

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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F 9a

MEMORANDUM

Date: August 8, 2007

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Robert S. Merrill, District Manager – North Coast District
Melissa B. Kraemer, Coastal Program Analyst – North Coast District

Subject: **Addendum to Commission Meeting for Friday, August 10, 2007**
North Coast District Item F 9a, Revised Findings for
CDP No. A-1-MEN-07-003 (Robert & Pamela Nelson)

STAFF NOTE

Staff is proposing to make certain changes to the Revised Findings staff report for Coastal Development Permit Application No. A-1-MEN-07-003. The purpose of the Commission's hearing is to determine whether the Revised Findings accurately reflect the Commission's action of June 15, 2007 to approve the permit with conditions. This addendum contains a change to the staff's interpretation of the condition adopted by the Commission as well as corresponding changes to the Findings.

The Commission's action of June 15, 2007 differed from the staff recommendation dated May 31, 2007. The primary change to the conditions and findings is that rather than require elimination of the proposed garage, the Commission approved an open-air carport in its place to provide a covering for automobiles while still maintaining coastal views. The Commission approved the carport on the condition that the proposed design would be subject to the review and approval of the Executive Director, therefore necessitating changes to Special Condition No. 1. The Revised Findings staff report of July 20, 2007 for the August 10, 2007 hearing specifies, in Special Condition No. 1 and related findings, that the proposed carport shall have a flat roof, among other specifications. The applicants object to this requirement, pointing out that no Commissioner specifically stated that the carport must have a flat roof. The applicants would prefer to have a pitched roof that is more in keeping with the design of the existing house.

No transcript of the June 15, 2007 hearing is available, but after reviewing the tape of the hearing, staff agrees that the Commission did not specifically state that the carport must have a flat roof. Although the Commission specified that the carport should not have walls so as to maintain views to and along the ocean and scenic coastal areas, the Commission did not specifically address roof design. The Commission determined, however, that the design of the carport shall be subject to the review and approval of the Executive Director, who will review the submitted design for its consistency with view protection. In addition, staff notes that the originally proposed garage was proposed at 16 feet and interprets the Commission's action to substitute the carport for the garage as retaining a 16-foot height limit on the garage. Thus, the applicants conceivably could present an alternative low-pitched roof design that still maintains public views. Therefore, staff believes that deleting the flat roof specification is consistent with the Commission's action at the June 15, 2007 meeting in Santa Rosa.

Staff recommends that the Commission adopt the Revised Findings with the special conditions included in the staff report of July 20, 2007, as modified by the revisions described below.

I. REVISIONS TO REVISED FINDINGS STAFF REPORT

The revisions to the Revised Findings staff report dated July 20, 2007, including the modification of special condition language and related findings, are discussed below. Text to be deleted is shown in ~~blocked double strikethrough~~.

[Note: Text that was revised in the July 20, 2007 Revised Findings staff report is shown as ~~strikethrough~~ for deleted language and **bold double-underlined** for new text.]

- *Delete the following text from Special Condition No. 1 on page 4:*

1. Revised Site Plans

A. IF MENDOCINO COUNTY GRANTS A VARIANCE TO ALLOW A CARPORT AT THE PROPOSED LOCATION, AND WITHIN ~~60~~ **180** DAYS OF COMMISSION APPROVAL OR WITHIN SUCH ADDITIONAL TIME AS THE EXECUTIVE DIRECTOR MAY GRANT FOR GOOD CAUSE, the applicants shall submit to the Executive Director, for review and written approval, a revised ~~site plans~~ that includes both of the following provisions:

- The garage addition shall be ~~deleted~~ **replaced by an open-air carport that complies with the following limitations:**
 - The carport shall be located a minimum of 33 feet from the terrace ground crack as mapped in the Bluff Retreat Evaluation, dated April**

3, 2007 (Exhibit No. 8) prepared by certified engineering geologist Jim Glomb.

- b. The carport shall be constructed in the location originally proposed for the garage and shall not extend northwesterly into the public view corridor.**
- c. The carport ~~shall have a flat roof~~ shall not contain walls, and shall allow for public views through ~~and over~~ the carport to the ocean and scenic coastal areas.**
- d. The carport shall have a maximum height of 16 feet above finished grade and maximum length (~north-south) of 20 feet (i.e., dimensions no greater than those originally proposed for the garage).**

If the applicants choose to construct the carport, the applicants shall submit with the revised plan for the carport a variance granted by Mendocino County for a reduction in the front yard setback and/or corridor preservation setback that would allow the carport to encroach into the setback area(s) depicted in the revised site plan. The front yard and corridor preservation setback lines shall be clearly delineated on the revised site plan.

- ii. The placement of the storage shed on the existing deck shall be shifted at least the minimum distance necessary to be entirely outside of both the front yard setback and corridor preservation setback areas for the property. The front yard and corridor preservation setback lines shall be clearly delineated on the revised site plan.
- B. The permittees shall undertake development in accordance with the approved revised plan. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- *Revise Section IV-4-A-1 "Garage" on page 14 as follows:*

Therefore, the Commission finds that the proposed garage addition cannot be approved consistent with the applicable provisions of the certified LCP. **However, the Commission finds that if the proposed garage was modified to an open-air carport design instead, such a structure would not be significantly view-obstructing and would allow for public views to the ocean and scenic coastal areas, consistent with LCP policies. An open-air carport without walls and with a flat roof located on the existing concrete pad where the applicants currently park their cars would greatly reduce view blockage and is a less environmentally damaging alternative.** The Commission therefore attaches Special Condition No. 1 which requires the applicants to submit for the review and approval **of the Executive Director** a revised site plans showing the garage addition deleted **replaced by an open-air carport** ~~with a~~

~~flat roof~~ that complies with various limitations, such as locating the structure a minimum of 33 feet from the terrace ground crack as recommended by the geology report (see Section IV-6 below), locating the structure at the site originally proposed for the garage and not further northwesterly into the public view corridor, designing the structure without walls to maximize protection of public views, and limiting the size of the carport to not exceed the dimensions proposed for the garage.

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Staff: Melissa B. Kraemer
Staff Report: July 20, 2007
Hearing on Revised Findings: August 10, 2007
Commission Action
On Revised Findings:

STAFF REPORT: REVISED FINDINGS

DECISION: Approval with Conditions

APPLICATION NO.: **A-1-MEN-07-003**

APPLICANTS: **Robert & Pamela Nelson**

AGENT: Richard Perkins

APPELLANTS: **Friends of Schooner Gulch (Attn: Peter Reimuller)**
Commissioners Patrick Kruer & Mike Reilly

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; 2) legalize the placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence in conjunction with a planting bed for screening vegetation; and 3) legalize the placement of a 44-square-foot storage shed on an existing deck, average maximum height of approximately 6 feet.

COMMISSIONERS ON THE PREVAILING SIDE: Commissioners Achadijan, Blank, Clark, Hueso, Secord, Neely, Potter, Reilly, Shallenberger, Wan, and Kruer.

STAFF NOTES:

1. Procedure

The Commission held a public hearing and approved the application on appeal *de novo* at its meeting on June 15, 2007. The Commission found the project consistent with the policies of the certified LCP and the access policies of Chapter 3 of the Coastal Act with certain specific conditions. The adopted conditions of approval differ from those contained in the written staff recommendation dated May 31, 2007. The revised Special Condition No. 1 is found on page 4. The primary changes to the findings regarding Special Condition No. 1 are found within the Visual Resources and Zoning Setback findings on pages 12 through 20. The primary change to the conditions and findings is that rather than require elimination of the proposed garage, the Commission approved an open-air carport in its place to provide a covering for the automobiles while still maintaining coastal views. The Commission approved the carport on the condition that the proposed design would be subject to the review and approval of the Executive Director, therefore necessitating changes to Special Condition No. 2, requiring design and lighting restrictions for the carport to ensure its consistency with all of the visual resource protection policies of the LCP (see findings, pages 16-18). Furthermore, the Commission's action required the addition of associated Special Condition Nos. 5 through 9, which relate to establishment and maintenance of a public view corridor (as volunteered by the applicants) on the property north of the approved carport site, restrictions on invasive species on the property and on any future shoreline protection device, and associated conditions on deed restriction and assumption of risk. The findings in support of these additional conditions are found primarily in the Visual Resources and Geologic Hazard sections on pages 14-15 and 23 through 31.

As the Commission's action differed from the written staff recommendation, staff has prepared the following set of revised findings for the Commission's consideration as the needed findings to support its action. The Commission will hold a public hearing and vote on the revised findings at its August 8-10, 2007 meeting. The purpose of the hearing is to consider whether the revised findings accurately reflect the Commission's previous action rather than to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly. The following resolution, conditions, and findings were adopted by the Commission on June 15, 2007 upon conclusion of the public hearing.

2. Jurisdiction and Standard of Review

The proposed project is located in an area subject to the County of Mendocino's certified LCP. In addition, the project site is located within the area between the first public road and the sea. Therefore, pursuant to Sections 30604(b) and (c) of the Coastal Act, the standard of review that the Commission must apply to the project is whether the development is consistent with the policies of the certified LCP and the access policies of Chapter 3 of the Coastal Act.

3. **Highlighted Revisions to Special Conditions and Findings**

Changes to the special conditions and related findings for approval of the subject coastal development permit appear in highlighted text format. Deleted language is shown in ~~strike through~~; new text appears as **bold double-underlined**.

I. **MOTION AND RESOLUTION:**

Motion, Staff Recommendation and Resolution to Adopt Revised Findings:

The staff recommends that the Commission adopt the revised findings in Section IV below in support of the Commission's action on June 15, 2007 approving the project with conditions. The proper motion is:

Motion:

I move that the Commission adopt the revised findings dated July 20, 2007 in support of the Commission's action on June 15, 2007, approving Coastal Development Permit No. A-1-MEN-07-003.

Staff Recommendation of Approval:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. Pursuant to Section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members from the prevailing side who are present at the August 10, 2007 Commission hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote. See the list of eligible Commissioners on page 1.

Resolution to Adopt Revised Findings:

The Commission hereby adopts the findings set forth below for Coastal Development Permit No. A-1-MEN-07-003 on the ground that the findings support the Commission's decision made on June 15, 2007 and accurately reflect the reasons for it.

Adopted Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as

conditioned, will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Revised Site Plans

A. IF MENDOCINO COUNTY GRANTS A VARIANCE TO ALLOW A CARPORT AT THE PROPOSED LOCATION, AND WITHIN ~~60~~ **180** DAYS OF COMMISSION APPROVAL OR WITHIN SUCH ADDITIONAL TIME AS THE EXECUTIVE DIRECTOR MAY GRANT FOR GOOD CAUSE, the applicants shall submit to the Executive Director, for review and written approval, a revised ~~site~~ **plans** that includes both of the following provisions:

- i. The garage addition shall be ~~deleted~~ **replaced by an open-air carport that complies with the following limitations:**
 - a. **The carport shall be located a minimum of 33 feet from the terrace ground crack as mapped in the Bluff Retreat Evaluation, dated April 3, 2007 (Exhibit No. 8) prepared by certified engineering geologist Jim Glomb.**
 - b. **The carport shall be constructed in the location originally proposed for the garage and shall not extend northwesterly into the public view corridor.**
 - c. **The carport shall have a flat roof, shall not contain walls, and shall allow for public views through and over the carport to the ocean and scenic coastal areas.**
 - d. **The carport shall have a maximum height of 16 feet above finished grade and maximum length (~north-south) of 20 feet (i.e., dimensions no greater than those originally proposed for the garage).**

If the applicants choose to construct the carport, the applicants shall submit with the revised plan for the carport a variance granted by Mendocino County for a reduction in the front yard setback and/or corridor preservation setback that would allow the carport to encroach into the setback area(s) depicted in the revised site plan. The front yard and corridor preservation setback lines shall be clearly delineated on the revised site plan.

- ii. The placement of the storage shed on the existing deck shall be shifted at least the minimum distance necessary to be entirely outside of both the front yard setback and corridor preservation setback areas for the property. The front yard and corridor preservation setback lines shall be clearly delineated on the revised site plan.
- B. The permittees shall undertake development in accordance with the approved revised plan. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Shed and Carport Material, Design, and Color Restrictions

- A. The colors of all exterior siding, trim, roofing, and door of the approved storage shed and carport shall be maintained to match or blend with the colors of the residence. In addition, all exterior materials, including roof, windows, and doors, shall not be reflective to minimize glare;
- B. All exterior lighting for the storage shed and carport, including any lights attached to the outside of the storage shed and carport, shall be the minimum necessary for the safe ingress and egress of the storage shed and carport, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

3. Permit Expiration and Condition Compliance

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

4. Conditions Imposed By Local Government

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

5. Deed Restriction

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE CARPORT, the applicant shall submit to the Executive Director, for review and written approval, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the

California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Establishment and Maintenance of Public View Corridor

The property from the driveway north to the end of the fence line, identified as "Public View Corridor" on Exhibit No. 4 of the staff recommendation and ranging in size from approximately 60 to 180 feet, shall, for the duration of the economic lifespan of the approved carport, be maintained as a view corridor for public views to the ocean and coastal areas from State Highway One. The following provisions proposed by the applicants shall apply to the designated view corridor:

- 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 Bishop pines and other trees in the area shall from the driveway north to the end of the fence line shall be limbed from the ground up to a minimum of eight feet above the ground, where accessible.

7. No Invasive Species

No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.

8. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the carport approved pursuant to Coastal Development Permit No. A-1-MEN-07-003, in the event that the carport is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of

himself and all successors and assigns, any rights to construct such devices to protect the carport that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).

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

9. Assumption of Risk, Waiver of Liability and Indemnity

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

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares the following:

1. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated February 2, 2007.

2. Site Description

The subject property is located approximately five miles south of Point Arena, approximately 720 feet south of the intersection of State Highway One and Iversen 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 1.5-acre parcel sits atop a steep, approximately 80- to 90-ft high bluff that overlooks Iversen Landing, also known as Island Cove, an approximately 700-ft long beach that is 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 (see Exhibit No. 3). A condition of the permit for the original home construction (Coastal Commission Coastal Development Permit No. 80-CC-138) required an offer of dedication of a public access easement. The public access easement that is the subject of the required offer of dedication extends from Highway One just to the south of the applicant's development down along the face of the bluff to the beach at Iversen Landing borders the subject property. The proposed development would not affect the public access easement area.

The subject parcel is located within an area designated as “highly scenic” in the County’s certified LCP. 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 (see Exhibit No. 2). Limited views of the cove, beach, sea stacks, coastal bluffs, terraces, and the open ocean are afforded between the trees from State Highway One, adjacent to the project site primarily through the portion of the property north of the existing house (see photos in Exhibit Nos. 7 and 9).

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 found no rare or endangered species and no environmentally sensitive habitat areas (ESHA) on the parcel. There are two seasonal watercourses on the parcel to the north and south of the existing residence (see Exhibit No. 4), though neither have any significant riparian vegetation according to the botanical report. The proposed garage is at least 50 feet from the northern drainage gully, according to the site plan included with the County staff report. An

existing berm lies between the northern drainage and the proposed garage site, which protects the drainage from driveway runoff, according to the botanical report.

According to the most recent geotechnical analysis for the parcel (Exhibit No. 8), the existing single family residence is located approximately 34 to 53 feet back from the bluff edge (“top of sea cliff”), and the proposed garage siting would be approximately 46 to 52 feet from the bluff edge. Additionally, the geotechnical analysis notes an open ground crack in the terrace mantle approximately 10 feet back from the top of bluff adjacent to the proposed garage (also see Exhibit No. 4). The crack, therefore, was considered by the geologist to represent the current landward extent of bluff retreat. The garage is proposed to be sited approximately 33 feet from the open crack, which is the building setback distance recommended in the geotechnical analysis (based on the estimated bluff retreat rate projected over the 75-year economic life span of the structure).

3. Project Description

The development, as proposed, consists of (1) construction of a new 480-square-foot two-car garage; (2) legalization of the previous placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence in conjunction with a planting bed for screening vegetation; and (3) legalization of the previous placement of a 44-square-foot storage shed on an existing deck (see Exhibit Nos. 5, 6, and 7).

The proposed garage would have a maximum size of 480 square feet (20 feet long by 24 feet wide) and a maximum height of 16 feet. The garage would be built atop an existing concrete pad, which is where the residents currently park their cars. The shed has a maximum size of 44 square feet (11 feet long by 4 feet wide) and a maximum height of 6 feet and has been placed on the existing deck on the southeast side of the residence. The retaining wall and associated planting bed are approximately 50 feet long and are sited directly in front of (east of) the existing residence.

The proposed design and materials of the garage are as follows:

Siding and trim:	“Certain-Teed” weather boards, light grey
Roofing:	Black fiberglass comp shingles
Window frames:	White vinyl
Door:	Fiberglass, grey

For purposes of *de novo* review by the Commission, the applicants submitted an alternatives analysis for the garage and shed sitings, dated April 4 and April 30, 2007 (Exhibit No. 7), and a geotechnical analysis for the garage siting, dated April 3, 2007 (Exhibit No. 8). These are discussed in more detail below (Sections IV-5 and IV-6).

4. Visual Resources

LCP Policies and Standards:

The certified Mendocino County Land Use Plan states, in applicable part, the following (emphasis added):

LUP Policy 3.5-1 states:

“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.”

