

CALIFORNIA COASTAL COMMISSION

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Filed:	January 16, 2007
49 th Day:	March 6, 2007
Staff:	Melissa B. Kraemer
Staff Report:	February 2, 2007
Hearing Date:	February 16, 2007

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NUMBER:	A-1-MEN-07-003
APPLICANTS:	Robert & Pamela Nelson
AGENT:	Richard Perkins
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately 5 miles south of Point Arena, on the west side of State Highway One, approximately 720 feet south of its intersection with Iversen Road, at 30150 South Highway One, APN 142-031-08.
PROJECT DESCRIPTION:	1) Construct a new 480-square-foot garage – at an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence for a new total area of 2,208 square feet of development; 2) legalize the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence used in conjunction with a planting bed for screening vegetation; and 3) place a 44-square-foot storage shed on an existing deck, average maximum height of approximately 6 feet.

APPELLANTS: 1) Friends of Schooner Gulch, Attn: Peter Reimuller
2) Commissioners Patrick Kruer & Mike Reilly

SUBSTANTIVE FILE: 1) Mendocino County CDPM No. 73-2003 (2006)
DOCUMENTS 2) Mendocino County CDP No. 73-2003
3) Mendocino County CDP No. 76-94
4) Coastal Commission CDP No. 80-CC-138
5) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION

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

The development, as approved by the County, consists of (1) construction of a new 480-square-foot garage – with an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence, for a new total area of 2,208 square feet of development; (2) legalization of the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence used in conjunction with a planting bed for screening vegetation; and (3) placement of a 44-square-foot storage shed (at an average maximum height of approximately 6 feet) on an existing deck.

The subject site is an approximately 1.5-acre bluff-top parcel located in a designated Highly Scenic Area on the west side of State Highway One approximately 5 miles south of Point Arena and approximately 720 feet south of the intersection of State Highway One with Iversen Road on the property known as 30150 South Highway One.

The Commission received two appeals of the County of Mendocino's decision to conditionally approve the development, including 1) an appeal from Friends of Schooner Gulch filed January 16, 2007, and 2) an appeal from Commissioners Kruer and Reilly filed January 24, 2007. The appellants contend that the project, as approved, is inconsistent with the visual resource policies of the certified LCP – specifically with respect to protection of views to and along the ocean and scenic coastal areas.

The project, as approved by the County, would have a direct impact on, and contribute to the cumulative loss of, visual resources in a designated Highly Scenic Area. Construction of the garage and shed would block a significant proportion of the viewshed currently available through the site to the ocean to passing motorists, bicyclists, and pedestrians traveling State Highway One. Views available from the highway to

passersby at the site include limited views of the cove (Iversen Landing), beach (Island Beach), tidepools, sea stacks, coastal bluffs, terraces, and the open ocean. The views affected by the proposed garage are most visible to southbound travelers, especially bicyclists and pedestrians.

The visual resources impacted by the proposed project are a significant part of the public viewshed towards Iversen Landing and Island Beach. Much of this particular viewshed has been lost to the Island Cove Estates subdivision development, and little of it is visible to the public along this stretch of highway. Furthermore, although the County conditioned the project to require some tree and shrub trimming with the intent of maintaining an open viewshed on the north side of the garage addition, the special conditions are not sufficient to adequately protect the remainder of the view corridor since they address only the wax myrtle plants “on the ocean side of the parking area” and the “present” Bishop pines in the area from the driveway north to the end of the fence line. The special conditions do not address the view corridor as a whole by limiting future use of the view corridor or restricting the planting of other vegetation in that location. For example, plants currently growing along the eastern fence (including evergreen wax myrtles and a climbing vine that is presently twining itself around the fence), could continue to grow and obstruct the remaining views in that view corridor, and the County conditions do not preclude the applicants from planting additional view-obstructing vegetation in the future.

In addition, the County’s findings do not fully address the feasibility of alternative locations for the proposed developments that would minimize or avoid the blockage of coastal views. There is no discussion in the staff report of alternative sitings for the shed, but from the submitted plans it appears that the shed potentially could be located on the existing deck on the west or east sides of the residence where the shed would not contribute to additional loss of public views to the ocean and scenic coastal areas. Regarding the garage siting, the County staff report references the idea (brought up by Friends of Schooner Gulch in a letter to the County dated July 18, 2004) of siting the garage between the house and the highway, but says only that “staff does not know if all the findings necessary for a variance (*i.e.*, no other feasible location for the development, etc.) could be made.” Therefore, it is unclear whether or not it would be possible to site the proposed garage or a smaller (*e.g.*, single car or tandem) garage in this area. Other alternatives – including the “no project” alternative and a detached garage alternative, for example – were not addressed in the County’s findings.

In conclusion, staff recommends that the Commission find that the approved project raises a substantial issue with respect to the approved project’s conformance with the visual resource protection policies of the certified LCP, specifically LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015(C)(1) because the project, as approved, does not protect views to and along the ocean and scenic coastal areas.

Staff further recommends that the Commission continue the *de novo* portion of the hearing because the Commission does not have sufficient information to determine what development can be approved consistent with the LCP. Continuing the hearing would enable the applicant to provide an Alternatives Analysis for siting the proposed developments, as well as an updated Geotechnical Analysis to ensure the new development would be set back far enough from the bluff edge to be safe from bluff retreat. Such information is needed to enable the staff to complete its analysis of the development and develop a *de novo* recommendation.

The motion to adopt the staff recommendation of Substantial Issue is found on Page 6.

STAFF NOTES

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if development is located between the first public road and the sea¹, the public access and public recreation policies set forth in the Coastal Act.

¹ Per Section 13011 of the California Code of Regulations, the “first public road paralleling the sea” means that road nearest to the sea, as defined in Section 30115 of the Public Resources Code, which: (a) Is lawfully open to uninterrupted public use and is suitable for such use; (b) Is publicly maintained; (c) Is an improved, all-weather road open to motor vehicle traffic in at least one direction; (d) Is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and (e) Does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

The approved development is appealable to the Commission for three reasons. First, the subject site is located between the sea and the first public road paralleling the sea [Section 30603(a)(1)]. Second, the subject site is located within 300 feet of the top of the seaward face of a coastal bluff [Section 30603(a)(2)]. Third, the subject site is located in a “sensitive coastal resource area” [Section 30603(a)(3)]. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,” including, among other categories, “highly scenic areas.” The approved development is located within an area designated in the LCP on the certified land use map as a “highly scenic area,” and, as such, is appealable to the Commission.

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

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

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

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

2. Filing of Appeal

Two appeals to the Commission were filed, including an appeal from (1) Friends of Schooner Gulch, and (2) Commissioners Kruer and Reilly (see Exhibit Nos. 8 and 9). Both appeals were filed in a timely manner, within 10 working days of receipt by the

Commission, on January 9, 2006, of the County's Notice of Final Local Action.² Appellant 1 filed the appeal on January 16, 2007, and Appellant 2 filed the appeal on January 24, 2007.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-07-003 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-07-003 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares the following:

² Pursuant to 14 CCR §13110, the appeal period commenced on January 10, 2007, the next working day following the receipt of the County's *Notice of Final Local Action* on January 9, 2007, and ran for the 10-working day period (excluding weekends and holidays) from January 10, 2007 through January 24, 2007.

A. APPELLANTS' CONTENTIONS

The Commission received two appeals of the County of Mendocino's decision to conditionally approve the development from (1) Friends of Schooner Gulch and (2) Commissioners Kruer and Reilly. The development, as approved by the County, consists of (1) construction of a new 480-square-foot garage – with an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence, for a new total area of 2,208 square feet of development; (2) legalization of the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence used in conjunction with a planting bed for screening vegetation; and (3) placement of a 44-square-foot storage shed (at an average maximum height of approximately 6 feet) on an existing deck.

The subject site is an approximately 1.5-acre bluff-top parcel located in a designated Highly Scenic Area on the west side of State Highway One approximately 5 miles south of Point Arena and approximately 720 feet south of the intersection of State Highway One with Iversen Road on the property known as 30150 South Highway One.

The appellants raise a contention alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit Nos. 8 and 9.

The appellants contend that the project, as approved, has a direct impact on, and contributes to the cumulative loss of, visual resources in a designated Highly Scenic Area. The appellants further contend that the County's findings do not clarify whether or not alternative, non-view-obstructing sitings for the developments are feasible.

Construction of the approved garage and shed would block a significant proportion of the currently available views through the site to the ocean for passing motorists, bicyclists, and pedestrians traveling State Highway One. Views available from the highway to passersby at the site include limited views of the cove (Iversen Landing), beach (Island Beach), tidepools, sea stacks, coastal bluffs, terraces, and the open ocean. The views affected by the proposed garage are most visible to southbound travelers, especially bicyclists and pedestrians.

The County conditioned the project to require some tree and shrub trimming with the intent of maintaining an open viewshed on the north side of the garage addition. However, the appellants contend that the special conditions are not sufficient to adequately protect the view corridor since they address only the wax myrtle plants "on the ocean side of the parking area" and the "present" Bishop pines in the area from the driveway north to the end of the fence line. The special conditions do not address the view corridor as a whole, and plants growing along the eastern fence (including wax myrtles and a climbing vine that is presently twining itself around the fence), could, if not

maintained, obstruct the remaining views in that view corridor (not to mention additional plantings that the property owners may choose to install in the future). In addition, the appellants contend that alternative locations for the garage and/or shed that would minimize or avoid view blockage were not clearly addressed in the County's findings. For example, there is no discussion in the staff report of locating the shed on the existing deck on the west or east sides of the residence where it would not contribute to additional loss of public views to the ocean and scenic coastal areas. Regarding the garage siting, the County staff report references the idea of siting the garage between the house and the highway, but says only that "staff does not know if all the findings necessary for a variance (*i.e.*, no other feasible location for the development, etc.) could be made." Therefore, it is unclear whether or not it would be possible to site the proposed garage or a smaller (*e.g.*, single car or tandem) garage in this area.

B. LOCAL GOVERNMENT ACTION

On December 21, 2006, the Mendocino County Coastal Permit Administrator conditionally approved CDPM #73-2003 (2006), an amendment to coastal development permit CDP #73-2003, which was originally approved, with conditions, on July 24, 2004. CDPM #73-2003 (2006) conditionally approved the following: (1) construction of a new 480-square-foot garage – with an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence, for a new total area of 2,208 square feet of development; (2) legalization of the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence used in conjunction with a planting bed for screening vegetation; and (3) placement of a 44-square-foot storage shed (at an average maximum height of approximately 6 feet) on an existing deck.

The subject garage had originally been approved in CDP #73-2003, which also approved the addition of 134 square feet to the existing single family residence (for an average maximum height of 21 feet) and the addition of 284 square feet of deck. Due to an appeal which was filed (though subsequently withdrawn) regarding the potential negative visual impact of the garage on public views from State Highway One, however, the garage portion was removed from the request, and the coastal permit was subsequently issued without the garage component (see Exhibit No. 8).

The Coastal Permit Administrator attached three special conditions to the approval of CDPM #73-2003 (2006). These conditions included the following:

1. *Prior to the issuance of the Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator, which shall provide that:*
 - a. *The wax myrtle bushes on the ocean side of the parking area shall be kept trimmed to a height not to exceed 2 feet above the existing berm;*

- b. The present Bishop pines in the area from the driveway north to the end of the fence line will be limbed up to eight feet from the ground where accessible.*
 - c. The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.*
- 2. Prior to the issuance of the Building Permit, the applicant shall substitute bronze colored aluminum window frames for the requested white vinyl frames. Any proposed change to either color or building materials for this project shall require the prior approval of the Coastal Permit Administrator, in perpetuity.*
- 3. Prior to the issuance of the Building Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, exterior lighting details consisting of downcast and shielded lights. Any proposed change to the approved lights shall require the prior approval of the Coastal Permit Administrator, in perpetuity.*

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on January 9, 2007 (Exhibit No. 7). The County's approval of the project was appealed to the Coastal Commission first by Friends of Schooner Gulch on January 16, 2007 (Exhibit No. 8), then by Commissioners Kruer and Reilly on January 24, 2007 (Exhibit No. 9). Both appeals were filed in a timely manner, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. SITE DESCRIPTION

The subject property is located approximately 5 miles south of Point Arena, approximately 720 feet south of the intersection of State Highway One and Iverson Road, on the west side of State Highway One, on the property known as 30150 South Highway One (see Exhibit Nos. 1, 2, and 3). The Commission issued permit #80-CC-138 on July 18, 1980, which approved, with conditions, the construction of the 1,060-square-foot single family residence (16 feet in height), a septic system, and a domestic well. The County issued CDP #76-94 on March 2, 1995, which approved, with conditions, all of the following: a) remodel of an existing 1,060-square-foot single family residence by extending the roof approximately 7 feet in order to convert an attic to living space; b) addition of approximately 218 square feet to the SFR; c) addition of approximately 900 square feet of decking; d) construction of a non-view-obstructing fence adjacent to the front property line, at a height of 5 feet 11 inches; e) drainage work to handle the deck drainage; and f) resurface and realign the existing driveway and parking area. As noted above, the County approved CDP #73-2003 in 2004 for additional improvements to the house.

The 1.5-acre parcel sits atop a steep bluff that overlooks Iversen Landing and Island Cove Beach, one of the few sand beaches of its kind along the southern Mendocino coastline. The parcel is part of the Island Cove Estates subdivision, which stretches both east and west of State Highway One. All property owners within this subdivision hold in their deed the legal right of use of “beach property” and “road easement to and from said property.” This right of use is shared by land owners within the Iversen Point and Iversen Landing subdivision as well, all in total some 113 lots. A condition of the permit for the original home construction (#80-CC-138) required an offer of dedication for this interest in the access easement. The Island Cove Shoreline Access borders the property directly adjacent to the east and south. The proposed development would not affect the access easement.

