

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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Staff:	Melissa B. Kraemer
Staff Report:	November 21, 2007
Hearing Date:	December 14, 2007
Commission Action:	

STAFF REPORT:
PERMIT AMENDMENT

APPLICATION NO.:	A-1-MEN-02-029-A1
APPLICANT:	Elk Home, LLC
AGENT:	Levanthal, Schlosser, Newberger Architects
PROJECT LOCATION:	5260 South Highway 1, ¼-mile north of Elk, Mendocino County (APN 127-130-04 & -05)
DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:	(1) Construction of a 3,025-square-foot, one-story, single-family residence and a 685-square-foot attached garage (for a total footprint of 3,710 square feet), with a maximum height of 18 feet above natural grade; (2) construction of a new segment of driveway connecting the garage to the existing rocked driveway road and a new guest parking area at an existing road turnout area near the walkway to the front entrance to the house; (3) installation of a new septic system, a 1,000-gallon, underground propane tank, underground existing power and telephone lines from an on-site power pole to the house, and an underground waterline; (4) replacement and extension of the existing wooden fence located along State Highway 1 and installation of a wooden roll-gate at the driveway road; and (5) demolition of the existing dilapidated house near the road, returning its footprint to natural condition.

DESCRIPTION OF

AMENDMENT REQUEST:

(1) Addition of 372 square feet to the north side of the approved 3,710-square-foot single family residence and garage, with the height of the addition not to exceed 18 feet above natural grade; (2) addition of 86 square feet of patio to the west side of the approved residence; and (3) changing the approved exterior siding and trim material from cement plaster with black color to clear all heart redwood vertical tongue and groove siding with a clear penetrating oil finish.

SUBSTANTIVE FILE:
DOCUMENTS

1) Commission CDP File No. A-1-MEN-02-029 (Shia)
2) County of Mendocino Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions the requested amendment to the coastal development permit originally granted for development of a new single family residence on the property. The proposed amended project would add additional square footage to the north side of the residence and modify the exterior siding of the home previously authorized by the Commission in September of 2003.

The original permit, CDP No. A-1-MEN-02-029 granted to Dan & Rosanna Shia, authorized (1) construction of a 3,025-square-foot, one-story, single-family residence and a 685-square-foot attached garage (for a total footprint of 3,710 square feet), with a maximum height of 18 feet above natural grade; (2) construction of a new segment of driveway connecting the garage to the existing rocked driveway road and a new guest parking area at an existing road turnout area near the walkway to the front entrance to the house; (3) installation of a new septic system, a 1,000-gallon, underground propane tank, underground existing power and telephone lines from an on-site power pole to the house, and an underground waterline; (4) replacement and extension of the existing wooden fence located along State Highway 1 and installation of a wooden roll-gate at the driveway road; and (5) demolition of the existing dilapidated house near the road, returning its footprint to natural condition. The proposed project amendments would (1) add 372 square feet to the north side of the approved 3,710-square-foot single family residence and garage, with the height of the addition not to exceed 18 feet above natural grade; (2) add 86 square feet of patio to the west side of the approved residence; and (3) change the approved exterior siding and trim material from cement plaster with black color to clear all heart redwood vertical tongue and groove siding with a clear penetrating oil finish.

Staff believes the amended development, with four special conditions reimposed, five special conditions modified from the originally imposed special conditions, and the attachment of two additional special conditions, will be consistent with the policies of certified Mendocino County LCP and the Chapter 3 public access policies of the Coastal Act. As conditioned, the

amended development will not be visible from Greenwood State Park, approximately ½ mile south of the project site, or from historic public viewing and photographic points adjacent to Cuffey's Cove Cemetery to the north. The proposed additions would not encroach into the prescribed 100-foot riparian setback, 100-foot rare plant ESHA setback, or the 35-foot geologic setback, all of which were approved by the Commission in its approval of the single family residence and related development under Coastal Development Permit No. A-1-MEN-02-029 on September 12, 2003.

Staff recommends that four of the nine special conditions of the original permit approved by the Commission be reimposed verbatim and remain in full force and effect for the amended development. These special conditions set forth requirements relating to (1) no future bluff or shoreline protective device; (2) the assumption of risk, waiver of liability and indemnity for development approved under A-1-MEN-02-029; (3) removal and disposal of demolition debris associated with the old residence; and (4) conditions imposed by local government.

Five of the nine original special conditions are recommended to be reimposed with revisions to assure that the amended development remains consistent with the policies of the certified LCP and the public access policies of the Coastal Act. These revised conditions would require (1) that the applicant execute and record a deed restriction imposing the special conditions of the permit amendment as covenants, conditions, and restrictions on the use and enjoyment of the property; (2) design restrictions on the exterior materials and colors of the approved structures and exterior lighting restrictions for the amended development; (3) conformance of the design and construction plans for the amended development to the geotechnical investigation report; (4) submittal of a revised erosion and runoff control plan for the amended development with measures to ensure protection of the riparian area around Laurel Creek; and (5) submittal of a revised landscaping plan with added provisions to (a) prohibit the use of problematic and/or invasive species, (b) require the in-kind replacement of failed tree plantings, (c) require the maintenance of existing screening trees and prohibit limbing of screening vegetation, and (d) prohibit the use of certain harmful rodenticides on the property.

In addition, staff is also recommending that two new special conditions be attached to the amended development requiring no future bluff or shoreline protective device and the assumption of risk, waiver of liability and indemnity for the new development authorized by this permit amendment.

As conditioned, staff has determined that the amended development is consistent with the policies of the certified LCP and the public access policies of the Coastal Act.

The Motion to adopt the staff recommendation can be found on Page 6.

STAFF NOTES:

1. Procedural Note

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

On September 12, 2003, the Commission approved Coastal Development Permit No. A-1-MEN-02-029 (Dan & Rosanna Shia) for development consisting of (1) construction of a 3,025-square-foot, one-story, single-family residence and a 685-square-foot attached garage (for a total footprint of 3,710 square feet), with a maximum height of 18 feet above natural grade; (2) construction of a new segment of driveway connecting the garage to the existing rocked driveway road and a new guest parking area at an existing road turnout area near the walkway to the front entrance to the house; (3) installation of a new septic system, a 1,000-gallon, underground propane tank, underground existing power and telephone lines from an on-site power pole to the house, and an underground waterline; (4) replacement and extension of the existing wooden fence located along State Highway 1 and installation of a wooden roll-gate at the driveway road; and (5) demolition of the existing dilapidated house near the road, returning its footprint to natural condition. The Commission approved the project with findings, among others, that the approved development would not adversely affect environmentally sensitive habitat at the site, would not contribute to geologic hazards, and would protect visual resources. The Commission approved the project with nine special conditions, including conditions (1) requiring that all terms and conditions of the permit are recorded as deed restrictions; (2) imposing design restrictions requiring that lighting be shielded and requiring that the color and materials used to ensure that building materials and colors are not replaced with unsuitable materials and colors in the future; (3) requiring conformance of the design and construction plans to the geotechnical report recommendations; (4) prohibiting future bluff or shoreline protective devices; (5) requiring the applicants to assume the risk of geologic hazard and waive liability for the Commission; (6) requiring an erosion and runoff control plan; (7) requiring the installation and maintenance of the existing and proposed landscaping to ensure the development will continue to be visually screened in the future; (8) requiring removal of demolition debris that may fall to the beach or tidal zone; and (9) informing the applicants that this action has no effect on conditions imposed by the local government pursuant to an authority other than the Coastal Act.

The proposed permit amendment requests a 372-square-foot addition to the approved home and an additional 86 square feet of patio as well as changes to the exterior siding of the home. Special Condition No. 2 of the original permit imposed design restrictions on the color and materials of the house, stating that no changes to the approved final plans could occur without an amendment to the permit. This permit amendment application requests a change in the exterior siding of the home from cement plaster with black color to clear all heart redwood

vertical tongue and groove siding with a clear penetrating oil finish. The amended development will not adversely affect visual resources, as the proposed new colors and materials will blend with the surrounding area and the proposed and required landscaping (per Special Condition No. 7) will continue to effectively screen the house as expanded from public vantage points. Furthermore, the amended development will not adversely affect ESHA, as the new additions will be located outside of any necessary buffer setback areas, and Special Condition No. 6 requires a revised erosion and runoff control plan to protect ESHA resources. Additionally, the amended development will not contribute to geologic hazards, as the proposed new additions will be outside of the 35-foot geologic setback area required under the original permit. Modification and reimposition of Special Condition Nos. 1, 2, 3, 6 and 7 of the original permit as well as the addition of two new special conditions (Special Condition Nos. 10 and 11) will further ensure the protection of visual resources and ESHA and ensure the amended development does not contribute to geologic hazards.

As discussed in the findings of the staff report, amending the original permit to allow for a 372-square-foot addition to the approved home, an additional 86 square feet of patio, and a change in the exterior siding of the home is consistent with the policies of the the certified County LCP and the public access policies of the Coastal Act.

Therefore, for the reasons discussed above, the Executive Director has determined that the proposed amendment would not lessen or avoid the intent of the approved permit and has accepted the amendment request for processing.

2. Commission Jurisdiction & Standard of Review

The project subject to this coastal development permit amendment is located on the west side of State Highway 1, within an area certified under the Mendocino County Local Coastal Program. The project site is located between the first through public road and the sea. Therefore, the standard of review that the Commission must apply to the project is the certified Mendocino County Local Coastal Program and the Chapter 3 public access policies of the Coastal Act.

3. Scope

This staff report addresses only the coastal resource issues affected by the amended development, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources caused by the development as amended in order to achieve consistency with the certified LCP and the public access and recreation policies of the Coastal Act, and provides findings for conditional approval of the amended development. All other analyses, findings, and conditions related to the originally permitted development, except as specifically affected by the amended development and addressed herein, remain as stated within the original permit approval adopted in by the Commission on September 12, 2003. The adopted findings for the original permit is included as Exhibit No. 5.

I. MOTION, STAFF RECOMMENDATION, & RESOLUTION:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. A-1-MEN-02-029 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve with Conditions:

The Commission hereby approves the proposed permit amendment and adopts the findings set forth below, subject to the conditions below, on the grounds that the development with the proposed amendment, as conditioned, will be in conformity with the certified Mendocino County LCP and the public access policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

Note: Special Condition Nos. 4, 5, 8, and 9 of the original permit are reimposed as conditions of this permit amendment without any changes and remain in full force and effect. They are attached in Exhibit No. 5. Special Condition Nos. 1, 2, 3, 6 and 7 of the original permit are modified and reimposed as conditions of Permit Amendment No. A-1-MEN-02-029-A1. Special Condition Nos. 10 and 11 (below) are additional new conditions attached to this permit amendment. For comparison, the text of the original permit conditions are included in Exhibit No. 5.

Deleted wording within the modified special conditions is shown in ~~striketrough~~ text, new condition language appears as **bold double-underlined** text.

1. **Deed Restriction**

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

2. **Design Restrictions**

- A. ~~All roofing of the proposed structures shall be composed of materials of the colors proposed in the application or darker earth tone colors only. Exterior siding at the locations identified in this condition shall be composed of materials of the colors proposed in the application or darker tone colors only. The specific wall locations to be restricted as to color shall be as follows: beginning at the northernmost corner of the garage and proceeding counterclockwise starting with the garage wall with the overhead garage doors, the ocean facing wall of the garage, the ocean facing walls of the kitchen, the ocean facing return wall of the living room, the ocean facing curved wall of the living room, the ocean facing walls of the master bedroom, the ocean facing walls of the master bathroom, the ocean facing wall of the guest bedroom and the east wall of the guest bedroom ending at the north east corner of the guest bedroom. The remaining walls proceeding counterclockwise around to the northernmost corner of the garage may be painted with a color or colors of the owners choosing.~~ **All exterior siding, trim, fascia, and roofing of the proposed residence shall be composed of the materials and colors proposed in the application (i.e., clear all heart redwood vertical tongue and groove siding with a clear penetrating oil finish, Gacoflex fluid applied urethane roofing membrane for sloped roofing, and 1B roof systems "Lifetime Roofing" membrane for flat roofing).** The current owner or any future owner shall not repaint or stain the house or other approved structures with products that would lighten the color of the house or structures as approved without an amendment to this Permit. In addition, all exterior materials, including roofs and windows, shall be non reflective to minimize glare; and

- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

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

- A. All final design and construction plans **for the redesigned house authorized by Coastal Development Permit Amendment No. A-1-MEN-02-029-A1**, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the Engineering Geologic Reconnaissance report dated October 11, 1999, and Supplemental Evaluation report dated April 25, 2003 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a **further** Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Erosion and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-02-029-A1**, the applicants shall submit ~~an~~ **a revised** Erosion and Runoff Control Plan for review and approval of the Executive Director. The **revised** Erosion and Runoff Control Plan shall **substantially conform to the plan entitled "Erosion Control Plan" (Sheets L1 and L2), submitted with the permit amendment application by Levanthal, Schlosser, Architects on August 13, 2007, but shall incorporate the following added erosion and runoff control measure:** ~~incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of~~

~~sediment generated from construction. The final drainage and runoff control plans shall at a minimum include the following provisions:~~

- ~~1. A physical barrier consisting of bales of straw placed end to end shall be installed between any construction and (1) bluff edges that are downslope of the construction, and (2) the edge of the riparian plant community adjacent to Laurel Creek. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period.~~
 - ~~2. Vegetation at the site shall be maintained to the maximum extent possible and any disturbed areas shall be replanted or seeded with native vegetation immediately following project completion.~~
 - ~~3. All on-site debris stockpiles shall be covered and contained at all times.~~
 - ~~4. Provide that runoff from the roof, driveway and other impervious surfaces from the completed development shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site. Where gutters and downspouts are used, velocity reducers shall be incorporated, to prevent scour and erosion at the outlet.~~
- B. The permittee shall undertake development in accordance with the approved Erosion and Runoff Control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a **further** Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Landscaping and Maintenance Requirement

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-02-029-A1**, the applicants shall submit revised landscaping plans to the Executive Director for review and approval. The revised plans shall substantially conform with the sheets **A1.2 and L2** of the amended site plans submitted to the California Coastal Commission on ~~May 31, 2003~~ **August 13, 2007**, prepared by Leventhal and Schlosser, except that the landscaping plans shall also provide for the following changes to the project:

1. The landscaping plan notes shall include a prohibition against the planting of non-native invasive plants at the project site. **No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a “noxious weed” by the State**

of California or the U.S. Federal Government shall be planted within the property.

2. The landscaping plan notes shall state that if any of the trees to be planted and/or maintained according to the plan die or are removed for any reason, they shall be immediately replaced in-kind. No limbing or pruning of the visually screening trees shall occur.
3. The landscaping plan notes shall state that if any of the trees shown on the site plan (including sixteen Bishop pine trees (*Pinus muricata*) that form the backdrop for the view of the residence from Greenwood State Park shall be maintained and if any of these trees die or are removed for any reason, they shall be immediately replaced in-kind. No limbing or pruning of the visually screening trees shall occur.

4. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

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

10. No Future Bluff or Shoreline Protective Device

A. By acceptance of this permit amendment, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit Amendment No. A-1-MEN-02-029-A1, including, but not limited to, the addition of 372 square feet to the north side of the approved 3,710-square-foot single family residence and the addition of 86 square feet of new patio along the west side of the approved residence, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit amendment, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy No. 3.4-12, and Mendocino County Coastal Zoning Ordinance No. 20.500.020(E)(1).

- B. By acceptance of this Permit Amendment, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit amendment, including the addition of 372 square feet to the north side of the approved 3,710-square-foot single family residence and the addition of 86 square feet of new patio along the west side of the approved residence, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the development authorized by this permit amendment but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the development authorized by this permit amendment without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

11. Assumption of Risk, Waiver of Liability and Indemnity

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

IV. FINDINGS & DECLARATIONS:

The Commission hereby finds and declares the following:

A. Project & Site Description

1. Background & Project Setting

The Coastal Commission approved Coastal Development Permit No. A-1-MEN-02-029 *de novo* on September 12, 2003 to applicants Dan and Rosanna Shia for development consisting of (1) construction of a 3,025-square-foot, one-story, single-family residence and a 685-square-foot attached garage (for a total footprint of 3,710 square feet), with a maximum height of 18 feet above natural grade; (2) construction of a new segment of driveway connecting the garage to the existing rocked driveway road and a new guest parking area at an existing road turnout area near the walkway to the front entrance to the house; (3) installation of a new septic system, a 1,000-gallon, underground propane tank, underground existing power and telephone lines from an on-site power pole to the house, and an underground waterline; (4) replacement and extension of the existing wooden fence located along State Highway 1 and installation of a wooden roll-gate at the driveway road; and (5) demolition of the existing dilapidated house near the road, returning its footprint to natural condition. Since that time, the property has changed ownership, and the proposed permit amendment is prompted by the proposal to (1) add 372 square feet to the north side of the approved 3,710-square-foot single family residence and garage, with the height of the addition not to exceed 18 feet above natural grade; (2) add 86 square feet of patio to the west side of the approved residence; and (3) change the approved exterior siding and trim material from cement plaster with black color to clear all heart redwood vertical tongue and groove siding with a clear penetrating oil finish. The subject development is located at 5260 South Highway 1, ¼-mile north of Elk, in Mendocino County.

The project site is a blufftop parcel west of State Highway 1, and is located on a point of land situated at the northern end of Greenwood Cove, approximately ½ mile south of Cuffey's Cove, and approximately ¼ mile north of the town of Elk, in an area designated as "highly scenic" in the Mendocino County LCP (Exhibit Nos. 1, 2, and 3).

