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49 th Day:	Waived
Staff:	Tiffany S. Tauber
Staff Report:	April 25, 2008
Hearing Date:	May 9, 2008
Commission Action:	

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE & DE NOVO**

APPEAL NO.:	A-1-MEN-08-009
APPLICANT:	Harvey Hoechstetter & Hilary (Lari) Shea
AGENT:	Norman deVall
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	On a ridgetop parcel located east of Highway One approximately 1,000 feet north of its intersection with the north end of the Ten Mile River Bridge, at 32900 North Highway, Mendocino County (APNs 015-140-62 and 015-130-57).
PROJECT DESCRIPTION:	(1) Construct a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) install a septic system, wind-powered generator, solar panels, and propane tank, and (3) connect to an existing water supply.

APPELLANTS: (1) Commissioners Mike Reilly and Mary Shallenberger, (2) Rixanne Wehren on behalf of Sierra Club, Mendocino Group

SUBSTANTIVE FILE 1) Mendocino County file CDP No. 29-2007; and
DOCUMENTS: 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATIONS:

1. Summary of Staff Recommendation: Substantial Issue

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

The development, as approved by the County, consists of (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, wind-powered generator, solar panels, and propane tank, and (3) connection to an existing water system.

The project site is an approximately 300-acre parcel located on a ridge approximately 1,500 feet east of Highway One and approximately 1,000 feet north of the intersection of Highway One and the north end of the Ten Mile River Bridge. The property is planned and zoned Rangeland (RL) and is located in a designated "highly scenic area." The surrounding area is largely characterized by undeveloped, open expanses of steep, grassy ridgelines on the east side of Highway One and coastal terraces on the west side of the highway that afford spectacular, unobstructed views to and along the ocean.

The Commission received two appeals of the County's approval of the subject development. The primary issue raised by the appellants is an allegation that the County's approval of the project is inconsistent with requirements of the Mendocino County LCP relating to the protection of visual resources. First, the appellants contend that the development as approved by the County would not protect views of the scenic area and would not be compatible with and subordinate to the character of the surrounding area inconsistent with LUP Policy 3.5-1 and 3.5-3 and Zoning Code Sections 20.504.010 and 20.504.015. Second, Appellant B contends that the project would be inconsistent with LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) because the approved house would be sited on top of the ridge and would be visible to the public and the appellant believes there are alternative development sites that would not create such impacts.

The contentions raised by Appellant A regarding visual impacts center around the portion of the County's approval involving installation of a wind-generator facility as part of the approved development. The County's findings for approval provide no details about the wind-powered generator facility and do not discuss how the facility is consistent with the visual resource policies of the certified LCP. Appellant A asserts that because details regarding the siting and design of the approved wind generator facility are not specified in the County's approval, virtually any design of wind tower(s) and other generating facilities could be built at any location on the parcel under the authorization granted by the County, thus raising an issue as to whether the approved wind energy facility would be consistent with the visual resource protection policies of the certified LCP.

Appellant B contends that the project approved by the County would be visible from other public locations in addition to Highway One and that the County failed to consider alternatives that would locate the development below the ridgeline and outside the viewshed of public vantage points. Appellant B also contends that the project would result in glare from the south-facing glass wall of the house and increased night lighting from car headlights traversing up the hillside to the top of the ridge such that the development would not protect views and would not be compatible with and subordinate to the character of the surrounding area.

LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on ridges be minimized by prohibiting development that projects above the ridgeline unless no alternative site is available below the ridgeline, in which case the visual impacts shall be reduced by utilizing existing vegetation, optimizing the structural orientation, landscaping, limiting the development to one story, and protecting existing tree masses which define the ridgeline silhouette.

The County's findings do not include a thorough analysis of alternative locations, but suggest that there are less visible locations to site the development. The County did not address potential alternative locations that would be less visible and that would site the development below the ridgeline as required by LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8). Furthermore, as noted above, the County's findings for approval provide no details about the approved wind-powered generator and do not discuss how the facility is consistent with the visual resource policies of the certified LCP, including policies requiring that new development in highly scenic areas be compatible with and subordinate to the character of the surrounding area. In the absence of any clarifying details, the authorization to install "a wind powered generator" would allow the applicants to develop any manner and number of wind turbines and towers, in any location on the site, designed in any fashion, using any kind of materials of any color, whether reflective and visually obtrusive or not. In addition, a wind energy facility, be it a turbine tower or generator unit, constructed in a prominent location on the site rather than in an area that is screened by topographical features and trees would not be subordinate to the character of its setting and minimize visual impacts.