LUP Policy 3.5-3 states, in applicable part:

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

- *...Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the 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...*

In addition to other visual policy requirements, new development west of Highway One in designated “highly scenic areas” is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within “highly scenic areas” will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

NOTE 1: The certified LUP Maps (Map 28) designate the area west of Highway One in the project vicinity as highly scenic.

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

LUP Policy 3.5-5 states:

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

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

The certified Mendocino County Coastal Zoning Code states, in applicable part, the following (emphasis added):

CZC Sec. 20.504.010, Purpose, states:

“The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.” (Ord. No. 3785 (part), adopted 1991)

CZC Sec. 20.504.015, Highly Scenic Areas, states in part:

...

(C) Development Criteria.

- (1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. (Ord. No. 3785 (part), adopted 1991)*
- (2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
- (3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

- (9) In specific areas, as designated on the Land Use Maps and other circumstances in which concentrations of trees unreasonably obstruct views to and along the ocean and scenic coastal areas, tree thinning or removal shall be made a condition of permit approval.
- (10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

CZC Sec. 20.504.035, 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.

- (1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.
- (2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.
- (3) Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.
- (4) Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.
- (5) No lights shall be installed so that they distract motorists. (Ord. No. 3785 (part), adopted 1991)

CZC Sec. 20.376.045, Building Height Limit for RR Districts, states:

Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen (18) feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)). (Ord. No. 3785 (part), adopted 1991)

Discussion:

A. Protection of Coastal Views

LUP Policy 3.5-1 and CZC Section 20.504.010 require that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. LUP Policy 3.5-3 and

CZC Section 20.504.015(C)(1) require that new development permitted in designated “highly scenic areas” provide for the protection of ocean and coastal views from public areas, including highways and roads.

The subject site is an approximately 1.5-acre parcel located in a designated “highly scenic area” on a blufftop parcel overlooking Island Cove/Iversen Landing on the west side of State Highway One (Exhibit Nos. 1, 2, and 3). The proposed developments would be visible from the highway. Limited views of the cove, beach, sea stacks, coastal bluffs, terraces, and the open ocean are afforded between the trees to travelers on adjacent State Highway One, primarily over the portion of the property north of the existing house (see photos in Exhibit Nos. 7 and 9).

The proposed project involves (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, increasing the total size of the structure to 2,208 square feet; (2) legalization of the previous placement of a retaining wall (less than 6 feet tall) on the eastern side of the residence in conjunction with a planting bed for screening vegetation; and (3) legalization of the previous placement of a 44-square-foot storage shed (at an average maximum height of approximately 6 feet) on an existing deck. The effects of each project element on coastal views ~~is~~ are discussed below.

1. Garage

The proposed garage would be constructed on the north side of the residence. The garage would be built atop an existing concrete pad, which is where the residents currently park their cars.

From a point just north of Iverson Point (approximately ¼-mile to the north of the project site) to the community of Anchor Bay (approximately 5 miles to the south of the project site), views from State Highway One to the ocean are largely obstructed by existing trees. The prevalence of trees and their effects on coastal views is reflected in notes on the LUP maps for this stretch of shoreline that call for tree removal along much of this section of the coast. LUP Policy 3.5-5 and CZC Section 20.504.015(C)(9) call for the removal or thinning of trees in such areas as conditions of permit approval of development. Views of the ocean are limited to various openings in the trees, usually for relatively short distances. In addition to being relatively narrow, these existing view corridors are also relatively widely spaced, leaving long stretches where the traveling public is afforded virtually no view of the ocean. Therefore, the view corridors that currently exist along this stretch of State Highway One provide windows to the ocean for highway travelers and are particularly valuable.

The existing view corridor afforded through the subject property to the public traveling along the highway is shown in Exhibit No. 4. At its narrowest point, the view corridor is approximately 60 feet wide, extending from the north end of the exiting residence to a tree covered knoll near the north end of the property. Because of their angle of view, northbound travelers heading north can see a larger portion of the ocean and coastline to the northwest. Similarly, southbound travelers can see a larger portion of the ocean and coastline to the southwest.

It should be noted that some of the view corridor is currently obstructed on a regular basis by the parking of vehicles on the existing concrete pad on the site. Other parts of the coastal viewshed available to the public from the highway are partially obstructed by mature Bishop pine trees, wax myrtle plants, and other vegetation within the view corridor. In the absence of routine vegetation management to maintain an open view corridor with views to the ocean and scenic coastal areas, the remaining views currently available would be diminished. **The applicants have proposed to limb and trim this vegetation to help mitigate the impact of the proposed garage on coastal views.**

The views that are afforded through the view corridor on the property are spectacular, albeit limited by the narrowness of the view corridor. As noted earlier, the coastline in this particular area is designated in the LUP as a “highly scenic” area. What makes the view particularly noteworthy in this location is the variety of features of the coastline one can see in this location (see Exhibit Nos. 7 and 9). The viewshed includes views of the cove (Island Cove/Iversen Landing), beach, sea stacks, coastal bluffs, terraces, and the open ocean.

The proposed garage would contribute to the blockage of an additional approximately 20 feet of coastal viewshed that is currently available to the public from the highway at its narrowest point. The Commission finds that as (1) the already narrow existing view corridor would be reduced in width by approximately a third, (2) the view corridor provides one of the full coastal view opportunities along the tree-shrouded section of Highway One that extends from a point ¼-mile north of the property to Anchor Bay, approximately 5 miles to the south, and (3) the view corridor is within a designated “highly scenic area” that provides particularly noteworthy views of the beach, bluff, and offshore rocks and sea stacks at Iverson Landing, development of the proposed garage would not protect views to and along the ocean and scenic coastal areas from public areas, including highways, as required by LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015(C)(1).

Therefore, the Commission finds that the proposed garage addition cannot be approved consistent with the applicable provisions of the certified LCP. **However, the Commission finds that if the proposed garage was modified to an open-air carport design instead, such a structure would not be significantly view-obstructing and would allow for public views to the ocean and scenic coastal areas, consistent with LCP policies. An open-air carport without walls and with a flat roof located on the existing concrete pad where the applicants currently park their cars would greatly reduce view blockage and is a less environmentally damaging alternative.** The Commission therefore attaches Special Condition No. 1 which requires the applicants to submit for the review and approval **of the Executive Director** a revised site plans showing the garage addition ~~deleted~~ **replaced by an open-air carport with a flat roof that complies with various limitations, such as locating the structure a minimum of 33 feet from the terrace ground crack as recommended by the geology report (see Section IV-6 below), locating the structure at the site originally proposed for the garage and not further northwesterly into the public view corridor, designing the structure without walls to maximize protection of public views, and limiting the size of the carport to not exceed the dimensions proposed for the garage.**

Even with substitution of the carport for the garage, some amount of view blockage would still occur from the carport support beams and roof. To ensure protection of remaining public views to the ocean and scenic coastal areas and to mitigate for any public views lost due to carport development, the Commission attaches Special Condition No. 6, which would require the applicants to establish and maintain a public view corridor from the driveway north the end of the fence line. Within the designated view corridor, the property owners would be required to, for the economic life of the carport, (1) keep the wax myrtle bushes on the ocean side of the parking area trimmed to a height not to exceed 2 feet above the existing berm, and (2) limb the Bishop pines and other trees in the area from the ground up to a minimum of 8 feet above ground, where accessible. These vegetation trimming measures were proposed by the applicants and will keep the views through the remainder of the view corridor from being blocked or obscured as they otherwise would become over time, thereby offsetting the impact on views by the support beams and roof of the approved carport on other parts of the view corridor.

In conclusion, the Commission finds that the project, as modified by (1) Special Condition No. 1 to require the applicants to replace the proposed garage with a proposed open-air carport, the design of which shall be subject to the review and approval of the Executive Director, and (2) Special Condition No. 6, which requires the establishment and maintenance of a public view corridor from the driveway north to the end of the fence line, would protect coastal views from State Highway One consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015(c)(1).

2. Retaining Wall & Associated Planting Bed

The applicants propose to legalize the previous placement of a retaining wall in conjunction with a planting bed for screening vegetation. The retaining wall and associated planting bed are approximately 50 feet long and are sited directly in front of (northeast of) the existing residence (see photos in Exhibit No. 7). As the landscaping matures, the vegetation will help screen the residence from public view. The retaining wall is not visible from the highway, and the planting bed, which is located between the house and the highway, does not block additional public views to the ocean or scenic coastal areas.

Therefore, the Commission finds that approval of the proposed legalization of the retaining wall and landscaped berm is consistent with the visual resource protection policies of the certified LCP, specifically, the retaining wall and landscaped berm are consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and CZC Section 20.504.015(C)(1) as these project elements will be sited and designed to protect views to and along the ocean and scenic coastal areas. In addition, the retaining wall and landscaped berm are consistent with LUP Policy 3.5-5 and CZC Sections 20.504.015(C)(10) which encourage tree planting to screen buildings, provided that trees will not block coastal views from public areas as: (1) the proposed development includes landscaping to screen the existing development; and (2) the proposed retaining wall and landscaped berm lie entirely between the highway and the existing house and therefore do not block additional public views to the coast.

3. Storage Shed

The proposed project includes legalization of the previous placement of a storage shed on an existing deck on the southeastern end of the residence. The shed is 44 square feet in size (11 feet long by 4 feet wide) and is 6 feet tall.

As part of the alternatives analysis, the applicants submitted photographs showing the location of the storage shed in relation to public views (Exhibit No. 7). Due to the placement of the shed on the existing deck immediately adjacent to the existing house, the shed blocks no views available to southbound travelers on the highway. Furthermore, the shed blocks no views available to northbound traffic due to the natural vegetation on the site. The photographs in Exhibit Nos. 7 and 9 show that the proposed placement of the shed conforms to the visual resource protection policies of the certified LCP, including LUP Policy 3.5-1 and CZC Section 20.504.010, which require that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas), and LUP Policy 3.5-3 and CZC Section 20.504.0215(C)(1), which require that new development permitted in designated “highly scenic areas” provide for the protection of ocean and coastal views from public areas, including highways and roads. Furthermore, the vegetation associated with the planting bed, as discussed above, shields the shed from public view, while not blocking public coastal views, consistent with LUP Policy 3.5-5 and CZC Sections 20.504.015(C)(9) and (10).

Therefore, the Commission finds that the proposed shed placement, as conditioned, is consistent 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) which require that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas, including highways and roads.

B. Storage Shed, Carport, and Landscaped Berm Subordinate to Character of Setting

LUP Policy 3.5-3 and CZC Section 20.504.015(A) require that new development in designated highly scenic areas be subordinate to the character of its setting. LUP Policy 3.5-3 and CZC Sections 20.504.015(C)(2) and §20.504.015(C)(3) limit the height of new development in highly scenic areas and require that new development be subordinate to the natural setting and minimize reflective surfaces.

The “character” of the area where the subject parcel is located is rural, sparsely populated, and highly scenic, although the subject parcel is somewhat wooded with a natural stand of Bishop pines and other trees. The existing house is similar in color (grey) to other homes in the general vicinity that also are colored in muted earth tones. The appearance of the storage shed blends with the color of the existing house and in this manner is subordinate to the character of its setting. The storage shed is only 44 square feet in size and the maximum height of the shed (6 feet) is lower than that allowed by the certified County Zoning Code (18 feet). As the existing residence is much larger and a maximum of 21 feet in height, the storage shed in this manner is also “subordinate” to the character of the setting. To ensure that the carport will be proportionate to the height and size of the existing house and help ensure it also is

“subordinate” to the character of the setting, the Commission attaches Special Condition No. 1-A-i-d, which requires that the carport shall not exceed 16 feet in height and 20 feet in length (~north-south).

The landscape berm and associated retaining wall are subordinate to the character of its setting as (1) the wall is not visible from the highway, (2) the berm is not excessively high and the landscaping blends with surrounding vegetation, and (3) the berm and retaining wall extend along approximately the same length of highway frontage as the existing house and deck and therefore do not add significant mass to the appearance of the site.

To ensure that the storage shed **and carport** remains subordinate to the character of its setting, the Commission attaches Special Condition No. **52**, which requires that the permittees maintain the colors of the storage shed **and carport** to match or blend with the corresponding colors of the existing house. The Commission finds that if the permittees choose to change the colors of the structures to colors that contrast with the colors of the house, the development may no longer blend in hue and brightness with its surroundings and could create an adverse visual impact as viewed from the highway. Special Condition No. **52(A)** also requires that all exterior materials, including roof and windows, be comprised of material that is not reflective. To further minimize potential glare from any exterior lighting, Special Condition No. **52(B)** requires that all exterior lights for the shed **and carport** be the minimum necessary for the safe ingress and egress of the structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will shine beyond the boundaries of the subject parcel.

Therefore, the Commission finds that approval of the storage shed, **carport**, and the landscape berm and retaining wall, as conditioned, are subordinate to the character of their setting and consistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.015 and 20.504.035(A) because: (1) the storage shed, **carport**, and landscaped berm with retaining wall are **or will be upon approval** relatively small in comparison with existing development at the site, (2) building materials and colors of the storage shed **and carport** would closely match the existing earth-toned house and therefore would blend in hue and brightness with their surroundings, (3) reflective surfaces would be prohibited, and (4) new exterior lighting would be designed to minimize glare and not shine beyond the boundaries of the parcel.

C. Conclusion

For all of the reasons discussed above, the Commission finds that the proposed garage addition is inconsistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015 (c)(1) requiring the protection of views to and along the ocean and scenic coastal areas and cannot be approved consistent with the applicable provisions of the certified LCP. **However, the Commission finds that an open-air carport could be found consistent with these LCP policies.** The Commission therefore imposes Special Condition No. 1 requiring the applicants to ~~remove the garage from the approved site plan~~ **replace the proposed garage addition with an open-air carport that complies with various limitations on size, location, and design. The Commission also attaches Special Condition No 2, which requires the carport design to match or blend with the colors of the residence, and which restricts exterior lighting to**

ensure that the approved structure is subordinate to the character of its setting, consistent with CZC §20.504.015(C)(2), §20.504.015(C)(3), and §20.504.035. The Commission further finds that approval of the retaining wall, associated planting bed, and placement of the storage shed as conditioned, is consistent with the visual resource policies of the certified LCP regarding (1) new development in highly scenic areas, including LUP §3.5-1 and §3.5-3 and CZC §20.504.015(A) and §20.504.015(C)(1); (2) using trees and screening vegetation in a manner that does not block ocean views, including LUP §3.5-5 and CZC §20.504.015(C)(10); and (3) design standards and exterior lighting regulations, including CZC Sections 20.504.015(C)(2), 20.504.015(C)(3), and 20.504.035.

5. Compliance with Prescribed Zoning Setbacks

LCP Policies and Standards:

The certified Mendocino County Coastal Zoning Code states, in applicable part, the following (emphasis added):

Sec. 20.444.020 Corridor Preservation Setback.

There is hereby established a corridor preservation setback. A corridor preservation setback shall apply to all lots or parcels that abut a publicly maintained street or highway. A corridor preservation setback shall be in addition to front yard setbacks prescribed elsewhere in this Division and shall apply in districts that prescribe no front-yard setback. Corridor preservation setbacks shall be measured perpendicular from the center line of the existing right-of-way of record or, where no recorded right-of-way exists, from the center of the physical road. Corridor preservation setbacks shall be as follows:

GENERAL PLAN ROAD CLASSIFICATION	CORRIDOR PRESERVATION SETBACK	
	URBAN	RURAL
<i>Principle Arterial</i>	60'	60'
<i><u>Minor Arterial</u></i>	45'	40'
<i>Connector</i>	45'	35'
<i>Major Collector</i>	45'	35'
<i>Minor Collector</i>	35'	30'
<i>Local Connector</i>	30'	30'
<i>Local Road</i>	25'	25'

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

Sec. 20.376.030 Minimum Front and Rear Yards for RR Districts.

(A) RR; RR:L-2: Twenty (20) feet each.

(B) RR:L-5: Thirty (30) feet each.

(C) RR:L-10: Fifty (50) feet each. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.040 Setback Exception.

Any nonconforming parcel which is less than five (5) acres and which is zoned RR:L-5 or RR:L-10 shall observe a minimum front, side and rear yard of twenty (20) feet. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.444.015 Yards.

...
(F) A detached garage, detached storage shed, or similar detached accessory building not exceeding fifteen (15) feet in height at the ridge and five hundred (500) square feet of floor area or uncovered decks or porches shall observe a five (5) foot setback from rear property lines that do not have street frontage. Setbacks from property lines having street frontage shall be as otherwise required by this Division.

Discussion

The corridor preservation setback that applies to the subject parcel, which fronts a “minor arterial” (State Highway One) is 40 feet measured perpendicular from the center line of the highway (CZC §20.444.020). The property is zoned rural residential RR:L-5 [RR:L-2] and thus requires a minimum front yard setback of 20 feet (CZC §20.376.030 and §20.376.040). Because the CZC requires that the front yard setback be additive to the corridor preservation setback, in the case of the subject parcel no structures are to be permitted on the property within 60 feet of the centerline of the highway (see Exhibit No. 4). In other words, as the eastern parcel boundary lies approximately 15 feet from the centerline of the highway, there should be no structures sited on the parcel within 45 feet of the property line without a variance from the County allowing a reduction in the prescribed setback.