The project site is an approximately 11-acre parcel located on a coastal terrace. The property is zoned Rural Residential, Five Acres Minimum, Development Limitations (DL). The southeast, southwest, and northwest sides of the property are surrounded by ocean water. A chain of large rock islands extends out into the ocean to the southwest. Greenwood Cove is on the southeast side of the rock/island chain, and Cuffey's Cove is on the northwest side. The coastal bluffs within the westerly three-fifths of the property are approximately 90 to 100 feet in vertical height above sea level. The easterly two-fifths of the property have bluffs that are approximately 120 feet in vertical height. Six small to medium size sea caves are located at the toe of the easterly two-fifths of the bluffs. A sandy beach is located at the bluff toe in the western portion of the property. A dirt road goes partially down the bluff toward this beach. The lower portion of this road becomes a rough hiking trail down to the beach. There is

another sandy beach at the northwest end of the property where the mouth of Laurel Creek meets the ocean. A dirt road goes partially down the bluff toward this beach. The property is predominantly grassland, with coastal bluff scrub on the bluff edge and bluff face and a riparian plant community associated with the immediate banks of Laurel Creek, near the northwest corner of the site. An unnamed tributary to Laurel Creek forms the northerly boundary of the property. There are scattered stands of Bishop pine, Monterey cypress, and Douglas-fir. The riparian vegetation along the creek constitutes an ESHA for which a 100-foot buffer has been required per CDP No. A-1-MEN-02-029. Populations of the Mendocino coast Indian paintbrush – *Castilleja mendocinensis* – were located growing on the bluff edge and bluff face. No development is proposed within 100 feet of this rare plant ESHA.

An existing house located approximately 65 feet from State Highway 1 at the southeast entrance to the property is built along a steep-sided ravine and is dilapidated and presently uninhabited. The ground has dropped from beneath several supporting piers of that structure.

An ancient geologic fault-line extends up the west side of the ravine, approximately 100 feet from the dilapidated original house. The ravine was created by weathering and erosion along the inactive fault. The active San Andreas Fault is located offshore, approximately four miles to the southwest.

A mobile home is located in the approximate north-central portion of the property. The building site for the house approved by the Commission under Permit No. A-1-MEN-02-029 is located in the southwest portion of the property. The parcel is bordered by agricultural rangeland to the north and east.

The proposed new addition would not be visible from Greenwood State Park, approximately ½ mile south of the project site, as the proposed development would be located on the north side of the residence, and only the south end of the residence is visible from the park. The proposed development would not be visible from historic public viewing and photographic points adjacent to Cuffey's Cove Cemetery to the north, due to the screening value of existing trees on the property.

2. Description of Originally Approved Project

The Coastal Commission approved Coastal Development Permit No. A-1-MEN-02-029 on September 12, 2003 to applicants Dan and Rosanna Shia for development consisting of (1) construction of a 3,025-square-foot, one-story, single-family residence and a 685-square-foot attached garage (for a total footprint of 3,710 square feet), with a maximum height of 18 feet above natural grade; (2) construction of a new segment of driveway connecting the garage to the existing rocked driveway road and a new guest parking area at an existing road turnout area near the walkway to the front entrance to the house; (3) installation of a new septic system, a 1,000-gallon, underground propane tank, underground existing power and telephone lines from an on-site power pole to the house, and an underground waterline; (4) replacement and extension of the existing wooden fence located along State Highway 1 and installation of a wooden roll-gate at the driveway road; and (5) demolition of the existing dilapidated house

near the road, returning its footprint to natural condition. The permit contained nine special conditions including conditions (1) requiring that all terms and conditions of the permit are recorded as deed restrictions; (2) imposing design restrictions requiring that lighting be shielded and requiring that the color and materials used to ensure that building materials and colors are not replaced with unsuitable materials and colors in the future; (3) requiring conformance of the design and construction plans to the geotechnical report recommendations; (4) prohibiting future bluff or shoreline protective devices; (5) requiring the applicants to assume the risk of geologic hazard and waive liability for the Commission; (6) requiring an erosion and runoff control plan; (7) requiring the installation and maintenance of the existing and proposed landscaping to ensure the development will continue to be visually screened in the future; (8) requiring removal of demolition debris that may fall to the beach or tidal zone; and (9) informing the applicants that this action has no effect on conditions imposed by the local government pursuant to an authority other than the Coastal Act.

3. Description of Permit Amendment

The permit amendment proposes to (1) add 372 square feet to the north side of the approved 3,710-square-foot single family residence and garage, with the height of the addition not to exceed 18 feet above natural grade; (2) add 86 square feet of patio to the west side of the approved residence; and (3) change the approved exterior siding and trim material from cement plaster with black color to clear all heart redwood vertical tongue and groove siding with a clear penetrating oil finish (see Exhibit No. 4). The proposed additions would not encroach into the prescribed 100-foot riparian setback, 100-foot rare plant ESHA setback, or the 35-foot geologic setback (see sheets A1.1 and A1.2 of Exhibit No. 4), all of which were approved by the Commission in its approval of the single family residence and related development under Coastal Development Permit No. A-1-MEN-02-029 on September 12, 2003. As discussed above, the proposed development would not be visible from Greenwood State Park to the south (as the proposed development would be located on the north side of the residence) or Cuffey's Cove Cemetery to the north (due to screening by existing trees).

Special Condition Nos. 6 and 7 of the original permit had required that an erosion control plan and a landscaping plan be submitted prior to issuance of the original permit. Prior to and in lieu of submitting such plans for condition compliance under the original permit, the applicants submitted both an Erosion Control Plan and a Landscaping Plan with the permit amendment application for the project as proposed to be amended (see sheets A1.2, L1, and L2 of Exhibit No. 4). The Erosion Control Plan (sheets L1 and L2 of Exhibit No. 4) proposes various measures for erosion and runoff control, including, but not limited to, (1) installing a physical barrier of silt fencing and bales of weed-free rice straw between any construction and the bluff top edge, and maintaining erosion control devices in place throughout the construction period; (2) maintaining vegetation at the site to the maximum extent possible and replanting or seeding disturbed areas with native vegetation immediately following project completion; (3) directing runoff from the roof, driveway, and other impervious surfaces from the completed development into pervious areas on the site for infiltration to the maximum extent practicable in a non-erosive manner; (4) incorporating velocity reducers and splash

blocks where gutters and downspouts are used to prevent scour and erosion at outlets; (5) restricting soil grading activities to the drier months between May 1 and October 31; (6) prohibiting the washing-out of concrete delivery vehicles, the disposal of solid waste, or the release of any hazardous materials, and immediate clean-up any hazardous materials spills; and (7) covering and containing at all times all on-site debris stockpiles. The landscaping plan (sheets A1.2 and L2 of Exhibit No. 4) proposes various measures for landscaping the site including specifications for plant material, soil preparation, planting, staking and wind protection, irrigation, maintenance and replacement, and protection of existing vegetation.

B. Visual Resources

LCP Provisions

Policy 3.5-1 of the certified Mendocino County Land Use Plan (LUP) states, in applicable part, the following:

...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. [Emphasis added]

LUP Policy 3.5-3 states, in applicable part, the following:

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 Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

In addition to other visual policy requirements, new development west of Highway One in designated ‘highly scenic areas’ is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures... New development should be subordinate to natural setting and minimize reflective surfaces... [Emphasis added]

Note 1: LUP Map No. 20 designates all of the area west of Highway One in the immediate vicinity of the applicants’ parcel as highly scenic.

Note 2: Coastal Zoning Ordinance 20.504.015(A)(3) reiterates this section of coastline as being a “highly scenic area.”

LUP Policy 3.5-4 states, in applicable part, the following:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists... Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; ...[Emphasis added]

LUP Policy 3.5-5 states, in applicable part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged ... [Emphasis added]

Section 20.504.010 of the certified Mendocino County Coastal Zoning Code (CZC) states:

The purpose of this section is to insure that 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.

CZC Section 20.504.015(C) states, in applicable part, the following:

- (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 shall be selected to blend in hue and brightness with their surroundings.*
- ...
- (5) Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area.*
- ...
- (7) Minimize visual impacts of development on terraces by the following criteria:*
 - (a) Avoiding development, other than farm buildings, in large open areas if an alternative site exists;*

(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;

(c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;

(d) Design development to be in scale with rural character of the area.

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

...
(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. [Emphasis added]

Discussion

The subject parcel is located on a broad coastal terrace situated west of State Highway 1 in an area designated as “highly scenic” under the Mendocino County LCP that is surrounded by ocean water on the southeast, southwest, and northwest sides. The property is predominantly open grassland, with coastal bluff scrub on the bluff edge and bluff face, and a riparian plant community associated with the immediate banks of Laurel Creek, near the northwest corner of the site. There are scattered stands of Bishop pine, Monterey cypress, and Douglas-fir with a prominent stand of 16 trees located immediately behind the proposed house addition site. This stand of existing trees screens the house site from historic public viewing and photographic points adjacent to Cuffey’s Cove Cemetery to the north.

The above listed visual resource protection policies set forth three basic criteria that development at the site must meet to be approved. First, LUP Policy 3.5-1 and CZC Section 20.504.010 require that development be sited and designed to protect views to and along the ocean and scenic coastal areas. Second, LUP Policy 3.5-3 and CZC Section 20.504.015(C)(2) generally require that new development in highly scenic areas be limited to one story and 18 feet in height. Finally, LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting.

1. Protecting Views To and Along the Coast

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

The proposed addition would not block any views to and along the coast because all views through the building site from public areas are screened by trees and the geographic setting.

Therefore, the Commission finds that the amended development as conditioned will protect public views to and along the ocean and scenic coastal areas consistent with visual resource protection provisions LUP Policy 3.5-1 and CZC Sections 20.504.010 and 20.504.015(C)(1) of the certified LCP.

2. Consistency with Height Requirements

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

3. Subordinate to the Character of its Setting

LUP Policies 3.5-1, 3.5-3, and 3.5-4, and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting. To help ensure that new development will be subordinate, LUP Policy 3.5-4 also requires that buildings located within areas designated highly scenic shall be sited in or near the edge of a wooded area rather than in open areas and utilize natural landforms or artificial berms to screen development. In addition, Policy 3.5-5 states that tree planting to screen buildings be encouraged. Furthermore, the County's CZC Section 20.504.010 states that permitted development shall be sited and designed to minimize the alteration of landforms. Moreover, CZC Section 20.504.015(C)(3) requires that in highly scenic areas, building materials, including siding and roof materials, shall be selected to blend in hue and brightness with their surroundings.

The approval of the original house under Commission Permit No. A-1-MEN-02-029 included several aspects to help make the development subordinate to the character of its setting, all of which are applicable to the proposed new addition under this permit amendment. The proposed new addition would not be visible from Greenwood State Park, approximately ½ mile south of the project site, as the proposed addition would be located on the north side of the residence, and only the south side of the residence is visible from the park. The existing trees on the property would protect the amended development from public view from State Highway 1, including from the stretch of the highway upon which the parcel fronts and also from portions of the highway both south and north of the proposed development. The southward-looking view from State Highway 1 near Cuffey's Cove to the north of the project site is of one of the most beautiful scenes along the Mendocino coastline. This view would be unaffected by the proposed amended development because the amended development would be visually screened from Cuffey's Cove by existing trees on the property (unless trees were limbed or removed). The proposed addition would be built on the north side of the approved

house site, which is situated at the edge of the prominent stand of 16 old pine trees described earlier, consistent with LUP Policy 3.5-4. The proposed addition would not require significant landform alteration or a change in the natural topography, consistent with CZC Section 20.504.010, thereby helping to keep it subordinate to the character of its setting.

The applicants propose to landscape the development with trees that would visually screen the view of the residence from the public trail at Greenwood State Park to further ensure that the amended development would be subordinate to the character of its setting. The original permit required the submittal of a landscaping plan providing for the planting of trees. Prior to and in lieu of submitting a landscaping plan for condition compliance under the original permit, the applicants submitted the current landscaping plan as part of the permit amendment request. The submitted site plan indicates that eight (8), 15-gallon-sized, landscape-screening trees would be planted between the house and the bluff edge in locations consistent with the geologic setback recommendations of 35 feet from the edge of the coastal bluff and at least ten feet from the closest inland walls of the subterranean sea caves. The two species of trees to be planted would include four Monterrey cypress (*Cupressus macrocarpa*) and four shore pine (*Pinus contorta*) planted at approximately 12-15-foot spacing in a pattern that would complement five existing pine trees providing visual screening for the house. Each planted tree would have humus builder amendment and water crystals added to the soil to provide nutrients and water retention capability. Three-foot-tall, green-colored windscreens would be provided to help protect the trees from physical damage and desiccation due to strong onshore winds. A drip irrigation system would be installed and maintained for a period of 12 to 15 years. Prior to any site development, temporary plastic fencing would be placed around all vegetation identified on the site plans for retention, specifically, the cypress and pine trees which would serve as visual screening for the proposed residence. No construction activities, vegetation removal, excavation, materials or equipment storage would be permitted within the dripline of the trees to be protected.

Although the landscaping specifications proposed are, in general, adequate to visually screen the view of the residence from the public trail at Greenwood State Park, they are not adequate to protect public views and ensure that the development is subordinate to the character of the area. For example, if any of the trees to be planted and/or maintained according to the proposed landscaping plan die or are removed for any reason, the amended development would be visible from public view areas and degrade the visual resources of the area. Furthermore, limbing or pruning of the visually screening trees could allow for a view of the development from State Highway 1 near Cuffey's Cove to the north. To ensure the protection of visual resources in the area, the Commission attaches Special Condition No. 7, which requires that the landscaping plans be modified to include the specifications that if any of the trees to be planted and/or maintained according to the plan die or are removed for any reason, they shall be immediately replaced in-kind, and no limbing or pruning of the visually screening trees shall occur.

The view from the public trail at the tip of Greenwood State Park includes spectacular vistas of bluffs and sea stacks protruding into the ocean. The view is not limited to pristine views of natural beauty. Many of the buildings of the town of Elk located between State Highway 1

and the ocean are visible from this vantage point, including the existing house on the subject property that was approved for demolition under Commission CDP No. A-1-MEN-02-029. Demolition of this old home will remove this house from the viewshed, but development of the new house approved under the original permit adds a house to the viewshed. However, in approving the new house, the Commission determined that by utilizing the existing backdrop of trees and adding additional landscaping, limiting the height to 18 feet, minimizing alteration of the landform, and carefully selecting building colors and materials to blend the development into the natural surroundings as much as possible, the proposed development would be subordinate to the character of its setting consistent with LUP Policies 3.5-1, 3.5-3, and 3.5-4 and with CZC Section 20.504.010.

As currently proposed, the amended development would utilize exterior siding for the new residence and proposed addition that would blend with, and be subordinate to, the surrounding forest environment. The proposed siding and parapet walls would be changed to clear all-heart redwood vertical tongue and groove with a clear penetrating oil finish. The brown color will contribute to the silhouette effect created by the backdrop of trees in the late afternoon sun and will not otherwise stand out. By using a natural dark wood as opposed to a glossy color siding, the color will not reflect a substantial amount of light. The applicants have also proposed to use only glass that is not reflective to further minimize reflection from the proposed development.

The use of the proposed dark colors as described above and the use of glass that is not reflective is consistent with CZC Section 20.504.015(C)(3), which requires that new development minimize reflective surfaces and requires that in highly scenic areas, building materials, including siding and roofing materials, shall be selected to blend in hue and brightness with the surroundings. The proposed addition to the approved residence and the proposed change in exterior siding of the residence would be subordinate to the character of its setting consistent with LUP Policies 3.5-1, 3.5-3, and 3.5-4 and with CZC Section 20.504.010 by (1) utilizing the backdrop of trees and adding additional landscaping, (2) limiting the height of the proposed addition to 18 feet, (3) minimizing alteration of the landform, and (4) carefully selecting building colors and materials to blend the development into the natural surroundings as much as possible.

The subordinate appearance of the amended development is dependent on the amended development being built and maintained as proposed. Therefore, to ensure that the screening trees (both planted and retained) will always be present to shield the amended development from view from State Highway 1 and from public vantage points, Special Condition No. 7 is modified and reimposed to require that no limbing or tree removal occur, and that trees be replaced in-kind as they die. Additionally, Special Condition No. 2 is modified and reimposed to restrict the color and building materials used for the development and require exterior lighting to have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel. To ensure that only the proposed siding that blends in hue and brightness with the surroundings as described above are utilized during the life of the project, the Commission modifies and reimposes Special Condition No. 2. This condition requires all siding and roofing of the proposed structures to be composed of materials utilizing

only the proposed color scheme. The design of the proposed house contains a significant amount of window glass that would not be consistent with the certified LCP if it were allowed to be reflective. Therefore, to ensure consistency with CZC Section 20.504.015(C)(3), Special Condition No. 2 requires that the window glass be non-reflective and any exterior lighting installed now or in the future be the minimum necessary for the safe ingress and egress of the structures and be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel. To ensure that any future buyers of the property will be aware of the limitations of Special Condition Nos. 7 and 2, on tree removal and limbing, maintaining the dark colors, prohibiting the use of reflective glass, and maintaining a certain kind and array of exterior lighting fixtures, the Commission modifies and reimposes Special Condition No. 1. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit amendment as covenants, conditions, and restrictions on the use and enjoyment of the property. Special Condition No. 1 of the original permit similarly required the recordation of a deed restriction recording the terms and conditions of the permit as conditions, covenants, and restrictions against the land. This condition has not been fulfilled. Therefore, Special Condition No. 1 is modified simply to require that the terms and conditions of the approved amended development be recorded.

As conditioned, the Commission finds that the amended development will be subordinate to the character of its setting consistent with LUP Policies 3.5-1 and 3.5-3, and with CZC Section 20.504.010 of the certified LCP.