The parcel is wooded with scattered Bishop pines (*Pinus muricata*), madrones (*Arbutus menziesii*), and wax myrtles (*Morella californica*). A botanical survey conducted on the property on June 14, 2006 by Alison Gardner found no rare or endangered species and no environmentally sensitive habitat areas (ESHA) on the parcel. The County staff report for the current permit also states that, upon a site inspection conducted by staff, no ESHAs appeared to be present within 100 feet of the proposed development. Two seasonal watercourses border the parcel to the north and south, though neither have any significant riparian vegetation according to the botanical report. The proposed garage is at least 100 feet from the watercourses, according to the site plan included with the County staff report (see Exhibit No. 4). An existing berm lies between the northern watercourse and the proposed garage site, which further protects the drainage from driveway runoff, according to the botanical report.

The current single family residence is located at least 50 feet back from the bluff edge according to staff reports for the various permits described above. The staff report for the original home construction in 1980 describes the bluff as 80-90 feet in height at a slope of approximately 90%. The lot, therefore, does not constitute 1.5 buildable acres, but rather approximately 0.75 buildable acres.

The subject parcel is located within a designated highly scenic area. The parcel overlooks Iversen Landing and Iversen Point, both of which are noted features on the Saunders Reef U.S. Geologic Survey 7.5-minute topographic quadrangle map of the site (see Exhibit No. 2). Limited views of the cove (Iversen Landing; also known as Island Cove), beach (known as Island Beach), tidepools, sea stacks, coastal bluffs, terraces, and the open ocean are visible between the trees from State Highway One adjacent to the project site (see Exhibit No. 6).

D. PROJECT DESCRIPTION

The County of Mendocino conditionally approved CDPM #73-2003 (2006), an amendment to coastal development permit CDP #73-2003, for the following

developments: (1) construction of a new 480-square-foot garage – with an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence, for a new total area of 2,208 square feet of development; (2) legalization of the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence used in conjunction with a planting bed for screening vegetation; and (3) placement of a 44-square-foot storage shed (at an average maximum height of approximately 6 feet) on an existing deck. To protect the remaining view corridor north of the proposed garage, the applicant has proposed several mitigation factors to assist in the reduction of negative visual impact to the area, including limbing the existing Bishop pines up to 8 feet from the ground and trimming existing wax myrtle bushes on the ocean side of the parking area to a height not to exceed 2 feet above the existing berm. Those factors were incorporated into the County’s special condition #1 (see above).

E. SUBSTANTIAL ISSUE ANALYSIS

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

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

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

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

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

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;

- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

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

The contention raised in the appeal presents potentially valid grounds for appeal in that the contention alleges the approved project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County is inconsistent with LCP provisions regarding protection of views to the ocean and scenic coastal areas in a designated Highly Scenic Area.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project, as approved, with the provisions of the LCP regarding visual resource protection, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP.

1. Allegations Raising Substantial Issue

a. Visual Resource Protection

The appellants contend that the project as approved is inconsistent with the visual resource protection policies of the certified LCP with respect to protecting views to and along the ocean and scenic coastal areas.

Applicable LCP Policies

Policy 3.5-1 of the LUP states, in applicable part, the following (emphasis added):

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

Policy 3.5-3 of the LUP states, in applicable part, the following (emphasis added):

“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 south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1...

Section 20.504.010 of the CZC states, in applicable part, the following (emphasis added):

“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.” (Ord. No. 3785 (part), adopted 1991)

Section 20.504.015 of the CZC states, in applicable part, the following (emphasis added):

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

(4) Portions of the Coastal Zone within the Highly Scenic Area between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. (Ord. No. 3785 (part), adopted 1991)

Discussion

The County staff report notes that the project site is located within a designated Highly Scenic Area and is visible from State Highway One. The staff report further notes that the proposed construction would be partially screened from the highway by existing mature evergreen trees and from the beach below by native vegetation adjacent to the bluff as well as by the angle of view from the beach up the steep bluff. The staff report further notes that the view is visible, briefly, to a passing motorist or bicyclist, but can be

enjoyed by a pedestrian. Finally, the staff report states that the proposed garage would lessen the public's view to and along the ocean from the highway, though not substantially.

The appellants contend that the project, as approved, does not protect views to and along the ocean and scenic coastal areas, and does, in fact, lessen the public's view to and along the ocean from the highway, as admitted by the County. Development of the garage and shed would have a direct impact on, and contribute to the cumulative loss of, public views currently available to passersby on this stretch of highway. Construction of the garage and shed would block approximately 20 feet and 11 feet, respectively, of view currently available to passing motorists, bicyclists, and pedestrians traveling State Highway One. The approved development would block a significant proportion of the currently available public views of this particular viewshed – much of which has been lost as a result of the Island Cove Estates subdivision development. Views available from the highway to passersby at the site include limited views of the cove (Iversen Landing), beach (Island Beach), tidepools, sea stacks, coastal bluffs, terraces, and the open ocean. The applicable LCP policies cited above are designed to protect public views to and along the ocean and scenic coastal areas in designated Highly Scenic Areas, such as where the project site is located.

The appellants further contend that the County did not adequately discuss alternative development sitings for the garage or the shed in its findings for CDPM 73-2003 (2006). No alternative siting for the shed is mentioned in the County staff report, but from the submitted plans it appears that the shed potentially could be located on the existing deck on the west side of the residence where it would not contribute to additional loss of public views to the ocean and scenic coastal areas. Or, perhaps the shed could be located between the house and the highway. Regarding the garage siting, the County staff report references the idea (brought up by Friends of Schooner Gulch in comment letters to the County dated July 18, 2004 and September 6, 2006 – see Exhibit No. 8) of siting the garage between the house and the highway, but says only that “staff does not know if all the findings necessary for a variance (*i.e.*, no other feasible location for the development, etc.) could be made.” Therefore, it is unclear whether or not it would be possible to site the proposed garage or a smaller (*e.g.*, single car or tandem) garage in this area. Other alternatives – including the “no project” alternative and a detached garage alternative, for example – were not addressed in the County's findings. Therefore, the Commission finds that a substantial issue is raised as to whether a feasible less view blocking alternative exists.

Although the County conditioned the project to require some tree and shrub trimming with the intent of maintaining an open viewshed on the north side of the garage addition, the special conditions are not sufficient to adequately protect the view corridor since they address only the wax myrtle plants “on the ocean side of the parking area” and the “present” Bishop pines in the area from the driveway north to the end of the fence line.

The special conditions do not address the view corridor as a whole by limiting future use of the view corridor or restricting the planting of other vegetation in that location. For example, plants growing along the eastern fence (including wax myrtles and a climbing vine that is presently twining itself around the fence), could continue to grow and obstruct the remaining views in that view corridor (not to mention additional plantings that the property owners may choose to install in the future). Given the “highly scenic” designation of the area, any permitted development in an area of such “vital interest and sensitivity” should, at the very least, first carefully consider all development alternatives, including the “no project” alternative.

The coastal resources affected by the decision are significant, given the area’s “highly scenic” designation, and that the appeal raises an issue of regional and statewide significance – namely, the protection of views in areas designated as “highly scenic.” Section 20.308.110(6) of the Mendocino County CZC and Section 30116 of the Coastal Act identify “highly scenic areas” as a type of “Sensitive Coastal Resource Area” that is of “vital interest and sensitivity.”

Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the visual resource protection policies of the certified LCP, including (a) LUP policy 3.5-1 and CZC section 20.504.010, which specify that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, and (b) LUP policy 3.5-3 and CZC section 20.504.015(C)(1), which specify that development in designated Highly Scenic Areas shall provide for the protection of ocean and coastal views from public areas, including roads and highways.

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

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

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

1. Alternatives Analysis

As noted above, it is unclear whether or not feasible alternative locations exist for the proposed garage and shed elsewhere on the property to better protect public views to the ocean and scenic coastal areas consistent with the visual resource policies of the LCP. To approve the project, the Commission must find that the project will protect views to and along the coast. Evaluating the feasibility and relative impact on coastal resources of alternatives is essential for making such a determination. Therefore, the Commission needs to receive an Alternatives Analysis for the subject property that addresses the feasibility and relative impact on view blockage of different alternatives including, but not limited to, whether it would be possible to site the proposed garage or a smaller (*e.g.*, single car or tandem) garage in the area along the east side of the house, the “no project” alternative and a detached garage alternative, for example.

2. Geotechnical Analysis

The Commission must make findings regarding potential geologic hazards associated with new development. LCP policies require that new development (1) minimize risks to life and property in areas of high geologic hazard, and (2) assure stability and structural integrity, and neither create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.

Authorization of the placement of the new development (garage) on a bluff top lot is contingent on making findings that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards will be minimized and mitigated. The existing geotechnical report on record, prepared in 1980, does not contain sufficient information with which to make these findings since it does not include a “quantitative slope stability analysis.” Such an analysis is needed to determine the following: (1) the static minimum factor of safety against landsliding of the bluff in its current configuration; (2) assuming that factor of safety obtained in (1) is less than 1.5, the location on the bluff top where a factor of safety of 1.5 is obtained; (3) the pseudostatic minimum factor of safety of the bluff, using a horizontal seismic coefficient of 0.15g; and (4) assuming that the factor of safety in (3) is less than 1.1, the location on the bluff top where a factor of safety of 1.1 is obtained.

Additionally, the updated geologic report should include a bluff edge setback evaluation, which should include (1) a determination of the location of the bluff edge relative to the proposed development, and (2) an estimate of the distance from the bluff edge in the vicinity of the proposed development that will maintain a minimum

factor of safety against landsliding of 1.5 for the expected economic life of the development (assumed to be 75 years).

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

III. EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Assessors Map
4. Approved Site Plan
5. Floor Plan & Elevations
6. Site Photos
7. Notice of Final Local Action & County Findings
8. Appeal, filed January 16, 2007 (Friends of Schooner Gulch)
9. Appeal, filed January 24, 2007 (Kruer & Reilly)
10. Applicants' Correspondence

