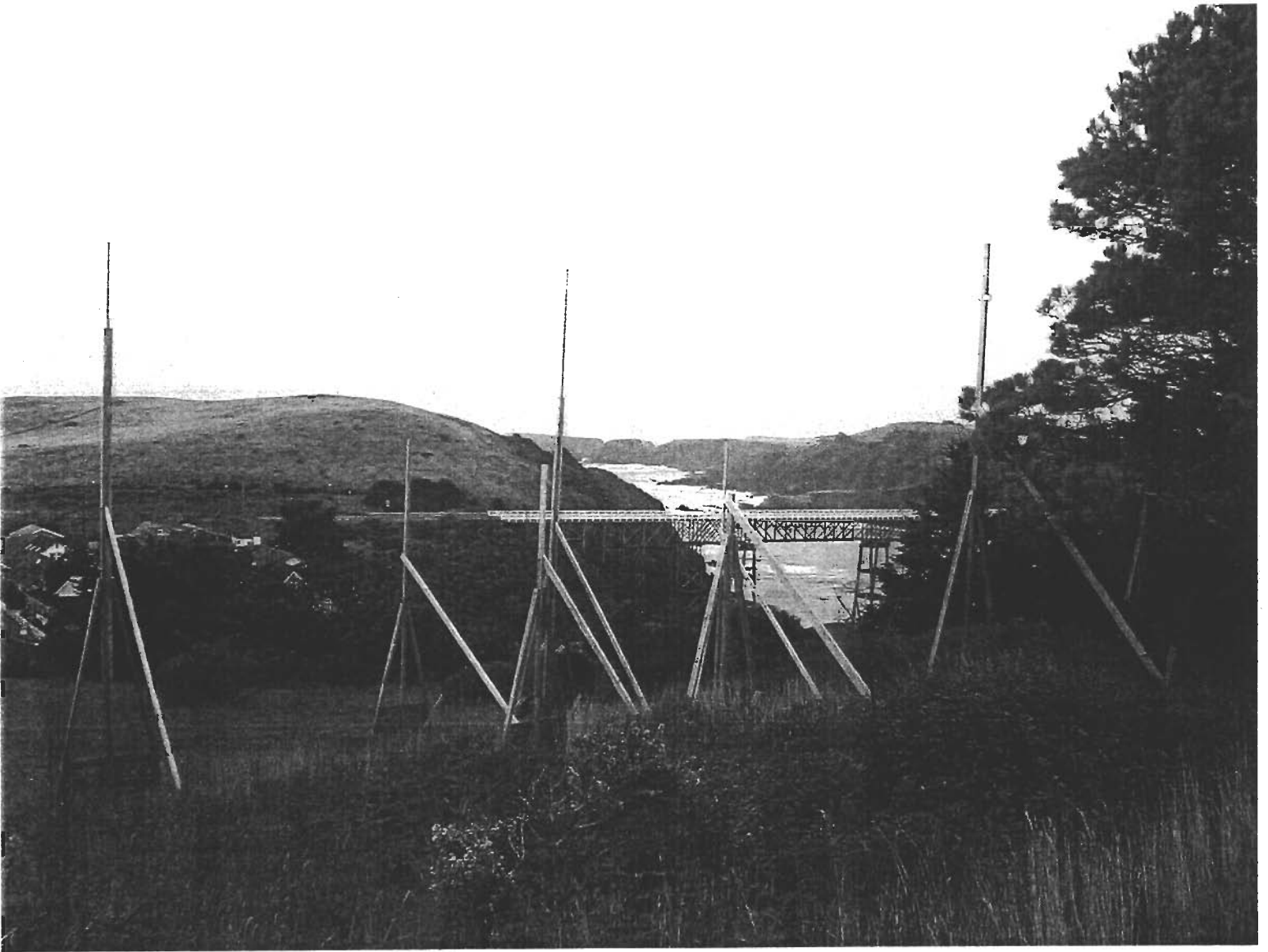
Subject Development

EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
PHOTO SIMULATION OF
APPROVED DEVELOPMENT
PREPARED BY APPLICANT



View of Project Site from southbound Highway One Albion River Bridge

EXHIBIT NO. 6
APPLICATION NO. A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
SITE PHOTOS (1 of 2)



View of Project Site looking West toward Albion River Bridge

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

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

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

6. Date of local government's decision: November 20, 006

7. Local government's file number (if any): CDP #28-2006

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Kathleen Elliott Lloyd, Irene Elliott, Lynn & Donna Shalley
Owner: Robert & Sharon Elliott
4214 Canyon Valley Road
Diamond Springs, CA 95619