The County staff report for CDPM #73-2003 (2006), which is the subject appeal (and is attached as Exhibit No. 12), states erroneously that the proposed garage meets all setbacks required in the certified Coastal Zoning Code, including the corridor preservation setback and all yard setbacks. The proposed garage is located as close as 50 feet from the center line of the highway, encroaching into the front yard setback area by approximately 10 feet (see Exhibit Nos. 4 and 5). The County’s findings in its approval of both the permit and the permit modification failed to address the need for a variance from the prescribed front yard setback for the proposed garage siting (see Exhibit No. 12). Therefore, the garage in its proposed location is inconsistent with the front yard and preservation corridor setback requirements of the certified LCP, including CZC Sections 20.444.020, 20.376.030, and 20.376.040. The Commission notes that no variance to these setback standards has been granted for the project by the County. Also, as discussed elsewhere in this report, the garage cannot be approved consistent with all applicable provisions of the certified LCP. The Commission attaches Special Condition No. 1 which requires the applicants to submit for the review and approval a revised site plan showing the garage addition deleted along with the revised plan showing the garage replaced by an open-air carport, a variance granted by Mendocino County for a reduction in the front yard setback and/or corridor preservation that would allow the carport to encroach into the setback area(s) depicted in the revised site plan.

The County's approval of the shed placement (CDPM #73-2003 (2006), which is the subject appeal) was based on findings that the proposed shed met all setbacks required in the certified Coastal Zoning Code, including the 40-ft corridor preservation setback (CZC §20.444.020) and the 20-ft front yard setback (CZC §20.376.030 and CZC §20.376.040). Section 20.444.015(F) addresses prescribed setbacks for detached storage sheds specifically as follows (emphasis added):

A detached garage, detached storage shed, or similar detached accessory building not exceeding fifteen (15) feet in height at the ridge and five hundred (500) square feet of floor area or uncovered decks or porches shall observe a five (5) foot setback from rear property lines that do not have street frontage. Setbacks from property lines having street frontage shall be as otherwise required by this Division.

As discussed above, because of the prescribed setbacks (corridor preservation and front yard combined), no structures are to be sited on the parcel within 60 feet from the highway centerline, which is 45 feet of the property line, without a variance from the County allowing a reduction in the prescribed setback. However, the proposed shed crosses into the front yard setback area by approximately 5 feet (see Exhibit Nos. 4 and 5) and no variance to allow such encroachment has been granted by the County.

Therefore, because the proposed shed conflicts with the setback requirements of CZC §20.376.030 and §20.444.015(F), Special Condition No. 1 requires that, prior to the issuance of the coastal development permit, the applicants shall submit to the Executive Director, for review and approval, a revised site plan showing that placement of the shed has been shifted approximately five (5) feet westward on the existing deck in order to comply with all prescribed setbacks in the certified LCP. The revised site plan map must show that the placement of the storage shed has been shifted at least the minimum distance necessary to be entirely outside of the corridor preservation and front yard setback area for the property. Shifting the storage shed five feet to the west will not affect public views through the site to and along the ocean.

In conclusion, the Commission finds that the ~~proposed~~ project, as conditioned, is consistent with all prescribed corridor preservation and front yard setbacks in the certified LCP including CZC §20.444.020, §20.376.030 and §20.376.040.

6. Geologic Hazard

LCP Policies and Standards:

The certified Mendocino County Land Use Plan states, in applicable part, the following (emphasis added):

Policy 3.4-1.

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

Policy 3.4-7.

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

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

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

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

Policy 3.4-8.

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

Policy 3.4-9.

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

The certified Mendocino County Coastal Zoning Code states, in applicable part, the following (emphasis added):

Section 20.500.010.

(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991)*

Section 20.500.015.

(A) Determination of Hazard Areas.

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

Section 20.500.020.

(B) Bluffs.

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

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

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

- (2) Drought tolerant vegetation shall be required within the blufftop setback.*
- (3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

(4) No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase accessways to beaches and pipelines to serve coastal-dependent industry. These developments shall only be allowed as conditional uses, following a full environmental, geologic and engineering review and upon a finding that no feasible, less environmentally damaging alternative is available. Mitigation measures shall be required to minimize all adverse environmental effects.

(E) Erosion.

(1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.

Discussion

LUP Policy 3.4-1 and CZC Section 20.500.015 require geologic investigations and reports to be prepared by a licensed engineer or geologist to determine the stability of the site for development located in areas of high geologic hazards, such as blufftop lots. LUP Policy 3.4-7 and CZC Section 20.500.020(B)(1) require that new structures be set back a sufficient distance from bluff edges to ensure their safety from bluff erosion and retreat during their economic lifespan (75 years). The policy/section also requires setbacks of sufficient distance to preclude the need for shoreline protective works. [A sole exception to this prohibition on the construction of shoreline protective devices is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal dependent uses.] LUP Policy 3.4-8 and CZC Section 20.500.020(B)(2) require property owners to maintain drought-tolerant vegetation within the required bluff top setback area to minimize the need for watering, which could accelerate bluff top erosion. Similarly, LUP Policy 3.4-9 and CZC Section 20.500.020(B)(3) require development landward of the bluff top setback to be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or the instability of the bluff itself. CZC Section 20.500.010 requires that all development in the County Coastal Zone minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion or engender the need for protective devices that would alter natural landforms along bluffs and cliffs.

As discussed above, the subject property is an approximately 1.5-acre blufftop parcel situated on the west side of State Highway One approximately 5 miles south of Point Arena, Mendocino

County. As depicted on the Assessor's parcel map (Exhibit No. 3), the lot measures approximately 477 feet along the northeastern side (which fronts Highway One), 197 feet along the southeastern side (which abuts the private, vertical beach access easement reserved for the use of subdivision lot owners only), and 128 feet along the western side (which borders a blue-line, unnamed watercourse depicted on the U.S.G.S. Saunders Reef 7.5' quadrangle). The southwestern side of the parcel lies beyond the bluff edge (as shown on Plate 5 of Exhibit No. 8) and is approximately 416 feet long. The bluff face drops steeply down (for approximately 80 to 90 feet) to Island Cove (also known as Iversen Landing), which is an approximately 700-ft long ~~private~~ sandy beach. Topographically, the blufftop portion of the property is gently to moderately sloped southwestward toward the upper terrace edge. Much of the property is wooded with Bishop pine, madrone, and wax myrtle. According to the most recent geotechnical investigation of the parcel (Exhibit No. 8), geologic materials exposed at the site consist of hard sandstone bedrock, which is described as "blocky fractured" with irregular, discontinuous fractures. Sandy terrace deposits, which are unconsolidated and prone to erosion, also are exposed on the upper 15 feet of the bluff.

The Bluff Retreat Evaluation, dated April 3, 2007 (Exhibit No. 8) and submitted for the purposes of *de novo* review, was prepared by certified engineering geologist Jim Glomb to determine the appropriate geologic setback for the proposed garage addition. The report contains the following conclusions with respect to the rate of bluff retreat and site stability:

"...The retreat of the bluff is chiefly controlled by rock block sliding along irregular fractures...The primary mode of failure of the terrace portion of the bluff is judged to be from erosion.

"Of particular concern is an open ground crack located in the terrace mantle 10 back [sic] from the top of bluff adjacent to the addition. We judge that the crack represents the head of an incipient landslide that has formed from seaward slipping of underlying rock blocks along fractures. We consider the crack to represent the current landward extent of bluff retreat...

"A quantitative slope stability analyses [sic] was not performed on the bluff because of the well demonstrated low to average retreat rate over the past 44 years; no appreciable retreat occurring in the past 5 years; the irregular, discontinuous character of the fractures; and the geologically favorable well developed in to slope bedding condition. Based on air photo analysis, a bluff retreat rate of 0.44 feet/year was estimated...

"...The bluff retreat rate of 0.44 feet/year projected over an expected structure life of 75 years would result in 33 feet of total retreat. Accordingly, a building setback line measured from the terrace ground crack is shown on the Site Plan, Plate 3, attached."

The garage siting proposed by the applicants (see Exhibit No. 5) lies immediately adjacent to the recommended geologic setback line (33 feet from the terrace ground crack, as shown in Plate 3 of Exhibit No. 8). However, the Commission's geologist, Dr. Mark Johnsson, reviewed the applicants' geotechnical report and determined that an additional 10 feet of setback distance is

necessary (for a total geologic setback of 43 feet from the terrace ground crack) to build in some margin for error in establishment of a safe building setback at the subject site. Typically, the development setback line to assure safety from marginally stable slopes is simply the line corresponding to a “factor of safety” of 1.5. According to a paper by Dr. Johnsson (~~to be~~ published in the Proceedings of the California and the World Ocean Conference):

“Assessing the stability of slopes against landsliding is undertaken through a quantitative slope stability analysis. In such an analysis, the forces resisting a potential landslide are first determined. These are essentially the strength of the rocks or soils making up the bluff. Next, the forces driving a potential landslide are determined. These forces are the weight of the rocks as projected along a potential slide surface. The resisting forces are divided by the driving forces to determine the “factor of safety.” A value below 1.0 is theoretically impossible, as the slope would have failed already. A value of 1.0 indicates that failure is imminent. Factors of safety at increasing values above 1.0 lend increasing confidence in the stability of the slope. The industry-standard for new development is a factor of safety of 1.5, and many local grading ordinances in California and elsewhere (including the County of Los Angeles, and the Cities of Irvine, Malibu, and Saratoga, among others) require that artificial slopes meet this factor of safety.”

The applicants’ geotechnical evaluation did not include a quantitative slope stability analysis (QSSA), which is the necessary method for determining a site’s “factor of safety,” or the numerical “confidence” in the stability of the slope. Therefore, it is unknown whether the “factor of safety” for the subject parcel is greater or less than (or equal to) the recommended safety standard of 1.5. ~~If it is less than 1.5, permitting development on the site would be in conflict with LUP 3.4.7 and CZC §20.500.020 which require that new structures be set back a sufficient distance from the bluff edge to ensure their safety from bluff erosion and cliff retreat during their economic life spans and with CZC §20.500.010 which requires that new development shall minimize risk to life and property, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas.~~

Quantitative slope stability analyses have consistently been required by the Commission for projects on blufftop parcels for at least a decade, since the method satisfies generally accepted scientific standards and provides reliable information regarding slope stability. Dr. Johnsson does not believe that the geotechnical report’s stated reasons for not conducting a QSSA are valid (the reasons are shown above and in Exhibit No. 8), but he does acknowledge that such an analysis would be difficult (though not impossible) to conduct on the site given the irregular, discontinuous character of the bedrock fractures, as described above. Furthermore, since the geologic setback recommended in the geotechnical report is relatively conservative as it was measured from the terrace ground crack, thereby acknowledging the potential instability of the area, Dr. Johnsson does not believe that further geotechnical evaluation of the site that includes a QSSA is necessary. However, because the recommended geologic setback, which is based primarily on aerial photo analysis, lacks the stronger assurance afforded by a setback derived from a QSSA and “factor of safety” determination (which is a much more informed analysis taking into account the strengths of rocks and soils on the site and various other factors, as

described in the above-cited paper), Dr. Johnsson believes that it is necessary to increase the geologic setback distance from the terrace ground crack in order to build in a margin for error in establishment of a safe setback.

According to Dr. Johnsson (in the above-cited paper), in the absence of a QSSA and known “factor of safety” for a site, a simple “buffer” is added to the setback derived from multiplying the long-term bluff retreat rate (determined from aerial photo analysis) by the design life of the structure (75 years). This buffer, which is on the order of 10 feet, serves several functions for this subject site: (1) it allows for uncertainty in all aspects of the analysis; (2) it allows for any future increase in bluff retreat rate due, for example, to an increase in the rate of sea level rise; (3) it assures that at the end of the design life of the structure the foundations are not actually being undermined (if that were to be the case the structure would actually be imperiled well before the end of its design life); and (4) it allows access so that remedial measures, such as relocation of the structure, can be taken as erosion approaches the foundations. Therefore, Dr. Johnsson recommends increasing the applicants’ recommended geologic setback for the subject site an additional 10 feet for a total geologic setback of 43 feet from the terrace ground crack.

~~As the proposed garage is located only 33 feet from the bluff edge (terrace ground crack), permitting the garage as proposed would be inconsistent with LUP 3.4 7 and CZC §20.500.020 which require that new structures be set back a sufficient distance from the bluff edge to ensure their safety from bluff erosion and cliff retreat during their economic life spans and with CZC §20.500.010 which requires that new development shall minimize risk to life and property, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas. Therefore, the garage cannot be approved in the location proposed consistent with the applicable provisions of the certified LCP.~~ As discussed above, it is unknown whether the factor of safety for the subject parcel is greater or less than (or equal to) the recommended safety standard of 1.5, and it is difficult to conduct a quantitative slope stability analysis on this particular site to determine the factor of safety. It is possible that the factor of safety is high enough that the proposed 33-foot setback from the terrace ground crack is sufficient to protect the carport during the economic life of the structure. No evidence exists to the contrary. The Commission also notes that the existing house is somewhat closer to the bluff edge than the 33-foot setback from the terrace ground crack recommended by the applicant’s geologist for the proposed garage for which the Commission has required that a carport be substituted to reduce view blockage. Bluff retreat at the site would therefore likely threaten the house before threatening the approved carport. The remodeling of the house was approved by the County in 2004 (Mendocino County CDP No. 73-03) with a requirement that a deed restriction be recorded prohibiting the future construction of a seawall to protect the approved remodeled house and requiring the house to be removed if threatened by bluff retreat. Therefore, prior to the time when the approved carport is directly threatened by bluff retreat, the applicants or their successors may already have to remove the house and the carport may no longer be needed. In addition, siting an open-air carport as approved by the Commission rather than a garage at the location proposed by the applicant (i.e., at the 33-ft setback line) allows for greater access than a garage for remedial measures in the event that bluff erosion approaches the structure’s foundation

and necessitates its removal. The Commission therefore attaches Special Condition No. 1, which requires the applicants to submit for the review and approval of the Executive Director a revised site plans showing the garage addition ~~deleted~~ replaced by an open-air carport that complies with various limitation, including locating the structure a minimum of 33 feet from the terrace ground crack as recommended by the geology report. For all of the above reasons, the Commission finds that the approved placement of the carport at the 33-foot setback line is consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

Notwithstanding the relative degree of insulation of the proposed project improvements in their proposed locations from geologic hazards, the applicant is proposing to construct a new carport that would be located on a high uplifted marine terrace bluff top that is actively eroding. Consequently, the structure would be located in an area of high geologic hazard. However, new development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicant has submitted information from a registered engineering geologist which states that if the new structure is set back at least thirty-three (33) feet from the terrace ground crack, it will be safe from erosion and will not require any devices to protect it during its useful economic life.

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

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (CDP No. 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff top parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff top lot (CDP No. 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit

- Application #6-93-135). The Commission denied the request. In 1996 (Permit Application #6-96-138), and again in 1997 (Permit Application #6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application #6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a bluff top project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

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

The geotechnical evaluation and report prepared by Jim Glomb for the 2004 house remodel (when the garage was originally proposed under County Permit No. 73-03) states the following:

“Predicting seacliff retreat is not an exact science and rates may vary in the future.”

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

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

The geologic report prepared by the applicant's geologist indicates that the risks of geologic hazard are minimized if the carport is set back at least 33 feet or more from the bluff edge as proposed. However, given that the risk cannot be completely eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the carport, the Commission finds that the proposed development is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 8 to ensure that no future shoreline protective device will be constructed. The Commission notes that the County, in its approval of CDP No. 73-03 in 2004 for the house remodel, conditioned the permit to provide that shoreline protection would not be constructed for the existing residence on the property.

Special Condition No. 8 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the carport if bluff retreat reaches the point where the carport is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with CZC Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with CZC Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 9 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 5 that a deed restriction be recorded, will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as massive slope failure, erosion, *etc.* could result in destruction or partial destruction of the carport or other development approved by the Commission. In addition, the development itself

and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 8 requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the carport should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 8 is also required to ensure that the proposed development is consistent with the LCP, and Special Condition No. 5 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12, and CZC Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

Both the storage shed as conditioned to be moved out of the corridor preservation and front yard setback area pursuant to Special Condition No. 1 and the landscaped berm with its supporting retaining wall are located inland of the combined 43-foot geologic setback recommended by Dr. Johnsson that is comprised of both the 33-foot long-term bluff retreat setback and the additional 10-foot factor of safety buffer for bluff stability concerns. The storage shed in its relocated location is approximately 50 feet from the bluff edge and the landscaped berm with its retaining wall are approximately 80 feet from the bluff edge. Therefore, the storage shed and the landscaped berm with its retaining wall are consistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020.