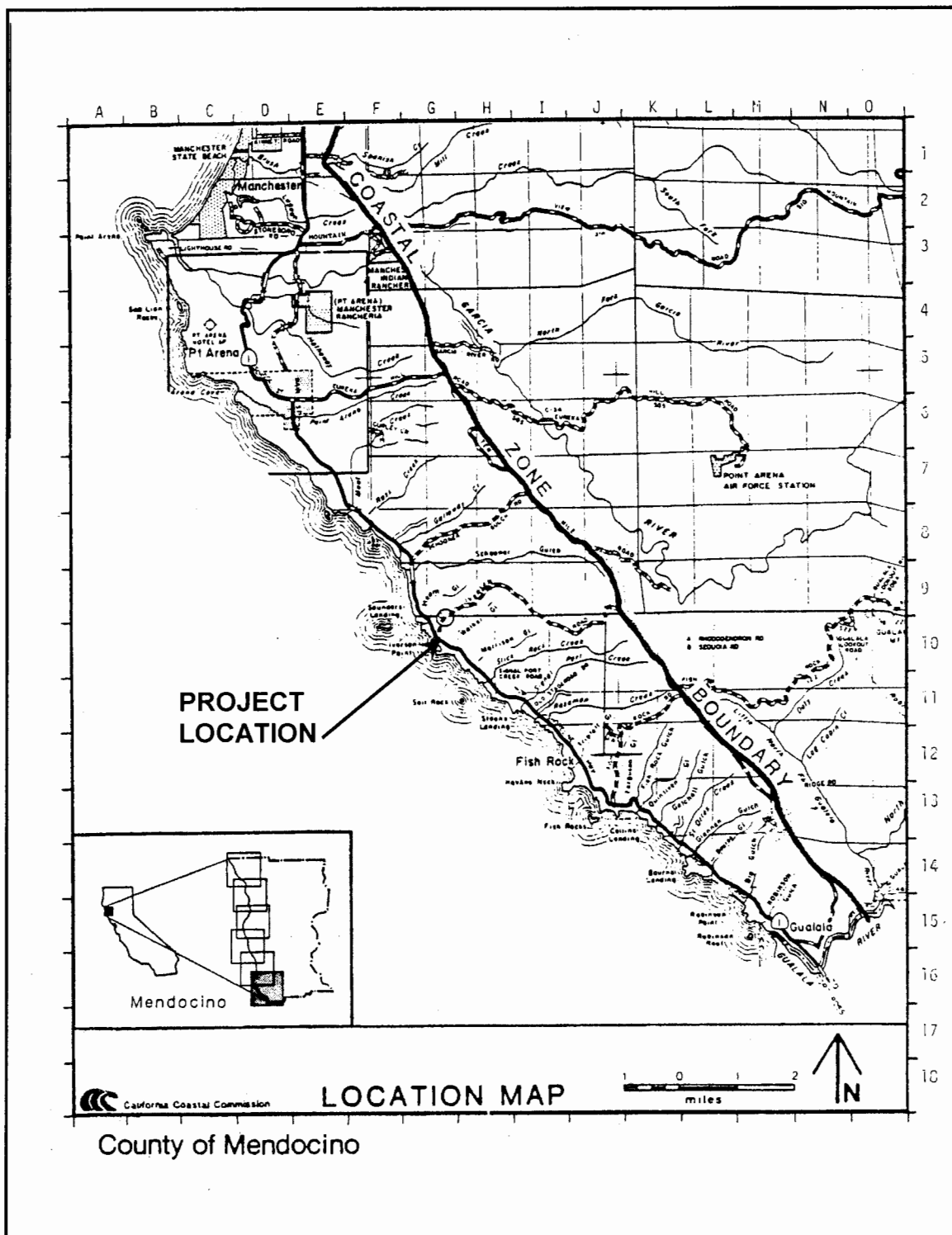


EXHIBIT NO. 1

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA
REGIONAL LOCATION MAP

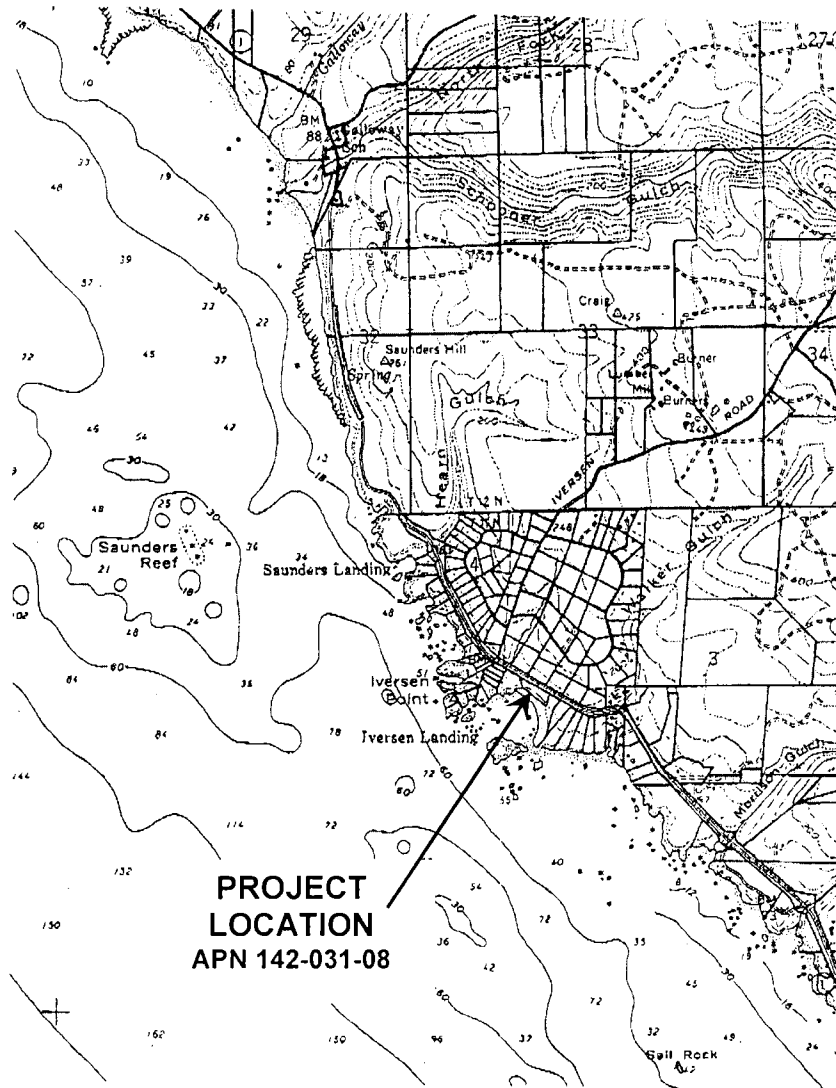


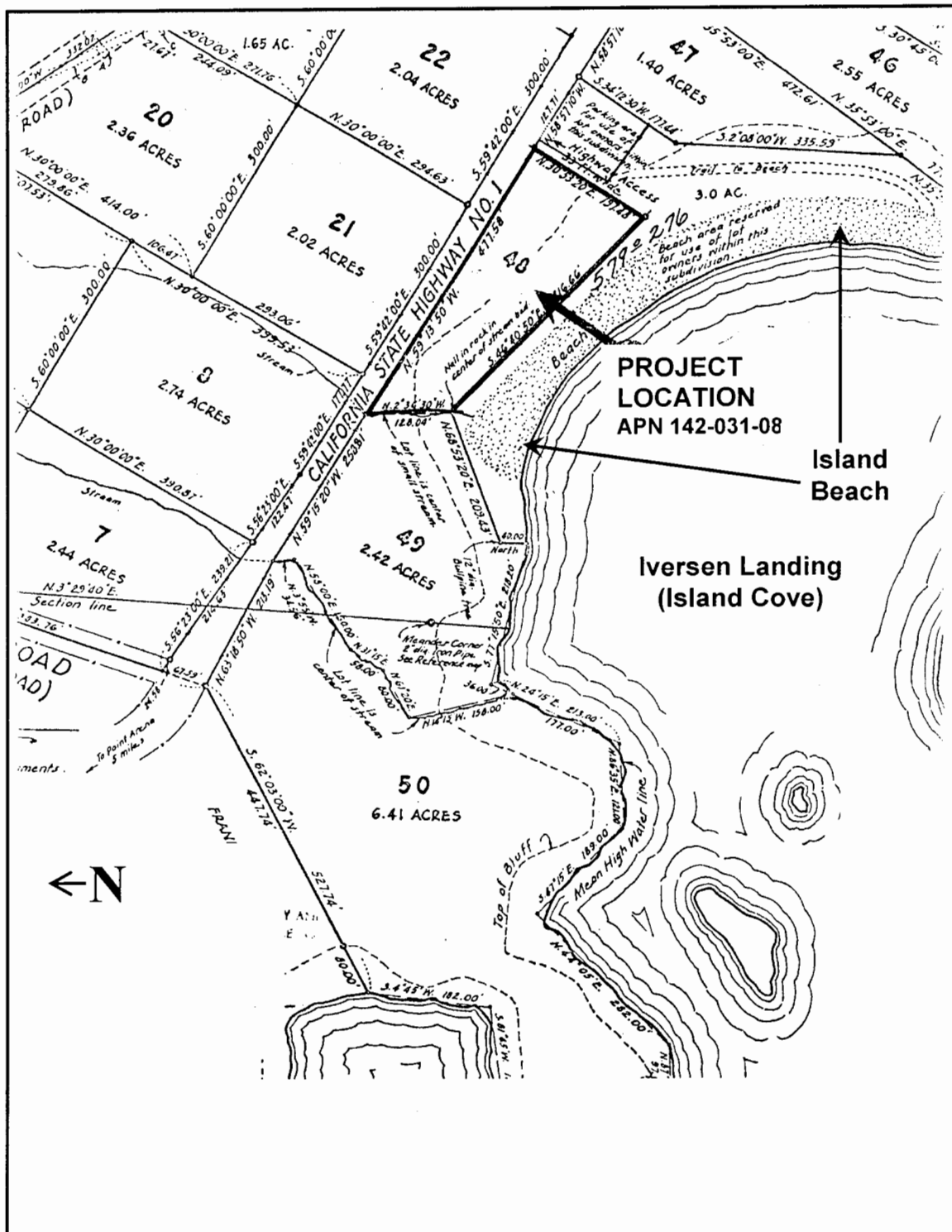
EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