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

(1)

(2)

(3)

(4)

2 of 10

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See ATTACHMENT 2

3910

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

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

SECTION V. Certification

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

Signed: Ma [Signature] Signature on File
Appellant or Agent

Date: December 18, 2006

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

4210

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: _____
Appellant or Agent

Date: December 18, 2006

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

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ATTACHMENT 1

SECTION I. Appellant(s)

1. Mary K. Shallenberger
3309 East Curtis Drive
Sacramento, CA 95818

Phone: (916) 322-0995

2. Mike Reilly, Supervisor
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

Phone: (707) 565-2241

ATTACHMENT 2

Reasons for Appeal

The approval of Coastal Development Permit Application No. 28-2006 by Mendocino County is inconsistent with the certified Local Coastal Program (LCP), and raises substantial issues regarding visual resources.

VISUAL RESOURCES

The approval of the coastal development permit by Mendocino County encompasses property within a highly scenic area designation, and is in conflict with visual resource policies and standards contained in the Mendocino LCP, including, but not limited to Policies 3.5-1, 3.5-3, and Coastal Zoning Ordinance Sections 20.504.015 and 20.504.020 .

Policies

Policy 3.5-1 states in applicable part:

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

Policy 3.5-3 states in applicable part:

"The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1. ...In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces..."

Coastal Zoning Ordinance Section 20.504.015 states in applicable part (emphasis added):

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(C) Development Criteria.

- (1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
- (2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
- (3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

Coastal Zoning Ordinance Section 20.504.020 states in applicable part (emphasis added):

(B) The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C):

(C) Development Criteria.

- (1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.*
- (2) New development shall be sited such that public coastal views are protected.*
- (3) The location and scale of a proposed structure will not have an adverse effect on nearby historic structures greater than an alternative design providing the same floor area. Historic structure, as used in this subsection, means any structure where the construction date has been identified, its history has been substantiated, and only minor alterations have been made in character with the original architecture.*
- (4) Building materials and exterior colors shall be compatible with those of existing structures.*

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

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Discussion

The County of Mendocino approved Coastal Development Permit # 28-2006 for the construction of a 2,761-square-foot, two-story single-family residence with a maximum average height of 24 feet above natural grade with an attached 790-square-foot garage for a total of 3,551 square feet. The approved development also includes construction of a retaining wall and driveway, installation of a septic system and underground utilities, conversion of an existing test well to a production well, and grading of approximately 30 cubic yards.

The subject site is an approximately one-acre parcel located in a designated "highly scenic" area on the top of a ridge above the Albion River on the east side of Highway One. The parcel is planned and zoned Rural Village (RV) in the County's LCP. The subject site is located adjacent to Albion Ridge Road and slopes steeply westward. The parcel sits above the clustered residential village of Albion and is the last undeveloped designated RV parcel in the village. The approved development is highly visible from the Albion River Bridge heading southbound on Highway One. The development is also visible from Albion Ridge Road, a public road.

The project as approved by the County would have a significant impact on visual resources. The approved development would not be subordinate to the character of its setting as required by LUP Policies 3.5-1 and 3.5-3, and Coastal Zoning Ordinance Sections 20.504.015(C)(3) and 20.504.020(D). Additionally, the scale of the approved development would not be consistent with the scope and character of existing development in the surrounding neighborhood as required by Coastal Zoning Ordinance Section 20.504.020(C)(1).

The character of the subject viewshed is largely defined by the cluster of modest-sized residences set below the peak of the ridge that rises above the south bank of the Albion River. As discussed in the County's findings, the average size of surrounding residences that comprise the character of the area is approximately 2,000 square feet. The approved two-story residence is approximately 3,550 square feet, significantly larger than the surrounding average. The approved residence would be located near the top of the ridge above and separated from the clustered residential village located downslope. Because of its prominent location near the top of the ridge, and because of its significantly larger size and bulk, the approved residence would dominate the view of the village as seen from southbound Highway One. As noted in the County's findings, several homes located east of the subject site in an area designated Rural Residential (RR) are larger than the homes located in the Rural Village below. Several of these homes in the RR zone are visible from Albion Ridge Road, but are out of the viewshed of Highway One. Thus, although the approved residence may be more similar to the character of homes along Albion Ridge Road, it is the smaller homes of the village that comprise the character of the area as viewed from Highway One. Additionally, the County's findings indicate that at least three County-approved permits for residential development in the RR zone east of the subject site range in size from approximately 1,700 square feet to approximately 2,400 square feet, still much less than the approved development in the RV zone. Furthermore, although some mature trees surround the site, and the County conditioned the project to require additional landscaping, existing and new trees and vegetation would not effectively soften or screen the

9410

design and bulk of the development in a manner that would cause it to be subordinate to the character of the surrounding area.