~~In conclusion, for all of the reasons discussed above, the Commission finds that the proposed garage addition is inconsistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020 in that the garage in the location proposed would not be located a sufficient distance from the bluff edge to minimize risk to property and ensure the garage's safety from bluff erosion and cliff retreat during its economic life span. Therefore, the proposed garage in its proposed location cannot be approved consistent with all applicable provisions of the certified LCP and must be deleted from the approved project plans. The Commission further finds that~~

approval of a carport, the retaining wall and associated planting bed, and placement of the storage shed, as conditioned, is consistent with LUP Policies 3.4-1 and 3.4-7 and CZC Sections 20.500.015 and 20.500.0210 as these elements of the development, as conditioned, will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

7. Alternatives to Construction of Garage

As discussed above, the Commission imposed Special Condition No. 1 requiring ~~deletion~~ **replacement** of the proposed garage ~~from the site plan for the development~~ **with an open-air carport** in part because the garage as currently proposed (a) blocks public views in this designated highly scenic area in a manner that is inconsistent with the visual resource protection policies of this LCP, **and** (b) does not conform to the corridor preservation and front yard setback requirements of the certified zoning ordinance, ~~and (c) is not set back sufficiently far from the bluff edge to ensure its safety from bluff retreat hazards over the economic lifespan of the development consistent with the geologic hazard policies of the LCP.~~ The imposition of Special Condition No. 1 requiring ~~deletion~~ **replacement** of the currently proposed garage **with an open-air carport if a variance from the County is obtained** does not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment-backed expectations of the subject property, **even if the applicants cannot obtain a variance from the County to allow for construction of the Commission-approved carport.** As discussed previously, the applicants have an existing single family residence on the property that they have been living in for several years that does not include a garage. The property currently affords sufficient uncovered off-street parking to serve the residence. Deletion of the garage from the project still leaves the applicants use of the property that is economically beneficial.

The applicants submitted an alternatives analysis for the siting of the garage for the Commission's *de novo* review of the application dated April 4 and April 30, 2007 (Exhibit No. 7). The applicants addressed the "no project" alternative of not constructing the garage and indicated several reasons why they did not prefer this alternative. First, the applicants indicate that whether or not a garage is approved, the current off-street parking for the residence is in the same location as the proposed garage and the cars themselves will continue to block a portion of the view corridor from State Highway One. The Commission acknowledges that when parked in this location the cars do obstruct a portion of the view of Iversen Landing from State Highway One. However, the view blockage from the cars only occurs when the cars are present, and the amount of view blocked by the cars is relatively small in comparison with the amount of view that would be permanently blocked by the proposed permanent 20-foot-long and 16-foot-high garage. Second, the applicants note that parking the vehicles in the open air as they do now exposes the cars to salt, moisture, winds, and other weather-related elements, and such exposure to the elements seems unfair to the applicants given that "this is the only home along the highway that does not have a garage." The Commission acknowledges that parking vehicles in the open air along the coast exposes vehicles to salt, moisture, winds, and other weather-related

elements. However, not all residents along State Highway One and elsewhere along the coast have garages. Many residents have open-air carports or simply exposed parking areas similar to the applicants' current off-street parking arrangement and are able to use their cars as their primary means of transportation. In addition, the applicants accepted the coastal development permit granted by the County in 2003 for remodeling of the residence with an acknowledgement that they would not construct a garage. Finally, the applicants indicate that Dr. Nelson is a consultant for the Redwood Coast Medical Services and needs to have reliable transportation when called to see a patient at the clinic in Gualala. As noted above, many residents have open-air carports or simply exposed parking areas similar to the applicants' current off-street parking arrangement and are still able to use their cars as their primary means of transportation. Therefore, the Commission finds that notwithstanding the concerns raised by the applicants, the "no project" alternative of removing the garage from the approved site plan is still a feasible less environmentally damaging alternative to the proposed project allowing the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the provisions of the certified LCP.

Unless a variance can be obtained from Mendocino County to the corridor preservation setback or front yard setback requirements, no other feasible alternatives for development of a garage carport on the property that are consistent with the certified LCP and the public access policies of the Coastal Act have been identified. The applicants submitted an alternatives analysis for the siting of the garage for the Commission's *de novo* review of the application dated April 4 and April 30, 2007 (Exhibit No. 7). In addition to identifying the proposed garage alternative along the north side of the residence (Alternative A) that the Commission has found cannot be accommodated consistent with the LCP, the applicants identified two other alternatives, including Alternative B, involving construction of a detached garage further north of the existing residence and Alternative C, involving the construction of a garage along the ocean side of the existing residence presumably as an attached garage (see Exhibit No. 7). Alternative B would be inconsistent with the visual resource protection policies of the LCP, as a garage built in this location would obstruct a portion of the view corridor that is afforded across the property to the ocean for travelers on State Highway One in a manner similar to the applicant's proposed garage location. As a result, developing a garage in this location would not protect views to and along the ocean and scenic coastal areas from public areas, including highways, and would be inconsistent with LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015(C)(1). Alternative C is infeasible due to geologic hazards. According to the most recent geotechnical analysis (Exhibit No. 8), the western side of the existing home lies approximately 34 to 53 feet back from the bluff edge ("top of sea cliff") and immediately adjacent to the report's recommended geologic setback (which is 33 feet from the terrace ground crack). Therefore there is no possibility of siting a garage in this location that would adhere to the recommended geologic setbacks and be consistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020 regarding the protection of development from geologic hazards.

~~However, if a variance can be obtained from Mendocino County to either the CZC prescribed corridor preservation setback, front yard setback requirements, or both, it may be possible to locate a two-car garage as proposed, or a narrower single-car garage, along the east, or highway side of the existing residence. The approval of a variance would address the inconsistency with~~

~~the setback requirements. In addition, development of a garage in this location would not block additional views to or along the ocean and the scenic coastal area as the existing residence already blocks such views from the highway through this particular site. Therefore, such an alternative would likely be found to be consistent with the aforementioned visual resource protection policies. Furthermore, development of a garage on the inland side of the highway would be consistent with the geologic hazards policies of the LCP, in that the location is inland of the necessary 43-foot setback recommended to avoid geologic hazards associated with bluff retreat over the life of the project. However, development in this location would still present certain challenges, including the need to move the existing septic tank (although not the leach field which is located across the drainage gully well to the south), grade an additional driveway, remove existing natural and planted vegetation to accommodate the new development, and potentially remodel the existing house exterior to accommodate a new garage at this site. There also is uncertainty as to whether the new driveway would be capable of being properly aligned with the existing driveway apron to conform to applicable access and safety standards.~~

In conclusion, ~~the Commission finds that constructing a garage on the highway side of the house may be a possible alternative for the applicants if the applicants can obtain approval of a variance to the front yard and/or corridor preservation setback requirements of the certified zoning ordinance. Whether or not such an alternative is feasible, the Commission finds that removing~~ replacing the garage from the approved site plan with an open-air carport, or not constructing either a garage or a carport (if a variance cannot be obtained from the County of Mendocino) are ~~is~~ a feasible less environmentally damaging alternatives to the proposed project allowing the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the provisions of the certified LCP.

7. Violation

Although certain development has taken place at the project site without benefit of a coastal development permit, including the installation of a storage shed and a landscaped berm with an associated retaining wall, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

8. Public Access

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization,

including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

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

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 (see Exhibit No. 3). A condition of the permit for the original home construction (Coastal Commission Coastal Development Permit No. 80-CC-138) required an offer of dedication of a public access easement. The public access easement that is the subject of the required offer of dedication extends from Highway One just to the south of the applicant's development down along the face of the bluff to the beach at Iversen Landing borders the subject property. The proposed development would not affect the access easement.

Although the original owner of the subject property and some other permittees for other coastal development permits within the subdivision recorded offers to dedicate public access over the interests in the road and beach held by the property owners, not all lot owners are subject to permit conditions requiring dedication of their interest or otherwise have offered to dedicate rights for public access over the road and beach property. Therefore, the road and beach have not been opened to the public.

The proposed development would not affect public rights of access to the roadway and beach. As noted, the applicants' interest in the road and beach is already the subject of an offer to dedicate public access and the proposed development would not block or otherwise affect ingress or egress to the roadway or beach. There is no other physical access from the subject parcel to the shoreline due to the very steep bluff. Therefore, the proposed development would not interfere with existing public access. Furthermore, the proposed project involves changes to an existing single-family residence that would not increase residential density, would not create any new demand for public access or otherwise create any additional burdens on public access.

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

9. California Environmental Quality Act (CEQA)

Mendocino County is the lead agency for purposes of CEQA review. The County determined that the proposed project is categorically exempt (Class 3) from CEQA requirements.

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

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

V. EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Assessors Map
4. Site Plan and View Corridor
5. Site Plan Detail
6. Floor Plan & Elevations
7. Alternatives Analysis (applicants')
8. Geotechnical Analysis
9. Additional Site Photos
10. Appeal (Commissioners Kruer & Reilly)
11. Appeal (Friends of Schooner Gulch)
12. Notice of Final Local Action & County Findings

ATTACHMENT A

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

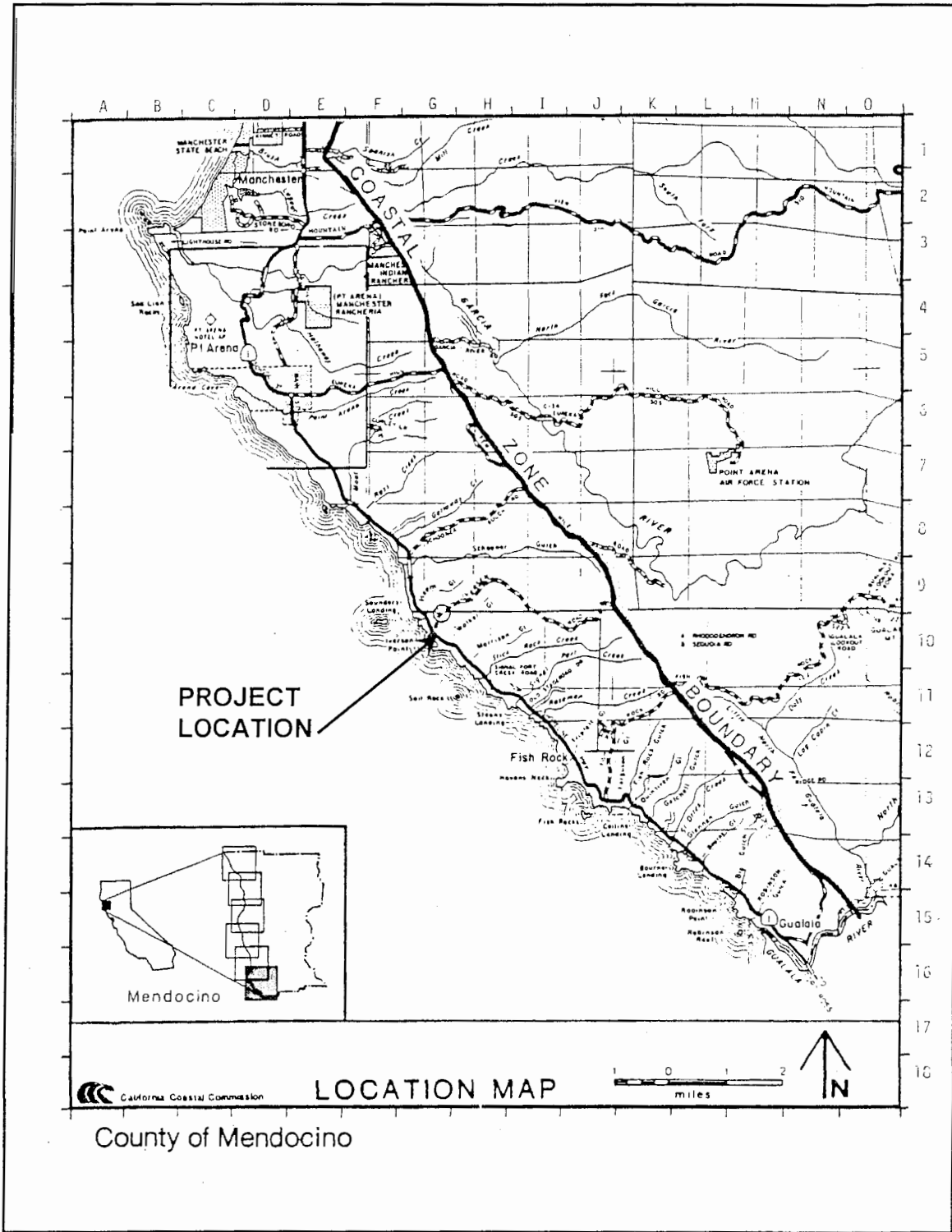
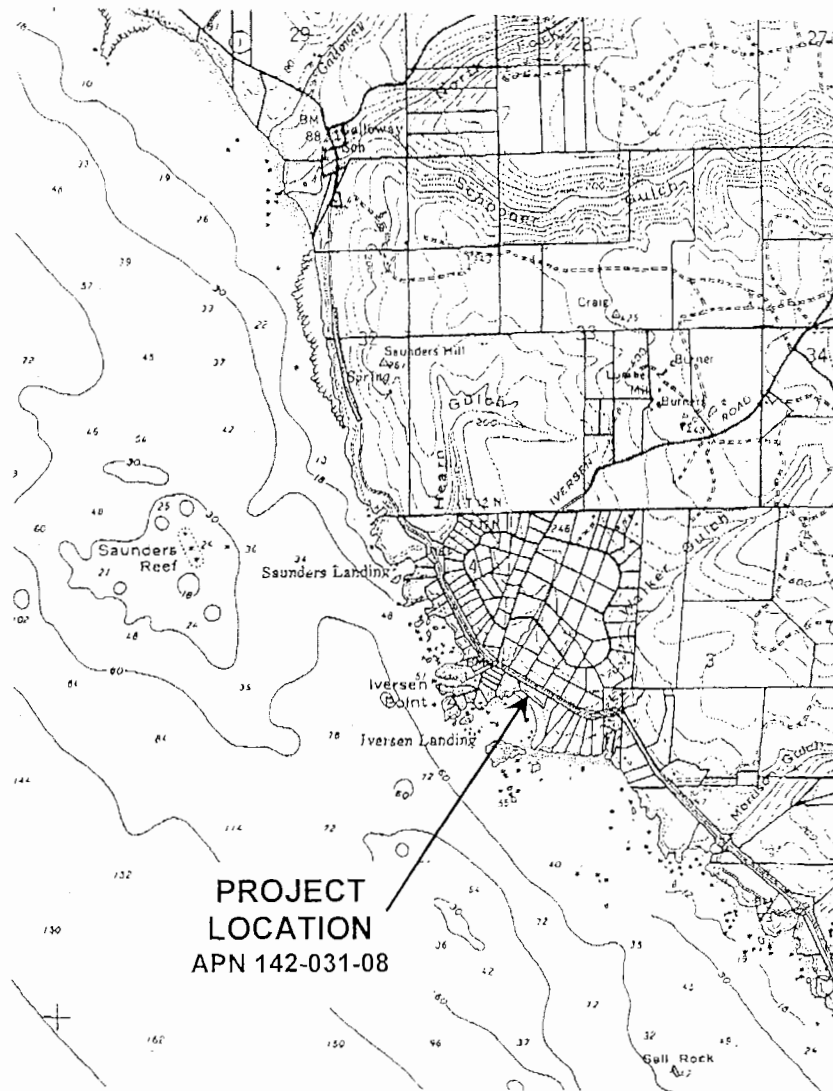