VICINITY MAP



<p>EXHIBIT NO. 3</p> <p>APPLICATION NO.</p> <p>A-1-MEN-07-003</p> <p>NELSON, ROBERT & PAMELA</p> <p>ASSESSORS MAP</p>

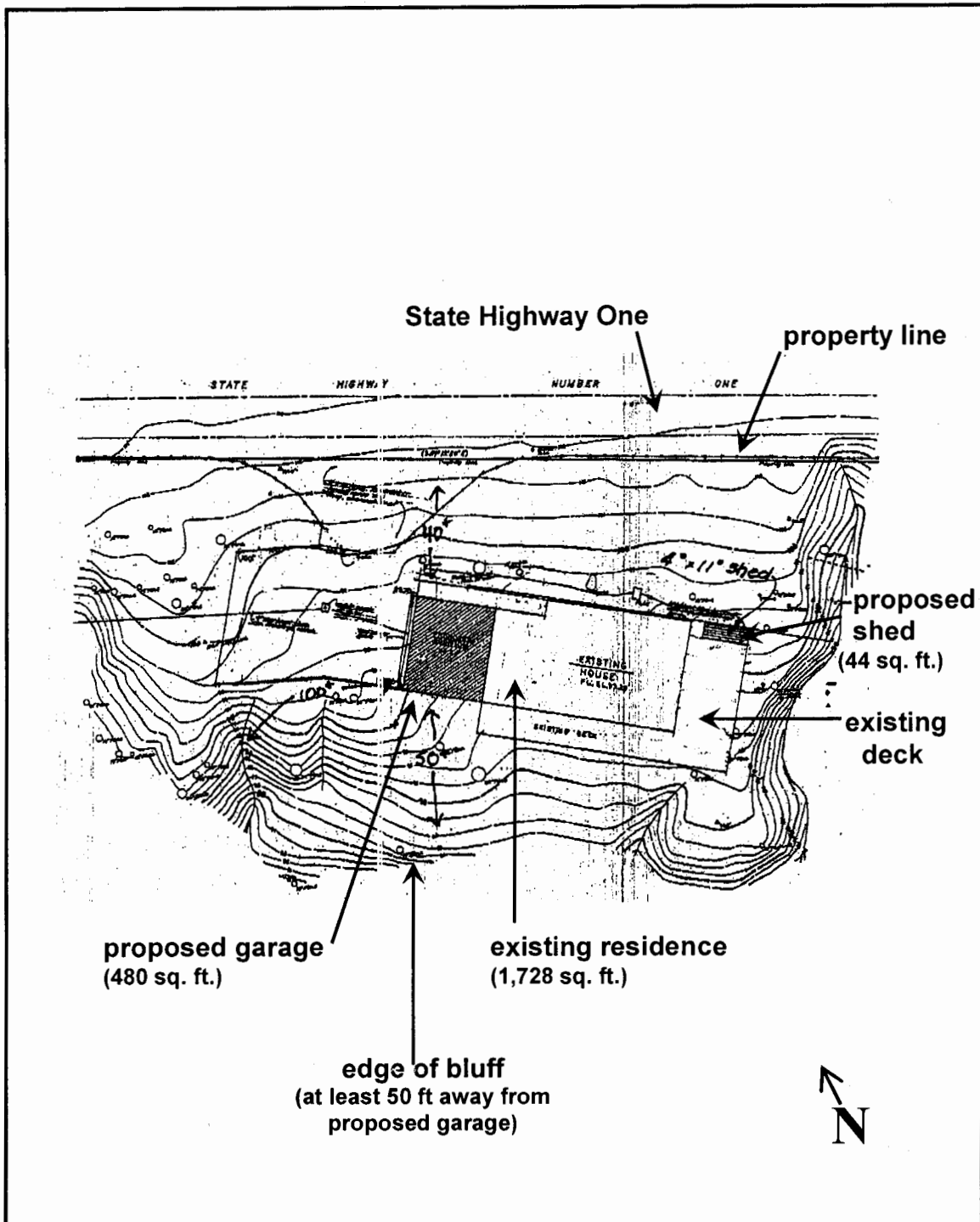


EXHIBIT NO. 4

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

APPROVED SITE PLAN

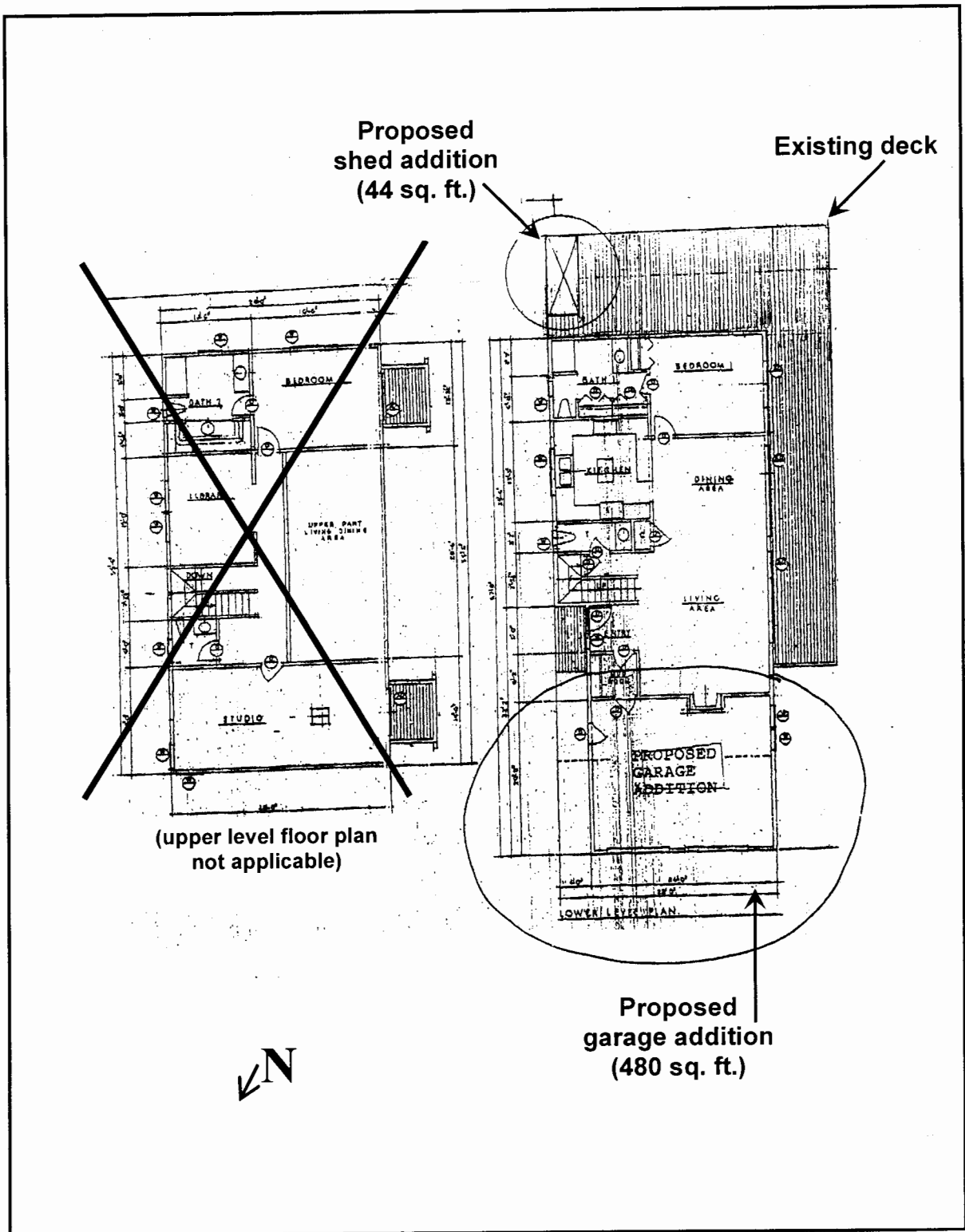


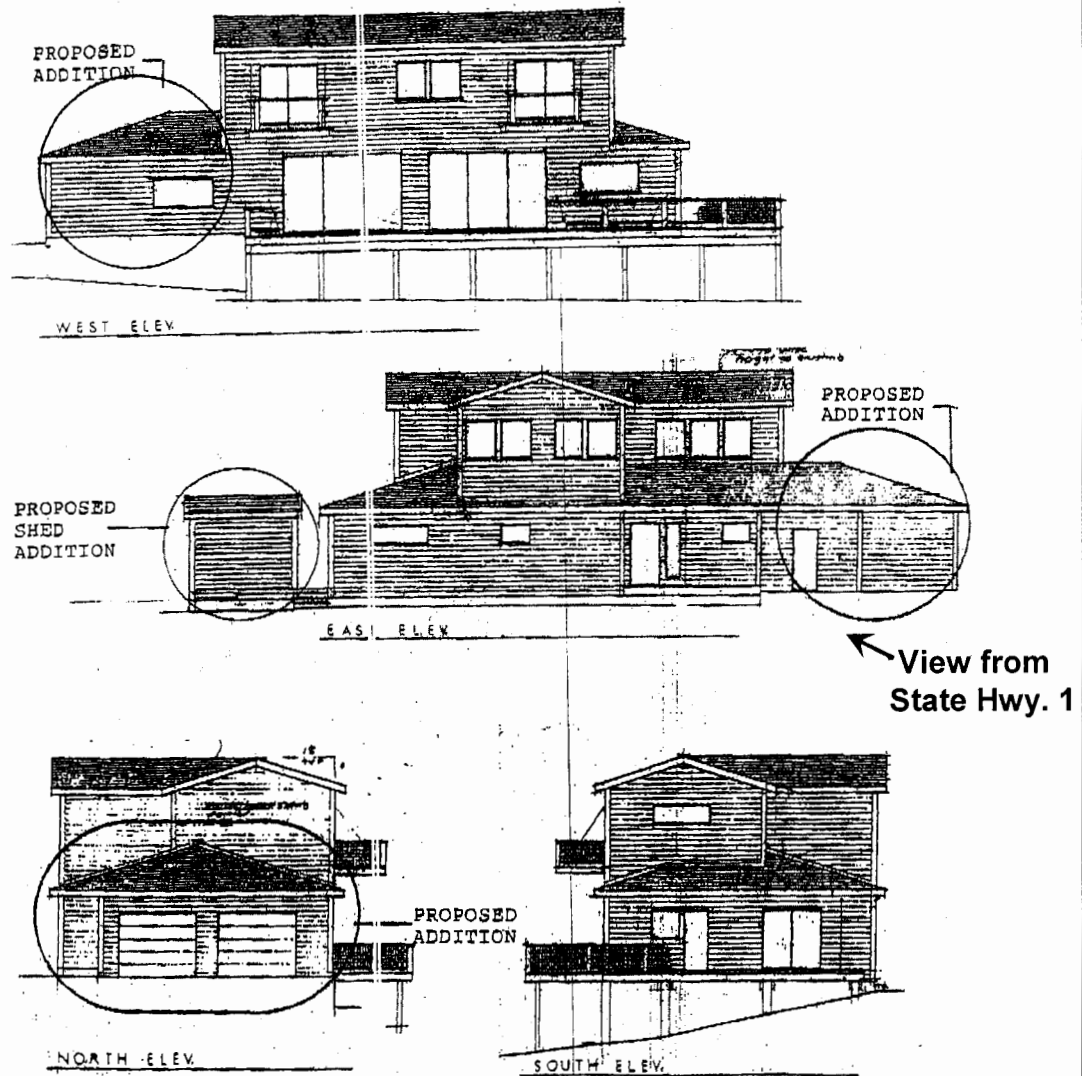
EXHIBIT NO. 5

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

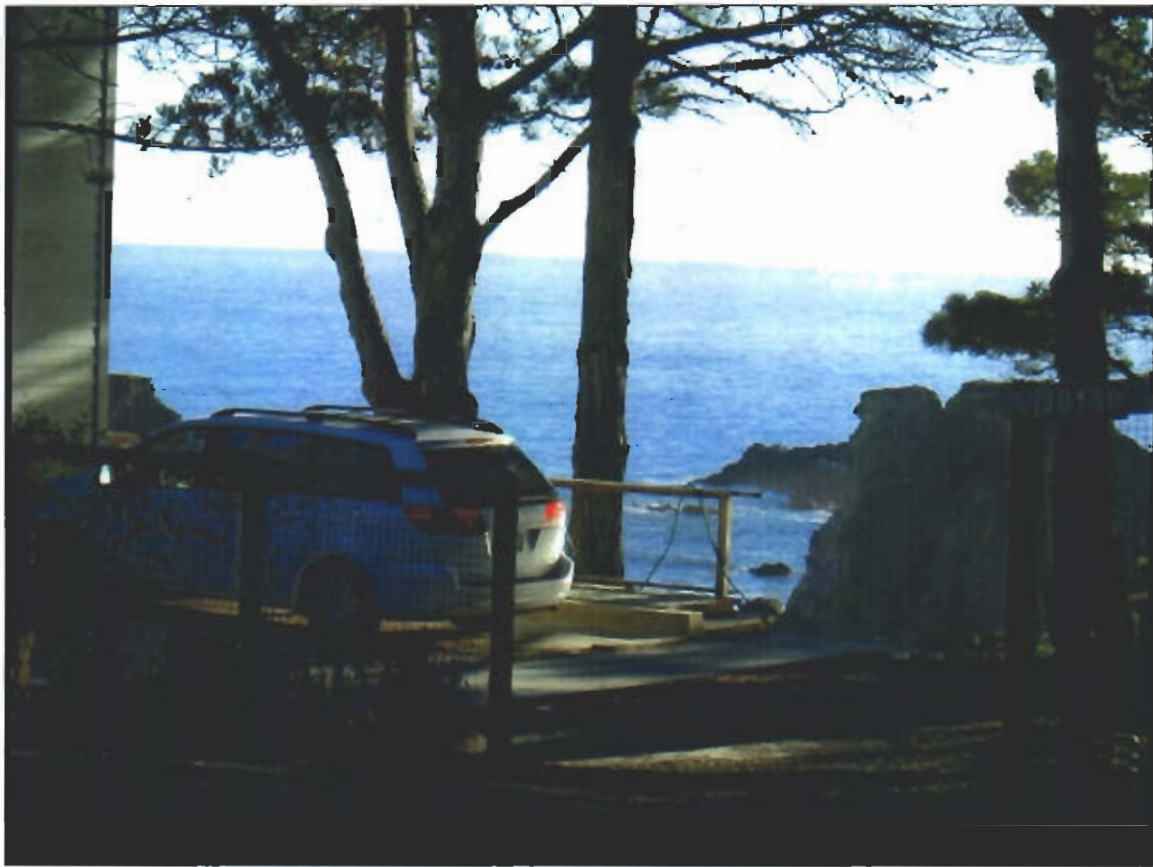
FLOOR PLAN & ELEVATIONS
(1 of 2)



Proposed garage addition = 480 sq. ft., max. height 16 ft.

Proposed shed addition = 44 sq. ft., max. height 6 ft.

202



View looking southwest from State Highway One through the proposed garage site to the open ocean. Date of photo: 1/22/07.

EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

SITE PHOTOS (1 of 3)



View looking southwest from State Highway One through the proposed garage site to the ocean and scenic coastal areas. Date of photo: 1/22/07.

293



View looking west from State Highway One through the property fence at the site of the proposed shed, which is visible in the photo. Date of photo: 1/22/07.

3 of 3



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
790 SOUTH FRANKLIN • FORT BRAGG • CALIFORNIA • 95437

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www.co.mendocino.ca.us/planning

RECEIVED

JAN 09 2007

CALIFORNIA
COASTAL COMMISSION

January 2, 2007

NOTICE OF FINAL ACTION

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

CASE#: CDPM #73-2003(2006)
OWNER: Robert & Pamela Nelson
AGENT: Richard Perkins
REQUEST: Construct a new 480 square foot garage attached to existing 1,728 square foot single-family residence for a new total area of 2,626 square feet of development. The garage will have an average maximum height of 16 feet above finished grade. Legalize the placement of a retaining wall used in conjunction with a planting bed for screening vegetation. Place a 44 square foot storage shed on existing deck, average maximum height of approximately 8± feet above natural grade, and construct a retaining wall (<6 feet tall) on eastern side of residence.
LOCATION: In the Coastal Zone, approximately 5± miles S of Point Arena, on the W side of State Highway One, approximately 720 feet S of its intersection with Iversen Road (CR# 503) at 30150 S Highway One, APN 142-031-08.
PROJECT COORDINATOR: Paula Deeter

HEARING DATE: December 21, 2006

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION: Approved with Conditions.

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

The project was not appealed at the local level.

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

EXHIBIT NO. 7

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

NOTICE OF FINAL LOCAL
ACTION (1 of 12)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDPM 73-2003 (2006) HEARING DATE: 12/21/06

OWNER: Nelson

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☒ Per staff report

☐ Modifications and/or additions

ACTION:

☒ Approved

☐ Denied

☐ Continued _____

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions

Signature on File 7

[Signature]
Signed: Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDPM# 73-2003(06) Nelson
December 21, 2006
CPA-1

OWNER: Robert and Pamela Nelson
1046 Clark Street
Napa, CA 94559

AGENT: Richard Perkins
46351 Gypsy Flat Road
Gualala, CA 95445

REQUEST: Construct a new 480 square foot garage attached to existing 1,728 square foot single-family residence for a new total area of 2,626 square feet of development. The garage will have an average maximum height of 16 feet above finished grade. Legalize the placement of a retaining wall used in conjunction with a planting bed for screening vegetation. Place a 44 square foot storage shed on existing deck, average maximum height of approximately 8± feet above natural grade, and construct a retaining wall (<6 feet tall) on eastern side of residence.

LOCATION: In the Coastal Zone, approximately 5± miles S of Point Arena, on the W side of State Highway One, approximately 720 feet S of its intersection with Iversen Road (CR# 503) at 30150 S Highway One, APN 142-031-08.

APPEALABLE AREA: Yes, blufftop parcel, highly scenic, west of Highway One

PERMIT TYPE: Standard

TOTAL ACREAGE: 1.51 acres

ZONING: RR:L-5 [RR:L-2]

GENERAL PLAN: RR-5 [RR-2]

EXISTING USES: Residential

SUPERVISORIAL DISTRICT: 5

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 3

CALIF. COASTAL RECORDS #: 200504014

OTHER RELATED APPLICATIONS: 80-CC-138 approval of the construction of the approximately 1100 square foot 25' high residence and associated septic system and well; CDP 76-94 single-family residential addition; building permit 959-148 residential addition; CDP 73-2003 residential addition/remodel which also reduced overall height to 21'.

PROJECT HISTORY: The applicant previously submitted a CDP application (CDP 73-03) that included the subject garage addition; however, due to public comment regarding potential negative visual

impact on public views from State Highway One, the garage portion was removed from the request and the coastal permit was subsequently issued without a garage. The applicant has resubmitted the garage addition request in this application with several mitigation offers that are discussed under the Visual Resource section.

PROJECT DESCRIPTION: The applicant proposes to construct a 480 square foot garage attached to an existing 1,728 square foot single-family residence for a total area of 2,626 square feet of development, with an average maximum height of 16 feet above natural grade. Additionally, the applicant requests the placement of an approximately 44 square foot storage shed on the existing deck with an average maximum height of approximately 8± feet above finished grade, and placement of a retaining wall (<6 feet tall) on the eastern side of the residence. The legalization of the approximately 4 foot high retaining wall used to hold the soil in the planting bed on the east side of the existing residence is included in this application.

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

GMAC

The Gualala Municipal Advisory Committee voted unanimously in favor of recommending approval of this permit application as submitted at their August 3, 2006 meeting, with the following comment:

According to the Environmental Data page of the Coastal Development Permit, the site is located within a Highly Scenic area west of State Highway One. Several GMAC members were concerned that the project as proposed may violate the conditions set forth within the defined parameters of a Highly Scenic area; therefore, GMAC requests that the County carefully consider the project's impact in relation to the parcel's Highly Scenic status in your final review.

This will be discussed further in the Visual Resource section.

Land Use

The proposed garage addition to the existing single-family residence is compatible with the Rural Residential zoning district and is designated as a permitted accessory use, as are the storage shed and the retaining wall.

Although this site is 1.5 acres in size, the buildable area constitutes .75 acre according to the previous Coastal Commission report. The original residence was approved at 50 feet from the bluff edge. The proposed garage addition would exceed this setback, and meet a minimum 70-foot setback from the bluff edge. The proposed project complies with both yard setback and corridor preservation setbacks.

The height limitation is 18 feet unless an increase in height would not affect the public's views to and along the ocean, is met. The existing two-story residence is approximately 21 feet in height and the proposed addition would not exceed an average of 16 feet from finished grade. The existing development is visible from State Highway One and has affected the public's view since it was originally constructed.