Therefore, the project as approved by the County is inconsistent with LUP Policy 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Sections 20.504.015(C)(3), 20.504.020(D), and 20.504.020(C)(1) as (1) it would not be subordinate to the character of its setting, and (2) the scale of the approved development would not be consistent with the scope and character of existing development in the surrounding neighborhood.

CONCLUSION

The Commission finds that the project as approved by the County is inconsistent with, and raises substantial issues, with respect to its conformance with LCP standards and policies pertaining to visual resource protection.

10 of 10

CALIFORNIA COASTAL COMMISSION

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Rixanne Wehren

Mailing Address: 27401 Albion Ridge Rd.

City: Albion

Zip Code: 95410

Phone: 707-937-2709

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County Coastal Development Permit Administrator

2. Brief description of development being appealed:

CDP# 28-2009 (Elliott) Development of a 3550 sq. ft. house and garage in the Rural Village of Albion, within a highly scenic area, and visible from the Highway 1 corridor. Landscaping plan not yet made available to the public.

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

33800 Albion Ridge Rd. Albion, CA 95410, AP# 123-170-19

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

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

RECEIVED

DEC 08 2006

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-06-047

LLOYD, ELLIOTT & SHALLEY

APPEAL (RIXANNE WEHREN)
(1 of 6)

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-06-047

DATE FILED: 12/5/06

DISTRICT: North Coast

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

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

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

6. Date of local government's decision: 11-20-06 meeting of CPA

7. Local government's file number (if any): CDP#28-2006

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Kathleen Elliott Lloyd, Irene Elliott, Lynn and Donna Shalley
4214 Canyon Valley Road
Diamond Springs, CA 95619

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

(1) Rixanne Wehren
27401 Albion Ridge Rd.
Albion CA 95410

(2) Beth Bosk
32201 Condor Rd.
Willits, CA 95490

(3) Linda Perkins
Sierra Club, Mendocino Croup
PO Box 467
Albion, CA 95410

(4) David Bramblett
Boxholder
Albion, CA 95410

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- ∞ Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- ∞ State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- ∞ This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The development is in the Rural Village zoning, but is not consistent with the LCP requirements. These include:

Section 20.504.020(c) of the Zoning Code requires that any new development (building height and bulk) be within the scope and character of existing development. This house, at 3550 sq. ft., would be nearly twice as big as the neighboring Rural Village houses (average size 2000 sq.ft.). While the argument has been made that the uphill house is large, it is in another zone. The huge increase in size within the Rural Village is inappropriate, and would set a precedent that would allow the other homeowners in the Rural Village zoning to feel entitled to expand to 3550 sq.ft. also, changing the entire makeup of the village.

Section 20.504.015 (c) states that development permitted in highly scenic areas shall provide protection of coastal views from public areas ... and (c) (10) adds that tree planting to screen buildings ... shall not allow trees to interfere with coastal /ocean views from public areas. Although our letters to the CPA specifically identified a valued coastal view of the Albion Bridge and Cove, the site plan shows 5 clusters of evergreens to be planted right along the stretch of road that affords this view for the other 700 residents of Albion, as well as visitors. A landscaping plan could have corrected this oversight, but was not submitted for public review prior to the approval of the permit. The "trimming" mentioned is not adequate protection.

Secondly, the public view of the hillside including the village would be greatly changed by the large flat front of the new house, with large reflective windows facing the Highway 1 bridge. At 64' wide and 27' high, the western wall would dominate the village scene and be visible from the highway, Albion beach and harbor, Albion River Inn and Albion Flats Campground. The intention of the RV zoning is to "preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages (Section 20.388.005) so a large, highly visible development is inconsistent with a Highly Scenic area with Rural Village zoning.