4. Conclusion

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

C. Geologic Hazards & Site Stability

LCP Provisions

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

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

LUP Policy 3.4-7 and CZC Section 20.500.020(B) state that:

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

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

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

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report

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

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

CZC Section 20.500.010 states that development shall:

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

CZC Section 20.500.015(A) states in applicable part:

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

Discussion

The subject parcel is a bluff top lot that overlooks the ocean, with bluffs ranging from approximately 90 to 125 feet in vertical height. Geotechnical evaluations performed by BACE Geotechnical between 1999 and 2003 for the house approved under Commission Permit No. A-1-MEN-02-029 reported seven sea caves and one arch in the vicinity of the proposed house site but concluded that the site was suitably stable for the planned residence. Regarding an assessment of landslide stability, BACE reported that the home site was not in danger from enlargement of the landslides, since the nearest landslide is 150 feet away, and the bluffs elsewhere at the property are comprised of moderately hard to hard rocks that are generally not subject to landsliding or erosion. With regard to seismicity, BACE reported that no evidence of recent movement (creep or rupture) was observed along the fault traces in the area, and neither of the two inactive faults trend through or towards the home site. With regard to expansive soils, BACE reported that no evidence (such as ground cracks) of expansive clay soils or rock materials, was observed at the site, and no expansive soils or rocks were observed at the property. With regard to tsunami or storm surge concerns, BACE reported that since the home site is approximately 120 feet above Mean Sea Level, the potential for inundation by tsunami or storm surge is not of concern. A quantitative slope stability analyses was performed for the home site investigation and indicated a factor of safety of >1.5 (static) and >1.1 (seismic). A blufftop setback of 35 feet was recommended, including a minimum 10-foot buffer between the proposed house and any inland walls of the sea caves. The 35-foot setback was determined to be sufficient to provide for at least a 75-year design life for the development before the development would be affected by bluff retreat and associated geologic hazards. After reviewing this analysis, Dr. Mark Johnsson, the Commission's staff geologist, determined that the BACE projection of the bluff retreat rate and the other recommendations were reasonable.

In its approval of the original permit for the new house on the property, the Commission attached Special Condition No. 3, which required that the development be undertaken in conformance with the recommendations of the geotechnical evaluations, including the recommendation that development on the site must be located no closer than 35 feet from the bluff edge. The proposed home addition and additional patios would be connected to the approved home site and are located at least 35 feet from the bluff edge, as seen in Exhibit No. 4. Therefore, the proposed additions would be set back a sufficient distance from the bluff edge to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. In its investigation of the approved house site, BACE geotechnical advised that conventional footing foundations could be used with this setback provided that BACE reviews the project plans; verifies the setbacks in the field when the house corners have been staked; and observes the foundation excavations during construction. The presence of weak surficial soils may require that footings be deepened beyond Uniform Building Code minimums to gain uniform support in underlying firm soil or rock.

As discussed above, the proposed home addition and additional patios occur at the approved home site and conform to the bluff setback requirements of the original permit. To ensure that the applicant adheres to the recommendations suggested in the BACE geotechnical reports and that the development does not contribute significantly to geologic hazards, the Commission attaches Special Condition No. 3. The special condition requires all final design and construction plans, including foundations, grading and drainage plans, to be consistent with the recommendations contained in the geotechnical reports dated October 11, 1999, and April 25, 2003 prepared by BACE Geotechnical Consultants. As conditioned, the amended development will include the measures determined by the geologic investigation to be necessary to stabilize the site consistent with LUP Policy 3.4-1.

In its approval of the original permit for the house (under Commission Permit No. A-1-MEN-02-029), the Commission attached Special Condition No. 4, which prohibits the construction of shoreline protective devices to protect the development approved under the permit, requires that the landowner provide a geotechnical investigation and remove the house and its foundation if bluff retreat reaches the point where the structure is threatened, and requires that the applicants accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are required by LUP Policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Code, which state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the amended development could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

The subject development proposes to construct an addition to the new house as well as additional patio areas adjacent to the house. This development would be located on a coastal terrace over 100 feet in height that is eroding and underlain by sea caves. Thus, this proposed development would be located in an area of high geologic hazard. The new development can only be found consistent with the above-referenced provisions if the risks to life and property from the geologic hazards are minimized and if a protective device would not be needed in the future. The submitted information from BACE Geotechnical submitted for the original house (which, as discussed above, suffices for the proposed development) states that if the development is set back 35 feet from the bluff edge in the proposed location, the amended development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life. Similarly, the Commission found that a 10-foot setback measured from the blufftop projection of any underlying sea caves must also be applied to the areas on the parcel underlain by sea caves so structures would be further safe-guarded from geologic hazards associated with catastrophic or incremental collapse of the materials above the sea caves.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given blufftop site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. As discussed in the findings for approval of the original permit, it has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The April 6, 2003, BACE Supplemental Evaluation for the originally approved house states that their geological and engineering services and review of the proposed development were performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities, stating, “[n]o other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in the report.” This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding both at the margins and underneath the landform, and that the proposed new house additions approved under the current amendment request will be subject to geologic hazard and may someday require a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7 and Zoning Code Sections 20.500.010 and 20.500.020(B). The Commission finds that the amended development authorized by the current amendment could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic information in the file and the evaluation of the house site by the Commission’s staff geologist for the original permit, the Commission finds that the risks of geologic hazard are minimized if the new development is set back 35 feet from the bluff edge and situated a minimum of 10 feet from the wall of any underlying sea caves. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed additions are consistent with the certified LCP only if the permit amendment is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems

that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 10 prohibiting the construction of seawalls and Special Condition No. 11 requiring the waiver of liability.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, *etc.* could result in destruction or partial destruction of the new addition or other development approved by the Commission. In addition, the new development authorized by the current amendment itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No. 10, which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house additions should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 10 is required to ensure that the amended development authorized by the current amendment is consistent with the LCP and that Special Condition No. 1 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a seawall could be constructed to protect the new development. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Additionally, the Commission attaches Special Condition No. 11, which requires the applicants to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the amended development authorized by the current amendment despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the new development authorized by the current amendment. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the new development authorized by the current amendment to withstand hazards. In addition, the requirement of Special Condition No. 1 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

The Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a

house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. However, in this case because the project site is located within a highly scenic area, future improvements to the amended development are not exempt from permit requirements pursuant to Section 30610(a) and Section 13250(b)(1) of the Commission's regulations.

Section 30610(a) requires the Commission to specify by regulation those classes of development, which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. Section 13250(b)(1) indicates that improvements to a single-family structure in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt.

As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future additional proposed modifications to the approved development would not be exempt from coastal development permit requirements and the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard.

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

D. Environmentally Sensitive Habitat Areas

LCP Provisions

LUP Policy 3.1-7 states in applicable part:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an

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

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

LUP Policy 3.1-10 states in applicable part:

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

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

CZC Section 20.496.010 states in applicable part:

The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.

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

CZC Section 20.496.020 states in applicable part:

ESHA- Development Criteria

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

(1) *Width.*

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. ...Standards for determining the appropriate width of the buffer area are as follows:

- (a) *Biological Significance of Adjacent Lands*
...
- (b) *Sensitivity of Species to Disturbance*
...
- (c) *Susceptibility of Parcel to Erosion*
...
- (d) *Use of Natural Topographic Features to Locate Development*
...
- (e) *Use of Existing Cultural Features to Locate Buffer Zones*
...
- (f) *Lot Configuration and Location of Existing Development*
...
- (g) *Type and Scale of Development Proposed*
...

Section 20.496.035 of the Coastal Zoning Ordinance states in applicable part:

Riparian Corridors and other Riparian Resource Areas.

- (A) *No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:*

- (1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);*
 - (2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;*
 - (3) Existing agricultural operations;*
 - (4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.*
- (B) Requirements for development in riparian habitat areas are as follows:*
- (1) The development shall not significantly disrupt the habitat the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;*
 - (2) No other feasible, less environmentally sensitive alternative exists;*
 - (3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;*

Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent [Emphasis added]

Discussion

The subject property is situated on a geologically young coastal terrace vegetated by three plant communities. First, non-native grassland covers most of the flat terrace area of the site that was originally vegetated with coastal bluff scrub and/or coastal terrace prairie, but has been subject to regular mowing for many years. Second, coastal bluff scrub is present on the bluff edges and bluff faces. Lastly, a riparian plant community associated with the immediate banks of a small tributary of Laurel Creek traverses the site from the southwest to the northwest. The majority of the developed area in the vicinity of the existing mobile home, up to the edge of riparian habitat, is lawn.

Several botanical reports were prepared for the subject parcel in association with development of the house approved under Commission Permit No. A-1-MEN-02-029. The parcel was surveyed for the presence of rare and endangered plant species, the riparian vegetation was mapped, and the upland extent of the vegetation was marked with flagging.

A botanical report by Dr. Gordon McBride's dated July 14, 1999 reported one specimen of Mendocino coast Indian paintbrush (*Castilleja mendocinensis*), a CNPS List 1B rare plant, growing on the edge of the bluff near the area where a historical road goes down to the beach, approximately 500 feet away from the closest area of approved development. There were also several populations of the paintbrush on the bluff face in the same vicinity as the historical

road. No other rare or endangered plants were discovered on the site as a result of the surveys conducted. In its approval of Commission Permit No. A-1-MEN-02-029, the Commission determined that none of the originally approved development would significantly disrupt the habitat value of the identified rare plant populations. Similarly, as no development is proposed within 500 feet of the nearest rare plant ESHA, the Commission finds that the amended development authorized by the current amendment will not adversely affect the rare plant ESHA.

In her report dated April 2, 2001 for the approved house on the site, botanist Mary Rhyne identified the upland limit of the riparian vegetation growing on the sides of Laurel Creek, which drains water from the east side of State Highway 1. The creek is a natural channel that flows along the northern boundaries of the subject property and empties water into the Pacific Ocean. Dr. McBride's report stated that alder, thimbleberry, salmonberry, sedge, elderberry and associated plants represent the riparian community. Watercourses and their associated riparian habitat are considered to be ESHA as defined by the Mendocino County certified LCP. Chapter 20.496 and Section 20.532.060, *et seq.* of the CZC contain specific requirements for protection of ESHA and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA from disturbances related to proposed development. LUP Policy 3.1-7 and Section 20.496.020 require that a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (CDFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width.

Both botanical consultants for the approved house recommended that a 100-foot no-disturbance buffer be measured from the upland limit of the riparian habitat for new development. The house addition and patios proposed under this permit amendment would be located outside of the 100-foot no-disturbance buffer, as seen in Exhibit No. 4. Therefore, the Commission finds that the amended development is consistent with the ESHA buffer policies of the LCP, including LUP Policy 3.1-7 and CZC Section 20.496.020.

The applicant submitted a Landscaping Plan with the permit amendment application by Levanthal, Schlosser, Architects (sheets A1.2 and L2 of Exhibit No. 4). As described above in the Visual Resources discussion, the applicants propose to landscape the development with native trees that would visually screen the view of the residence from the public trail at Greenwood State Park to further ensure that the amended development would be subordinate to the character of its setting. Although the landscaping plan includes many specifications for plant material, soil preparation, planting, staking and wind protection, irrigation, maintenance and replacement, and protection of existing vegetation, in some aspects the plan is inadequate to ensure protection of ESHA on the property. For example, if nonnative, invasive plants were to be used in the landscaping plan, they potentially could spread into sensitive habitat areas and displace native species, including rare plants and riparian vegetation. Therefore, to ensure that the ESHA is not adversely impacted by any future landscaping of the site, the

Commission attaches Special Condition No. 7(A)(1), which precludes the use of invasive or otherwise problematic species.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species, the Commission attaches Special Condition No. 7(A)(4) prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-MEN-02-029-A1.

Therefore, the Commission finds that the amended development, as conditioned, will protect the ESHA on the property consistent with LUP Policies 3.1-7 and 3.1-10 and with CZC Sections 20.496.010, 20.496.020, and 20.496.035.

E. Water Quality

LCP Provisions

LUP Policy 3.1-25 states:

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

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

- (A) *Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
- (B) *To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
- (C) *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*
- (D) *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection [Emphasis added]*

Discussion

Storm water runoff from proposed development can adversely affect the biological productivity of coastal waters by degrading water quality. LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation.

As discussed above, the subject parcel is located on a coastal terrace atop a steep coastal bluff. Runoff originating from the development site that is allowed to drain over the bluff edge would contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of marine waters. Sedimentation impacts from runoff would be of greatest concern during and immediately after construction.

As discussed above in the project description, Special Condition No. 6 of the original permit required the submittal of an erosion and runoff control plan prior to issuance of the permit. Prior to, and in lieu of submitting the plan for condition compliance, the applicant submitted an Erosion Control Plan with the permit amendment application (see sheets L1 and L2 of Exhibit No. 4), which proposes various measures for erosion and runoff control, including, but not limited to, (1) installing a physical barrier of silt fencing and bales of weed-free rice straw between any construction and the bluff top edge, and maintaining erosion control devices in place throughout the construction period; (2) maintaining vegetation at the site to the maximum extent possible and replanting or seeding disturbed areas with native vegetation immediately following project completion; (3) directing runoff from the roof, driveway, and other impervious surfaces from the completed development into pervious areas on the site for infiltration to the maximum extent practicable in a non-erosive manner; (4) incorporating velocity reducers and splash blocks where gutters and downspouts are used to prevent scour and erosion at outlets; (5) restricting soil grading activities to the drier months between May 1 and October 31; (6) prohibiting the washing-out of concrete delivery vehicles, the disposal of solid waste, or the release of any hazardous materials, and immediate clean-up any hazardous materials spills; and (7) covering and containing at all times all on-site debris stockpiles.

Although the measures proposed by the applicant are, in general, appropriate to minimize erosion and protect water quality, no physical barrier of silt fencing and bales of weed-free rice straw has been proposed to ensure protection of Laurel Creek and its associated riparian habitat. In its approval of the original permit, the Commission included a specific requirement in Special Condition No. 6 that the final runoff and erosion control plan prepared for the development include a physical barrier consisting of bales of straw placed end to end between any construction and the edge of the riparian plant community adjacent to Laurel Creek. Therefore, in order to implement CZC Section 20.492.020(B), the Commission modifies and reimposes Special Condition No. 6, which requires that, prior to issuance of the

permit amendment, the applicant submit a revised Erosion and Runoff Control Plan. The revised plan shall substantially conform to the submitted plan (Sheet L1 of Exhibit No. 4), but shall incorporate the added erosion control measure of installing a physical barrier of straw bales placed end to end between any construction and the edge of the riparian plant community adjacent to Laurel Creek.

The Commission finds that as conditioned, the amended development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) covering and containing debris stockpiles at all times, (4) using hay bales to control runoff during construction, and (5) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the amended development, as conditioned, is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because stormwater runoff from the amended development would be directed away from the coastal bluff.

F. Public Access & Recreation

Coastal Act Access Policies

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

LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-27 states that development shall not interfere with the public's right of access to the sea either acquired by the public at large, by court decree, or where evidence of historic public use indicates the potential existence of prescriptive rights of public access.

Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

Discussion

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

The approximately 11-acre subject parcel is located west of State Highway 1 and sits atop a coastal bluff. The certified LUP does not designate the property for location of a potential coastal access trail. The nearest location currently providing public access to the coast is Greenwood State Park approximately ½-mile south of the parcel. LUP Map No. 20 identifies Cuffey's Point, located north of the subject property, as a location for potential public access. To date, however, no public access has been acquired. The subject parcel contains a sandy beach at the bluff toe in the western portion of the property. An old dirt road goes partially down the bluff at the western most tip of the property toward this beach. The lower portion of the road becomes a rough hiking trail down to the beach according to the afore-mentioned geotechnical survey conducted in October of 1999. However, the road and trail appear to have been used only by the property owners and their guests. No evidence exists that the old road (or the property in general) has been used by the public to gain access to the coast.

In approving the original permit, the Commission found that the approved development would not interfere with any possible prescriptive right of public access and would not otherwise adversely affect public access. Similarly, the Commission finds that the amended development authorized by the current amendment (a) will not interfere with any possible prescriptive rights of public access; (b) will not otherwise adversely affect public access on the site; and (c) will not increase the demand for new public access.

Therefore, the Commission finds that the amended development does not have any significant adverse effect on public access, and that the amended development as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the County's certified LCP.