EXHIBIT NO. 1
APPLICATION NO.
A-1-MEN-07-003
NELSON, ROBERT & PAMELA
REGIONAL LOCATION MAP



PROJECT
LOCATION
APN 142-031-08



EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

VICINITY MAP

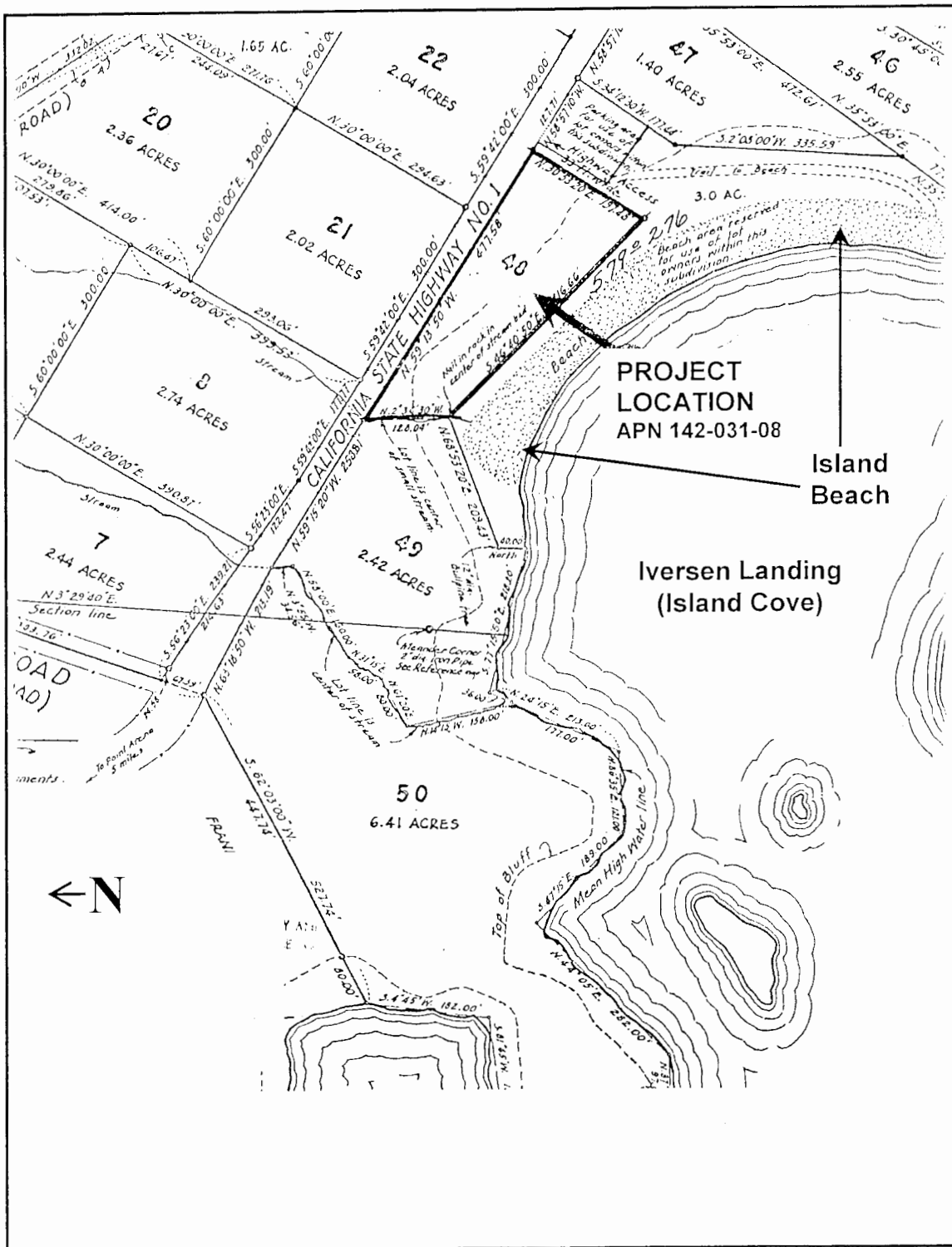


EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-07-003

NELSON, ROBERT & PAMELA

ASSESSORS MAP

SITE PLAN AND VIEW CORRIDOR



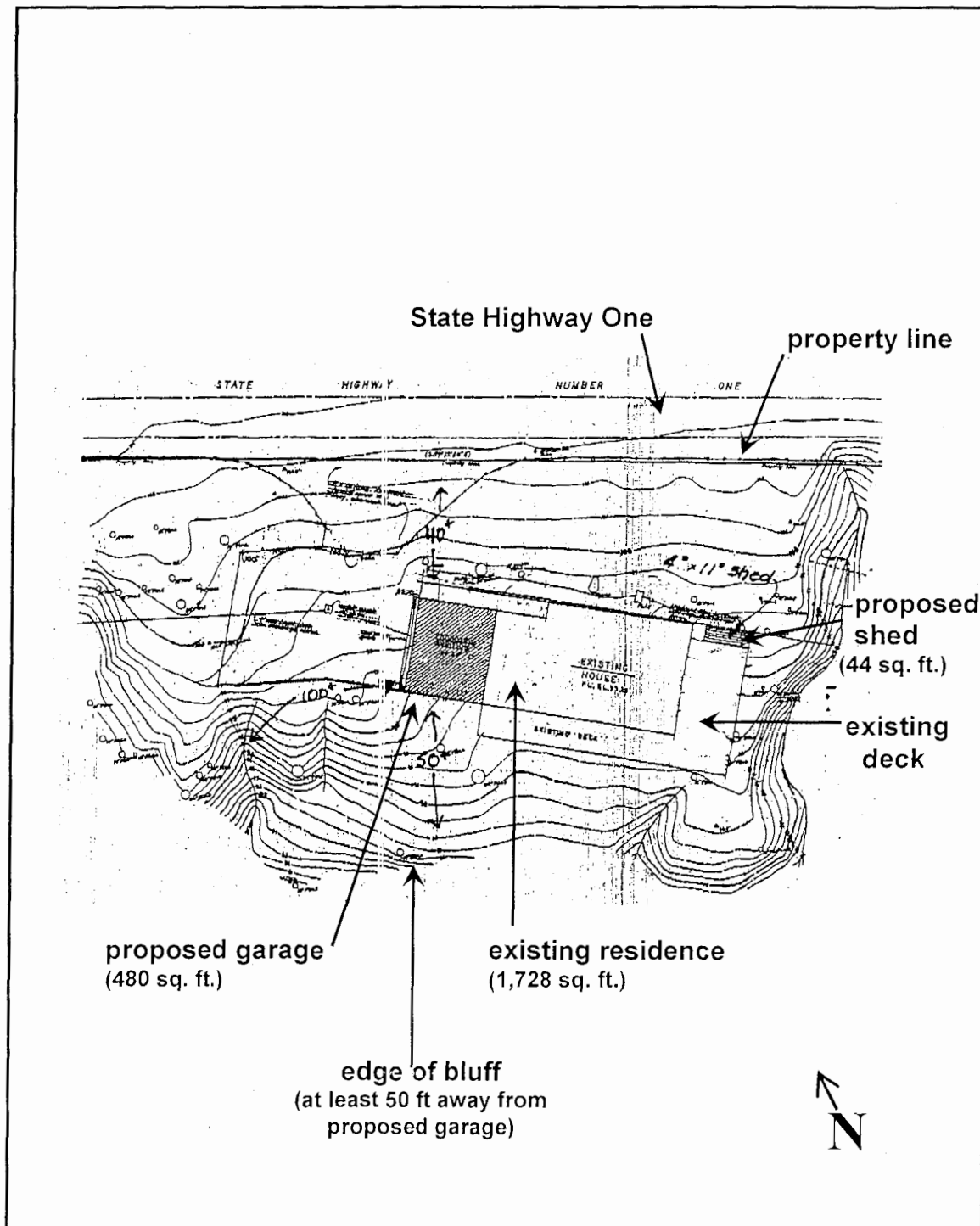


EXHIBIT NO. 5
APPLICATION NO.
A-1-MEN-07-033
NELSON, ROBERT & PAMELA
SITE PLAN DETAIL

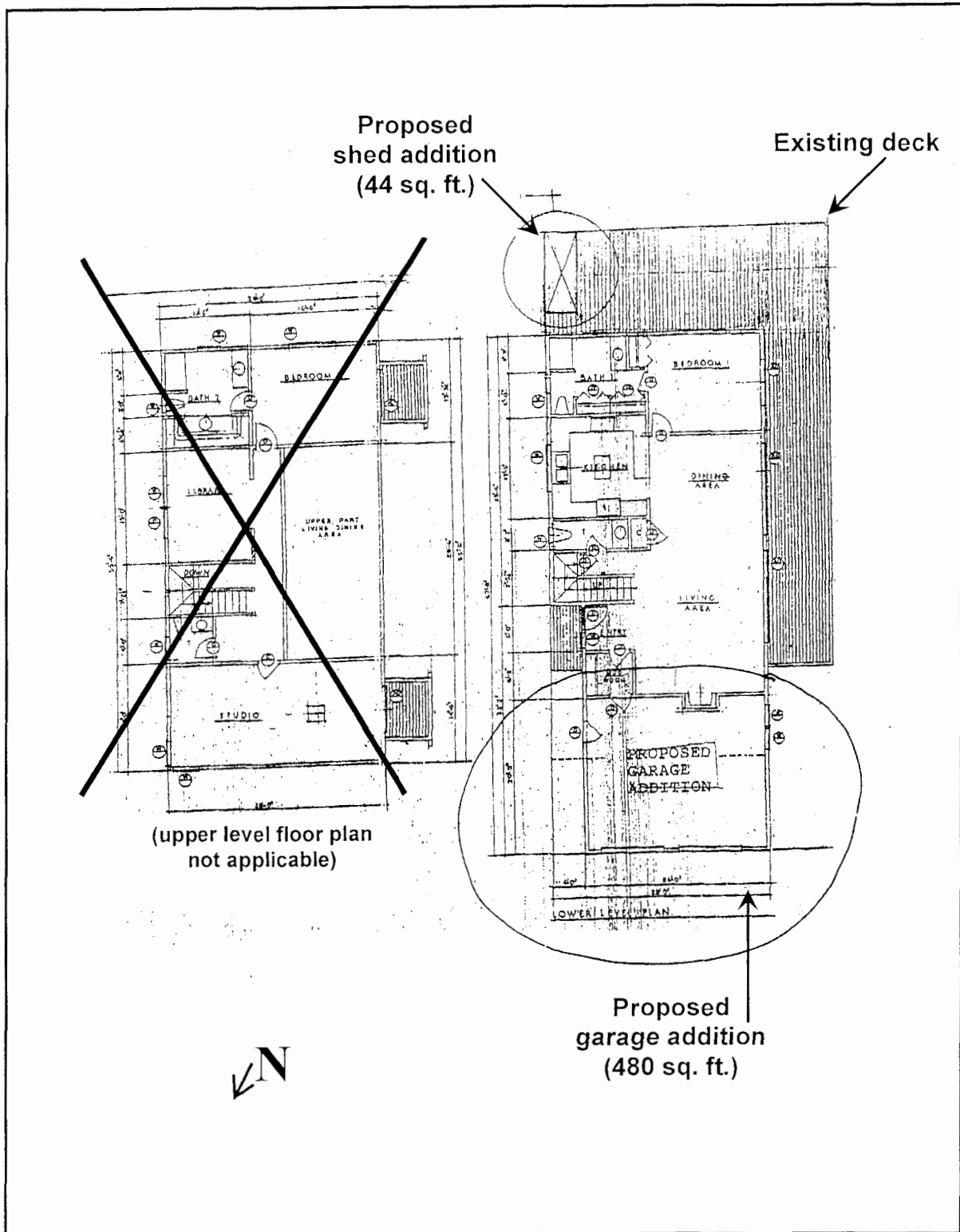


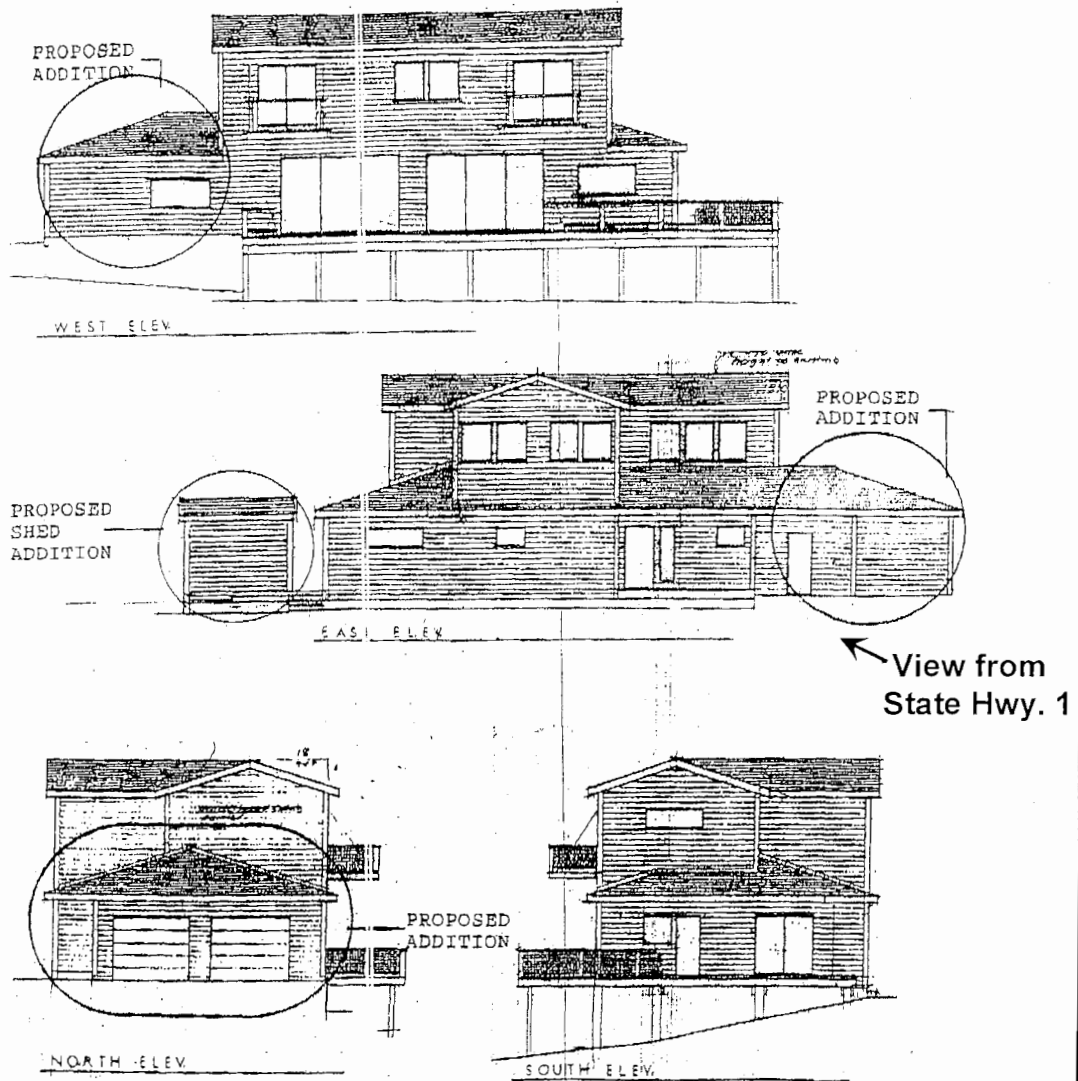
EXHIBIT NO. 6

APPLICATION NO.

A-1-MEN-07-033

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.

2022

ROBERT A. NELSON, M.D.

30150 South Highway One
Gualala, California 95445

RECEIVED

APR 16 2007

CALIFORNIA
COASTAL COMMISSION

April 4, 2007

Melissa B. Kraemer, Coastal Planner
California Coastal Commission
North Coast District Office
710 E Street – Suite 200
Eureka, CA 95501-1865

RE: Appeal No. A-1-MEN-07-003

Dear Ms. Kraemer:

Under separate cover you should receive a geotechnical analysis from Mr. Glomb as requested in your letter dated February 27, 2007.

In regard to "Alternative Analysis" that you requested I am enclosing a map of our property showing the proposed site for the garage, the alternative sites and the state highway right of way. Please note the following:

1. The state highway right of way is 40 feet from the center line. This places the extent of the right of way within approximately four feet of our front walk. There is no possible space for a garage between the highway and the house. I have marked this area in red. The Highway One center line is indicated in yellow.
2. An alternate site "B" (blue pencil) would be more of a problem if the concern is blockage of the view of the ocean and as a separate freestanding structure too close to a ravine.
3. Alternate site "C" (green) is too close to the bluff edge.

Please let me know if this satisfies the requirements for a positive recommendation for our garage.

Sincerely,

Signature on File
Robert A. Nelson

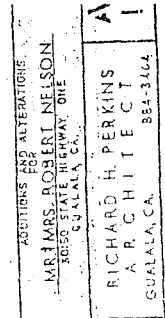
EXHIBIT NO. 7

APPLICATION NO.

A-1-MEN-07-033

NELSON, ROBERT & PAMELA

APPLICANTS' ALTERNATIVE
ANALYSIS (1 of 10)



T AND J
 PROFESSIONAL LAND SURVEYING
 261900 Auburn Road Road
 Auburn, CA 95611
 (916) 537-1916

Map prepared by:
Edward R. Hay
Entered & Map L.P. 6420



NOTES

1. Explanations shown in this paper are based on an arbitrary assumed randomness of molecular motion as a function of membership of the host as shown before.
2. No source of matter in this paper was needed. The source of matter in this paper is the host.
3. The concept of the host in this paper is not meant to be taken literally. The host may be a molecule, a group of molecules, a cell, a colony of cells, a tissue, an organ, a body, a society, a nation, a culture, a civilization, a world, a universe, etc.
4. All studies observed during the phenomenon of measurement, are not intended by the one who made those studies, but intended by the one who reads the studies.
5. Experiments, including statistics, they have not been conducted on this paper.

~~RE~~ EXTENT OF ROW

ROBERT A. NELSON, M.D.

30150 South Highway One
Gualala, California 95445

April 30, 2007

Melissa Kraemer, Coastal Planner
California Coastal Commission
North District Office
P.O. Box 4908
Eureka, CA 95502-4908

RECEIVED

MAY 08 2007

CALIFORNIA
COASTAL COMMISSION

RE: Appeal No. A-1-MEN-07-003

Dear Ms. Kraemer



In answer to your concerns of an "alternative analysis" I am submitting recent photos that also show the effect of an alternate siting for the proposed garage as a freestanding structure. A topo map is also included. As you can see, such location may block any view that is presently available as opposed to the minimal effect of our requested site.

The shed that is presently on the deck does not block any views. As documented in the enclosed photos the natural vegetation (shore pine and wax myrtle) blocks the view of the shed and the ocean from northbound traffic and the berm and vegetation (requested by the original appellant to "shield" the view of the house from the highway) blocks the view of the shed otherwise. The shed is necessary to protect gardening implements and other materials that would be exposed to the coastal winds and weather. I also wish to point out that it is not physically possible to turn one's head ninety degrees to obtain views. If absolutely necessary the shed could be moved but at present does not constitute a problem in regard to "visual resource protection".

Regarding the "no project" alternative, I must say that this is the only home along the highway that does not have a garage. Whether the proposed garage is approved or not there will still be vehicles parked in the same site as the proposed garage. My vehicles are exposed to the salt, moisture, winds and other weather related elements. Such exposure to the elements, when protection is possible, seems unfair. In addition, I am a consultant for Redwood Coast Medical Services and need to have reliable transportation when called to see a patient at the clinic in Gualala. Requests for my services there occur frequently.