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**SIERRA
CLUB**
FOUNDED 1892

Sierra Club, Mendocino Group
Trails Committee, P.O. Box 340
Albion, CA 95410

Nov. 17, 2006

Coastal Permit Administrator
Mendocino County Planning & Building Dept
790 S. Franklin St.
Fort Bragg, CA 95437

RECEIVED

DEC 08 2006

CALIFORNIA
COASTAL COMMISSION

*copy to CCC
12/1/06*

Re: CDP 28-2006 Elliott

Dear Staff,

We are concerned about several issues in the application for a 3551 sq. ft. development in the Albion Rural Village, a highly scenic area. The bulk of the development is considerably larger than the other houses in the area (averaging 2000 sq.ft.) and so does not meet the requirement of protecting views from Albion bridge, Highway 1 and Albion Flats, nor of being consistent with the surrounding structures of the Rural Village zoning. A third issue is the protection of the view from Albion Ridge Road toward the Albion bridge and cove.

Regarding the size of the structure and eastward views, we find that the structure can be seen from public spaces, and will have a huge presence, standing as it will near the crest of a hill overlooking all of the town. It will look like the huge mansion on the hill compared to the common people's houses below. While we appreciate the improved design from the original application, we still feel that a solid wall 28' high with large reflective windows and an upstairs deck will dominate the hillside, and is not in keeping with the village, nor subordinate to the natural setting.

We also understand the staff report on the visual impact being similar to the adjacent Rural Residential dwellings, but would argue that this is not relevant, as the zoning is Rural Village. As such, a large increase of square footage in this instance would set a

5 of 6

precedent for the Rural Village zone that is greatly in excess of the current sizes. This will become a growth-inducing element in the Albion Village, with each other homeowner now feeling justified to increase their structure square footage to 3500 sq. ft. Such a precedent should not be made on the desire of one applicant.

We would suggest a smaller split-level house to minimize the visual impact and the vast difference with the structural square footage.

The third issue is the viewshed from Albion Ridge Road northwest toward Albion bridge and cove. While this is easily overlooked in construction planning, it is vitally important to the residents of Albion Ridge. When driving west down Albion Ridge, the view over the Elliott property to the bridge and cove is the most highly scenic and inspiring of the entire area. It is one of the very few places where this view is available, and the protection of that particular view is very important to us. We find that the recommended landscaping plan does not take into consideration the protection of this specific view, instead recommending plantings to shield the house. While this is commendable, we feel that the view to the bridge should be protected, and no trees or bushes planted that interfere with that view. Therefore we would request that the landscaping plan be detailed before approval of the CDP, and that it specify the protection of the view from Albion Ridge Road to the bridge and cove. This is in keeping with the use of the lower property for septic fields, and will not much effect the screening of the house. We feel very strongly about this, as mentioned in my letter in Aug. 2005, so please consider it an important issue. A special condition could resolve this issue.

We hope these issues will be addressed at the hearing, even though we may not be able to attend on a workday.

Sincerely,

Signature on File

Rixanne Wehren

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December 1, 2006

NOTICE OF FINAL ACTION

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

CASE#: CDP #28-2006
OWNER: Robert & Sharon Elliott
APPLICANT: Kathleen Elliott Lloyd, Irene Elliott, Lynn & Donna Shalley
AGENT: Rick Jurczynski
REQUEST: Construct a 2,761± square foot two-story single-family residence with a maximum average height of 24± feet from natural grade, with an attached 790± square foot garage. Total square footage of development would be 3,551± square feet. Construct a retaining wall and driveway; install a septic system and underground utilities. Convert an existing test well to a production well. Grading of approximately 30 cubic yards associated with the project.
LOCATION: In the Coastal Zone, on the N side of Albion Ridge Road (CR# 402), approximately ¼ mile E of its intersection with State Highway One, at 33800 Albion Ridge Road, APN 123-170-19.

PROJECT COORDINATOR: Teresa Beddoe

HEARING DATE: November 20, 2006

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 9
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
NOTICE OF FINAL LOCAL ACTION & COUNTY FINDINGS (1 of 13)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP 28-2006 HEARING DATE: 11/20/06

OWNER: Elliott

ENVIRONMENTAL CONSIDERATIONS:

- Categorically Exempt
- Negative Declaration
- EIR

FINDINGS:

- Per staff report
- Modifications and/or additions

ACTION:

- Approved
- Denied
- Continued

CONDITIONS:

- Per staff report
- Modifications and/or additions

Signature on File

Signed: Coastal Permit Administrator

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-1

OWNER: Robert & Sharon Elliott
4214 Canyon Valley Road
Diamond Springs, CA 95619

APPLICANTS: Kathleen Elliott Lloyd & Irene Elliott,
Lynn & Donna Shalley
4214 Canyon Valley Road
Diamond Springs, CA 95619

AGENT: Rick Jurczynski
30710 Sherwood Road
Fort Bragg, CA 95437

REQUEST: Construct a 2,761± square foot two-story single-family residence with a maximum average height of 24± feet from natural grade, with an attached 790± square foot garage. Total square footage of development would be 3,551± square feet. Construct a retaining wall and driveway; install a septic system and underground utilities. Convert an existing test well to a production well. Grading of approximately 30 cubic yards associated with the project.