G. California Environmental Quality Act (CEQA)

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

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

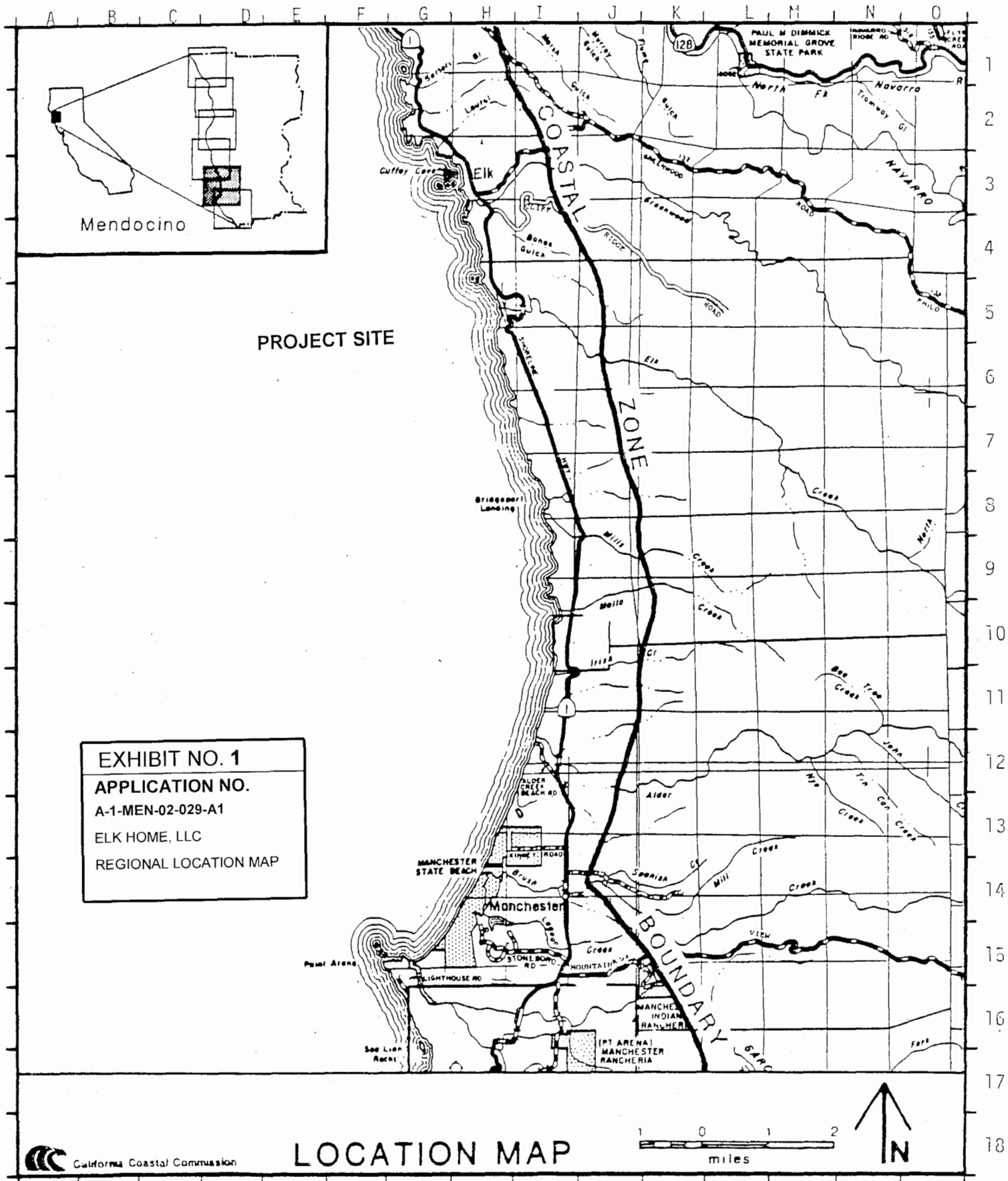
V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Assessors Parcel Map
4. Project Plans
5. Adopted Findings for Original Permit (Commission CDP No. A-1-MEN-02-029)

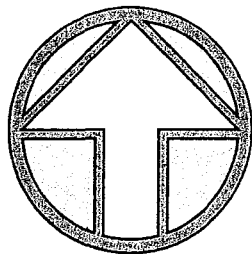
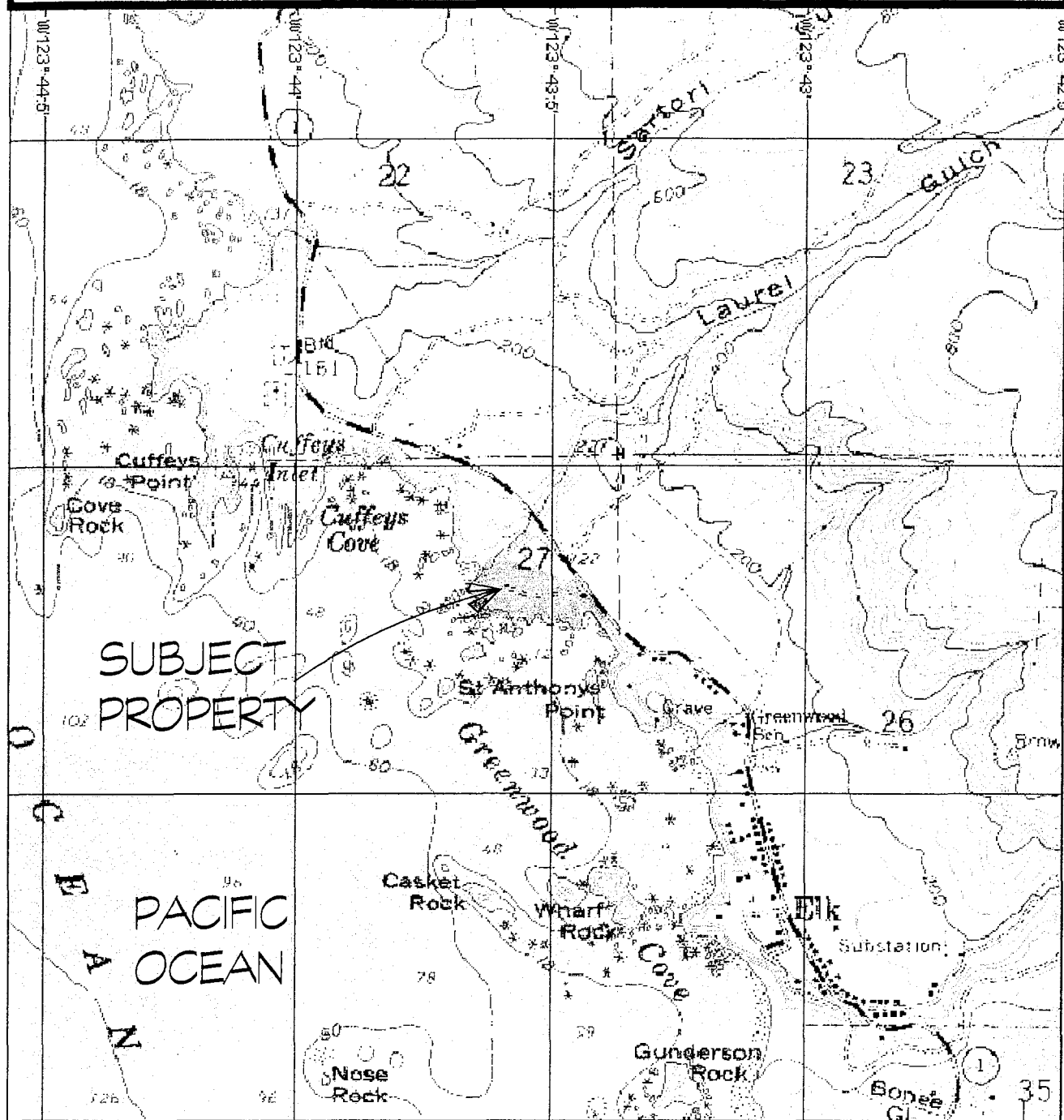
ATTACHMENT A

STANDARD CONDITIONS

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



VICINITY MAP



N

EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-02-029-A1

ELK HOME, LLC

VICINITY MAP

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104-025
104-043

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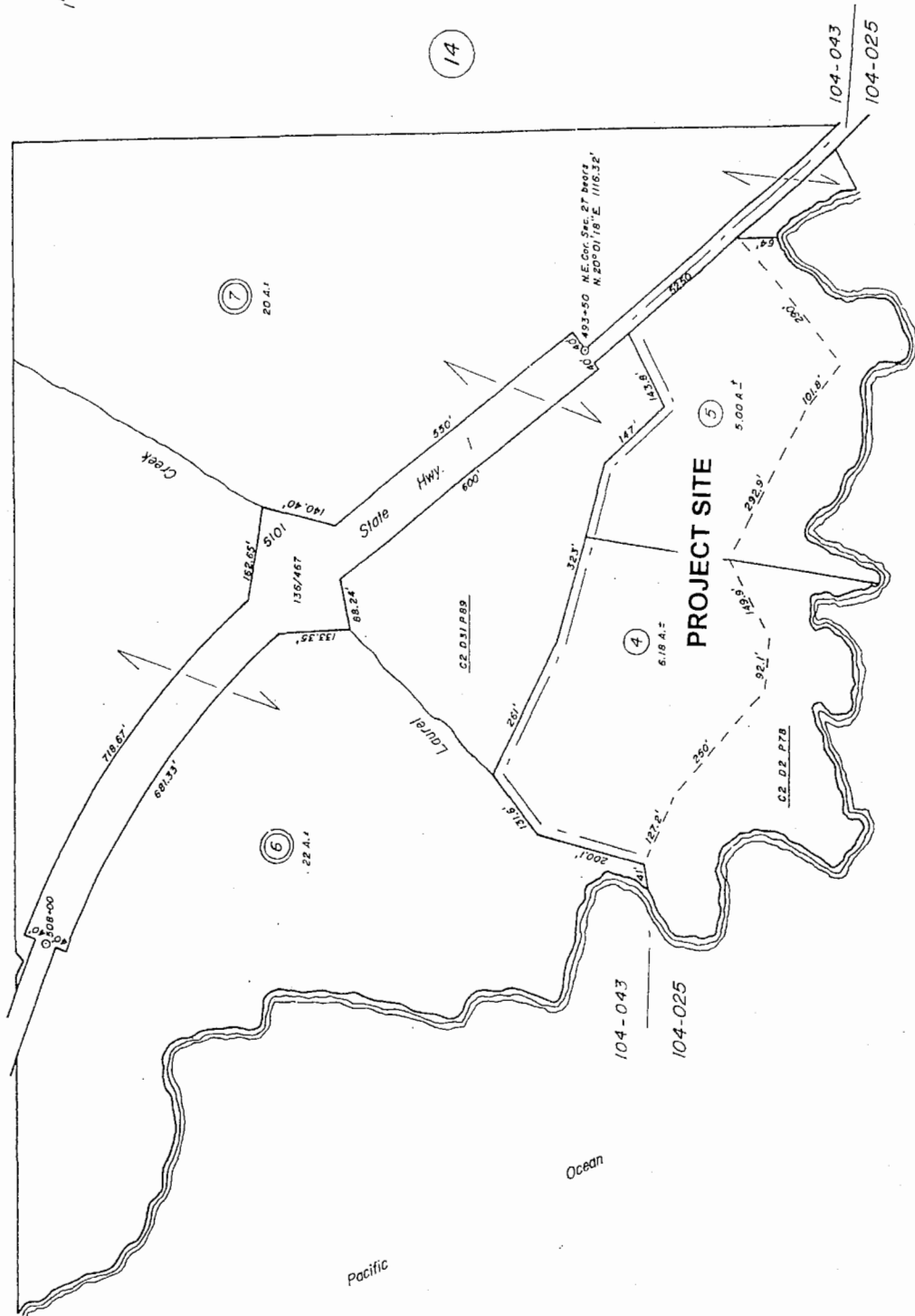
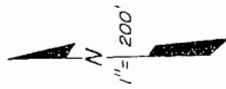






































































































EXHIBIT NO. 3
APPLICATION NO.
A-1-MEN-02-029-A1
ELK HOME, LLC
ASSESSOR'S MAP

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

MAR 02 1998
Assessor's Map
County of Mendocino, Calif.
March, 1971

ELK, California, 95432

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ABBREVIATIONS

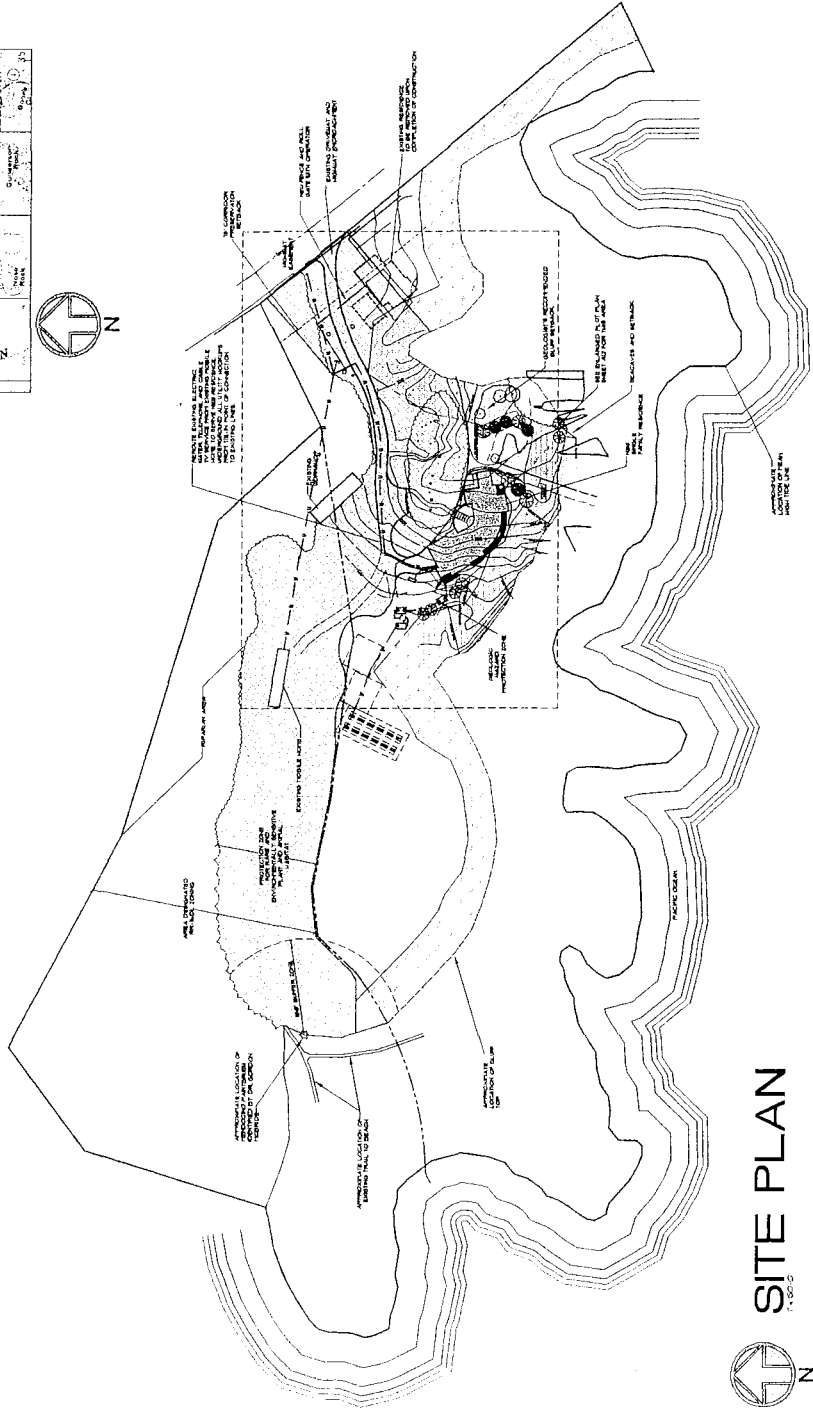
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CODE ANALYSIS

NEW RESIDENCE: 32640 South Highway One, Elk Cajonville, 95433
 27-130-04
 27-130-05
 CODE AUTHORITY: COUNTY OF HEBBARD
 OCCUPANCY GROUP: R-3
 CONSTRUCTION TYPE: V N

REAR PORCH	300 SQ. FT.	TOTAL
GARAGE	630 SQ. FT.	
TOTAL GARAGE	470 SQ. FT.	

CALCULATED AREAS SHOWN ARE FOR THE BUILDING DEPARTMENT
USE ONLY. THE FIGURES ARE NOT TO BE CONSIDERED AS A BINDING
AREA OR FOR TAX CONSIDERATION.



SITE PLAN



VICINITY MAP

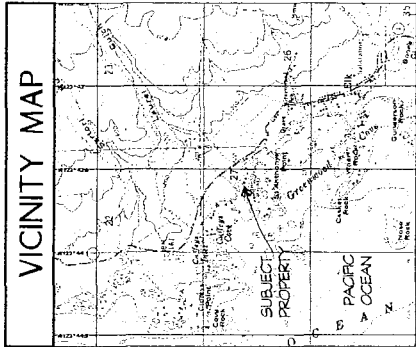


EXHIBIT NO. 4
APPLICATION NO

A-1-MEN-02-029-A1

ELK HOME, LLC

PROJECT PLANS (1 of 10)

TITLE SHEET
AND
SITE PLAN

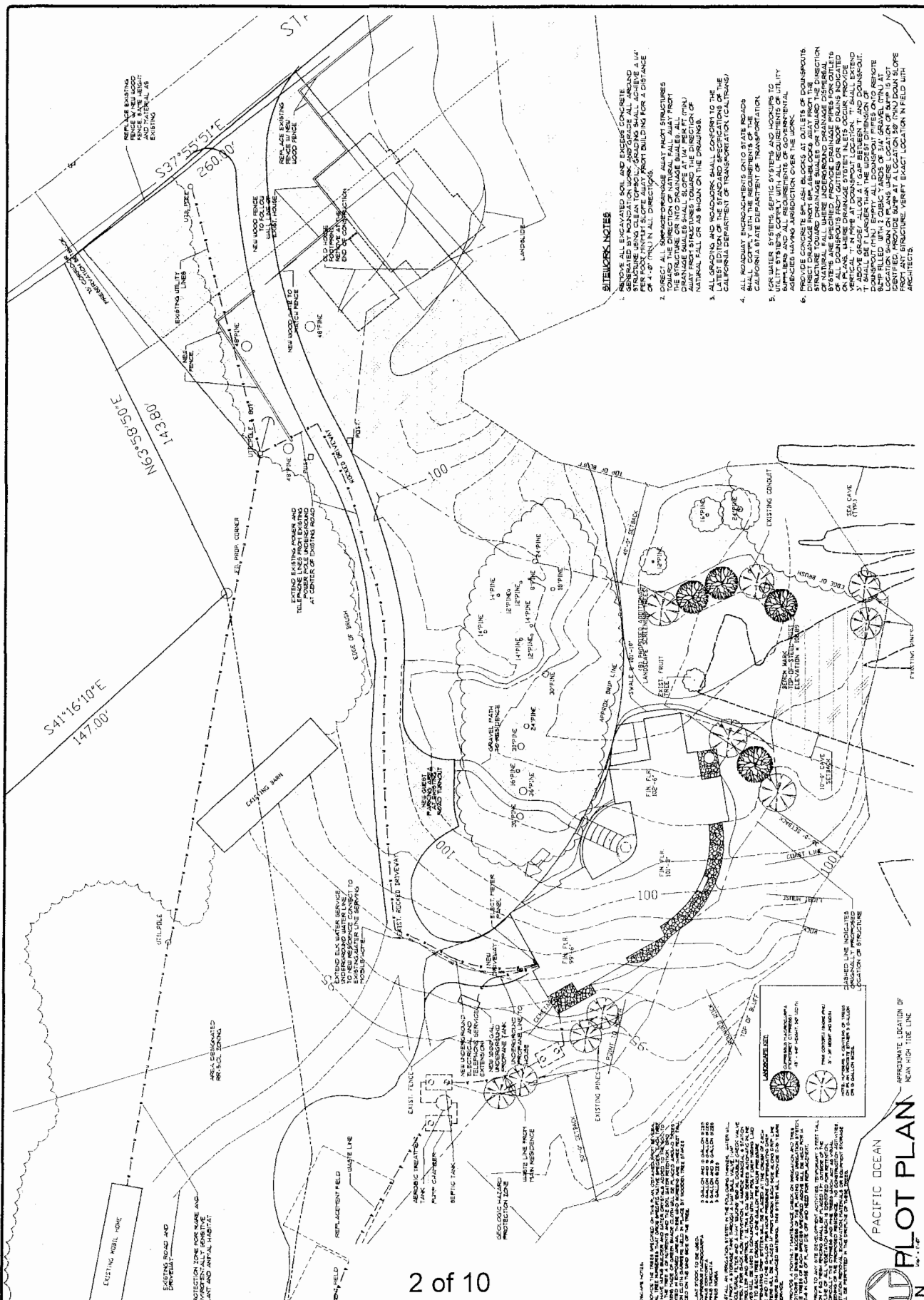
New Residence for:
ELK HOME, LLC
5360 South Highway 90A