I hope that this satisfies your concerns.

Sincerely,

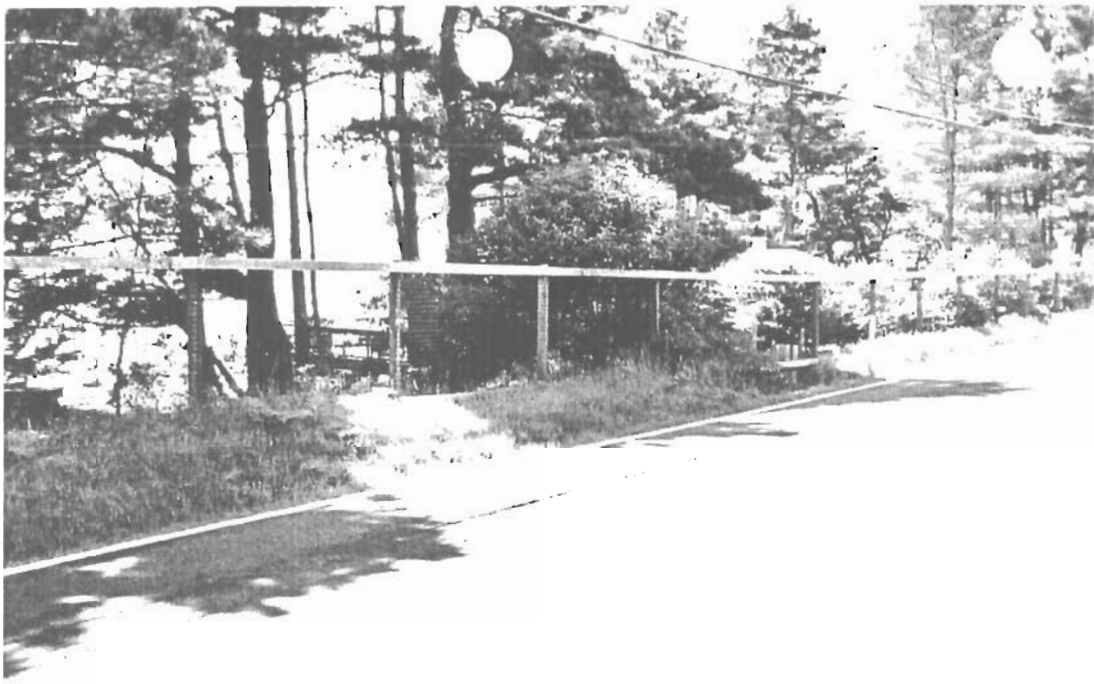
 Signature on File 

Robert A. Nelson MD

Enclosures

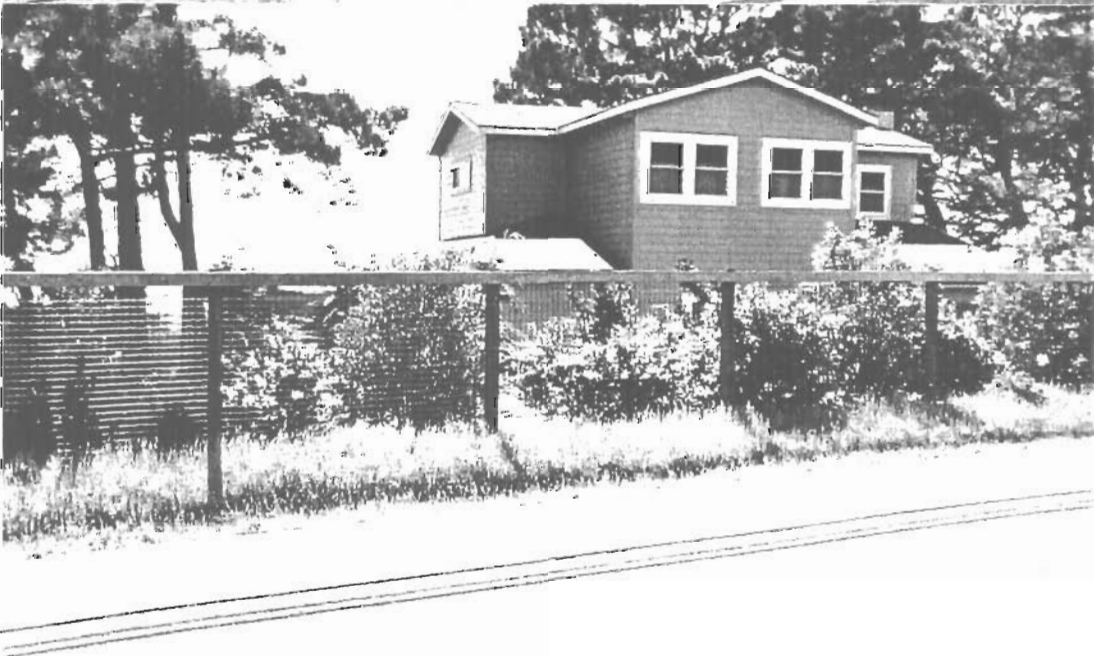
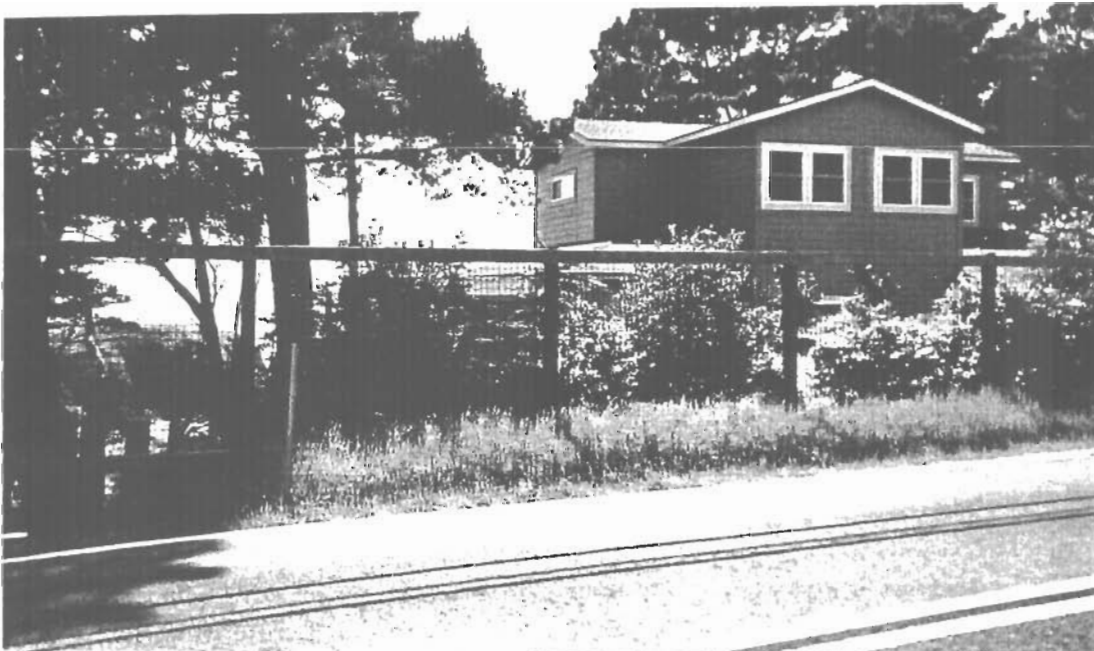
Cc: Richard Perkins

3910

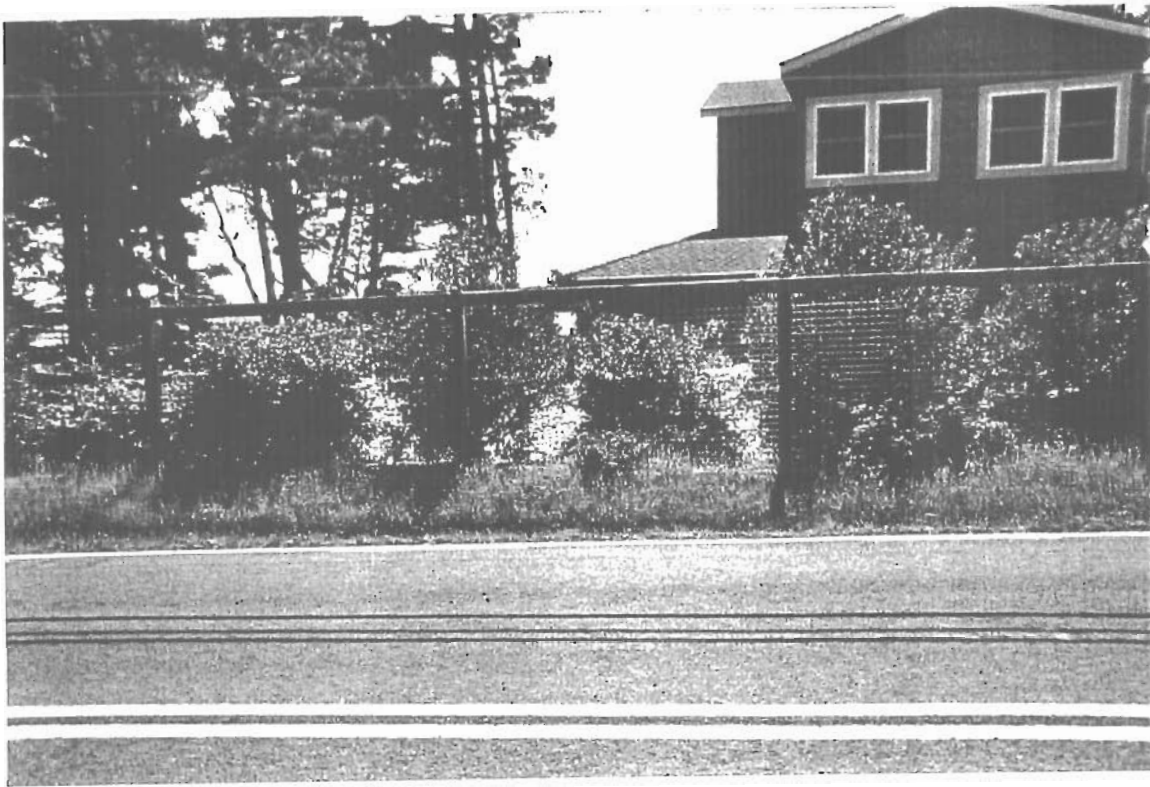


"View" of
shed when
driving north
on Highway One

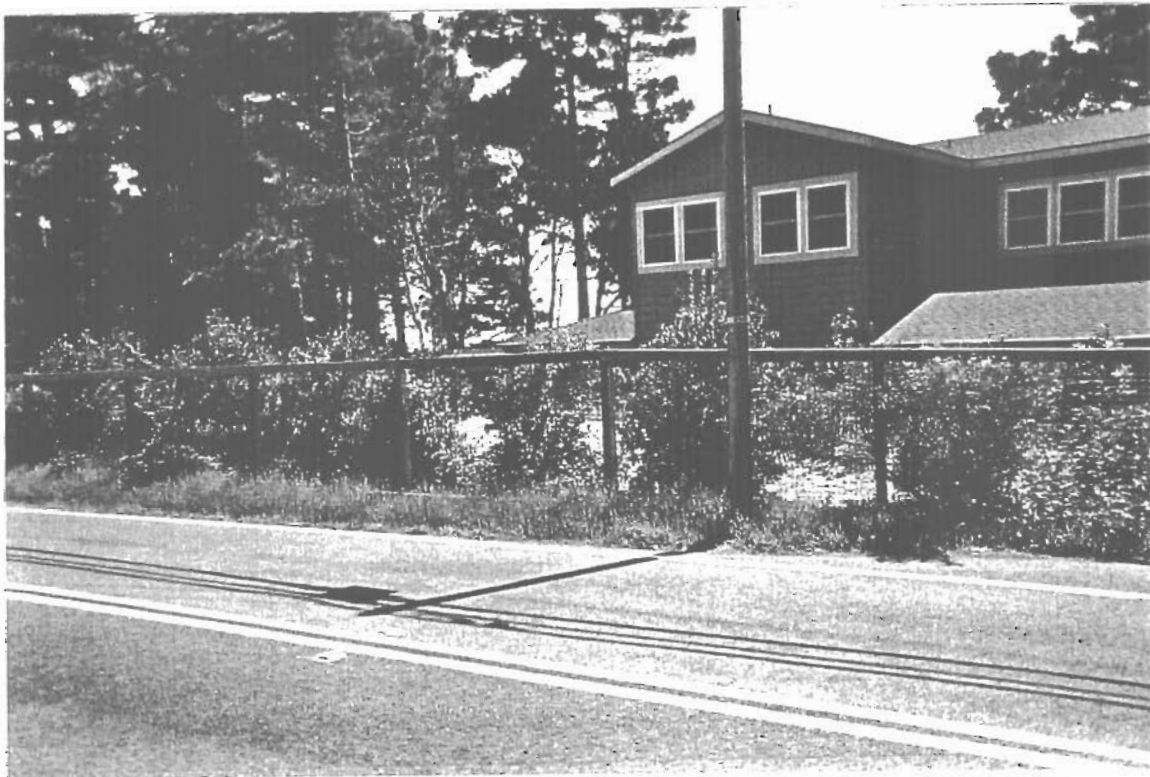
April, 2007



4 of 10



"View"
of
shed
from
Hwy One
April 2007

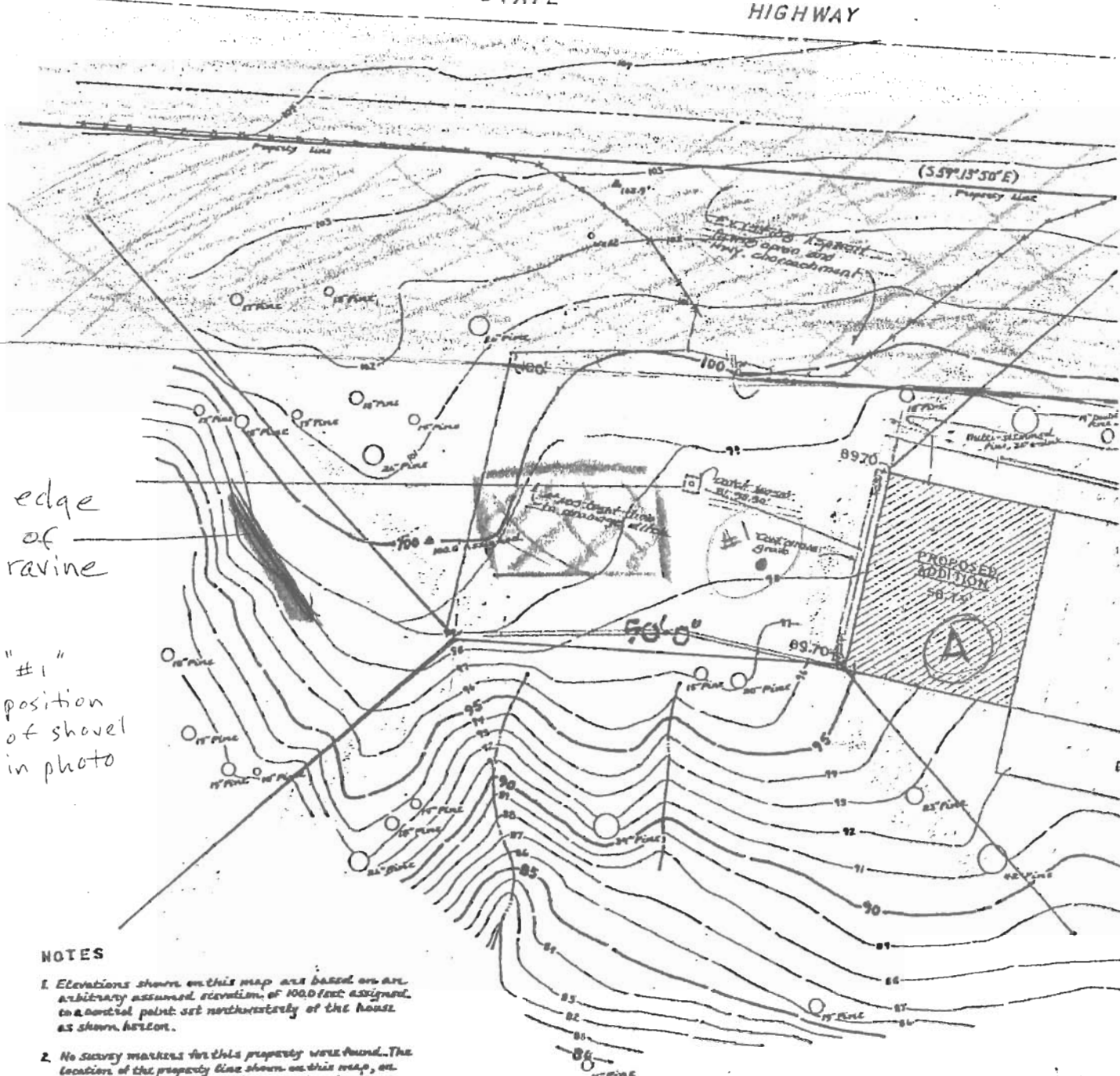


5910

RIGHT OF WAY

STATE

HIGHWAY



edge
of
ravine

"#1"
position
of shovel
in photo

NOTES

1. Elevations shown on this map are based on an arbitrary assumed elevation of 100.0 feet assigned to a control point set northwesterly of the house as shown hereon.
2. No survey markers for this property were found. The location of the property line shown on this map, on the Southwest side of the highway, is based on measurements to iron pipe survey markers marking the Southwest and Northeast corners of lot 2E of the Island Cove Estates Subdivision per M.C.S., Div. I, Pg. 106, M.C.R.
3. All utilities observed during the performance of measurements on this property are shown hereon. Other features, not detected by the crew, may exist.
4. Easements, building setbacks or other restrictions may affect this property. They have not been addressed on this map.