Public Access

There are no public access trails on this site indicated on the County's LCP maps. The Island Cove Shoreline Access traverses the property directly adjacent to the east and south.

The Coastal Commission report for the original construction states, in part:

The applicant's parcel is part of Island Cove Estates, a subdivision stretching both east and west of Highway One. All property owners within this subdivision hold in their deed the legal right of use of "beach property" and "road easement to and from said property". This right of use is shared by land owners within the Iversen Point and Iversen Landing subdivision as well, all in total some 113 lots. This beach, more commonly known as Island Cove is one of the few sand beaches of its kind that dot the southern Mendocino coastline. Island Cove has 700 foot sand beach with adequate parking area and a path. This beach has been identified by Blayney Dyett in their "Shoreline Access" paper, prepared for Mendocino County and the North Coast Commission. These beaches offer not only a needed access to the ocean but a range of recreational opportunities as well.

A condition of that original permit required an offer of dedication for this interest in the access easement. That condition was implemented by an offer of dedication and has been determined to be adequate access for this current review. The proposed construction will not affect the access easement, as the proposed garage is to be located on an already-poured concrete slab where the applicants currently park their vehicles.

Hazards

This property is within an area designated Moderate Fire Hazard. The California Department of Forestry and Fire Protection's preliminary clearance notes that this project is exempt from their fire safe regulations.

Although the Local Coastal Plan maps indicate this site to be in a Tsunami Hazard area, the adjacent bluff is approximately 90' high. Construction on blufftop properties with elevations above 40 feet are considered safe from this hazard. Large sea stacks occur a few hundred feet to the south which also block and slow wave impact to the bluff of the subject property.

The site is also characterized by the County's LCP Hazards maps as Beach Deposits and Stream Alluvium and Terraces (Zone 3) Intermediate Shaking. This proposed construction will not be affected by or affect this hazard as it is being constructed to Uniform Building Code standards.

The project site is located on a bluff top parcel, which is subject to natural coastal erosion and bluff retreat. A geotechnical report prepared for the construction approved by CDP 73-2003 recommended a 50-foot setback. The original Coastal Commission report states:

The (geotechnical report) states that there is no evidence of landslide activity and that "the construction activities will not change the present condition or stability of the site or nearby areas".

The addition would be at least 70 feet from the bluff edge as measured from the edge of the structure at the closest point. This distance should provide a safe distance from the bluff edge and is consistent with the geotechnical recommendations. Staff finds that the project is consistent with Section 20.500.020(B)(1) of Mendocino County Code which requires new structures to be a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic lifespans (75 years).

The Coastal Commission and Mendocino County have been applying a deed restriction for blufftop parcels where the development is within 100 feet of the bluff prohibiting the construction of seawalls with the requirement that the structures be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean up associated with portions of the development, which might fall onto a beach. It is anticipated that the Coastal Commission will continue to apply this deed restriction for any blufftop development. Although the structure would be over 100 feet from the bluff edge the existing water well is approximately 60 feet from the bluff edge. County policy

has been to apply the deed restriction condition for all developments, including wells and septic systems. A deed restriction has been submitted with the prior Coastal Development Permit (CDP 73-2003) and staff has verified through the County Recorder's office that it has been recorded onto the applicant's deed. The deed restriction would apply to the proposed garage and shed.

Visual Resources

The project site is located within a designated "highly scenic area" and is visible from State Highway One. The highly scenic designation limits building heights to 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. The plans indicate the proposed addition of a garage to be an average of 16 feet in height from natural grade.

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

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

Policy 3.5-3 states:

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

...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 shall be subordinate to the setting and minimize reflective surfaces. Variances from this standard may be allowed for planned unit development(s) that provides clustering and other forms of meaningful mitigation.

The above policies are codified in Section 20.504.015 et.al. of the Coastal Zoning Code. Therefore, consistency with these policies results in consistency with the corresponding sections of the Zoning Code.

The proposed building site is partially screened by existing mature evergreen trees from State Highway One and from native vegetation adjacent to the bluff. The proposed construction, although visible from the Highway, would not significantly add to the visual obstructions to views of the ocean. The existing structure currently blocks public view to the ocean from the Highway. The addition of 480 square feet of a garage and 44 square feet of a storage structure on an existing deck will not lessen the public view substantially in this location, as the angle of view from the beach below will partially screen the structure from view from the beach below the bluff. The retaining wall was placed in association with the previously required landscaping, in order to hold soil for the plantings, and does not affect the public's view from the highway to the ocean. The retaining wall is located approximately 1 foot lower than State Highway One and will be legalized with this application.

The Friends of Schooner Gulch had expressed trepidation with the original project, as stated in several letters to the original CDP file, all referring to the potential loss of a public view.

The most detailed letter, dated July 18, 2004, addresses the concerns that they have:

- The proposed location for the garage is quite visible from Highway One and would most certainly add to the cumulative blocking of the public's views towards the magnificent cove to the west. We repeat, this is not your normal ocean view- this is a one-in-a-million view from the highway, and the addition of another 20' of length to the already long house will only block it more....Even though there are a few trees in the viewshed, the is magnificent through them anyway. The fence which was installed along the highway [to the north of the proposed development] was required to be wire mesh to allow the view to be fully appreciated from the highway.

Staff notes that the view is visible only briefly to the passing motorist or bicyclist, but can be enjoyed by a pedestrian, none of which have been noted at any site views.

Additionally, the FOSG letter notes:

- We also note that the owner has installed a huge commercial shipping container on the property, and it further blocks the view. It is not shown on the plot plan, is not permitted by the Coastal Act, and must be removed.

The shipping container has been removed from the site.

- We would like to bring to your attention that, from the highway, the top of the cliff appears to be very, very close to the house. The staff report says that the edge is at least 50' from the garage, but we dispute the definition of cliff edge in Mendocino County. We were not able to research this matter to our satisfaction.

Staff measured to the edge of where the sharpest drop-off occurs; it is at least 50 feet from the edge of the proposed garage to the closest point of the drop-off.

- One solution would be to site a new garage between the house and the highway. That way it would not add to the view blockage and would certainly be farther from the cliff edge. Perhaps it could be a 2-car garage in tandem (end to end, rather than side by side), or it could be a single-car garage. There is quite a bit of space there, and if necessary, it seems that a small variance to the 40' highway corridor setback could be found necessary to save this view.

The screening (from the highway) landscaping (that was requested in CDP 73-2003) is located in that area, and topographically, beyond that area to the south, it slopes towards a drainage area farther away. This makes the proposal for a garage in that area extremely difficult to site. Staff does not know if all of the findings necessary for a variance (i.e., no other feasible location for the development, etc.) could be made.

- If that option is not deemed feasible, then the permit should be denied and the shipping container removed...If the permit is granted, it should contain a provision whereby the new garage space will not be converted into living space or a separate living unit.

Second residential units are not permitted in the Coastal Zone; the shipping container has been removed; and the garage cannot be used as living space without prior review and approval by the Coastal Permit Administrator.

In an effort to assuage the concerns that the Friends of Schooner Gulch had noted with the previous application, the applicant has submitted a letter dated September 28, 2006 with several mitigating factors to assist in the reduction of negative visual impact to the area. The letter summarizes changes made since CDP 73-3003 was processed. It states:

In response to our conversation of September 22 we would like to offer the following:

1. The height of the storage shed on the deck will be lowered by two feet.
2. The wax myrtle bushes on the ocean side of the parking area will be trimmed to a height not exceeding two feet above the present berm where they are located.
3. The present Bishop pines in the area from the driveway north to the end of the fence line will be limbed up to eight feet from the ground where accessible.
4. We will record a deed restriction to include the above conditions if you desire.

In a previous letter from the Friends of Schooner Gulch, dated August 6, 2004 it had been suggested that a view easement be a condition in order to avoid the appeal of the project to the Coastal Commission. Staff notes that a deed restriction would satisfy this request and therefore finds that this is an acceptable solution to the dilemma.

Staff is recommending Special Condition #1 to ensure that the visual resources are protected in perpetuity by this deed restriction, which will encompass all of the mitigations set forth in the letter of September 28, 2006 by the applicant.

As specifically addressed in Section 20.504.015(C)(3), exterior colors and materials shall be selected to blend in hue and brightness with the surrounding area. The proposed materials for the structure are as follows:

Siding and trim: "Certain-Teed" weather boards, light grey

Roofing: Black fiberglass comp shingles

Window frames: White vinyl

Door: Fiberglass, grey

The white vinyl window frames create a contrast that is too attention-arresting and contrasting with other exterior colors and does not match the residence. The previously approved CDP for the residence authorized bronze-colored aluminum, which staff recommends for compliance with the intent of the visual resource section of the County Code.

Special Condition #2 is recommended to ensure that any proposed change to the approved materials and colors shall require the Coastal Permit Administrator's prior approval, and to incorporate the change in proposed window frame materials to be consistent with the frames on the single-family residence.

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

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

- (2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.
- (5) No lights shall be installed so that they distract motorists.

Staff is recommending Special Condition #3, requiring that prior to the issuance of the Coastal Development permit, the applicant submit for the review and approval of the Coastal Permit Administrator, exterior lighting details that indicate downcast and shielded lighting that shall remain as described in perpetuity.

Natural Resources

A botanical survey was conducted by Alison Gardner, dated August 24, 2006. It states that this is a very small parcel, wedged between State Highway One to the east and the bluff on the west, with two small draws, one to the north and one to the south. The development is proposed to be constructed on an existing cement parking pad. Both draws carry only seasonal runoff, and do not contain any significant riparian vegetation. No rare or endangered species were found on this site. As the construction work is to be confined to the existing concrete pad, and there is already a berm between it and the north draw, any impact that the planned construction would have on the surrounding flora would be negligible.

During a site inspection conducted by staff, it did not appear that there are any environmentally sensitive habitat areas located within 100' of the proposed development.

Archaeological/Cultural Resources

As noted in the previous CDP 73-2003, the project site is not located in an area where archaeological and/or cultural resources are likely to occur. The applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Groundwater Resources

The project is located in an area mapped as "Critical Water Resources".

The proposed development would be served by an existing on-site water source and an existing septic system and would not adversely affect groundwater resources.

A response from the Division of Environmental Health states:

No increase in number of bedrooms requested. New development does not impact septic area. DEH can clear this CDP.

Transportation/Circulation

The project site is presently developed and is currently served by an encroachment off of State Highway One. The proposed project would not increase the intensity of use at the site. No impacts to Highway 1, local roads and circulation systems would occur.

A response of "no comment" was received from the Department of Transportation in regard to the referral sent.

Zoning Requirements

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

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

FINDINGS:

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

STANDARD CONDITIONS:

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

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

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

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

SPECIAL CONDITIONS:

1. Prior to the issuance of the Coastal Development Permit, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator, which shall provide that:
 - a. The wax myrtle bushes on the ocean side of the parking area shall be kept trimmed to a height not to exceed 2 feet above the existing berm;
 - b. The present Bishop pines in the area from the driveway north to the end of the fence line will be limbed up to eight feet from the ground where accessible.

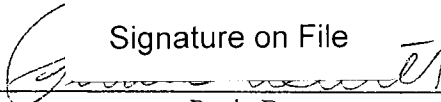
STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDPM# 73-2003(06) Nelson
December 21, 2006
CPA-10

- c. The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
2. Prior to the issuance of the Building Permit, the applicant shall substitute bronze colored aluminum window frames for the requested white vinyl frames. Any proposed change to either color or building materials for this project shall require the prior approval of the Coastal Permit Administrator, in perpetuity.
3. Prior to the issuance of the Building Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, exterior lighting details consisting of downcast and shielded lights. Any proposed change to the approved lights shall require the prior approval of the Coastal Permit Administrator, in perpetuity.

Staff Report Prepared By:

12-7-06
Date

Signature on File

Paula Deeter
Planner I

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

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

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

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95601

VOICE (707) 446-7833 FAX (707) 443-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s) *Friends of Schooner Gulch*Name: *Peter Reimuller, Secretary*Mailing Address: *Box 4*City: *Pt. Arena CA* Zip Code: *95468* Phone: *707 882-2001*SECTION II. Decision Being Appealed

1. Name of local/port government: *Mendocino County*
2. Brief description of development being appealed: *Addition of Garage and shed to single family residence.*
3. Development's location (street address, assessor's parcel no., cross street, etc.):
30150 S. Hwy One, Guadalupe CA 95445
4. Description of decision being appealed (check one.):
 - ☐ Approval; no special conditions
 - ☒ Approval with special conditions:
 - ☐ Denial

RECEIVED

JAN 11 2007

CALIFORNIA
COASTAL COMMISSION

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: *A-1-MEN-07-003*DATE FILED: *1/11/07*DISTRICT: *North Coast*

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

APPEAL (FRIENDS OF
SCHOONER GULCH) (1 of 8)

Pg. 1 of 8

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

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

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

6. Date of local government's decision:

Dec 21, '06

7. Local government's file number (if any):

CDPM 73-2003(2006)

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Robert and Pamela Nelson
30150 S. Hwy One
Orland Ca 95445

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

(1) Friends of Schooner Gulch
Box 4
Pt Arena Ca 95468

(2) Richard Perkins
46351 Gypsy Flat Rd
Orland Ca 95445

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

Applicant proposes view-blocking improvements in a very sensitive Highly Scenic Area. Please see prior correspondence in County's record of the case.

Pg. 3 of 8

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)SECTION V. Certification

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

FRICA
Fie

Signature on File

ner Gulch
llay Sec'y

Signature of Appellant(s) or Authorized Agent

Date:

1-10-'07

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

Section VI Agent Authorization

I/We hereby
authorize

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:

Pg. 4 of 8

Friends of Schooner Gulch

A Watershed Organization

P. O. Box 4, Point Arena, California 95468
(707) 882-2001, Fax (707) 882-2011

RECEIVED

SEP 06 2006

PLANNING & BUILDING SERV
FORT BRAGG CA

September 2, 2006

Executive Committee:

Charles Peterson
Peter Reimuller
Peter Dobbins

Ms. Paula Deeter
Planning Department
790 S. Franklin St.
Fort Bragg CA 95437

RE: Nelson application

Dear Ms. Deeter:

Please refer to our 2004 correspondence regarding the prior building permit on this property. Those comments still have merit. That permit was for a remodel only, but the owner proceeded to demolish the entire house.