LOCATION: In the Coastal Zone, on the N side of Albion Ridge Road (CR# 402), approximately ¼ mile E of its intersection with State Highway One, at 33800 Albion Ridge Road, APN 123-170-19.

APPEALABLE AREA: Yes - Highly Scenic Area

PERMIT TYPE: Standard

TOTAL ACREAGE: .92± acre

ZONING: Rural Village (RV)

GENERAL PLAN: Rural Village (RV)

EXISTING USES: Undeveloped with the exception of a test well

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 3

CA. COASTAL RECORDS PROJECT: Image 200503590 (shows CDP 88-2003 story poles)

OTHER RELATED APPLICATIONS: 3913

CDP 88-2003 for the subject parcel was denied (see project history for more information). Septic permit #5728, not issued. Septic permit ST 22686, on hold awaiting issuance of a CDP.

**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 28-2006 (Elliott)
November 20, 2006
CPA-2**

Projects nearby the subject parcel that have obtained a Coastal Development permit:

CDP 103-1999 (Sinnott & Hall) approved, in an Rural Residential zone, the construction of a 1,612 sq. foot single-family residence with a 410 sq. foot attached garage and a maximum height of 18 feet. Associated development includes well, underground utilities, septic installation, and driveway development. Located at 33666 Albion Ridge Road (APN 123-170-12).

CDP 103-2002 (Bosk) approved, in a Rural Residential zone, the construction of a 1,100 square foot single-family residence with the maximum average building height of 24 feet from natural grade. Construction of a 150 foot driveway, a detached 648 square foot carport, installation of a septic system, connection to existing well and extension of underground utilities. Located at 33740 Albion Ridge Road (APN 123-170-25).

CDP 111-2003 (Woodhull) approved, in a Rural Residential zone, the construction of a 1,888 square foot two-story, split-level, single-family residence with an average maximum height of 20'10" above natural grade, and an attached 576 square foot garage, a 250-foot long driveway and a septic system, both within an easement on a neighboring parcel. Conversion of a test well to a production well, and extension of underground utilities. The project also includes a request for a variance to the front yard setback. The specific variance request is to reduce the front yard setback from twenty feet to five feet. Located at 33710 Albion Ridge Road (APN 123-170-26).

CDP 32-2004 (Pacific Union College) approved, in a Fishing Village zone, the addition of bath facilities to four existing dorm cabins and four existing family cabins; upgrade of the existing septic system; demolition and relocation of a boat barn; underground utilities; installation of boat sewage pump line; removal of cement boat; temporary bridge placement; tree removal; construction of a generator building. Located at 34100 Albion Street (APNs 123-170-02, 123-060-07).

PROJECT HISTORY: The previous application (CDP 88-2003) was for the construction of a 4,016± square foot two-story single-family residence with a maximum average height of 28± feet from natural grade, and the installation of a septic system, underground utilities, fence with a gate, a driveway and conversion of a test well to a production well. Grading associated with placement of the structure and a retaining wall was included in the request. This project was denied by the Coastal Permit Administrator due to the potential for negative impacts to visual resources in a mapped Highly Scenic Area and inconsistency with the LCP, requiring that the scale of development and the scope of the project be consistent with the surrounding structures in the Rural Village designation.

The applicant has redesigned the project, bringing the overall height down by 4 feet, to 24 feet average from natural grade, and eliminating 465 square feet of proposed development. The exterior façade of the structure, once referred to by a member of the public at the previous CDP hearing as a "Ramada Inn," has been redesigned to be more in keeping with the surrounding area and development.

Staff has contacted the Assessor's office in an effort to determine square footages for surrounding residential developments (some are within the Rural Village zoning and some are zoned Rural Residential; however, all examples are located on the same assessor's parcel number page). Seven surrounding parcels (APN's 123-170-09, -10, -12, -21, -23, -25 and -26) were examined; the average residential square footage is slightly less than 2,000 square feet (1942.14) per parcel.