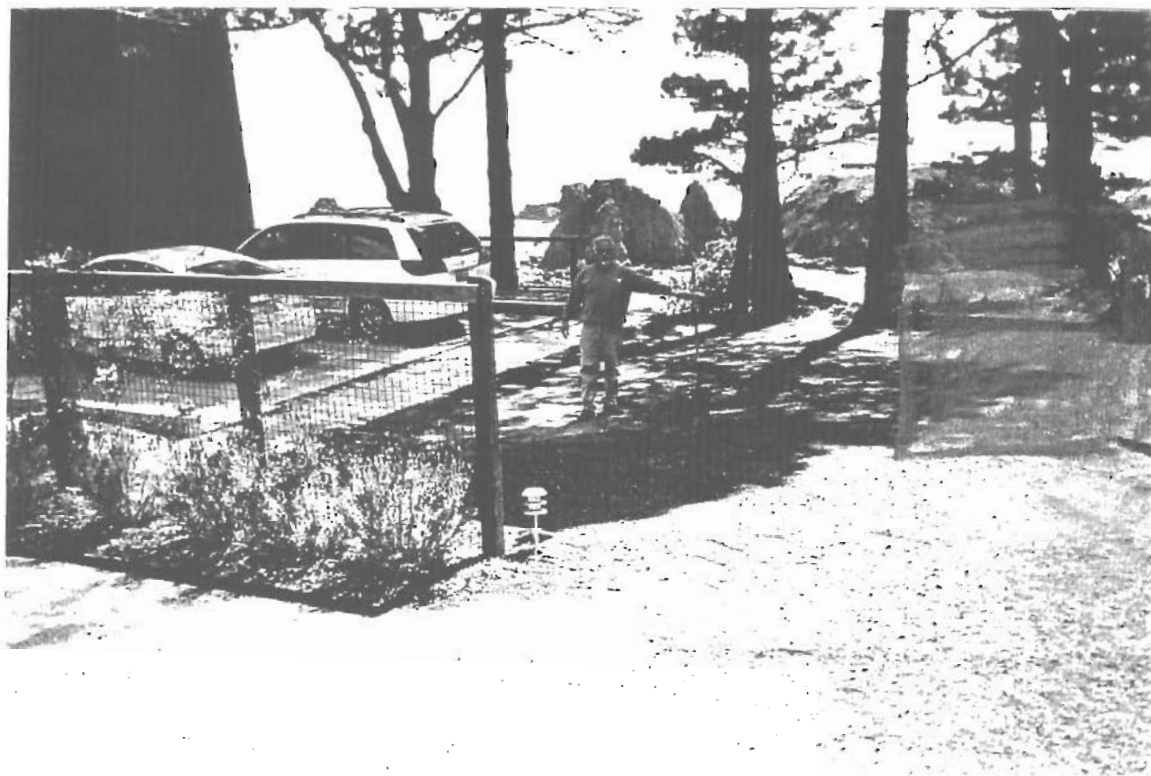
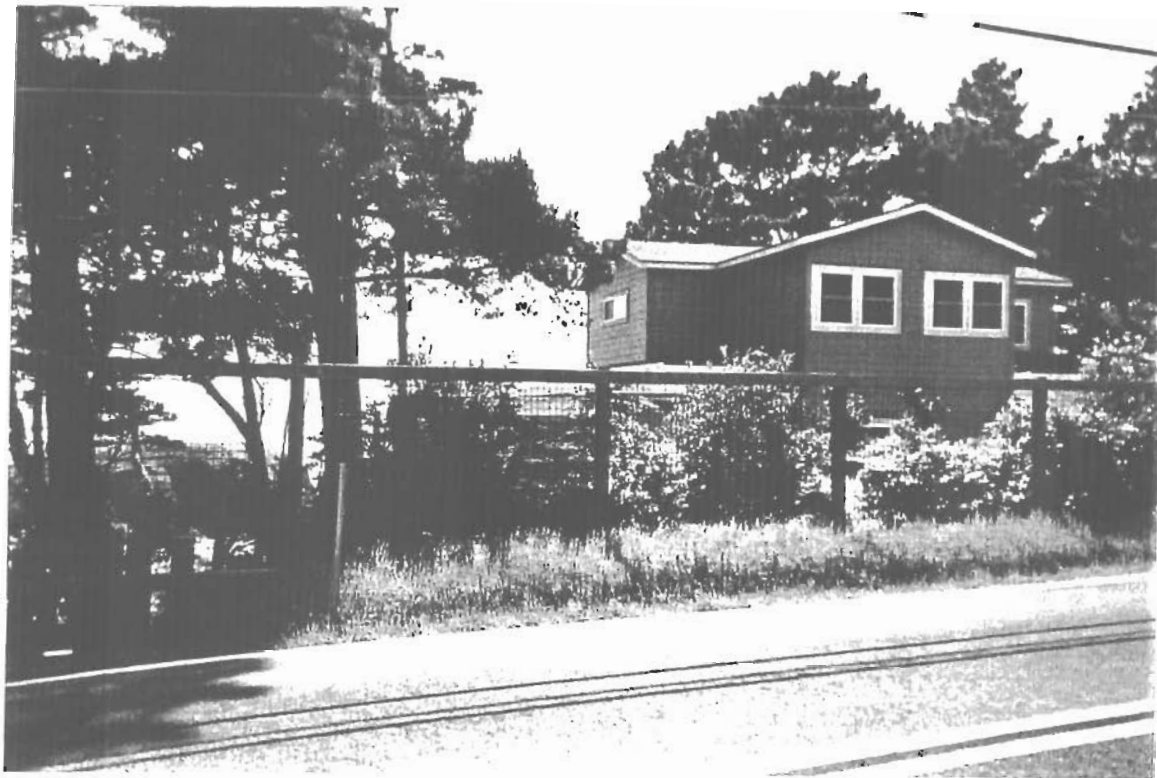
"site
B"



Map prepared by:
Edward R. Way L.S. 6

#1 - location of shovel in photo

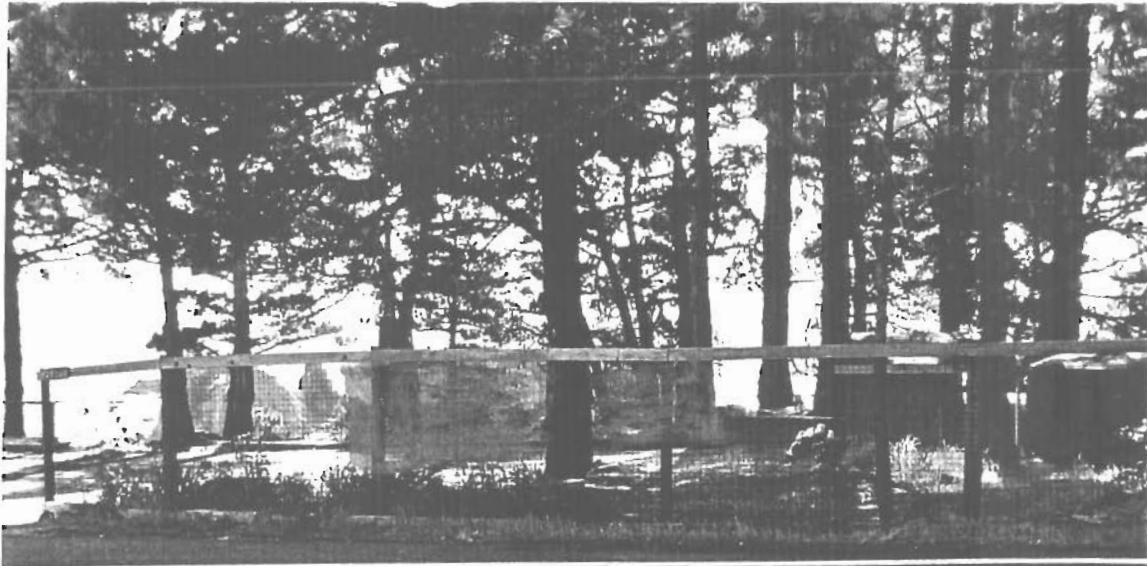
6 of 10



alternative
siting

Shovel
handle
50' from
ravine edge
to north

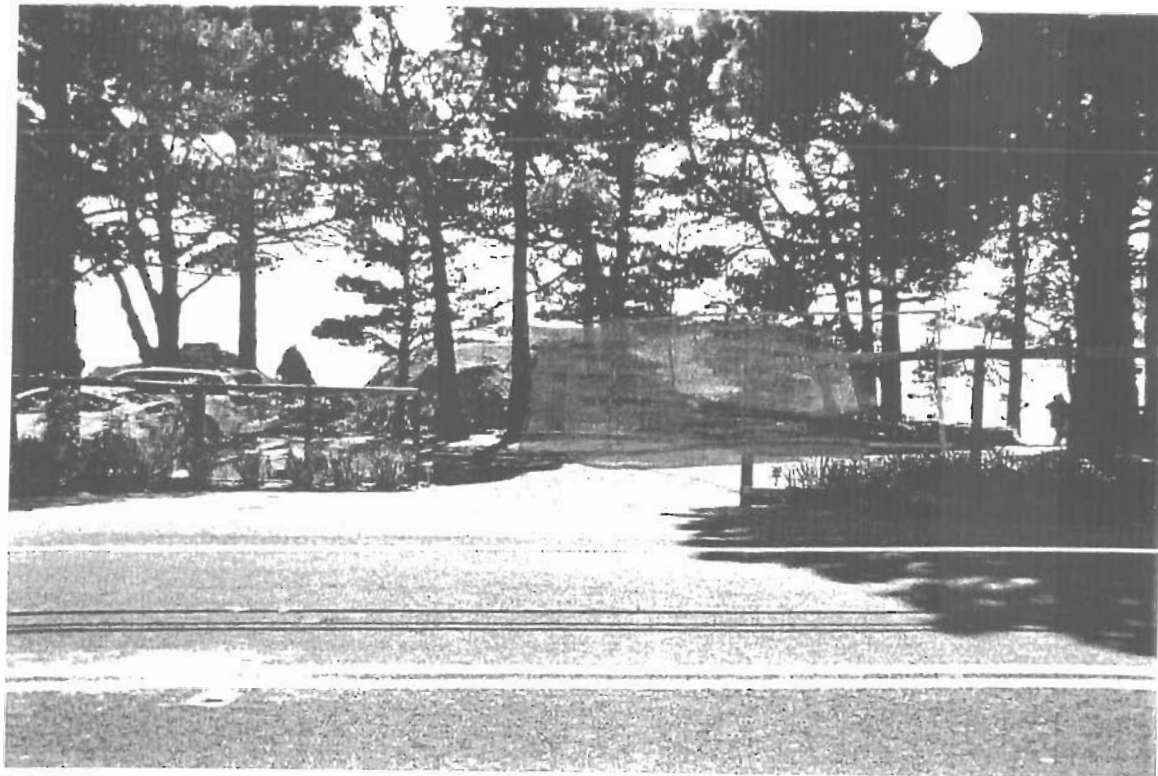
7910



Alternative
Site "B"



8.9.10



Alternate
Site
"B"



9 of 10

10 of 10



This photo demonstrates the area that has been cleared to open the view (removal of wax myrtle & pine branches). Garage, at this site would block view (Site "B")

Jim Glomb

Geotechnical and Environmental Consulting, Inc.

152 Weeks Way, Sebastopol, CA 95472 • Phone 707/237-2703, Fax 707/237-2659

April 3, 2007
Project 685

Appeal #

A-1-MEN-07-003

Robert and Pam Nelson
30150 State Highway One
Anchor Bay, CA 95445
GUALACIA

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APR 18 2007

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-07-033

NELSON, ROBERT & PAMELA

GEOTECHNICAL ANALYSIS
(1 of 8)

Re: **Bluff Retreat Evaluation**
Garage Addition to Nelson Residence
30150 State Highway One
Anchor Bay, CA

Dear Mr. & Mrs. Nelson:

At the request of the Coastal Commission and upon review of comments by Dr. Mark Johnsson, the Commission's staff geologist, we are providing the following evaluation of the bluff retreat rate at the subject property. We revisited the site on 3/22/07, reanalyzed air photos and estimated the actual retreat rate for the bluff. In addition, we have provided additional drainage recommendations. References reviewed are listed in the attachments.

We reanalyzed stereo air photos from 1963 and a 1960 vintage bluff top map, attached as Plate 5. The photos show bluff conditions similar to those we found at our recent site visit in February. Photo analysis showed approximately 19 feet of retreat when the distance from the centerline of the highway to the top of bluff were compared. The bedrock exposed in the bluff consists of hard sandstone with an average in to bluff dip slope of 62 degrees. The attached photo, Plate 1 illustrates this condition. The bedrock is also blocky fractured with an average fracture spacing of ½ foot to several feet. Fractures are irregular and discontinuous and have a predominant out of slope attitude of between 41 and 45 degrees. The retreat of the bluff is chiefly controlled by rock block sliding along irregular fractures. This condition is shown on the attached photo, Plate 2. Several large rock blocks that had apparently fallen from the bluff were observed on the beach. The upper 15 feet of the bluff exposes sandy terrace deposits that are unconsolidated and prone to erosion. The primary mode of failure of the terrace portion of the bluff is judged to be from erosion.

Of particular concern is an open ground crack located in the terrace mantle 10 back from the top of bluff adjacent to the addition. We judge that the crack represents the head of an incipient landslide that has formed from seaward slipping of underlying rock blocks along fractures. We consider the crack to represent the current landward extent of bluff retreat. Based on comparison of photos taken during our 2002 site work with our recent site visit, no noticeable retreat has occurred over the past 5 years.

A quantitative slope stability analyses was not performed on the bluff because of the well demonstrated low to average retreat rate over the past 44 years; no appreciable retreat occurring in the past 5 years; the irregular, discontinuous character of the fractures; and the geologically favorable well developed in to slope bedding condition. Based on air photo analysis, a bluff retreat rate of 0.44 feet/year was estimated. Bluff retreat rates of 0.8 to 1 foot/year were estimated by this author and others, listed in the attached references, on nearby bluff top properties.

The bluff retreat rate of 0.44 feet/year projected over an expected structure life of 75 years would result in 33 feet of total retreat. Accordingly, a building setback line measured from the terrace ground crack is shown on the Site Plan, Plate 3, attached.

In order to retard erosion of the terrace bluff and to limit the drainage entering the terrace ground crack, surface drainage should be improved. Currently, a drop inlet exists near the west edge of the driveway next to the area of the proposed garage. The drainage flows by gravity from the drop inlet to a subsurface solid pipe that outlets in the drainage gulley about 100 feet to the north. The ground slopes away from the inlet on the downslope side, allowing overflow to drain over the slope. See photo, Plate 4 attached. We therefore recommend that the driveway ground surface be raised in this area to an elevation, at least 6 inches above the inlet to prevent drainage from overflowing down the slope.

We trust this provides the geotechnical information requested. If you have questions or wish to discuss this further, please call.

Yours very truly,
JIM GLOMB CONSULTING, INC.

Jim Glomb
Engineering Geologist, C.E.G. 1154

Attachments: References
Photos
Site Plan
Vintage Map

298

REFERENCES

1. Brunsing Associates, 2/27/03, Geotechnical Investigation, Westport Stairway and Boat Ramp, Westport, California.
2. Coastal Commission letter, dated 2/27/07, from Melissa B. Kraemer.
3. Coastal Commission Guidelines For Slope Stability Analyses and for Engineering Geologic Reports.
4. Geotronics Air Photos, 6/30/63, Men 6-88, 89
5. Glomb, Jim, 6/5/92, Engineering Geologic Investigation, Lot 27, Robinson Reef Drive, Gualala, California, Project 7.
6. Glomb, Jim, 11/26/96, Engineering Geologic Evaluation, 38420 Robinson Reef Drive, Gualala, California, Project 283.
7. Glomb, Jim, 8/14/2004, Engineering Geologic Evaluation Report, 38280 South Highway One, Gualala, California, Project 886
8. Johnsson, Dr. Mark, Establishing Development Setbacks From Coastal Bluffs.
9. Williams, J.W., 1977, Coast Zone Geology near Gualala, California, in *California Geology*, February 1977.