The owner has recently built an additional "spite wall," without permit, to further block the public's views of this magnificent seascape - one of the finest on our entire coast. The entire Island Cove Beach is privately held by the owner's subdivision and is locked-off to the public. Now this owner is attempting to steal the remaining view from the public as well.

During your site inspection, please note that view-blocking landscaping (including berm and bushes) has been installed by the owner. Consequently, a full landscape plan for the property is necessary to ensure that the owner does not proceed with this end-run around the view requirements of the Coastal Act.

Clearly, the owner is not willing to follow the rules.

It would be possible to build a single-car garage between the house and the highway, and this solution would not block any views.

If the view-blocking garage, wall, or landscaping is permitted by the County, we will appeal the matter to the Coastal Commission.

Sincerely,

Signature on File

Peter Reimuller
Secretary

Pg. 5 of 8

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECEIVED

AUG 23 2004

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

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

FRIENDS of SCHOONER GULCH
P.O. BOX 4
POINT ARENA CA 95468 (707) 882-2001
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: County of Mendocino2. Brief description of development being
appealed: Addition to single family dwelling
in Highly Scenic Area3. Development's location (street address, assessor's parcel
no., cross street, etc.): 30150 S. Hwy 1 APN 142-
031-08, South of Iverson Rd.

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: ✓

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: 12-1-MEN-04-047DATE FILED: 8/23/04DISTRICT: North Coast

H5: 4/88

Pg. 6 of 8

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

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

- a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: July 22, 2004

7. Local government's file number (if any): CDP 73-03

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Robert AND Pamela Nelson
1046 Clark St
Napa CA 94559

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

- (1) unknown

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

CPA failed to deny permit or mitigate
loss of ocean view in HSA.
MCZC 20,504,010 et seq; 20,504,020
-C(2);-D.

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

SECTION V. Certification

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


Signature on File

Signature of Appellant(s) or
Authorized Agent

Date

8-13-04

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: See Attachment A

Mailing Address:

City:

Zip Code:

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Construct a new 480 square foot garage attached to existing 1,728 square foot single-family residence, legalize the placement of a retaining wall used in conjunction with a planting bed for screening vegetation, place a 44 square foot storage shed on existing deck, and construct a retaining wall (<6 feet tall) on eastern side of residence.

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

30150 South Highway One, Gualala, California 95445 - APN 142-031-08

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

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

EXHIBIT NO. 9

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

APPEAL (COMMISSIONERS
KRUER & REILLY) (1 of 9)

RECEIVED

JAN 24 2007

CALIFORNIA
COASTAL COMMISSION

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-07-003

DATE FILED: January 24, 2007

DISTRICT: North Coast

Pg. 1 of 9

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

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

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

6. Date of local government's decision: 12/21/06

7. Local government's file number (if any): CDPM #73-2003(2006)

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Robert & Pamela Nelson
30150 South Highway One
Gualala, CA 95445

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

(1) Richard H. Perkins
46351 Gypsy Flat Road
Gualala, CA 95445

(2) Friends of Schooner Gulch
Attn: Peter Reimuller, Secretary
P.O. Box 4
Point Arena, CA 95468

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See Attachment B

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

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

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

SECTION V. Certification

The info _____ above are correct to the best of my/our knowledge.

Signature on File

Signed: _____
Appellant or Agent

Date: 1/24/07

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

Signed: _____

Date: _____

(Document2)

Page 4

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

Pg. 5 of 9

ATTACHMENT A

SECTION I. Appellant(s)

1. Patrick Kruer
The Monarch Group
7727 Herschel Avenue
LaJolla, CA 92037

Phone: (858) 551-4390

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

Phone: (707) 565-2241

ATTACHMENT B

Reasons for Appeal

The approval of Coastal Development Permit Application No. 73-2003 (2006) by Mendocino County is inconsistent with the certified Local Coastal Program (LCP), and raises a substantial issue regarding visual resources.

VISUAL RESOURCES

The approval of the coastal development permit by Mendocino County encompasses property within a Highly Scenic Area designation and is in conflict with visual resource policies and standards contained in the Mendocino County LCP, including, but not limited to, Land Use Plan Policies 3.5-1 and 3.5-3, and Coastal Zoning Code Sections 20.504.010 and 20.504.015(C)(1).

Policies

Policy 3.5-1 of the LUP states, in applicable part, the following (emphasis added):

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

Policy 3.5-3 of the LUP states, in applicable part, the following (emphasis added):

"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 south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1 ...

Section 20.504.010 of the CZC states, in applicable part, the following (emphasis added):

"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." (Ord. No. 3785 (part), adopted 1991)

Section 20.504.015 of the CZC states, in applicable part, the following (emphasis added):

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

(4) Portions of the Coastal Zone within the Highly Scenic Area between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. (Ord. No. 3785 (part), adopted 1991)

Discussion

The subject site is an approximately 1.5-acre parcel located in a designated Highly Scenic Area on the west side of State Highway One approximately 5 miles south of Point Arena and approximately 720 feet south of the intersection of State Highway One with Iversen Road. The subject site is between the first public road (State Highway One) and the ocean, and it overlooks Iversen Landing and Iversen Point. Views of the cove, beach, tidepools, sea stacks, coastal bluffs, terraces, and the open ocean are visible from the highway adjacent to the project site.

The County of Mendocino issued a Notice of Final Action on January 2, 2007 for approval, with conditions, of Coastal Development Permit #73-2003 (2006) for (1) the construction of a new 480-square-foot garage – with an average maximum height of 16 feet above finished grade – attached to an existing 1,728-square-foot single-family residence, (2) the placement of a 44-square-foot storage shed (at an average maximum height of approximately 8 feet above natural grade) on an existing deck, (3) legalization of the placement of a retaining wall used in conjunction with a planting bed for screening vegetation, and (4) construction of a retaining wall (<6 feet tall) on the eastern side of the residence.

The project, as approved by the County, would have a direct impact on, and contribute to the cumulative loss of, visual resources in a designated Highly Scenic Area. As approved, the development would not protect views to the ocean and scenic coastal areas, and thus it would be in conflict with the LUP policies and CZC sections listed above. Construction of the garage and shed would block approximately 20 feet and 11 feet, respectively, of view currently available to passing motorists, bicyclists, and pedestrians traveling State Highway One. The approved development would block a significant proportion of the currently available views through the site to the ocean. Views available from the highway to passersby at the site include limited views of the cove (Iversen Landing), beach (Island Beach), tidepools, sea stacks, coastal bluffs, terraces, and the open ocean. The views affected by the proposed garage are most visible to southbound travelers, especially bicyclists and pedestrians.

The visual resources impacted by the proposed project are a significant part of the public viewshed towards Iversen Landing and Island Beach. Much of this particular viewshed has been

lost to the Island Cove Estates subdivision development, and little of it is visible to the public along this stretch of highway. Furthermore, although the County conditioned the project to require some tree and shrub trimming with the intent of maintaining an open viewshed on the north side of the garage addition, the special conditions are not sufficient to adequately protect the view corridor since they address only the wax myrtle plants "on the ocean side of the parking area" and the "present" Bishop pines in the area from the driveway north to the end of the fence line. The special conditions do not address the view corridor as a whole, and plants growing along the eastern fence (including wax myrtles and a climbing vine that is presently twining itself around the fence), could, if not maintained, obstruct the remaining views in that view corridor (not to mention additional plantings that the property owners may choose to install in the future).

In addition to inadequate view corridor protection, the possibility of alternative, visually non-obstructive sitings for the garage and/or shed were not clearly addressed in the staff report. There is no discussion in the staff report of alternative sitings for the shed, but from the submitted plans it appears that the shed potentially could be located on the existing deck on the west side of the residence where it would not contribute to additional loss of public views to the ocean and scenic coastal areas. Regarding the garage siting, the County staff report references the idea (brought up by Friends of Schooner Gulch in a letter to the County dated July 18, 2004) of siting the garage between the house and the highway, but says only that "staff does not know if all the findings necessary for a variance (*i.e.*, no other feasible location for the development, etc.) could be made." Therefore, it is unclear whether or not it would be possible to site the proposed garage or a smaller (*e.g.*, single car or tandem) garage in this area. Presently in this area is a "retaining wall" (berm), the placement of which is proposed for legalization with this permit. The staff report states that "the screening (from the highway) landscaping (that was requested in CDP 73-2003) is located in that area..." However, the staff report for CDP 73-2003 (dated July 24, 2004) makes no mention of requested landscaping in this area. To maximize protection of public views to and along the ocean, it may be more appropriate, if feasible, to site the garage between the house and the highway rather than legalize the berm placement.

CONCLUSION

The project, as approved by the County, is inconsistent with the visual resource protection policies of the certified LCP, including, but not limited to, LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015(C)(1), which require the protection of views to and along the ocean and scenic coastal areas.

ROBERT A. NELSON, M.D.

30150 South Highway One
Gualala, California 95445

January 26, 2007

RECEIVED

JAN 31 2007

Melissa Kraemer
California Coastal Commission
710 E. Street, Suite 200
Eureka, CA 95501

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Kraemer:

First let me thank you and Mr. Merrill for your patience in explaining the system to me yesterday. I don't know if I understand all of it but it probably will become clearer to me in the future,

I am sorry that I was not available to you when you visited the site. I wanted to point out the changes we had made to increase the view area. These changes were presented at the CDP hearing in the form of photos taken before and after the trimming of bushes and trees. If they are not part of the record you obtained from the county please contact me.

I also wanted to point out that the fence is a five foot fence and since pedestrians tend to use the highway blacktop it poses no obstruction to most of them. The only pedestrians we have seen in the last six years have been vacationers from the houses at Iversen Point. Even then, most people use cars to reach the beach access because of the dangers of walking on the state highway. Cyclists that we have observed are very busy watching the white fog line since there is no shoulder on the highway in front of our home.

The berm between the highway and the house has a retaining wall below the level of the state highway and does not affect the view. The top of the berm is only slightly higher than the crown of the state highway. In no case does it interfere with views of the ocean.

The twenty feet of garage is small in comparison to the approximately 175 feet of open view area north of the house. None of our neighbors object and have been quite supportive of our plans (see enclosures). Whether a garage is approved or not there will still be various vehicles parked in the place of the proposed garage.

Finally, as I mentioned on the phone, Pam and I will be away for the first three weeks in February; please mail correspondence to us c/o Nelson, P.O.Box 189, Oracle, AZ, 85623.

Sincerely,

Signature on File

Robert A. Nelson, M.D.

EXHIBIT NO. 10

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

APPLICANTS'
CORRESPONDENCE (1 of 13)

Enclosures

P. 1.5 13

To: Melissa Kramer
California Coastal Commission

Date: 1/28/07

Re: Appeal No: A-1-MEN-07-003

This is an addendum to my enclosed letter. I note that Commissioners Krueer and Reilly have appealed my permit. Their appeals are dated on 1/24/07 and are received (?) on the same date at the North District Office. If there have been any ex parte discussions of the project or of any preliminary staff report I have no knowledge.

I wish to respond to specific points in the "Discussion".

1. There is no view of beach, tidepools or terraces from the highway at the projected garage site.
2. As noted in my letter (enclosed) cyclists and pedestrians are not restricted in their views from Highway One. It is a five foot high wire fence.
3. Iversen Point Road is a county road approximately 700 feet to the north. It is open to all pedestrians, cyclists and motorists. It affords views of the beach, tidepools, etc.
4. We have mitigated the effect of wax myrtles and low hanging Bishop pine branches to open the view. The vines noted to be on the eastern fence south of the driveway do not in fact limit views. They are below the view line. We do not plan any additional plantings. Landscaping to mitigate the view of the house was in accordance with Mr. Reimuller's letter to the county in 2004
5. The location of the garage and possible alternatives have been considered. They were discussed in open session at the Coast Development Permit hearing in Ft. Bragg in December 2006. As noted by county staff at that time, siting the garage between the highway and the house is not possible because of the highway right of way, access to the garage and the grade between the house and the crown of the highway. This also is the location of the pre-existing septic tank and would preclude access to it. If it had been possible to place the garage between the highway and the house we would have done it as it would have afforded us a buffer from the noise from cars and trucks on Highway One.
6. Removal of the shed is possible but will only result in views of our deck and any activity on it, including people, furniture, etc. Please see Mr. Mohr's letter regarding view times while driving along Highway One. The shed has been lowered from its original height. There is no other place on the deck for the shed because of windows and doors.

Melissa

There are three enclosures.

First, is a copy of the topo map to show the elevation of the highway in relationship to the house. Sitting in a car adds another three to four feet in line of sight elevation for the motorized viewer, about seven feet above the floor of the garage.


Second, is a letter from our neighbor across the highway, Peter Mohr, the only person with direct daily views. This was sent in 2004 when we originally were planning the garage along with the house remodel.

Third, is a letter from Mr. Billings, a neighbor, again regarding our 2004 application, its appeal and subsequent withdrawal of appeal by Mr. Reimuller.

I hope to enclose recent photos if there are none from the county planners.