PROJECT DESCRIPTION: The applicants propose to construct a 2,761± square foot two-story, 4-bedroom, 4 1/2 bathroom, single-family residence with a maximum average height of 24 feet from natural grade and an attached 790± square foot, 2-car garage for a total of 3,551± square feet of structural

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**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 28-2006 (Elliott)
November 20, 2006
CPA-3**

development. The applicant would also install a septic system, underground utilities, a driveway and a retaining wall. An existing test well would be converted to a production well.

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

Land Use

The proposed residential use is compatible with the Rural Village zoning district and is designated as a principal permitted use as per Section 20.388.010 of the Mendocino County Coastal Zoning Code (MCCZC).

The maximum building height limitation in a designated "highly scenic" area east of Highway One is 28 feet. Although Rural Village zoning would potentially allow for 35 feet in height, this is superseded by the 28-foot height limit in designated highly scenic areas, as discussed in Visual Resources below. The proposed structure would have a maximum average height of 24 feet above natural grade.

The proposed development complies with the rear and side building setback requirements of the Rural Village zoning district, which are 20 feet for the rear yard, and 6 feet for the side yards. Corridor preservation setbacks are also met.

Public Access

The project site is located east of Highway 1 and is not designated as a potential public access trail location on the LUP maps. There is no evidence of prescriptive access on the site. The proposal is consistent with the public access policies of the LCP.

Hazards

The project site is less than one acre in size and is exempt from CDF's fire safety regulations. Fire safety issues are addressed as part of the building permit process.

As the property is in close proximity to the slope that leads down to the Albion River, the applicant has submitted a geotechnical report. The report, prepared by PJC & Associates, dated November 29, 2004, concludes that the project is feasible, with several significant notations:

- The San Andreas fault is located five miles southwest from the project site, and the Maacama fault is located 24 miles northeast of the site.
- The site is located within a region subject to a high level of seismic activity. Although the potential for fault rupture, liquefaction, lateral spreading and expansive soils are low, ground shaking is expected to occur in the region on the next several decades.
- No evidence of significant slope instability was observed; however, due to the steepness, soil creep should be expected within the building envelope.
- Of primary concern to the geologists is the presence of the weak and creeping colluvial soils and the close proximity of the building envelope to the steep slope bordering the Albion River.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-4

- The geologist recommends the foundation should consist of a drilled concrete, cast-in-place pier and grade beam foundation system, as well as making specific requirements for site preparation, drainage, grading, retaining walls, and observation by PJC & Associates.
- Drainage and erosion control measures are recommended by the geologist.

Special Condition #1 is recommended to ensure compliance with the geotechnical report.

Visual Resources

The project site is located within a designated "highly scenic area" and is zoned Rural Village. The proposed residence would be visible from the north on Highway One, Albion River and Albion Flats.

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

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

Policy 3.5-3 states:

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

Section 20.388.005 of the Mendocino County Coastal Zoning Code (noting the intention of the RV zoning) states:

This district is intended to preserve and maintain the character of the rural atmosphere and visual quality of existing coastal rural villages...

Section 20.504.015 of the Mendocino County Coastal Zoning Code states (pertinent part):

(C) Development Criteria.

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

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

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-5

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

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

(8) Minimize visual impact of development on ridges by the following criteria:

- (a) Prohibiting development that projects above the ridgeline;*
- (b) If no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;*
- (c) Prohibiting removal of tree masses, which destroy the ridgeline silhouette.*

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

The project site is located within the portions of Albion that are subject to the Development Criteria established in Section 20.504.020(C) of the Zoning Code:

(C) Development Criteria.

- (1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.*
- (2) New development shall be sited such that public coastal views are protected.*
- (3) The location and scale of a proposed structure will not have an adverse effect on nearby historic structures greater than an alternative design providing the same floor area. Historic structure, as used in this subsection, means any structure where the construction date has been identified, its history has been substantiated, and only minor alterations have been made in character with the original architecture.*
- (4) Building materials and exterior colors shall be compatible with those of existing structures.*

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-6

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

Of primary visual concern is the bulk of the development. This parcel is the furthest Rural Village zoned parcel from the highway as one travels east on Albion Ridge Road, and there are several existing homes behind it (east) that are somewhat larger and taller than those found in the older Albion village (RV zoning). The parcels to the east of the subject are in the Rural Residential zone, but are also in the mapped "highly scenic" area. While the proposed development would exceed the bulk of the surrounding homes (and all of those found in the RV zoning), staff has worked closely with the agent/designer of the home to ensure that the visual impact to the public would be minimized. Staff requested that story poles be placed to assist in envisioning the development, and a computer-generated photo be prepared.