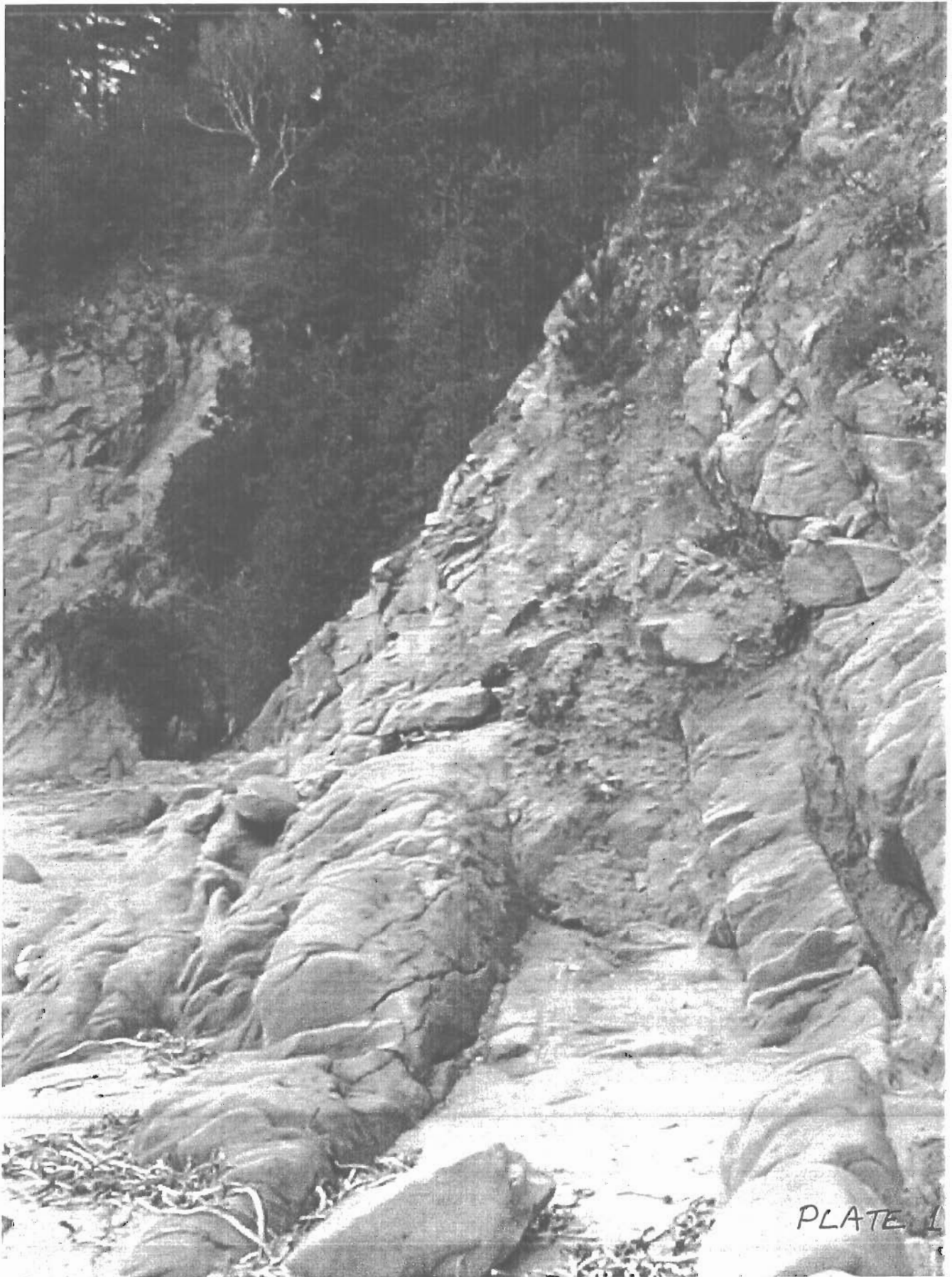
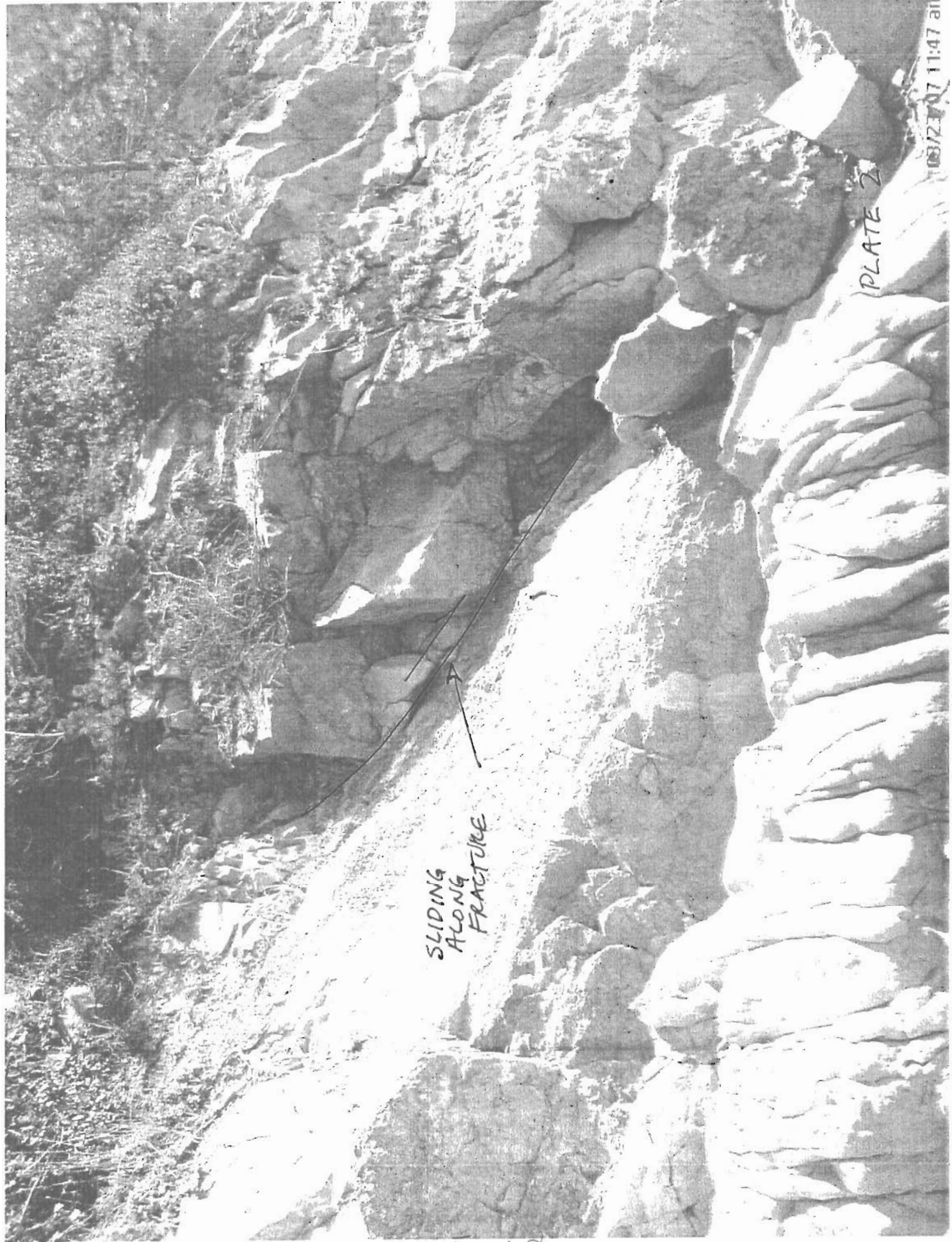


PLATE 1



SLIDING
ALONG
FRACTURE

PLATE 2

08/23/07 11:47 am

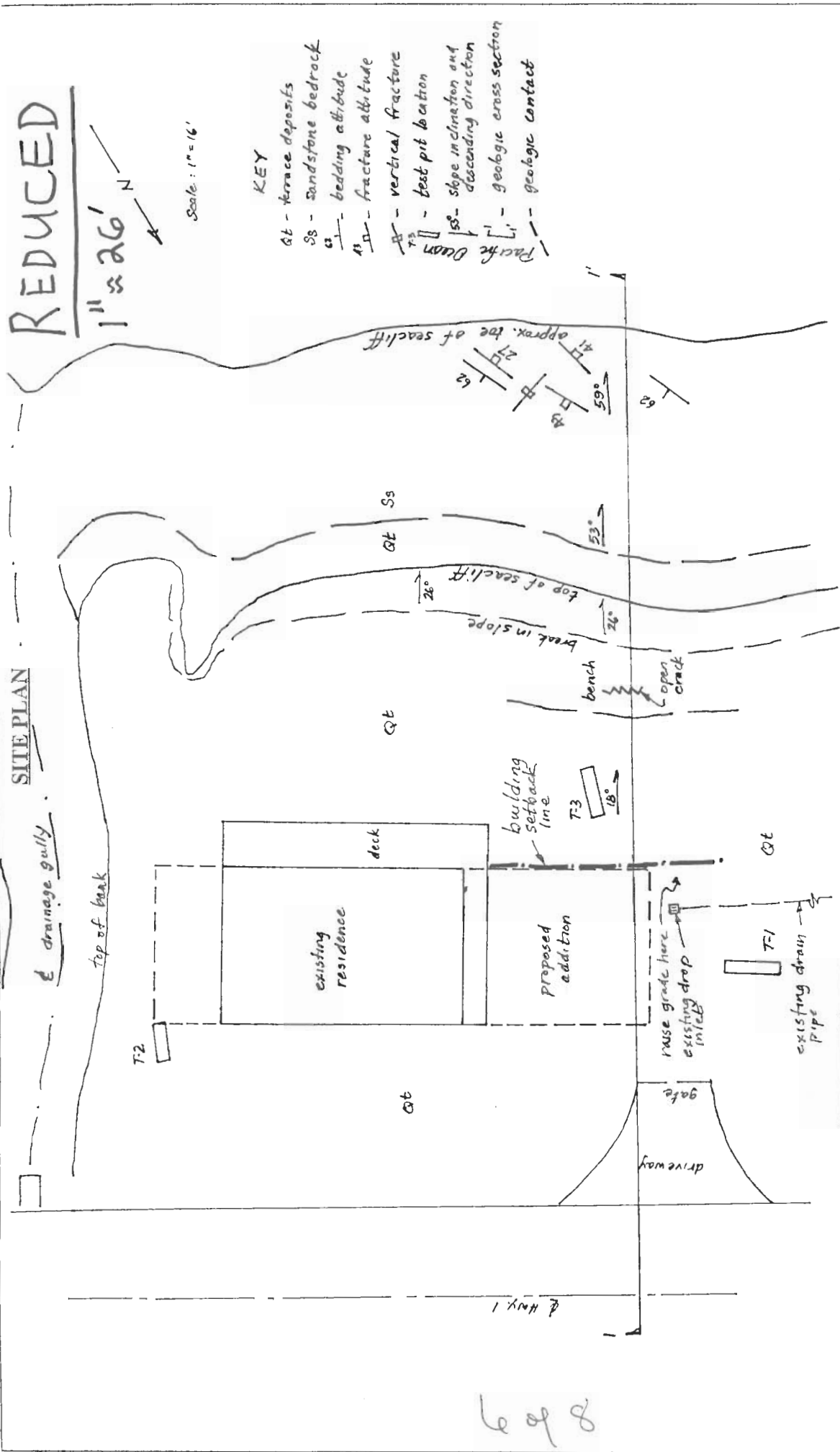
REDUCED

1" = 26'

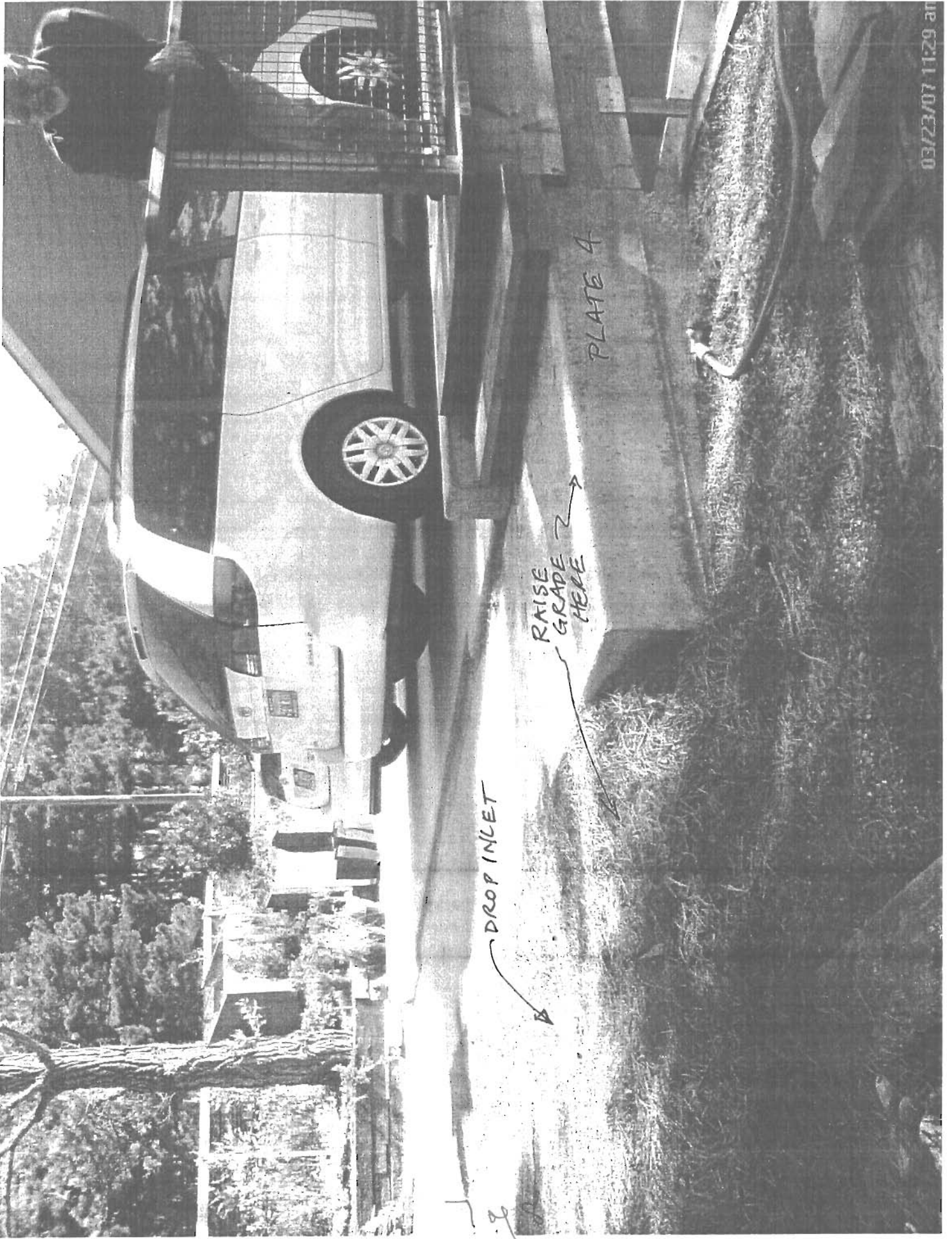
Scale: 1" = 16'

KEY

- qt - terrace deposits
- ss - sandstone bedrock
- as - bedding attitude
- fr - fracture attitude
- vf - vertical fracture
- tp - test pit location
- is - slope inclination and descending direction
- gc - geologic cross section
- gc - geologic contact



6 of 8





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

EXHIBIT NO. 9

APPLICATION NO.

A-1-MEN-07-033

NELSON, ROBERT & PAMELA

ADDITIONAL SITE PHOTOS
(1 of 6)



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.

296



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.

396



View looking **northwest** from **State Highway One** through the wooded view corridor. Date of photo: **5/16/07**.

496



View looking southwest from State Highway One through the driveway apron to the ocean and sea stacks along the coast. Date of photo: 5/16/07.

5 of 6



View looking south from State Highway One towards the garage site to the ocean and sea stacks along the coast. Date of photo: 5/16/07.

6 of 6

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. 10

APPLICATION NO.

A-1-MEN-07-033

NELSON, ROBERT & PAMELA

APPEAL (COMMISSIONERS
KRUEER & 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

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 information and facts ~~we~~ we are correct to the best of my/our knowledge.

Signed: (Signature on File)
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)

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.)

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SECTION V. Certification

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

Signed: Signature on File
Appellant or Agent 0

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: _____

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.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95601

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) *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. 11

APPLICATION NO.

A-1-MEN-07-033

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.

FRIENDS of Schooner Gulch
RA Signature on File *Lang Sec'y*
Signature of Agent 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

Executive Committee:

Charles Peterson

Peter Reimuller

Peter Dobbin

September 2, 2006

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

From the Coastal Ridge to the Pacific Ocean, since 1986.

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

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AUG 23 2004

CALIFORNIA
COASTAL COMMISSIONAPPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTPlease 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 Appealed

1. Name of local/port government: County of Mendocino
2. Brief description of development being appealed: Addition to single family dwelling in Highway Scenic Area
3. 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: A-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 _____



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

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
pbs@co.mendocino.ca.us
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. 12

APPLICATION NO.

A-1-MEN-07-033

NELSON, ROBERT & PAMELA

NOTICE OF FINAL LOCAL
ACTION (1 of 12)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDPM 173-2003 (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

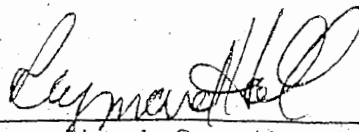
☐ Denied

☐ Continued

CONDITIONS:

☒ Per staff report

☐ Modifications and/or additions



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 Blayne 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.

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STANDARD COASTAL DEVELOPMENT PERMIT

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December 21, 2006
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- 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

Paula Deeter
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.)