Thanks,

Signature on File



HIGHWAY

NUMBER

ONE

104'

(35°15'30"E)

EXISTING HOUSE
FL. EL. 93.25'

EXISTING DECK

PROPOSED ADDITION
98.76'

99.79'

2" as shown in survey of 1950

2" as shown in survey of 1950

2" as shown in survey of 1950

2" as shown in survey of 1950

2" as shown in survey of 1950

2" as shown in survey of 1950

END OF FENCE TO NORTH IS 0.175' from house

Notes on this map are based on an assumed elevation of 100.0 feet assigned about 500 feet north of the house. Areas on this property were found. The present line shown on this map, on the side of the highway, is based on a survey of 1950. The survey was made by the Southwest Survey Co. of the Island One Survey, per M.C.B. Dr. J. J. 104, M.C.B.

PETER B. MOHR, Engr.
30151 So. Hwy. 1
Point Arena, 95468
July 27, 2004

Peter Reimuller,
P.O. Box 4
Point Arena, CA
95468

Dear Mr Reimuller:

I have become aware that you have expressed demurer regarding the proposed addition by Robert and Pamela Nelson to their 30150 Hwy. 1 residence. I am their nearest neighbor and the person of the community most affected by their plans. It is my understanding that you have expressed reservation concerning effect of the proposed addition on the view thru their property to me (the community) and the public at large. Perhaps a recitation of the lengths to which the Nelsons have gone in consideration of their neighbors (and the public) in making their plans will help ameliorate your concerns.

More than a year ago, the Nelsons told me of their hopes to move full time to their Island Cove home following Mr. Nelson's retirement. They expressed concern however regarding the absence of any protective structure (i.e. "garage") for their vehicles and maintenance equipment (and for necessary corrections to the previous incorrectly executed remodeling of the house). Their initial plan was to "secrete" a garage within the trees to the north, believing this would minimize the esthetic and view impact. They commissioned plans and models and consulted with their neighbors and other knowledgeable authorities. Largely out of concern for the interests of their neighbors and the community, their resulting plan became more modest and of minimal prospective impact on the view. Their plan reduces the roofline height, extends the structure little more than the length of a vehicle. Their trimming of lower tree branches and judicious choice of plantings will actually increase the view to the public.

I remind you that the view to passing motorists is limited in any case to less than 1 second; since 90% of the traffic past our property is in excess of 45 mph (66 ft/sec). There is essentially no pedestrian traffic. Our appeals to Cal Trans to open such pedestrian paths has been consistently denied.

In summary, I believe the Nelsons have already shown consideration beyond any recognized standard. Anything more could only be arbitrary since there is no precedent and no basis for uniform application. The Nelsons are entitled to reasonable freedom of use and enjoyment of their property. I hope you will agree.

Sincerely,

 Signature on File

cy:
Badger
Nelson
I.C.E.

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September 16, 2004

California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501

REFERENCE: North Coast District September 9, 2004 Meeting (Item Postponed)

SUBJECT: Appeal No. A-1-04-47 (Nelson, Mendocino Co.) Appeal by Friends of Schooner Gulch from decision of County of Mendocino granting permit with conditions to Robert & Pamela Nelson for 21-ft-high 1,048 sq.ft. addition to existing 1,728 sq.ft. single-family home, at 30150 South Highway One, south of Point Arena, Mendocino County. Coastal Commission meeting.

TO: Chuck Damm, Sr. Deputy Director
Bob Merrill, District Manager
Members of the California Coastal Commission

Please consider **Denying the Appeal** of the Nelson development at 30150 South Highway One, south of Point Arena, Mendocino County. I understand the proponents of the appeal want to remove existing trees as a condition of the development. See attached Exhibit "A"

The existing trees in question provide a buffer between the Highway One and the ocean cove to the west that dampens or mitigates the highway traffic noise. The increased noise levels from trucks, with their use of "Jake brakes", along with motorcycles and other vehicle noise would be a negative impact to a nearby colony of harbor seals. Also, of concern would be an increase in reflected lighting from vehicle headlights into the cove.

Another point to consider is that tree removal removes habitat for raptors. Raptors use these trees to nest and as a vantage point to spot prey in the cove below. In addition, the trees provide habitat for other animals that could otherwise be forced to cross a highway to access the bluffs and beach to forage.

Furthermore, please keep in mind that removing a strand of trees cannot be considered, by CEQA guidelines, a categorical exemption, and thus the potential negative impact should be mitigated.

CEQA Guidelines, Section 15300.2. Exceptions, subpart (d)

"Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway."

Clustering newly planted trees in tighter spacing as a mitigation measure might propose is doomed to fail as trees need appropriate spacing for the species planted. Tighter spacing will

September 16, 2004

REFERENCE: North Coast District September 9, 2004 Meeting (Item Postponed)

SUBJECT: Appeal No. A-1-04-47

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increase competition for sunlight and stress the trees. The stress will increase their potential for disease and premature death.

In my opinion, pedestrian views are not a significant concern because access is limited and the existing tree spacing allows for pedestrian views. Pedestrian access is limited because there is a narrow shoulder lane, 1' wide or less, in both directions, and some areas have steep side slopes. Many locals resort to driving, when it would be preferred to walk this stretch, because of the lack of a safe pedestrian route.

I understand that tree removal can in many cases achieve the Commission's goal to increase views to the ocean. However, in this case, the tree removal proposed by the Friends of Schooner Gulch does not offer a reasonable opportunity for a passing motorist traveling at 45mph or more to take in a view. At this location, drivers passing in both directions must negotiate the intersection at Iversen Road 700' to the North, which has a sharp vertical grade change and reduced sight lines, or the sharp horizontal curve 800' to the South with reduced sight lines.

I have observed several accidents along this dangerous stretch. The peek-a-boo view desired by the FoSG would not be worth the potential sacrifice of human life, the loss habitat for raptors, nor an increase in noise and light impacts to the nearby harbor seals.

Please include these points in your consideration to deny the appeal. As you may know the County considered the tree removal issue raised by the Friends of Schooner Gulch and added a condition that "No tree removal shall occur onsite, without prior approval of the Coastal Permit Administrator." With the ability for local review in place I hope you will support the Nelson's development as approved by the Local Coastal Permit Administrator and deny the appeal.

If you have any questions, please contact me at (909) 938-2847 or at the address below.

Cordially,

Signature on File

Curt Billings

Board member, Island Cove Estates HOA, Point Arena, CA

Mailing Address:

5830 Zapata Place

Alta Loma, CA 91737

Enclosure:

Ex. A FoSG letter dated July 23, 2004

Friends of Schooner Gulch

A Watershed Organization

P. O. Box 4, Point Arena, California 95468

(707) 882-2001, Fax (707) 882-2011

Executive Committee:

Lucie Marshall
Charles Peterson
Peter Reimuller

July 23, 2004 ,

Ms. Paula Deeter
Planning Department,
Mendocino County Offices
790 S. Franklin St.,
Fort Bragg CA 95437

RE: CDP 73-03 (Nelson) Landscaping

Dear Ms. Deeter:

The Executive Committee of Friends of Schooner Gulch has discussed your telephone call regarding the Nelson application. Your suggestion was to open up the landscaping on the lot to mitigate the view blockage. We think this

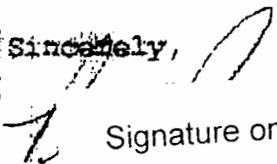

The area between the house and the highway should be newly landscaped in perpetuity with shore pine, wax myrtle,

From the Coastal Dunes to the Pacific Ocean since 1986

or similar to help mitigate the increased visual bulk of the newly expanded house.

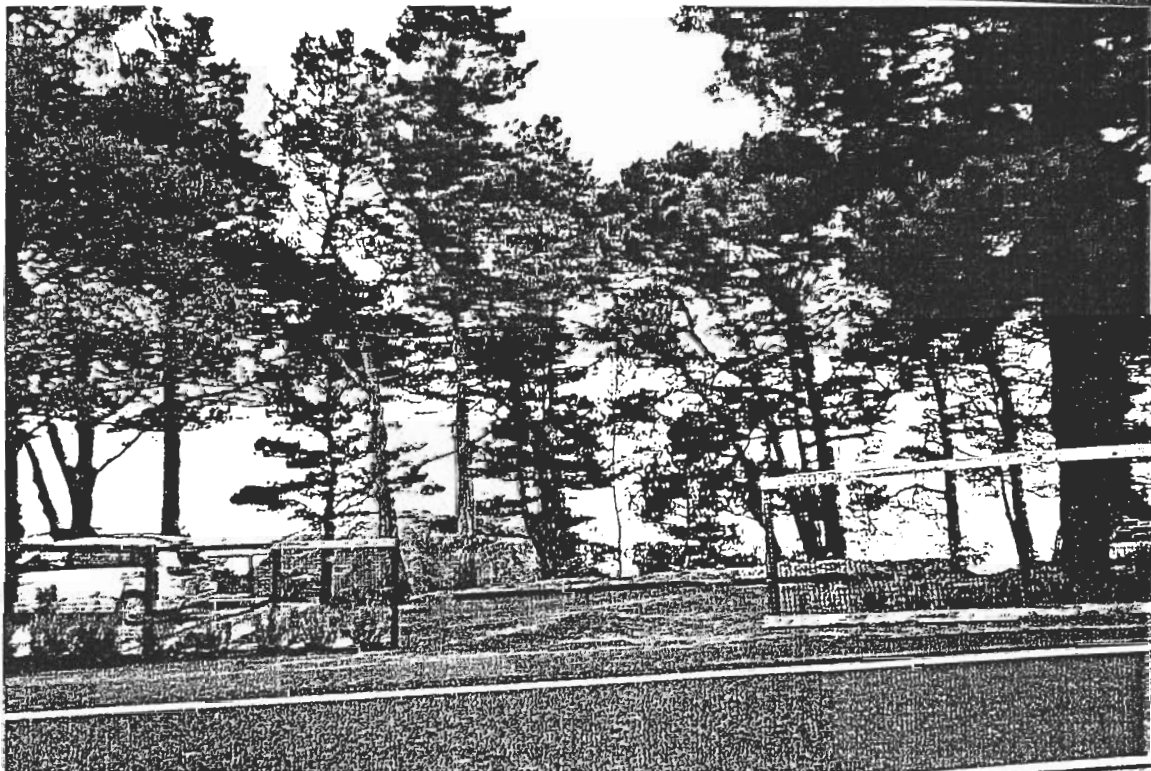
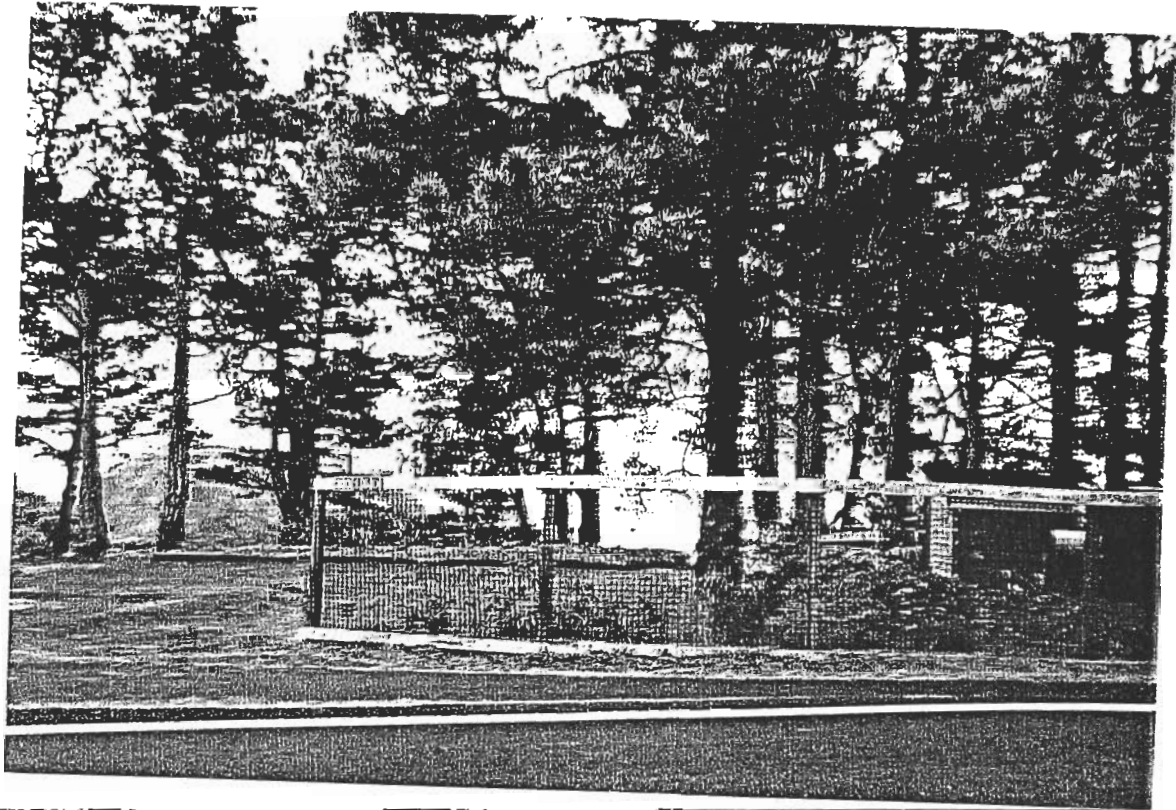
Our acceptance of this solution depends entirely on how securely and completely the County conditions the landscape