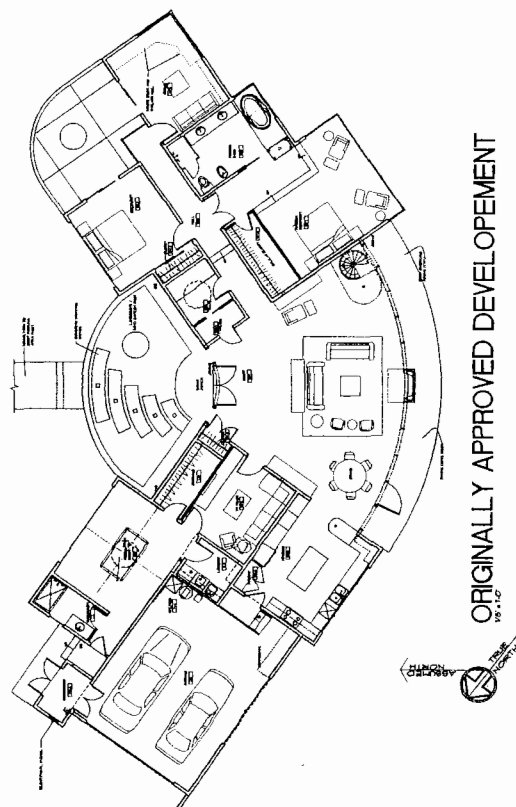
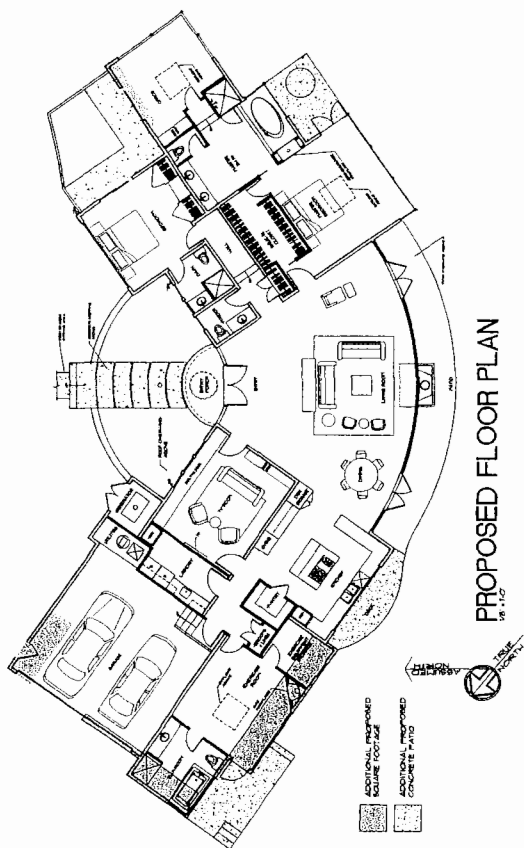
ELK HOM
New Residence for:
55260 South Highway One
EIK, California 95432

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A1.





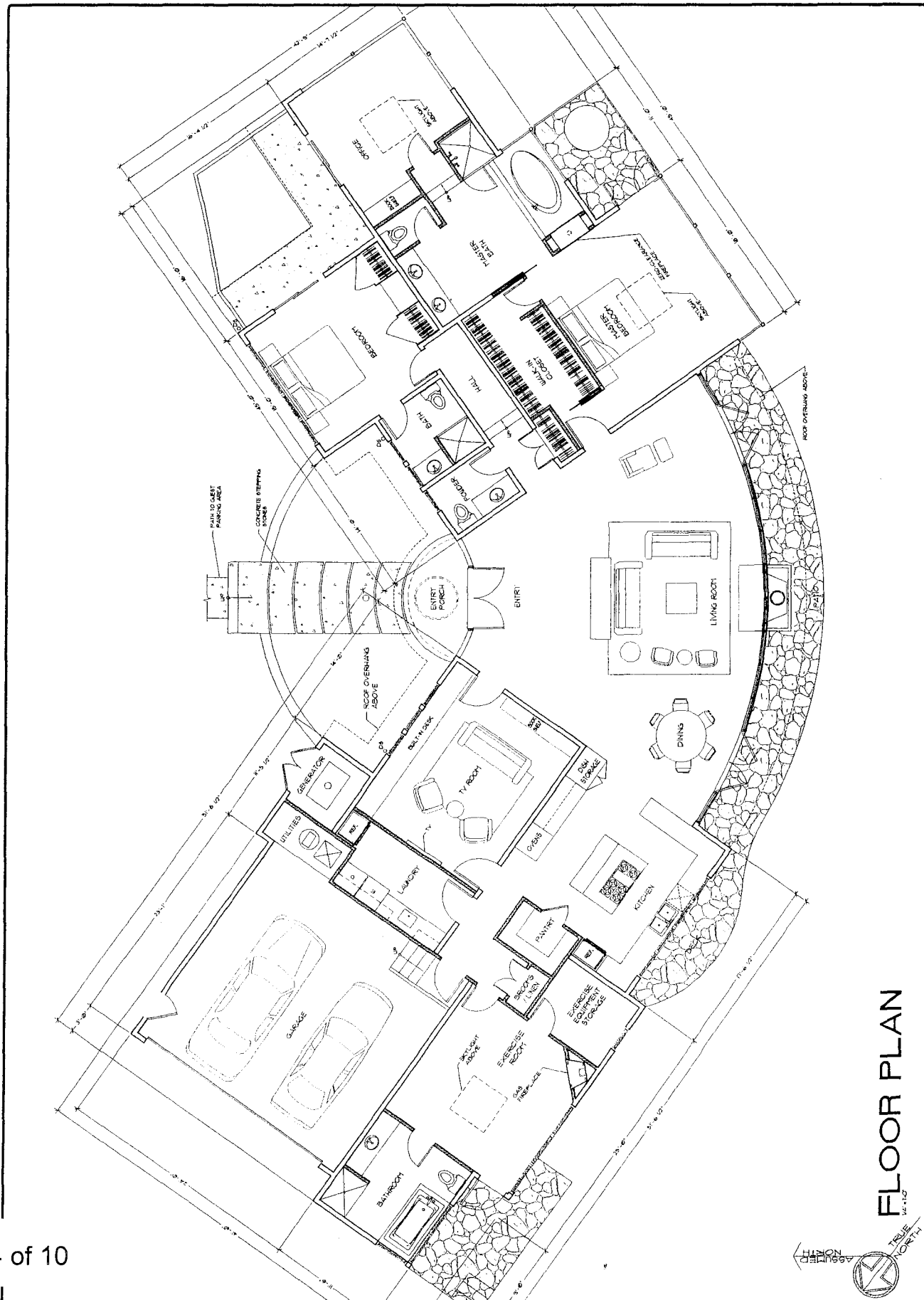


FLOOR PLAN

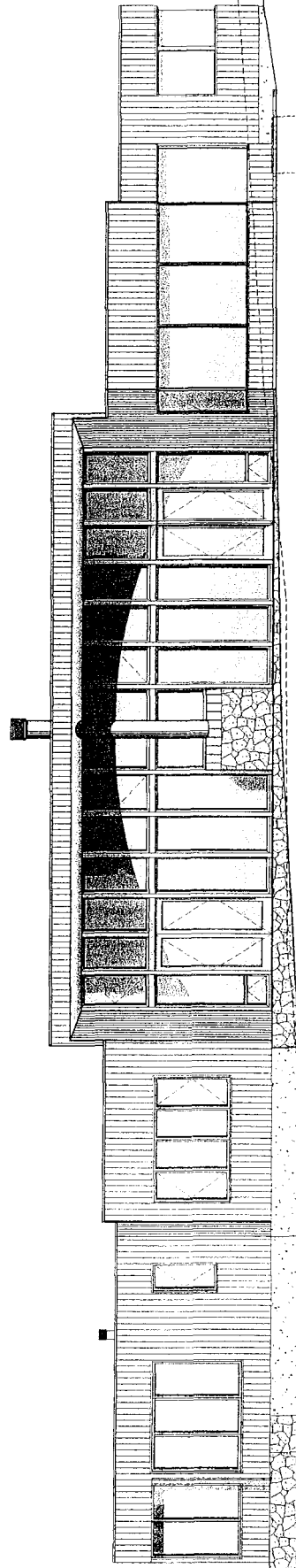
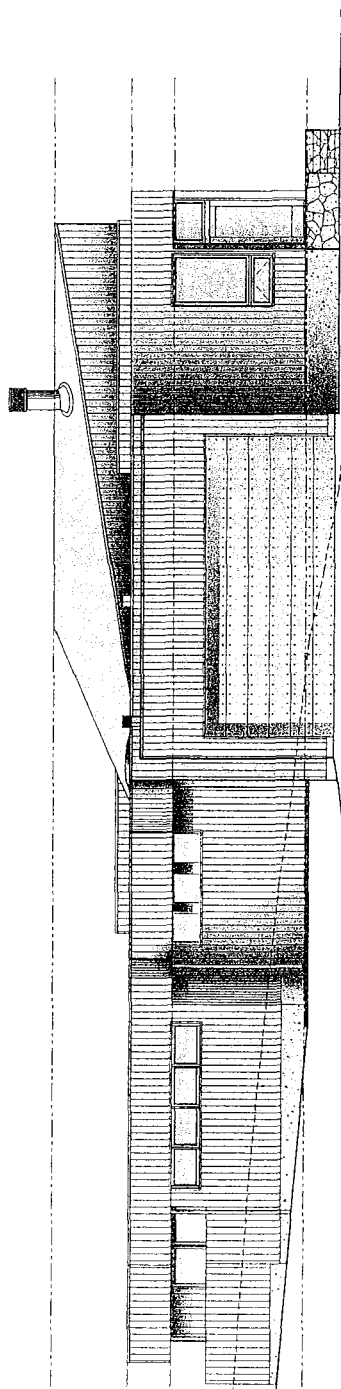
New Residence for:
ELK HOME, LLC
 5260 South Highway One
 Elk, California 95432

NO.	DATE	DESCRIPTION
1		PRELIMINARY
2		REVISED
3		REVISED
4		REVISED
5		REVISED
6		REVISED
7		REVISED
8		REVISED
9		REVISED
10		REVISED

OWNER	ELK HOME, LLC
ARCHITECT	LEVENTHAL, SCHLOSSER, ARCHITECTS
DATE	10/10/10
SCALE	1/4" = 1'-0"
PROJECT	5260 South Highway One
SHEET	A2.1



- HIGHEST POINT OF ROOF
• 116'-3"
- TOP OF PARAPET WALL
• 113'-6"
- TOP OF PLATE
• 110'-6"
- TOP OF SUBFLOOR ENTRY
• 101'-3"



ELEVATIONS

ASSUMED SOUTH

LEVINTHAL, SCHLOSSER, ARCHITECTS
ARCHITECTS, ENGINEERS, AND DESIGNERS
10000 LEVINTHAL AVENUE, SUITE 100
PORTLAND, OREGON 97206
503.255.1111
www.levinthal-schlosser.com

ELEVATIONS

New Residence for
ELK HOME, LLC
5260 South Highway One
Elk, California 95432

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CHKD	JS

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EXTERIOR MATERIALS

SIDING:	CLEAR ALL-HEART REDWOOD VERTICAL T&G SIDING
PARAPET WALLS	CLEAR ALL-HEART REDWOOD VERTICAL T&G SIDING
WALL FINISH:	2 COATS CLEAR PENETRATING OIL FINISH
WINDOWS:	DARK BRONZE ANODIZED ALUMINUM SASH
SLIDING DOORS:	DARK BRONZE ANODIZED ALUMINUM SASH
FRENCH DOORS:	DARK BRONZE ANODIZED ALUMINUM SASH
WOOD DOORS	CUSTOM FABRICATED REDWOOD OR MAHOGANY WITH CLEAR SATIN URETHANE FINISH
SLOPED ROOFING:	GACOFLEX FLUID APPLIED URETHANE ROOFING MEMBRANE
FLAT ROOFING:	1B ROOF SYSTEMS "LIFETIME ROOFING" MEMBRANE
SKYLIGHTS:	DARK BRONZE ANODIZED ALUMINUM
FLASHING:	1/8 OZ. COPPER
SCUPPERS:	1/8 OZ. COPPER
DOWN SPOUTS:	1/8 OZ. COPPER
FOUNDATIONS:	CAST CONCRETE
ENTRY POOL:	CAST CONCRETE
CHIMNEY:	1/8 OZ. COPPER COVER OVER FLUE PIPE
FENCES:	CLEAR ALL-HEART REDWOOD VERTICAL T&G SIDING w/ CLEAR OIL FINISH
GATES:	CLEAR ALL-HEART REDWOOD VERTICAL T&G SIDING w/ CLEAR OIL FINISH
PATIOS:	4" CONCRETE SLAB w/ NATURAL STONE VENEER
CONC. FLAT WORK:	CAST CONCRETE w/ STIFF BROOM FINISH
NAILING:	ALL EXPOSED NAILING TO BE STAINLESS STEEL RING SHANK TYPE

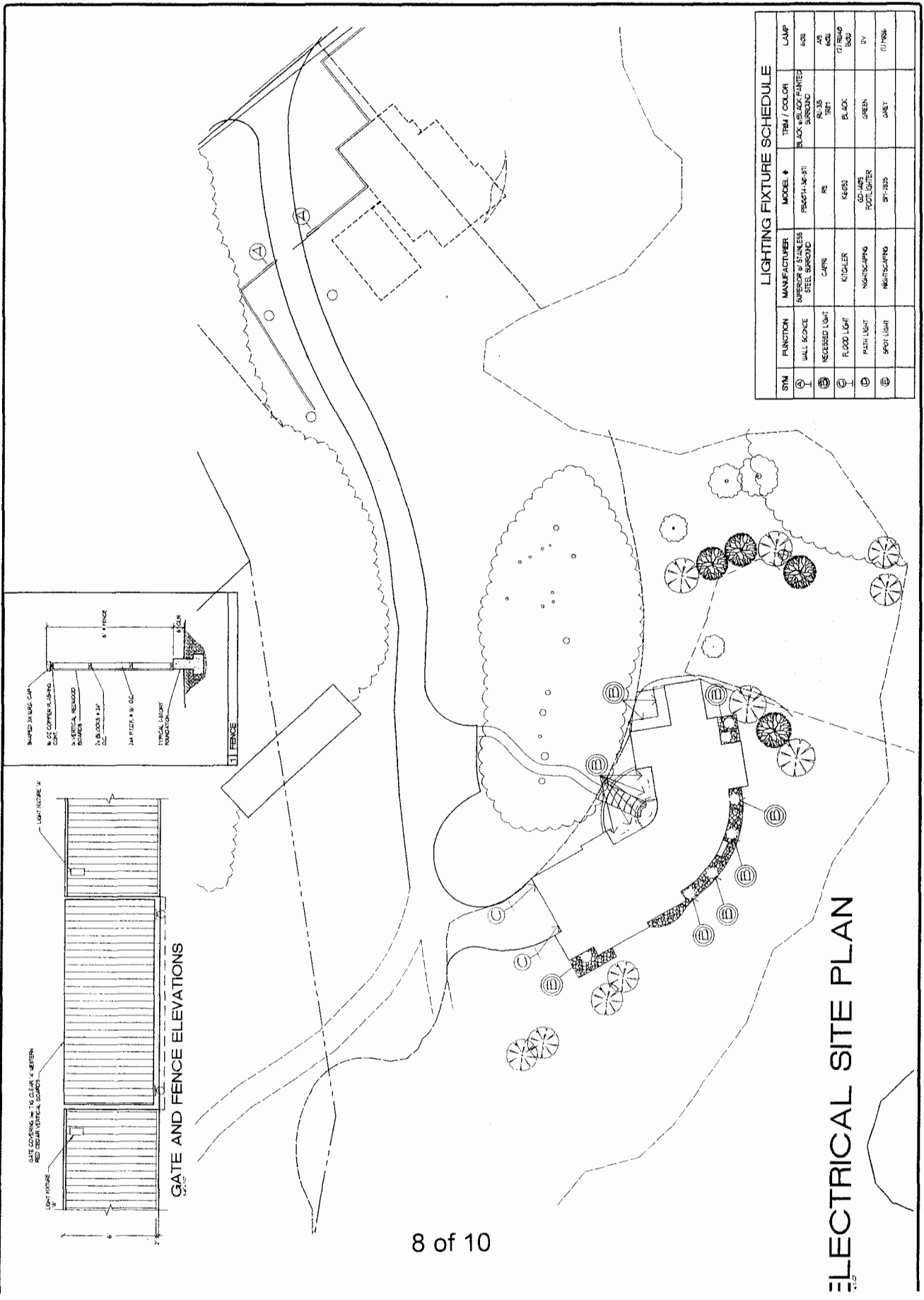
LEVENTHAL, SCHLOSSER, ARCHITECTS
 430 NORTH LAKE AVENUE, SUITE 200, PASADENA, CA 91106
 PHONE (626) 799-0881 FAX (626) 799-0882
 WWW.LEVENTHALSCHLOSSER.COM

ELECTRICAL SITE PLAN
 AND GATE,
 FENCE DETAILS

ELK HOME, LLC
 New Residence for
 5260 South Highway One
 Elk, California 95432

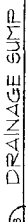
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 OF 10 SHEETS



ELECTRICAL SITE PLAN

EQUIPMENT STORAGE SHALL BE PERMITTED WITHIN THE DRAIN LINE OF THIS VEGETATION



CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

**EXHIBIT NO. 5****APPLICATION NO.****A-1-MEN-02-029-A1**

ELK HOME, LLC

ADOPTED FINDINGS TO
ORIGINAL PERMIT (1 of 40)

Hearing Date: September 12, 2003
Commission Action: **Approved with
Conditions**

ADOPTED FINDINGS**DE NOVO ACTION ON APPEAL NO. A-1-MEN-02-029**

APPEAL NO.: A-1-MEN-02-029

APPLICANTS: *DAN* ~~Bob & Rosanna Shia~~

AGENT: Robert Schlosser, Leventhal / Schlosser Architects

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: At 5260 South Highway One, ¼ mile north of Elk,
Mendocino County (APN 127-130-04 and 127-130-05).