As noted above, this proposed structure is larger than the surrounding development. However, after staff received a computer-generated photo of the site with the story poles, with the development superimposed as an overlay, it is staff's determination that this home is consistent with the intent of the Rural Village zoning, despite the difference in size and height compared to surrounding structures.

The rationality behind staff determination of consistency with Visual Resources policy for the project is as follows:

- The public view of the ocean, as heading westerly on Albion Ridge Road, would not be negatively impacted, as the development would be placed in a cut of 6 to 8 feet, resulting in a lower development. The cut would follow natural contours.
- The view of the development as seen from Highway 1 would not silhouette the sky, and would be set back sufficiently from the public roadway so as to nearly match in perceived bulk the neighboring structures to the east. Without looking at a map, it is very difficult to ascertain that the proposed development is zoned RV and not Rural Residential like the parcels to the east. The development would be located in the viewshed of the Rural Residential structures as opposed to the cluster of smaller houses comprising the Rural Village below.
- The proposed materials have been revised from the original submittal and are more in keeping with the neighboring structures and the surroundings.
- The location of the proposed development has remained largely the same as in the previous application; however, it is located on a long piece of land that requires that the proposed septic system be located lower than the house for proper flow of septic material. It meets all of the required setbacks set forth in the Rural Village zoning.
- The house could conceivably be located farther to the west on the subject property; however, it would be moved away from existing vegetation and out into an open area where it would be more visible.
- A landscaping plan is recommended to ensure that the public view of the proposed structure would be softened. It is not staff's intent to make the structure "invisible;" it is our intent that the

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-7

development blend in better with the surroundings. We believe this may be accomplished with a landscape plan containing mostly native plants¹.

In order to comply with the visual resource policies noted above, staff would recommend that a landscaping plan be submitted and approved prior to the issuance of the Coastal Development Permit. The purpose of the landscaping would not be to obscure the structure but to soften the appearance of the structure from public locations. Native plantings shall be specified. Special Condition #2 is recommended to this effect.

Exterior colors and materials are also analyzed for consistency with Visual Resources policy. As discussed above, Section 20.504.015(C)(3) states 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 following exterior materials and finishes are proposed:

Siding: Hardi Siding, light brown

Trim: Hunter green

Window frame: Hunter green fiberglass

Roofing: Composition shake, weathered wood color

Decking: Trex, Brasilia line (tan)

The proposed materials and finishes appear to meet Visual Resources code compliance.

Section 20.504.035 (Exterior Lighting Regulations) of the Coastal Zoning Code states:

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

- (1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.*
- (2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.*

Special Condition #3 is recommended to ensure that, prior to the issuance of the building permit, the applicant shall submit acceptable external lighting details.

Special Condition #4 is recommended to ensure proposed exterior materials, finishes and lighting are not changed without the review and approval of the Coastal Permit Administrator for the life of the project.

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¹ All proposed vegetation shall be limited in height to protect the public view of the ocean as one travels westerly on Albion Ridge Road.

**STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT**

**CDP# 28-2006 (Elliott)
November 20, 2006
CPA-8**

Additionally, there is an existing tree located on the northeast corner of the subject property, which staff believes to be an important visual screening resource. In order for the project to be in compliance with the section noted above that requires the structure not create a silhouette, this established tree must be retained in perpetuity, with a 1:1 ratio replacement when the natural lifespan of the tree is reached.

Staff feels that the proposed development as revised complies with the development criteria, if all recommended conditions were implemented.

Natural Resources

There are no known rare or endangered plant or animal species located on or in close proximity to the project site, as noted in the submitted botanical report prepared by the late Dr. Gordon McBride.

There are no environmentally sensitive habitat areas located within 100' of the proposed development.

Archaeological/Cultural Resources

This project was referred to the Northwest Information Center of the California Historical Resources Inventory at Sonoma State University (SSU) for an archaeological records search. SSU responded that the site has a low probability of containing archaeological resources and further investigation was not recommended. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Groundwater Resources

The site is located within an area mapped as "Critical Water Resources" (CWR). An existing well and a proposed septic system would serve the development.

A response to a referral sent to the Division of Environmental Health states:

DEH can give clearance to this CDP. Please note that the septic permit has not yet been purchased, and that on 8/10/06, the septic work will be 5 years old and will have to be re-reviewed by the designer per the sunset policy.

The project is expected to result in incremental but insignificant impacts to groundwater resources.