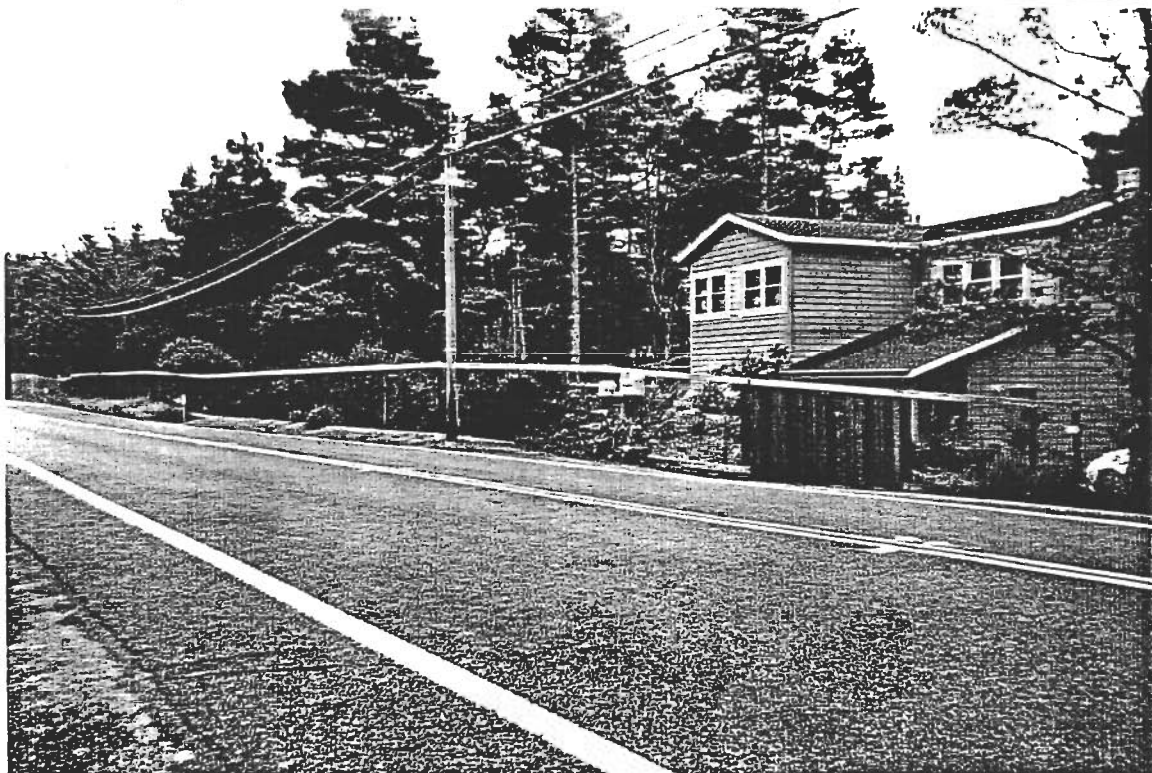
Sincerely,

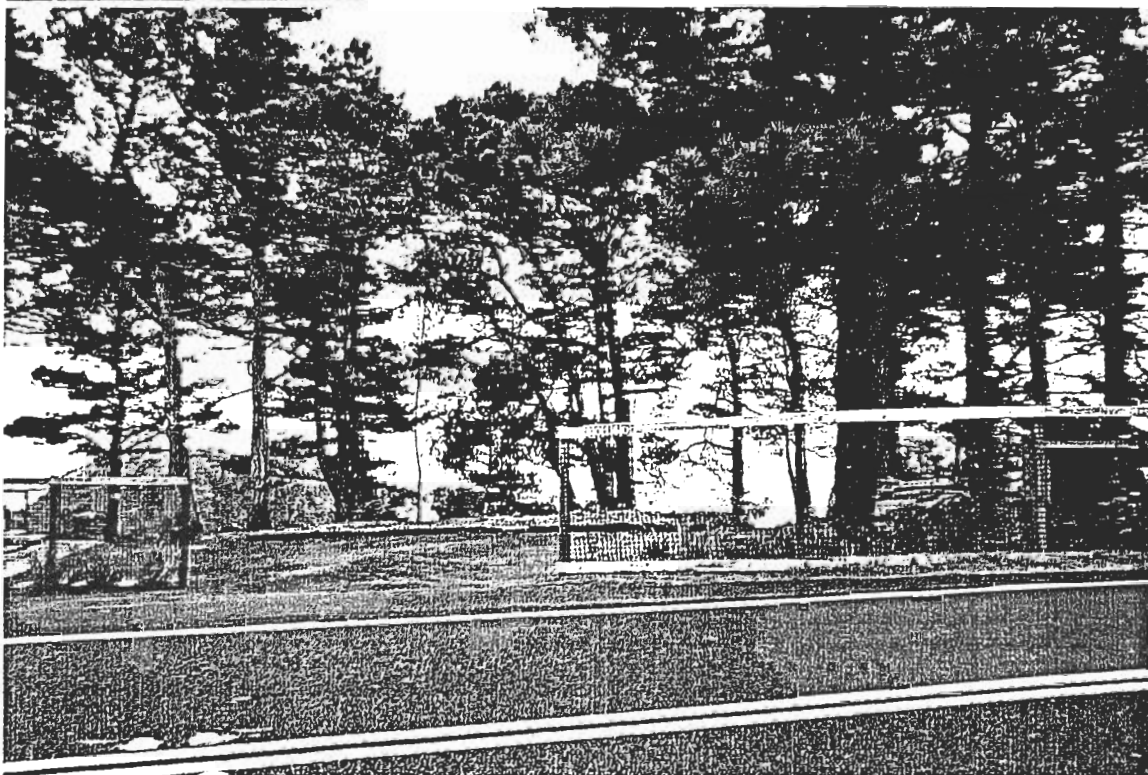
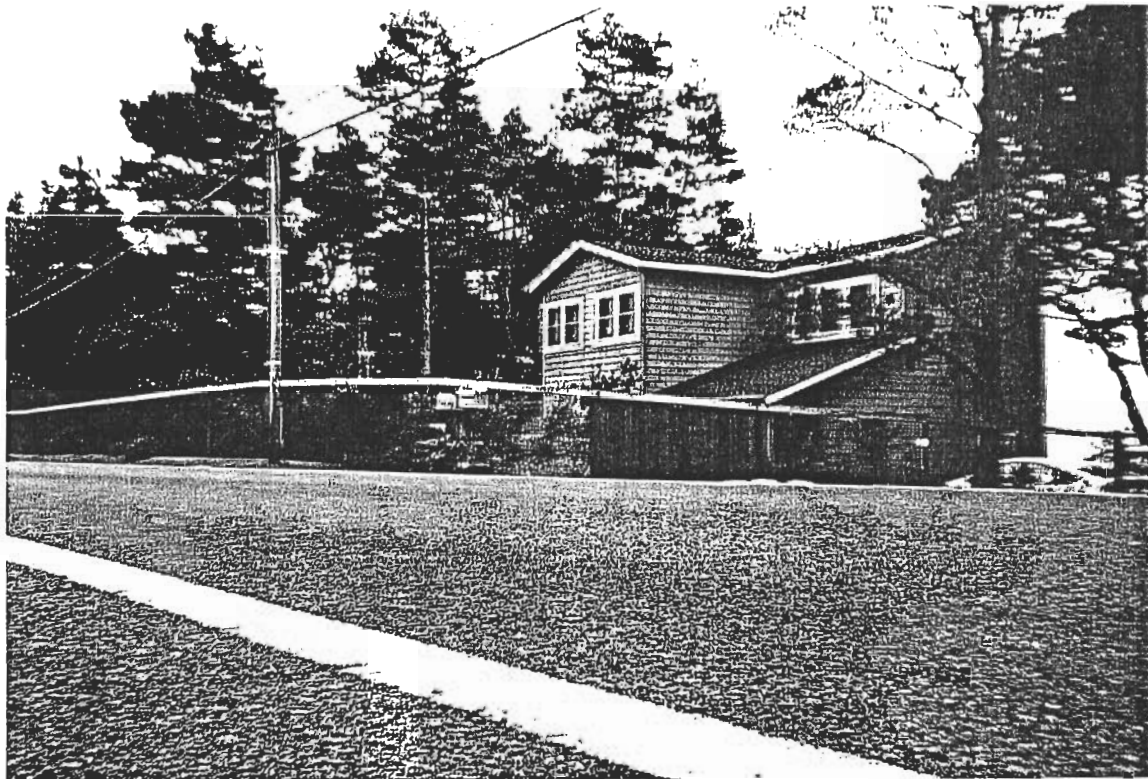
 Signature on File 

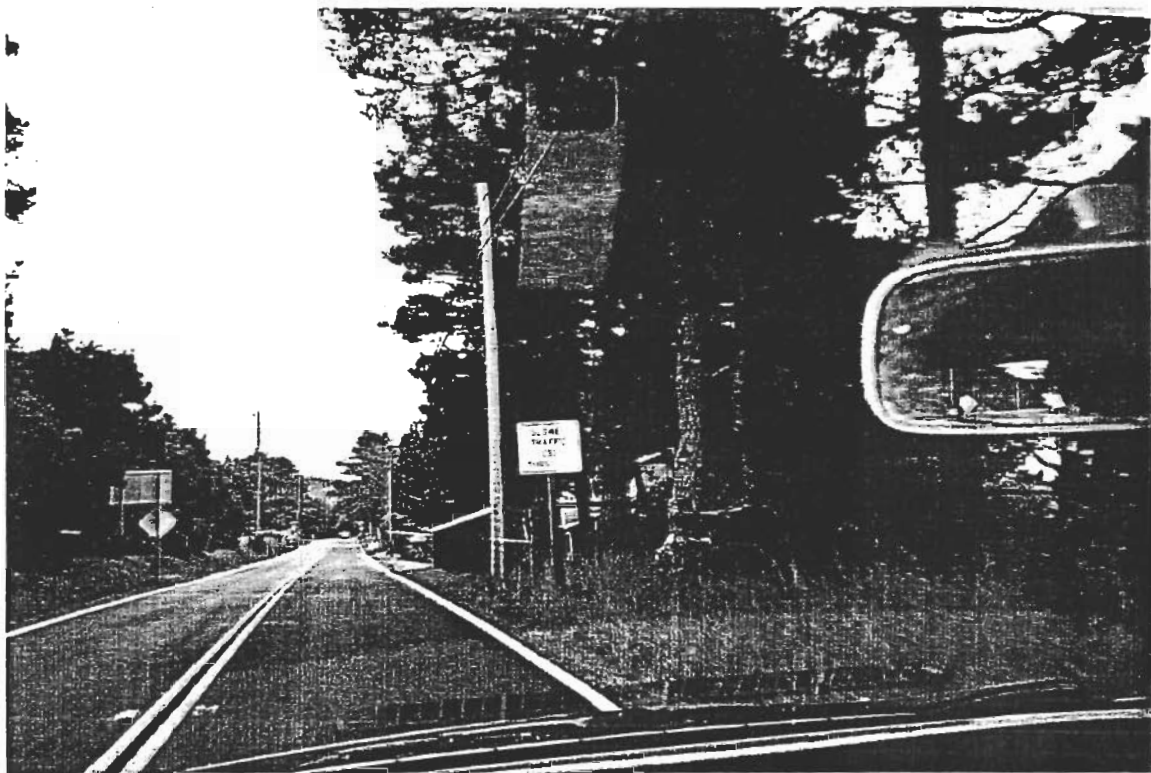
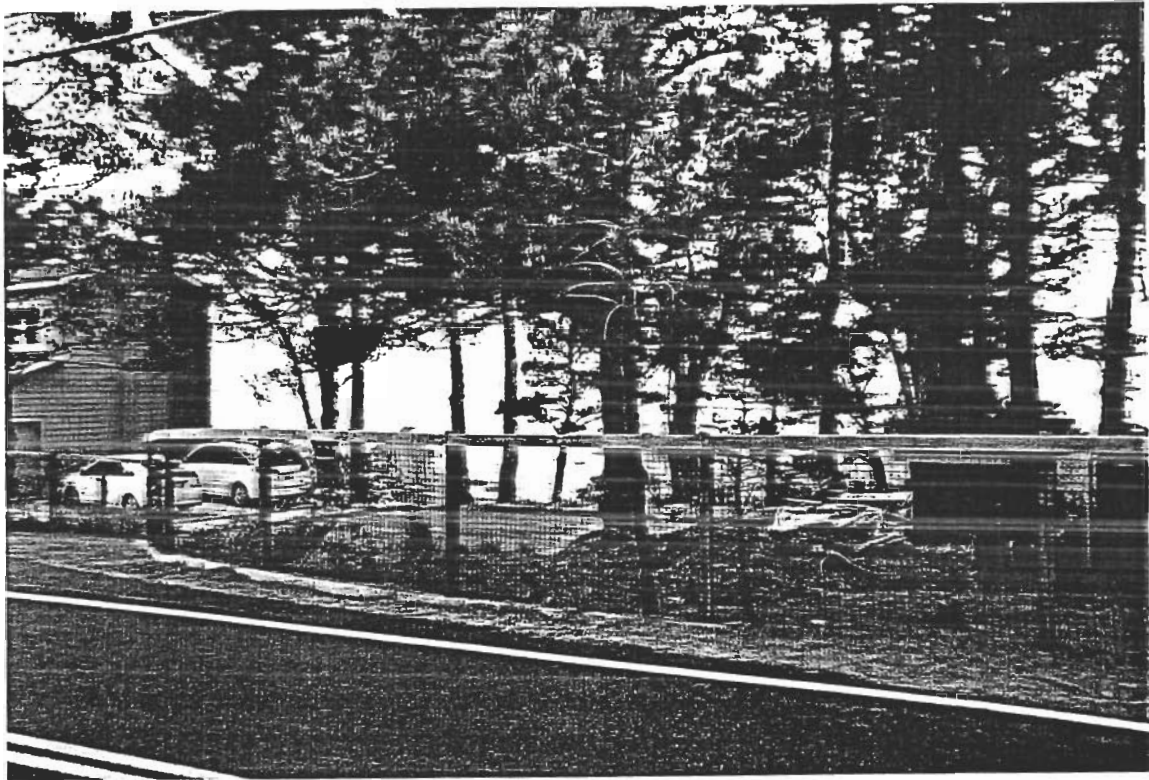
Peter Reimuller
Secretary

Enclosed: map of landscape exclusion areas









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