PROJECT DESCRIPTION: Construct a 3,025-square-foot, single-story, single-family residence with a maximum height of 18 feet above average natural grade, a 685-square-foot attached garage, septic system, wood fences and wood gate, add parking areas and turnouts to the existing driveway, extend underground utilities, connect the new residence to the existing community water system, install a new underground propane tank, and replace an existing mobile home with a new 768-square-foot 16 ½-foot-high, single-story residence.

REVISED PROJECT DESCRIPTION FOR PURPOSES OF DE NOVO: For the purposes of the Commission's *de novo* review, the applicants have amended the project description to 1) relocate the new primary residence 23 feet toward the northeast to move the house away from the coastal bluff and

additional 5 feet and provide a 10-foot setback-buffer from the newly surveyed rear extent of the previously identified sea caves; 2) reduce the height of the proposed structure by one foot; 3) provide landscaping for visual screening between the proposed development and the public trail on the northern tip of Greenwood State Park; 4) reduce the glass area on the south elevation to minimize potential reflectivity; 5) substantially darken the color of the proposed building materials; and 6) delete the proposal to replace the existing non-conforming mobile home with a new structure.

APPELLANT: Dr. Hillary Adams

SUBSTANTIVE FILE: 1) Mendocino County CDU No. 15-2001; and
DOCUMENTS 2) Mendocino County Local Coastal Program

STAFF NOTES:

1. Adopted Findings

The Commission held a public hearing on the *de novo* portion of the appeal and approved the permit on September 12, 2003. The adopted conditions for the approval differ slightly from those contained in the written staff recommendations dated August 28, 2003. At the public hearing, staff revised its recommendation to make changes to Special Condition No. 2A to modify the design restrictions imposed on the approved residential development structures. The Commission adopted the staff recommendation as modified.

The following resolution, conditions, and findings for the *de novo* portion of the Commission's review of the appeal were adopted by the Commission on September 12, 2003 upon the conclusion of the public hearing.

I. RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the

development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attached.

III. SPECIAL CONDITIONS:

1. Deed Restriction

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

2. Design Restrictions

- A. All roofing of the proposed structures shall be composed of materials of the colors proposed in the application or darker earth tone colors only. Exterior siding at the locations identified in this condition shall be composed of materials of the colors proposed in the application or darker tone colors only. The specific wall locations to be restricted as to color shall be as follows: beginning at the northernmost corner of the garage and proceeding counterclockwise starting with the garage wall with the overhead garage doors, the ocean facing wall of the garage, the ocean facing walls of the kitchen, the ocean facing return wall of the living room, the ocean facing curved wall of the living room, the ocean facing walls of the master bedroom, the ocean facing walls of the master bathroom, the ocean facing wall of the guest bedroom and the east wall of the guest bedroom ending at the north east corner of the guest bedroom. The remaining walls proceeding counterclockwise around to the northernmost corner of the garage may be painted with a color or colors of the owners choosing. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that would lighten the color of the house or structures as approved without an amendment to this Permit. In addition, all exterior materials, including roofs and windows, shall be non reflective to minimize glare; and

- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

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

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the Engineering Geologic Reconnaissance report dated October 11, 1999, and Supplemental Evaluation report dated April 25, 2003 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-02-029, including, but not limited to, the residence with the attached garage, foundations, septic system, utilities, driveway, or appurtenant residential development in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy No. 3.4-12, and Mendocino County Coastal Zoning Ordinance No. 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence with the attached garage, foundations, septic

system, driveway, and other appurtenant residential development, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- C. In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

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

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

6. **Erosion and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-02-029**, the applicants shall submit an Erosion and Runoff Control Plan for review and approval of the Executive Director. The Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from

construction. The final drainage and runoff control plans shall at a minimum include the following provisions:

1. A physical barrier consisting of bales of straw placed end to end shall be installed between any construction and (1) bluff edges that are downslope of the construction, and (2) the edge of the riparian plant community adjacent to Laurel Creek. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period.
 2. Vegetation at the site shall be maintained to the maximum extent possible and any disturbed areas shall be replanted or seeded with native vegetation immediately following project completion.
 3. All on-site debris stockpiles shall be covered and contained at all times.
 4. Provide that runoff from the roof, driveway and other impervious surfaces from the completed development shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site. Where gutters and downspouts are used, velocity reducers shall be incorporated, to prevent scour and erosion at the outlet.
- B. The permittee shall undertake development in accordance with the approved Erosion and Runoff Control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Landscaping and Maintenance Requirement

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-02-029**, the applicants shall submit revised landscaping plans to the Executive Director for review and approval. The revised plans shall substantially conform with the sheet A1.2 of the amended site plans submitted to the California Coastal Commission on May 31, 2003, prepared by Leventhal and Schlosser, except that the landscaping plans shall also provide for the following changes to the project:
1. The landscaping plan notes shall include a prohibition against the planting of non-native invasive plants at the project site.
 2. The landscaping plan notes shall state that if any of the trees to be planted and/or maintained according to the plan die or are removed for any reason, they shall be immediately replaced in-kind. No limbing or pruning of the visually screening trees shall occur.

3. The landscaping plan notes shall state that if any of the trees shown on the site plan (including sixteen Bishop pine trees (*Pinus muricata*) that form the backdrop for the view of the residence from Greenwood State Park shall be maintained and if any of these trees die or are removed for any reason, they shall be immediately replaced in-kind. No limbing or pruning of the visually screening trees shall occur.

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

8. Removal of Demolition Debris

All debris from the demolition of the existing residence near the bluff edge at the eastern end of the project site shall be removed from the site, and disposed at a location where such material may be lawfully disposed. In the event that portions of the development fall to the beach or tidal zone before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

9. Conditions Imposed By Local Government.

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

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated July 25, 2002.

B. Project History / Background

The applicants propose to develop a single-family residence with an attached garage and parking areas, demolish an existing residence, install a new septic system, a new underground propane tank, new wooden fences and gate, and provide underground utilities to the new building site at 5260 South Highway One, ¼ mile north of Elk, Mendocino County.

On May 16, 2002, the Mendocino County Planning Commission approved with conditions Coastal Development Use Permit #15-2001 for a 3,710 square-foot, single-story, single-family residence with a maximum height of 18 feet above average natural grade. The County-approved development included a residence with 3,025 square feet of living space, a 685 square-foot attached garage, replacement of an existing mobile home with a new 768 square-foot single-story residence with a maximum height of 16 feet, 6 inches above average natural grade, and the demolition of an existing non-conforming residence. Additionally, the County approved the installation of a new septic disposal system, addition of parking areas and turnouts to the existing driveway, extension of underground utilities to the new building site, connection of the new residence to existing community water system, installation of a new underground propane tank, and installation of new wood fences and a new wood gate. The subject site is in an area designated in the certified Mendocino County Land Use Plan as highly scenic.

The County Planning Commission approved the project with seventeen conditions, attached as pages 5-8 of Exhibit No. 4. The County Planning Commission action was not appealed at the local level to the Board of Supervisors. After the close of the local appeal period, the County issued a Notice of Final Action for Coastal Development Use Permit #15-2001 for construction of the residence. The Notice of Final Action was received by Commission staff on June 6, 2002 (Exhibit No. 4). The project was appealed to the Coastal Commission by Dr. Hillary Adams in a timely manner on June 19, 2002, within 10-working days after receipt by the Commission of the Notice of Final Local Action. The appeal cited inconsistencies between the approved development and certain provisions of the certified LCP relating to community neighborhood, color, reflectivity, style of architecture, geologic hazards, and non-conforming uses (Exhibit No. 5). On June 20, 2002, staff requested all relevant documents and materials regarding the subject approval from the County; these materials were received on July 8, 2002. On July 11, 2002, the Commission opened and continued the appeal hearing. On July 17, 2002, prior to the 49th day after the appeal was filed, the applicants submitted a signed waiver of the requirements of Section 30621 that an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed.

On August 7, 2002, the Commission found that a substantial issue had been raised with regard to the consistency of the project as approved by the County with the provisions of certified LUP Policies 3.4-7, 3.5-1, 3.5-3, and Coastal Zoning Code Sections 20.376.025(C), 20.480, 20.500.020, 20.504.015, and 20.532.070 concerning geologic hazards, protection of visual resources, and conformance with non-conforming use standards.

The Commission continued the de novo portion of the appeal hearing.

C. Project and Site Description

1. Project Setting

The project site is a blufftop parcel west of Highway One, and is located on a point of land situated at the northern end of Greenwood Cove, approximately ½ mile south of Cuffey's Cove,

and approximately ¼ mile north of the town of Elk, in an area along the Mendocino coastline designated as highly scenic (Exhibit Nos. 1 and 2).

The subject property is an approximately 11-acre bluff top parcel located on a coastal terrace. The parcel occupies a point of land with the southeast, southwest, and northwest sides of the property surrounded by ocean water. A chain of large, rock islands extends out into the ocean to the southwest. Greenwood Cove is on the southeast side of the rock/island chain, and Cuffey's Cove is on the northwest side. The coastal bluffs on the property range in height from 90 to 120 feet in vertical height above sea level. Six small to medium size sea caves are located at the toe of the bluffs. A sandy beach is located at the bluff toe in the western portion of the property. A dirt road goes partially down the bluff toward this beach. The lower portion of this road becomes a rough hiking trail down to the beach. There is another sandy beach at the northwest end of the property where the mouth of Laurel Creek meets the ocean. A dirt road goes partially down the bluff toward this beach. The property is predominantly grassland, with coastal bluff scrub on the bluff edge and bluff face, and a riparian plant community associated with the immediate banks of Laurel Creek, near the northwest corner of the site. An unnamed tributary to Laurel Creek forms the northerly boundary of the property. There are scattered stands of Bishop pine, Monterey cypress, and Douglas-fir with a predominate stand of 16 old pine trees located immediately behind the proposed house site. The riparian vegetation along the creek constitutes an ESHA for which a 100-foot buffer has been recommended. Populations of the Mendocino coast paintbrush—*Castilleja latifolia* spp. *mendocinensis*—grow on the bluff edge and bluff face. No development is proposed within 100 feet of this rare plant ESHA.

An existing house located about 65 feet from Highway One at the southeast entrance to the property is built along a steep-sided ravine and is dilapidated and presently uninhabited. The ground has dropped from beneath several supporting piers of that structure.

An ancient geologic fault-line extends up the west side of the ravine, approximately 100 feet from the dilapidated original house. The ravine was created by weathering and erosion along the inactive fault. The active San Andreas Fault is located offshore, approximately four miles to the southwest.

A mobile home is located in the approximate north-central portion of the property. The proposed house would be located in the southwest portion of the property. The parcel is bordered by agricultural rangeland to the north and east.

The proposed new house construction would be visible from Greenwood State Park, approximately ½ mile south of the project site. The most visible portion of the structure would be the southeast elevation where the master bedroom would be located. The proposed residence would not be visible from historic public viewing and photographic points adjacent to Cuffey's Cove Cemetery to the north, due to the screening value of existing trees on the property.

The property is zoned Rural Residential, Five Acres Minimum, Development Limitations (DL). Within the Rural Residential Zone, a single-family residence is a permitted use, subject to approval of a coastal development permit.

2. Project Description

As approved by the County, the development would have consisted of an 18-foot-high, 3,710-square-foot, single-story, single-family residence with 3,025-square-feet of living space, and a 685-square-foot attached garage. The residence would have been located south of an existing barn, west of the original dilapidated residence (to be demolished), and would have been served by an existing driveway. A 768-square-foot residence would have been constructed as a second residential unit at the site of the existing legal non-conforming mobile home. The approved 16 ½-foot-high, second residence would have occupied the same footprint, and would have been equal in size to the existing mobile home. New wood fencing would have been built along the wall line of the existing original house near Highway One, and the old wooden fences along Highway One would have been repaired and maintained. A new wooden gate would have been installed at the driveway entrance to match the wooden fence. Existing telephone and electric lines would have been extended to the approved building site from an existing power pole underground at the center of the existing driveway. Elk water service would have been provided underground to the new residence, and connected to the existing hook-up at the site of the mobile home. A new guest parking area would have been created at an existing road turnout and a new driveway spur and turnaround to the approved attached garage would have been installed. A new 1,000-gallon underground propane tank would have been buried providing service to the approved house. A new septic system would have been installed northwest of the new building site to serve the proposed three-bedroom residence and the proposed second residential unit.

For the purposes of the Commission's *de novo* review, the project was subsequently revised by the applicants to: 1) relocate the new primary residence 23 feet toward the northeast to move the house away from the coastal bluff an additional 5 feet and provide a 10-foot setback-buffer from the newly surveyed rear extent of the previously identified sea caves; 2) reduce the height of the proposed structure by one foot; 3) provide landscaping for visual screening between the proposed development and the public trail on the northern tip of Greenwood State Park; 4) reduce the glass area on the south elevation to minimize potential reflectivity; 5) substantially darken the color of the proposed building materials; and 6) delete the proposal to replace the existing non-conforming mobile home with a new structure.

The proposed landscaping plan would serve to visually screen the house from view from the public trail at the tip of Greenwood State Park across Greenwood Cove approximately ½-mile to the south. The proposed landscaping includes the planting of Monterey cypress and shore pine in locations that would block the view of the house from the park trail. Use of wind-screens and an irrigation system is proposed along with monthly maintenance to ensure success of the planting and proper operation of the irrigation system. Existing trees to be retained for visual screening would be fenced from construction activities to protect them from being potentially damaged.

D. Planning and Locating New Development

LCP Provisions

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

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

The property is zoned Rural Residential, Five Acres Minimum, Development Limitation Combining District (DL). Within the Rural Residential Zone, a single-family residence is a permitted use, subject to approval of a coastal development permit. Coastal Zoning Code Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single-family residences are a principally permitted use in the RR zoning district. The minimum parcel size is 5 acres, pursuant to Coastal Zoning Code (CZC) Section 20.376.020(C). Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. Unless a further increase in height were found to not affect public views to the ocean or be out of character with surrounding structures, the maximum building height allowed by LUP Policy 3.5-3 is 18 feet above natural grade. CZC Section 20.376.065 sets a maximum of 20% structural coverage on RR lots of less than two acres in size. CZC Section 20.480.010 allows lawfully existing improvements and uses made non-conforming by the adoption of the Coastal Element of the Mendocino County General Plan and Coastal Zoning Code to be continued where the use is compatible with adjacent land uses and where it is not feasible to replace the activity with a conforming land use. Conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification.

Discussion

The proposed single-family residence would be consistent with the rural residential zoning for the site. As discussed above, the development as proposed would consist of an 18-foot-tall, one-story, 3,710-square-foot, single-family residence, that includes a 685-square-foot attached garage; appurtenant structures including an underground propane tank and installation of a septic system; driveway with parking at the existing turnout; pathway; extension of water, power, and phone lines from existing service to the new house; front gate; fencing; and landscaping.

Demolition of the existing dilapidated house would also be accomplished, and the footprint returned to a natural condition. The proposed development and the existing mobile home on the property together represent less than 1% coverage of the approximately 11-acre parcel consistent with the maximum 20% structural coverage standard for the zoning district. The legal, non-conforming mobile home provides a 2nd unit on the property, allowed by the non-conforming use policies articulated in the certified LCP. The use is compatible with adjacent land uses, and is contained within a structure built to accommodate the existing use.