Transportation/Circulation

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

A response to a referral sent to the County Department of Transportation (DoT) noted the requirements for construction of a standard private driveway approach. Special Condition #5 is recommended to ensure compliance with DoT's regulations.

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Zoning Requirements

The project, as conditioned, complies with all of the zoning requirements of Division II of Title 20 of the Mendocino County Code.

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

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

STANDARD CONDITIONS:

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

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.

11/21/06

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-10

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

SPECIAL CONDITIONS:

1. The applicant shall comply with all requirements set forth by PJC & Associates and shall not deviate from this plan unless a written modification is submitted by the geologist and approved by the Coastal Permit Administrator. Prior to issuance of the building permit, evidence shall be provided that PJC & Associates or another qualified geotechnical or civil engineer has reviewed the final building plans.
2. Prior to the issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a landscaping plan designed to soften and partially shield the proposed structure from public view. This is intended

12/9/13

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 28-2006 (Elliott)
November 20, 2006
CPA-11

for the western, northwestern and eastern views. The existing tree located on the northeasterly portion of the property will be maintained in perpetuity; if it appears that the development would require that the tree be removed, then the building itself MUST be relocated downslope in order to retain the tree, only as far in distance as that is required. In the event that the tree reaches its natural lifespan, a replacement tree shall be replanted on a 1:1 basis and maintained for the life of the project. Any screening vegetation that hinders the public's view as seen from Albion Ridge Road traveling west shall be trimmed so as to protect the public view.

3. Prior to the issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, an exterior lighting detail that indicates shielded and downcast fixtures.
4. No change may be made to the exterior colors or approved lighting fixtures without prior approval by the Coastal Permit Administrator, for the life of the project.
5. Prior to commencement of construction activities, the applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation and construct appropriate improvements to protect the County road during the construction phase of the project. Prior to final occupancy, applicant shall complete, to the satisfaction of the Department of Transportation, a standard private driveway approach onto Albion Ridge Road (CR# 402), to a minimum width of ten feet, area to be improved fifteen feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.

Staff Report Prepared By:

Nov. 1, 2006
Date

Tc Signature on File Tc
Teresa Beddoe
Planner I

Attachments:

- Exhibit A Location Map
- Exhibit B Site Plan
- Exhibit C Floor Plan
- Exhibit D Floor Plan
- Exhibit E Elevations
- Exhibit F Elevations

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

Appeal Fee: \$795 (For an appeal to the Mendocino County Board of Supervisors.)

130813



30710 SHERWOOD RD
FORT DRAGG, CA 95437
707-961-1347
FAX 707-961-1872

RECEIVED

DEC 18 2006

CALIFORNIA
COASTAL COMMISSION

12-12-06

To Whom It May Concern,

I am writing this letter in response to Appeal # A-1-MEN-06-047 filed by Rixanne Wehren in regards to the Robert L and Sharon S. Elliott Project, CDP # 28-2006, CCC Reference # 1-MEN-06-188.

As the designer and builder for this project, I would like to respond to the reasons supporting this appeal by Ms. Wehren.

She states that the site plan shows " 5 clusters of evergreens to be planted along Albion Ridge Rd, which would obstruct the view from the road."

In reality, these are existing trees that are drawn on the site plan. There are no plans to plant large trees in that location, or trim the existing trees.

She states the "public view of the hillside would be greatly changed by the large, flat front of the new house." Again, this is incorrect. The west elevation of the house has eight different areas that face in three different directions. Two facing west, three northwest, and three southwest.

She mentions "large reflective windows facing the Highway 1 Bridge." There are only seven windows on the west facade of the house, the largest being 6' wide, with 2 pairs of French Doors at 7' high.

She also mentions that the west wall, "at 64' wide and 27' high would dominate the village scene" and would be "inconsistent with rural zoning."

The home is a maximum average height of 24' above grade. This home was designed specifically to blend in with the homes in the village.

She states that the square footage of the house is too large, and is inappropriate. The actual footprint of the house is 1789 Sq. Ft. Because it is being built on a sloped lot, it allows for living space in the lower level, the majority of which would exist whether used as living space or crawl space.

The owner has provided the building department with computer generated photos of the house in its proposed location to aid in envisioning how the house will appear in actuality. The photos show that the home will blend in with the surrounding homes in the area.

Please feel free to contact me with any questions that I may be able to help you with.

Sincerely,
Rick Jurczynski
RJ Builders

EXHIBIT NO. 10
APPLICATION NO.
A-1-MEN-06-047
LLOYD, ELLIOTT & SHALLEY
CORRESPONDENCE