The proposed development would be served by the Elk Water District, an existing community water service. The water district already served the primary residence to be demolished and continues to serve the mobile home on the property. Sewage would be handled by an on-site septic system. The Mendocino County Division of Environmental Health has determined that the proposed septic system would have adequate capacity to serve the proposed development and has granted its approval. Development of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots meeting minimum parcel size standards established for the property under the certified LCP were addressed at the time the LCP was certified. When the Mendocino County LCP was certified by the Commission, the effect of the non-conforming 2nd unit mobile home on traffic capacity may not have been taken into account. However, since the proposed new residence would replace the existing primary home on the property to be demolished, there would be no net increase in residential density on the property from the proposed development that would result in significant adverse individual or cumulative impacts on the traffic capacity of Highway One. Therefore, as conditioned, the proposed development is located in an area able to accommodate the proposed development, consistent with the applicable provisions of LUP Policy 3.9-1.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all adverse environmental impacts.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1 3.8-1, and with Zoning Code Sections 20.376 as the development will be located in a developed area, there will be adequate services on the site to serve the proposed development, and the project will not result in significant adverse individual or cumulative impacts on highway capacity, scenic values, or other coastal resources.

E. Visual Resources

LCP Provisions

LUP Policy 3.5-1 states, in applicable part:

...The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

LUP Policy 3.5-3 states, in applicable part:

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

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

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

Note 1: LUP Map No. 20 designates all of the area west of Highway One in the immediate vicinity of the applicants’ parcel as highly scenic.

Note 2: Coastal Zoning Ordinance 20.504.015(A)(3) reiterates this section of coastline as being a “highly scenic area.”

LUP Policy 3.5-4 states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists... Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; ...[emphasis added]

LUP Policy 3.5-5 states, in applicable part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged ... [emphasis added]

Coastal Zoning Ordinance Section 20.504.010 states:

The purpose of this section is to insure that 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.

Coastal Zoning Ordinance Section 20.504.015(C) states, in applicable part:

- (1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
- (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 shall be selected to blend in hue and brightness with their surroundings.*
...
- (5) Buildings and building groups that must be sited in highly scenic areas shall be sited:*
(a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area.
...
- (7) Minimize visual impacts of development on terraces by the following criteria:*
 - (a) Avoiding development, other than farm buildings, in large open areas if an alternative site exists;*
 - (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
 - (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
 - (d) Design development to be in scale with rural character of the area.*
- ...
- (10) Tree planting to screen buildings shall be encouraged, however new development shall not allow trees to interfere with coastal/ocean views from public areas.*
...

- (13) *Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible.*

Discussion

The subject parcel is located on a broad coastal terrace situated west of Highway One in an area designated as “highly scenic” under the Mendocino County LCP that is surrounded by ocean water on the southeast, southwest, and northwest sides. The property is predominantly open grassland, with coastal bluff scrub on the bluff edge and bluff face, and a riparian plant community associated with the immediate banks of Laurel Creek, near the northwest corner of the site. There are scattered stands of Bishop pine, Monterey cypress, and Douglas-fir with a prominent stand of 16 trees located immediately behind the proposed house site.

As discussed above, the application, as amended for purposes of the Commission’s de novo review, proposes an 18-foot-tall, one-story, 3,710-square-foot single-family residence, with a 12-foot-tall, 685-square-foot attached garage; and appurtenant structures including an underground propane tank and septic system; driveway with parking at the existing turnout; extension of water, power, and phone lines from existing service to the new house; front gate; fencing; and landscaping. The proposed stucco exterior of the buildings would be painted a very dark flat black color. The colors of the roof and chimney flue pipe would also be dark colors. Demolition of the existing dilapidated house would also be accomplished, and the footprint returned to a natural condition.

The above listed visual resource protection policies set forth three basic criteria that development at the site must meet to be approved. First, LUP Policy 3.5-1 and CZC Section 20.504.010 require that development be sited and designed to protect views to and along the ocean and scenic coastal areas. Second, LUP Policy 3.5-3 and CZC Section 20.504.015(C)(2) generally require that new development in highly scenic areas be limited to one story and 18 feet in height. Finally, LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting.

1. Protecting Views To and Along the Coast

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

Development at the proposed building site would not block any views to and along the coast because all views through the building site from public areas are screened by trees and the geographic setting.

Therefore, the Commission finds that the proposed development as conditioned will protect public views to and along the ocean and scenic coastal areas consistent with visual resource

protection provisions LUP Policy 3.5-1 and CZC Sections 20.504.010 and 20.504.015(C)(1) of the certified LCP.

2. Consistency with Height Requirements

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

3. Subordinate to the Character of its Setting

LUP Policies 3.5-1, 3.5-3, and 3.5-4, and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas be subordinate to the character of its setting. To help ensure that new development will be subordinate, LUP Policy 3.5-4 also requires that buildings located within areas designated highly scenic shall be sited in or near the edge of a wooded area rather than in open areas and utilize natural landforms or artificial berms to screen development. In addition, Policy 3.5-5 states that tree planting to screen buildings be encouraged. Furthermore, the County's Coastal Zoning Ordinance Section 20.504.010 states that permitted development shall be sited and designed to minimize the alteration of landforms. Moreover, Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that in highly scenic areas, building materials, including siding and roof materials, shall be selected to blend in hue and brightness with their surroundings.

Several aspects of the project as proposed will help make the development subordinate to the character of its setting. The view of the building site on the subject property is essentially hidden from sight except from the public trail at the tip of Greenwood State Park located across Greenwood Cove more than ½-mile to the south. The existing trees would protect the development from public view from Highway One, including from the stretch of the highway upon which the parcel fronts and also from portions of the highway both south and north of the proposed development. The view from Highway One near Cuffy's Cove to the north is of one of the most beautiful scenes along the Mendocino coastline and it would be visually screened from the proposed development by existing trees on the property unless trees were limbed or removed. The proposed house would be built at the edge of the prominent stand of 16 old pine trees described earlier, consistent with LUP Policy 3.5-4. In addition, although the development would include minor grading for the establishment of building foundations, the development would not require significant landform alteration and a change in the natural topography, consistent with CZC Section 20.504.010, thereby helping to keep it subordinate to the character of its setting.

The applicants have also proposed a color for use on the stucco exterior of the proposed residence that would blend with, and be subordinate to, the surrounding forest environment. The proposed color for the stucco exterior is a very dark flat black color labeled "Black Tuxedo" (ACE ® color chip number 181-A). The black color will contribute to the silhouette effect created by the backdrop of trees in the late afternoon sun and will not otherwise stand out. By using a flat black as opposed to a glossy black, the color will not reflect a substantial amount of light. The proposed roof would present a low profile with sloped sections and flat sections. The low-pitched sloped portions would be treated with an applied urethane roofing membrane. The flat portions would be composed of a single-ply, co-polymer alloy membrane. The proposed color of the roof would be a dark greenish-gray labeled "Shale" (Gacoflex ® color chip number 16). The color proposed for use on the chimney flue would be a dark gray labeled "Medium Gray" (Benjamin Moore ® color chip number 71). The colors used for the building materials, including the walls, roof, and chimney flue pipe, would not stand out in contrast to the background. The applicants have also proposed to use only glass that is not reflective to further minimize reflection from the proposed development. The use of the proposed flat black and other dark colors as described above and the use of glass that is not reflective is consistent with Coastal Zoning Code Section 20.504.015(C)(3), which requires that new development minimize reflective surfaces and requires that in highly scenic areas, building materials, including siding and roofing materials, shall be selected to blend in hue and brightness with the surroundings.

The applicants propose to landscape the development with trees that would visually screen the view of the residence from the public trail at Greenwood State Park to further ensure that the proposed development would be subordinate to the character of its setting. The submitted site plan indicates that eight (8), 15-gallon-sized, landscape-screening trees would be planted between the house and the bluff edge in locations consistent with the geologic setback recommendations of 35 feet from the edge of the coastal bluff and at least ten feet from the closest inland walls of the subterranean sea caves. The two species of trees to be planted would both be native and would include four Monterey cypress (*Cupressus macrocarpa*) and four shore pine (*Pinus contorta*) planted at approximately 12-15-foot spacing in a pattern that would complement five existing pine trees providing visual screening for the house. Each planted tree would have humus builder amendment and water crystals added to the soil to provide nutrients and water retention capability. Three-foot-tall, green-colored windscreens would be provided to help protect the trees from physical damage and desiccation due to strong onshore winds. A drip irrigation system would be installed and maintained for a period of 12 to 15 years. Prior to any site development, temporary plastic fencing would be placed around all vegetation identified on the site plans for retention, specifically, the cypress and pine trees which would serve as visual screening for the proposed residence. No construction activities, vegetation removal, excavation, materials or equipment storage would be permitted within the dripline of the trees to be protected.

The view from the public trail at the tip of Greenwood State Park includes spectacular vistas of bluffs and sea stacks protruding into the ocean. The view is not limited to pristine views of natural beauty. Many of the buildings of the Town of Elk located between Highway One and the ocean are visible from this vantage point, including the existing house on the subject property that is proposed to be demolished. The proposed development would remove this house from the

viewshed, but add a new house. However, by utilizing the backdrop of trees and adding additional landscaping, limiting the height to 18 feet, minimizing alteration of the landform, and carefully selecting building colors and materials to blend the development into the natural surroundings as much as possible, the proposed development would be subordinate to the character of its setting consistent with LUP Policies 3.5-1, 3.5-3, and 3.5-4 and with CZC Section 20.504.010.

The subordinate appearance of the development is dependent on the development being built and maintained as proposed. Therefore, to ensure that the screening trees (both planted and retained) will always be present to shield the development from view from Highway One and from Greenwood State Park, Special Condition No. 7 is imposed to require that no limbing or tree removal occur, and that trees be replaced in kind as they die. Additionally, Special Condition No. 2 is imposed to restrict the color and building materials used for the development and require exterior lighting to have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel. To ensure that only the proposed dark colors that blend in hue and brightness with the surroundings as described above are utilized during the life of the project, the Commission attaches Special Condition No. 2. This condition requires all siding and roofing of the proposed structures to be composed of materials utilizing only the proposed color scheme. The design of the proposed house contains a significant amount of window glass that would not be consistent with the certified LCP if it were allowed to be reflective. Therefore, to ensure consistency with CZC Section 20.504.015(C)(3), Special Condition No. 2 is imposed to require that the window glass be non-reflective and any exterior lighting installed now or in the future be the minimum necessary for the safe ingress and egress of the structures and be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel. To ensure that any future buyers of the property will be aware of the limitations of Special Condition Nos. 7, and 2, on tree removal and limbing, maintaining the dark colors, prohibiting the use of reflective glass, and maintaining a certain kind and array of exterior lighting fixtures, the Commission imposes Special Condition No. 1. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

As conditioned, the Commission finds that the proposed development will be subordinate to the character of its setting consistent with LUP Policies 3.5-1 and 3.5-3, and with CZC Section 20.504.010 of the certified LCP.

4. Conclusion

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

F. Geologic Hazards and Site Stability

LCP Provisions

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

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

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

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

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

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

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

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

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

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;
- (2) Assure structural integrity and stability; and

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

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

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

Discussion

The subject parcel is a bluff top parcel that overlooks the ocean. The bluffs range in height from approximately 90 to 125 feet in vertical height. Initial mapping completed by BACE Geotechnical on September 13, 1999, reported seven sea caves and one arch in the vicinity of the proposed house site. A supplemental evaluation of the proposed building site was provided by BACE in response to the Commission's request for submittal of additional information to be considered during de novo review of the appeal (Exhibit No. 6). In a letter dated April 25, 2003, Engineering Geologist Erik Olsborg of BACE Geotechnical responded to staff's request for updated assessment of the following items:

- Plan and profile of the sea caves;
- Site stability (landsliding);
- Seismicity;
- Erosion potential;
- Expansive soil or rock;
- Tsunamis or storm surge;
- Quantitative stability analysis.

The letter states "[the subject] property above the bluff appears relatively stable; we conclude that the site is suitable for the planned residence." On December 3, 2002, a survey was conducted during a minus 1.3-foot tide to re-map the sea caves. The survey party found the largest caves are connected together about 50 feet inside the bluff, and extend 110 feet into the bluff, which is about twice as far as previously described. However, no evidence of rock falls or severe erosion was observed with the caves during any of the visits.

In response to the request for an assessment of landslide stability, Mr. Olsborg reports that the two landslides previously reported on the property have not changed significantly since their 1999 reconnaissance.

"The noted landslides are the only areas of severe erosion at the site. The landslides are isolated areas of weak soils and weathered rock materials. The planned building area is not in danger from enlargement of the landslides, since the nearest is 150 feet from the planned building area. The bluffs elsewhere at the property are comprised of moderately hard to hard rocks that are generally not subject to landsliding or erosion."

The larger landslide is approximately 300 feet west-northwest of the planned building site. The smaller landslide is located adjacent to the existing dilapidated house, about 150 feet east and across a ravine from the planned building site. With regard to seismicity, Mr. Olsborg states that:

"no evidence of recent movement (creep or rupture) was observed along the previously mentioned fault traces, and neither of these two inactive faults trend through or towards the planned building area. 'No other faults were observed during our 1999 reconnaissance or our 2002 sea cave survey.' With regard to expansive soils, Mr. Olsborg reports that '[n]o evidence (such as ground cracks) of expansive clay soils or rock materials, has been observed at the site,' and '[n]o expansive soils or rocks were observed at the property.' With regard to tsunami or storm surge concerns, Mr. Olsborg states that '[s]ince the planned building area is approximately 120 feet above Mean Sea Level, the potential for inundation by tsunami or storm surge is not of concern.'"

With respect to Commission staff's inquiry regarding the quantitative slope stability analysis, a quantitative slope stability analyses was performed, and indicated a factor of safety of >1.5 (static) and >1.1 (seismic), indicating that no setback should be needed for slope stability concerns.

Mr. Olsborg discussed the adequacy of the bluff setback recommendation and the procedure he used to determine the average bluff retreat rate of 2 ¼-inches-per-year, stating that:

"During our 1999 reconnaissance, enlargements (from negatives) of 1964 and 1981 aerial photographs were used as an aid in determining the bluff retreat rate. For this supplemental analysis, we also use an enlargement of an aerial photograph dated April 2, 2000. In our analyses, BACE determined the scale of each photograph by measuring the length of various physical features in the site vicinity, including a 60-foot barn. The distances between the Highway One centerline and several points on the bluff, as well as the distance from the barn corner to the bluff were then measured on each photograph. The results of our supplemental analysis confirm our previously-determined, average bluff retreat rate of 2 ¼ inches per year."

The April 25, 2003 Supplemental Evaluation (Exhibit No. 6) revises the previously recommended blufftop setback to increase the distance of the residential structure from the bluff edge from 30 feet to 35 feet. The project design was also revised to move the residential

structure 23 feet toward the northeast to provide a minimum 10-foot buffer between the proposed house and any inland walls of the sea caves.

After reviewing this analysis, Dr. Johnsson, the Commission's staff geologist, points out that the long-term bluff retreat rate was measured from three aerial photographs spanning only 36 years, a far less extensive record than generally needed to accurately characterize the long-term average erosion rate when, as here, erosion is highly episodic. Dr. Johnson states that: *"Bluff retreat at this site will likely be dominated by sea cave collapse and rock falls, which occur at widely spaced intervals in time. The long-term bluff retreat rate assumed, 2.25 inches per year, is effectively doubled by the 'factor of safety' of 2 recommended in the geologic reports, leading to a great degree of conservatism in the setback calculation."* Dr. Johnsson continues his discussion regarding the adequacy of the recommended blufftop setback stating that:

"Taking the slope stability analyses at face value, no setback is needed for slope stability considerations. Assuming that the 2.25 inches per year erosion rate does, indeed, represent a true long-term average, then slightly more than 14 feet of erosion would be expected over a 75 year assumed design life. To this should be added a 10-foot buffer to assure that foundation elements are not actually undermined at the end of the design life, to allow access for remedial action, such as moving the structure when it is threatened, to allow for uncertainties on the analysis, and to allow for possible acceleration of bluff erosion in the future due, for example, to increases in sea level. Thus, a 24-foot setback would appear to be adequate, again assuming that the very limited data available on the long-term bluff retreat rate and slope stability are accurate. The proposed setbacks are all greater than 24 feet."

As noted above, several sea caves extend into the bluff in the vicinity of the building site. Sea caves are well recognized as erosional hazards to bluff top development, and the Commission has reviewed many applications for the construction of seawalls, revetments, and infilling of sea caves as a response to the threat posed by sea cave collapse (see, for example, permits granted in San Diego County for the infill of sea caves in dense sandstones similar to the subject site, such as F8915 [Phillips], F9143 [Seascape Shores], 6-96-102 [Solana Beach and Tennis Club Homeowners Association], 6-98-027 [O'Neal], 6-98-021 [Blackburn], 6-00-066 [Monroe and Pierce] and A-42-79-A1 [22-240 Associates]).

Although it is impossible to predict when the cave will fail, when it does the most landward portion of the cave will be the new bluff edge. If the cave were to collapse early in the lifetime of the development, it is important that a setback of appropriate width be maintained to provide assurance that no seawall or other shoreline protective devices would be needed over the lifetime of the development. In previous coastal development permit decisions, the Commission has held that blufftop setbacks be required from the rear of the sea cave. Dr. Johnsson discusses the adequacy of the setback in relation to the rear of the sea caves. He notes that the proposed house would be setback 10 feet from the end of the largest sea cave. Generally, as staff geologist, he would recommend that the recommended bluff setback be applied to the rear walls of the sea cave, so that in this instance, the structure would be set back at least 24 feet from all parts of the sea cave. He notes, however, in this case:

“the rear portion of the sea cave (those parts closer than 24 feet to the proposed structure) are less than 5 feet in height and contained within relatively strong rock. Nearly 100 feet of rock, most of it quite strong, overlies the roof of the cave, making it unlikely that an outright, catastrophic collapse of this part of the cave would occur. More likely would be gradual rock fall from the ceiling, particularly concentrated at the mouth of the cave or along fractures. It would be prudent to monitor the growth of the cave and take remedial action if the cave expands significantly.”

Mendocino County LUP Policy 3.4-7 and CZC Section 20.500.020(B) require that new structures be set back a sufficient distance from the edge of the bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years) and the setback be of sufficient distance to eliminate the need for shoreline protection devices. As discussed above, BACE Geotechnical concluded that the bluff is eroding at an average rate of about 2 ¼-inches-per-year. Therefore, over a period of 75 years representing the economic life span of a house, the bluff would erode back approximately 14 feet. A factor-of-safety of two was applied to arrive at the 30-foot recommended bluff setback. The final geologic analysis determined that the setback from the coastal bluff should be increased to 35 feet to allow for an approximately 10-foot setback from the rear of the sea cave. After reviewing the requested additional documentation concerning the analysis of aerial photos, bluff retreat rate, and recommended bluff top setback; the extent of the sea caves; and the quantitative slope stability analysis and erosion potential; the Commission staff geologist determined that the applicants' geologist's projection of the bluff retreat rate and the other recommendations were reasonable. Special Condition No. 3 requires that all future development must be located no closer than 35 feet from the bluff edge. Therefore, the proposed development as conditioned will be set back a sufficient distance from the bluff edge to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. In its investigation of the site, BACE geotechnical advised that conventional footing foundations could be used with this setback provided that BACE reviews the project plans; verifies the setbacks in the field when the house corners have been staked; and observes the foundation excavations during construction. The presence of weak surficial soils may require that footings be deepened beyond Uniform Building Code minimums to gain uniform support in underlying firm soil or rock.

To ensure that the applicants adhere to the recommendations suggested in their consultant's geotechnical reports, and that the development does not contribute significantly to geologic hazards, the Commission attaches Special Condition No. 3. The special condition requires all final design and construction plans, including foundations, grading and drainage plans to be consistent with the recommendations contained in the geotechnical reports dated October 11, 1999, and April 25, 2003 prepared by BACE Geotechnical Consultants. As conditioned, the development will include the measures determined by the geologic investigation to be necessary to stabilize the site consistent with LUP Policy 3.4-1.

The Commission also attaches Special Condition No. 4, which prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the house and its foundation if bluff retreat reaches the point where the structure is threatened, and requires that the applicants accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are consistent with LUP Policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Ordinance, which state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

The applicants are proposing to construct a new house as well as other improvements. The house as well as the other improvements would be located on a coastal terrace 120-125 feet in height that is eroding and underlain by sea caves. Thus, the house as well as the other improvements would be located in an area of high geologic hazard. The new development can only be found consistent with the above-referenced provisions if the risks to life and property from the geologic hazards are minimized and if a protective device would not be needed in the future. The applicants have submitted information from a geologist which states that if the new development is set back 35 feet from the bluff edge, the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life. Similarly, the Commission finds that a 10-foot setback measured from the blufftop projection of any underlying sea caves must also be applied to the areas on the parcel underlain by sea caves so structures would be further safe-guarded from geologic hazards associated with catastrophic or incremental collapse of the materials above the sea caves.

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

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989 the Commission approved the construction of a new house on a vacant blufftop parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the blufftop parcel to a landward parcel because the house was

threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.

- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984 the Commission approved construction of new house on a vacant blufftop lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Bennett home at 265 Pacific Avenue, Solana Beach (San Diego County). In 1995, the Commission approved a request to construct a substantial addition to an existing blufftop home (Permit 6-95-23). The minimum setback for the area is normally 40 feet. However, the applicants agreed to waive future rights to shore/bluff protection if they were allowed to construct 25 feet from bluff edge based on a favorable geotechnical report. The Commission approved the request on May 11, 1995. In 1998, a substantial bluff failure occurred, and an emergency permit was issued for a seawall. The follow-up regular permit (#6-99-56) was approved by Commission on May 12, 1999. On August 18, 1999, the Commission approved additional seawall and upper bluff work on this and several other properties (Permit #6-99-100).
- The McAllister duplex at 574 Neptune Avenue, Encinitas (San Diego County). In 1988, the Commission approved a request to construct a duplex on a vacant blufftop lot (Permit #6-88-515) based on a favorable geotechnical report. By October 1999, failure of the bluff on the adjoining property to the south had spread to the bluff fronting 574 Neptune. An application is pending for upper bluff protection (Permit #6-99-114-G).
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a blufftop project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot blufftop setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize blufftop protective works.

The Commission notes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form it's opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The April 6, 2003, BACE Supplemental Evaluation states that their geological and engineering services and review of the proposed development were performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities, stating, “[n]o other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in the report.” This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding both at the margins and underneath the landform, and that the proposed new development will be subject to geologic hazard and may someday require a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7 and Zoning Code Sections 20.500.010 and 20.500.020(B). The Commission finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and Zoning Code Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicants and the evaluation of the project by the Commission’s staff geologist, the Commission finds that the risks of geologic hazard are minimized if the residence is set back 35 feet from the bluff edge and situated a minimum of 10 feet from the wall of any underlying sea caves. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed residence is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 4 prohibiting the construction of seawalls and Special Condition No. 5 requiring the waiver of liability.

In addition, as noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No. 4, which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 4 is required to ensure that the proposed development is consistent with the LCP and that Special Condition No. 1 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a seawall could be constructed to protect the development. This condition requires that the applicant execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Additionally, the Commission attaches Special Condition No. 5, which requires the applicants to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the requirement of Special Condition No. 1 that a deed restriction be recorded will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

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

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

G. Environmentally Sensitive Habitat Areas

LCP Provisions

LUP Policy 3.1-7 in applicable part states:

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

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

LUP Policy 3.1-10 states:

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

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

Section 20.496.010 of the Coastal Zoning Ordinance states in applicable part:

"Purpose.

The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.

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

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

"ESHA- Development Criteria

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

(1) *Width.*

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. ...Standards for determining the appropriate width of the buffer area are as follows:

(a) *Biological Significance of Adjacent Lands*

...

(b) *Sensitivity of Species to Disturbance*

...

(c) *Susceptibility of Parcel to Erosion*

...

(d) *Use of Natural Topographic Features to Locate Development*

...

(e) *Use of Existing Cultural Features to Locate Buffer Zones*

...

(f) *Lot Configuration and Location of Existing Development*

...

(g) *Type and Scale of Development Proposed*

...

(2) *Configuration*

...

(3) *Land Division. New Subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) *Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:*

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

(b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

(c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least*

impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

- (d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
- (e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
- (f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
- (g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*
- (h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*
- (i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*
- (j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*
- (k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in*

permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.

Section 20.496.035 of the Coastal Zoning Ordinance states in applicable part:

“Riparian Corridors and other Riparian Resource Areas.

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

- (1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);*
- (2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;*
- (3) Existing agricultural operations;*
- (4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.*

(B) Requirements for development in riparian habitat areas are as follows:

- (1) The development shall not significantly disrupt the habitat the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;*
- (2) No other feasible, less environmentally sensitive alternative exists;*
- (3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;*

Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent [emphasis added.]”

Discussion

The subject property is situated on a geologically young coastal terrace vegetated by three plant communities. First, non-native grassland covers most of the flat terrace area of the site that was originally vegetated with coastal bluff scrub and/or coastal terrace prairie, but has been subject to

regular mowing for many years. Second, coastal bluff scrub is present on the bluff edges and bluff faces. Lastly, a riparian plant community associated with the immediate banks of a small tributary of Laurel Creek traverses the site from the southwest to the northwest. The majority of the developed area in the vicinity of the existing mobile home, up to the edge of riparian habitat, is lawn.

Mary Rhyne, Botanical Surveyor, and Dr. Gordon McBride have prepared several botanical reports for the subject parcel (Exhibit No. 7). The parcel has been surveyed for the presence of rare and endangered plant species, the riparian vegetation has been mapped, and the upland extent of the vegetation has been marked with flagging.

Dr. McBride's report, dated July 14, 1999, discovered one specimen of Mendocino paintbrush, a listed rare plant, growing on the edge of the bluff near the area where a historical road goes down to the beach, approximately 500 feet away from the closest area where new development is proposed. There were also several populations of the Mendocino paintbrush on the bluff face in the same vicinity as the historical road. No other rare or endangered plants were discovered on the site as a result of the surveys conducted. While the Mendocino paintbrush should be protected from disturbance, it should be noted that none of the proposed development would significantly disrupt the habitat value of the identified rare plant populations. Therefore, no mitigation is required for rare plants.

In her report dated April 2, 2001, Mary Rhyne identified the upland limit of the riparian vegetation growing on the sides of Laurel Creek, which drains water from the east side of Highway One. The creek is a natural channel that flows along the northern boundaries of the subject property and empties water into the Pacific Ocean. Dr. McBride states that alder, thimbleberry, salmon berry, sedge, elderberry and associated plants represent the riparian community. Watercourses and their associated riparian habitat are considered to be ESHA as defined by the Mendocino County certified LCP. Chapter 20.496 and Section 20.532.060, et.seq. of the CZC contains specific requirements for protection of ESHA and development within the buffer area of an ESHA. A sufficient buffer area is required to be established and maintained to protect ESHA from disturbances related to proposed development. LUP Policy 3.1-7 and Section 20.496.020 require that:

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.

Both botanists recommend that a 100-foot non-disturbance setback be measured from the upland limit of the riparian habitat for new development. It is important to note that all of the existing development on the parcel (the dilapidated residence immediately adjacent to Highway One, the non-conforming mobile home, the workshop, the driveway, and a driveway pullout used as a

turn-around and for occasional parking) is located within the recommended 100-foot riparian ESHA buffer setback. The new residence and the new septic system would be located just outside of the recommended 100-foot buffer. However, other portions of the proposed development would be located within the recommended 100-foot buffer. These portions of the development include the proposed demolition of the existing primary residence, most of the underground utility extensions within the existing driveway road, and a pathway extending from the front door of the new residence to the driveway turn-around, which is an existing development within the buffer area.

LUP Policy 3.1-7 and CZC Section 20.496.020 require developments permitted within a buffer area to generally be the same as those uses permitted in the adjacent ESHA, and shall be (1) sited and designed to prevent impacts which would significantly degrade such areas, (2) compatible with the continuance of the habitat, and (3) allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development. LUP Policy 3.1-10 and CZC Section 20.496.035 state that no development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor except for certain limited kinds of development, including, but not limited to, utility lines and road and trail crossings when no less environmentally damaging alternative exists.

The proposed demolition of the primary house, an existing dilapidated structure located at the southeast entrance to the property, about 65 feet from Highway One, and about 60 feet from the riparian ESHA associated with Laurel Creek, would return the site to its natural condition restoring riparian ESHA buffer values. Demolition and therefore restoration of the footprint of this structure can be allowed consistent with LUP Policies 3.1-7 and 3.1-10 because the development would have restorative value for the riparian ESHA and is not the addition of a use that would degrade the riparian area or adversely affect its value as a natural resource. The applicants' biology consultant, Dr. Gordon McBride, has reviewed the demolition project proposal and has determined that the work would not adversely affect the riparian ESHA if certain mitigation measures are taken. Dr. McBride recommends that a barrier be placed between the dilapidated structure and the riparian plant community. He suggests that the barrier be either a four-foot-high plastic construction fence or bales of straw placed end to end. The barrier fence should be on the north side of the existing gravel driveway, thereby allowing access to the site for demolition work. Special Condition No. 6 requires hay bales to be placed end to end along the edge of the riparian plant community adjacent to Laurel Creek, between the riparian ESHA and the proposed demolition site, thereby meeting this recommendation. Therefore, as conditioned, the demolition and restoration work would not significantly disrupt the habitat value of the ESHA. The proposed and conditioned mitigation measures would act to minimize disruption to the habitat, consistent with the standards under LUP Policy 3.1-7 and CZC Section 20.496.020 required for development within ESHA buffers. No feasible less environmentally damaging alternative exists, since the house to be demolished is located at a site within the otherwise proposed 100-foot ESHA buffer.

The applicants also propose to provide utility service for the new residential development by extending existing utility lines down the center of the existing gravel road/driveway within the

proposed 100-foot ESHA buffer. Placement of utility lines are expressly allowed within ESHA buffers by LUP Policy 3.1-10 and CZC Section 20.496.035 when no less damaging route is feasible. The use of the roadbed would be the most feasible least damaging alternative for placement of the utility line extensions. The road is an existing development and would continue to be used to serve the new residential development. Therefore, burying the utilities below the road would avoid disruption of new ground and vegetation for placing the utility lines in another location. In certain locations between the existing utility lines and the proposed new residential development, the entire blufftop is within the 100-foot ESHA buffer, and avoidance of the buffer is impossible. The placement of utility lines underground, would minimize disruption to birds using the riparian ESHA from overhead lines hung from poles, and would also avoid disruption to riparian vegetation from avoiding the need to trim trees for utility line safety. For these reasons, the installation of the underground utility lines meets the standards under LUP Policy 3.1-7 and CZC Section 20.496.035 for allowing development within ESHA buffers.

The proposed construction of the pathway between the new residence and the existing road/driveway turnaround is also expressly allowed to occur within an ESHA buffer under CZC Section 20.496.035, when no less environmentally damaging route is feasible. Since the existing turn out and parking area is already located within the buffer itself, the pathway has to extend partially through the buffer area anyway, and the proposed pathway would take the most direct route possible leading to the front door of the new residence. For these reasons, and the fact that the approximately 4-foot-wide path is relatively narrow and would be composed of gravel allowing greater infiltration of surface water than a concrete or asphalt path would, the installation of the pathway meets the standards required under LUP Policy 3.1-7 and CZC 20.496.020 for development within ESHA buffers.

Landscaping of the residential development is proposed. To ensure that no invasive exotic vegetation is planted at the site that could spread into the ESHAs and significantly disrupt the value of the protected rare plant or riparian habitat, the Commission imposes Special Condition No. 7, requiring the preparation and installation of a revised landscape plan to protect visual resources, including a requirement that no invasive exotic plants will be planted along with the landscaping of the site.

As conditioned to (1) establish an adequate buffer to protect the adjacent rare plant and riparian ESHA, (2) limit development within the 100-foot riparian buffer area to only uses allowable under the LCP buffer policy and development that would not significantly disrupt the habitat value of ESHA resources, and (3) prohibit invasive exotic species from being planted as part of the landscaping, the Commission finds that the project as proposed and conditioned will protect the ESHA on the property consistent with LUP Policies 3.1-7 and 3.1-10 and with Coastal Zoning Code Sections 20.496.010, 20.496.020, and 20.496.035.

H. Water Quality

LCP Provisions

LUP Policy 3.1-25 states:

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

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

- (A) *Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
- (B) *To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
- (C) *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*
- (D) *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection [emphasis added.]*

Discussion

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation.

As discussed above, the subject parcel is located on a coastal terrace atop a steep coastal bluff. Runoff originating from the development site that is allowed to drain over the bluff edge would contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of marine waters. Sedimentation impacts from runoff would be of greatest concern during and immediately after construction. Consistent with CZC Section 20.492.020(B), the Commission attaches Special Condition No. 6 to minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 6 requires that the applicants submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan that would provide that (1) hay bales be installed to contain runoff from construction and demolition areas; (2) on-site vegetation be maintained to the

maximum extent possible during construction, and (3) any disturbed areas be replanted or seeded with native vegetation following project completion. In addition, Special Condition No. 6 requires that all on-site stockpiles of construction debris be covered and contained to prevent polluted water runoff. The applicants propose to control runoff from the completed development by providing concrete splash blocks at outlets of downspouts, and to direct drainage from splash blocks away from the structure toward vegetated drainage swales or toward the direction of natural fall. Where underground drainage dispersal systems are specified, the applicant would provide drainage pipes for outlets of all downspouts from gutters or roof drains. All downspout pipes would drain into sumps filled with 2 cubic yards of ¾-inch gravel. No drainage would be allowed to flow over the bluff edge. To ensure that runoff from the completed development is controlled as proposed, Special Condition No. 6 requires that runoff from the roof, driveway, and other impervious surfaces of the development be collected and directed into pervious areas on the site for infiltration and that velocity reducers be used on roof downspouts as proposed.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) covering and containing debris stockpiles at all times, (4) using hay bales to control runoff during construction, and (5) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be directed away from the coastal bluff.

I. Public Access and Recreation

Coastal Act Access Policies

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

LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-27 states that development shall not interfere with the public's right of access to the sea either acquired by the public at large, by court decree, or where evidence of historic public use indicates the potential existence of prescriptive rights of public access. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

Discussion

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

The approximately 11-acre subject parcel is located west of Highway One and sits atop a coastal bluff. The certified LUP does not designate the property for location of a potential coastal access trail. The nearest location currently providing public access to the coast is Greenwood State Park approximately ½-mile south of the parcel. LUP Map No. 20 identifies Cuffey's Point, located north of the subject property, as a location for potential public access. To date, however, no public access has been acquired. The subject parcel contains a sandy beach at the bluff toe in the western portion of the property. An old dirt road goes partially down the bluff at the western most tip of the property toward this beach. The lower portion of the road becomes a rough hiking trail down to the beach according to the afore-mentioned geotechnical survey conducted in October of 1999. However, the road and trail appear to have been used only by the property owners and their guests. No evidence exists that the old road (or the property in general) has been used by the public to gain access to the coast.

Therefore, the proposed project will not interfere with any possible public prescriptive rights. In addition, the proposed project would not otherwise adversely affect public access. The proposed replacement of the old house with a new house will not increase the density of development on the site, and therefore will not increase the demand for new public access.

Therefore, the Commission finds that the proposed development does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the County's certified LCP.

J. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application,

as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Location Map
3. Site Plans
4. Notice of Final Action
5. Appeal
6. Excerpts of Supplemental Geologic Evaluations
7. Excerpts of Botanical Surveys
8. Appellant's Correspondence
9. Correspondence

ATTACHMENT A

Standard Conditions:

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