Appellant A raises a second contention that the portion of the County's approval involving installation of a wind-generator facility as part of the approved development is inconsistent with LUP Policy 3.9-1 requiring that all development be regulated to prevent any significant adverse effects, either individually or cumulatively on coastal resources, including environmentally sensitive habitat areas. It is widely recognized that alternative energy, such as wind-generated energy as the applicant proposes, is considered to have certain environmental advantages over traditional power sources in that it eliminates pollution and hazardous air emissions associated with burning fuel. However, wind energy facilities can adversely impact wildlife, especially birds and bats, and their habitats (United States Fish and Wildlife Service, 2003).

A biological survey was not performed for purposes of determining whether the project site contains habitat for any rare or endangered bird or bat species. However, the site does include significant stands of trees, which commonly support bird and bat populations and the coast serves as a corridor for migratory birds. As noted above, the County's findings for approval fail to specify what particular design of wind generating facility the applicant proposed and in what location, and thus, whether the siting and design would minimize impacts on bird or bat species.

For all of the above reasons, staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the project as approved by the County with the certified LCP policies with respect to the contentions raised concerning the protection of visual resources and environmentally sensitive habitat.

The motion to adopt the staff recommendation of Substantial Issue is found on page 8.

2. Summary of Staff Recommendation *De Novo*: Approval with Conditions

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that as conditioned, the development as amended for purposes of the Commission's de novo hearing would be consistent with the policies and standards of the Mendocino County LCP pertaining to development in highly scenic areas and on ridges, and would avoid impacts to environmentally sensitive habitat.

For the purposes of *de novo* review by the Commission, the applicants submitted an amended project description that (1) eliminates the wind-powered generator from the project, (2) clarifies that the proposed building materials include dark stone siding and dark mottled asphalt roof shingles, and (3) proposes a landscaping plan that involves planting trees to screen the residence. The removal of any wind-powered generator from the proposed project eliminates the potential for the development to adversely impact environmentally sensitive habitat. Thus, the primary issue raised by the proposed project is the project's consistency with the visual resource protection policies of the LCP.

The project site is an approximately 300-acre parcel located on a ridge approximately 1,500 feet east of Highway One and approximately 1,000 feet north of the intersection of Highway One and the north end of the Ten Mile River Bridge. The property is planned and zoned Rangeland (RL) and is located in a designated “highly scenic area.” The surrounding area is largely characterized by undeveloped, open expanses of steep, grassy ridgelines on the east side of Highway One and coastal terraces on the west side of the highway that afford spectacular, unobstructed views to and along the ocean.

As revised for purposes of de novo review, the proposed project involves (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, solar panels, and propane tank, and (3) connection to an existing water system. The proposed residence and garage would be comprised of dark, stone siding and dark asphalt shingled roof materials. The site would be accessed via an existing gravel driveway and no grading, landform alteration, or tree removal is required.

The applicants also propose a landscaping plan that includes planting approximately 15 trees located to the south and southwest of the proposed residence to screen the development from view from Highway One. The applicants propose that these trees will be maintained and replaced in-kind in the event of die-off. The applicants further propose that no exterior lighting would be installed on the south/southwest side of the residence and all lighting will be down-facing and of low wattage.

The LCP policies and standards governing the protection of visual resources at the site, which is located on a ridge in a designated highly scenic area require conformance with a number of visual criteria, including criteria related to: (1) minimizing the impacts of development on ridges; (2) minimizing landform alteration; (3) utilizing tree planting to screen development; (4) utilizing appropriate building materials, colors, and lighting; (5) protecting views to and along the coast; and (6) ensuring the development is visually compatible with and subordinate to the character of its setting. For the reasons discussed below, the Commission finds that the development as conditioned is consistent with both the LUP policies and zoning standards affecting development within highly scenic areas and the LUP policies and zoning standards affecting development on ridges.

Staff recommends that the Commission find that the proposed development, as conditioned, is consistent with the LCP policies and standards affecting development located on a ridge and within a highly scenic area for several reasons as summarized below.

The applicants installed story poles at the subject site to delineate the perimeter and height of the proposed residence. Based on a site visit to view the story poles, Commission staff determined that no portion of the residence would be silhouetted against the open sky and the structure would not project any higher than existing trees. The proposed residential development would be a maximum of 13.5 feet high and would

be set against a backdrop of dense, mature trees at the top of the ridge. Whether or not the existing trees are considered part of the ridgeline, the proposed residence would project above the top of the topographic ridgeline.

LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that development that projects above the ridgeline be permitted only when no alternative site is available below the ridgeline. The applicants and Commission staff considered several alternative sites that would locate the development below the ridgeline including (1) adjacent to the existing barn, (2) on the hillside below the top of the ridge, (3) on the forested slopes, and (4) at a level site further north beyond the top of the ridge. None of these locations were found to be a feasible less environmentally damaging alternative to the proposed development location on the ridgeline. In summary, the alternative locations would cause the development to (1) be closer to and more visible from Highway One, (2) require significant landform alteration and vegetation removal, (3) be sited in an area that has insufficient soils to support a septic system, and/or (4) be sited in an area with insufficient solar access.

When no alternative site is available, as in this case, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that development be sited and designed to reduce visual impacts by (1) utilizing existing vegetation, (2) optimizing the structural orientation, (3) landscaping, (4) limiting development to a single story above the natural elevation, and (5) protecting existing tree masses which define the ridgeline silhouette.

The existing mature forest vegetation at the top of the ridge is a significant defining element of the ridgeline in this location and provides a screening backdrop to the proposed residence as viewed from northbound Highway One. The proposed project does not involve removal of any trees. Additionally, the applicants propose a landscape plan that includes planting an additional 15 trees spaced in front of the south and southwest portion of the house along the entire length of the structure, thereby further screening the view of the residence along the ridgeline. Furthermore, the proposed residence would be limited to one story above natural elevation and would not exceed 13.5 feet in height.

The proposed residence has been sited on a relatively level terrace at the top of the ridge. Construction of the proposed residence would not involve significant grading or vegetation removal beyond clearing the grassy site. Additionally, the proposed residence would be served by an existing gravel driveway that was a former logging road. No new driveway access or associated grading would be required.

The applicants propose to use dark, earthtone colors and materials for the exterior of the residence and garage including dark stone siding, dark brown trim, and dark black/brown mottled asphalt shingle roofing. The proposed colors and materials would blend in hue and brightness with the dark brown and green colors of the forested backdrop. The applicants propose to install double glazed non-reflective glass windows with overhanging eaves. Overhangs on the south side of the house will prevent direct sunlight

from hitting the glass during the months of the year at which the sun is high, thereby minimizing potential glare.

The subject parcel is geographically situated such that the proposed residential development would not significantly affect views to the ocean from public areas including highways, roads, coastal trails, beaches, or coastal streams. As described above, the subject site is located on the east side of Highway One and therefore, the proposed development would not obstruct any views to or along the coast between the highway and the ocean.

The subject site is designated highly scenic and as described in LUP Policy 4.2 cited above, is part of a significant scenic coastal area of Mendocino County. The applicants installed story poles at the site to depict the dimensions of the proposed residential development. Commission staff found that when viewed from Highway One near the Ten Mile River Bridge, the story poles were difficult, if not impossible, to discern without the use of binoculars. Thus, while the residence may be minimally visible from locations along northbound Highway One, and possibly from portions of the beach and dunes located over a mile to the west of the site, the impact would be less than significant.

For all of the reasons discussed above, the proposed development would be visually compatible with and subordinate to the character of its setting, as required by LCP policies regarding new development located in highly scenic areas.

Staff recommends that the Commission attach several special conditions to ensure the project's consistency with the visual resource protection policies of the LCP. Special Condition No. 1 requires, in part, the applicants to submit a final landscaping plan for the review and approval of the Executive Director prior to issuance of the permit amendment that substantially conforms to the proposed landscape concept plan included as Exhibit No. 7, but is revised to include provisions that (i) prohibit limbing or pruning of the visually screening trees already existing or planted unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning or additional planting; (ii) require all plantings and all existing trees on the parcel be maintained in good growing condition throughout the life of the project to ensure continued compliance with the landscape plan and that if any of the existing trees or any of the trees and plants to be planted according to the plan die or are removed for any reason, they shall be immediately replaced in-kind or with other native non-invasive species common to the area that will grow to a similar or greater height.

Special Condition No. 2 requires that only the proposed building materials and colors are used in the construction of the development and that the current owner or any future owner shall not repaint or stain the house with products that would change the color of the house from the proposed and approved colors without a permit amendment.

Special Condition No. 3 requires the applicant to submit a plan for the installation of the proposed solar panels that demonstrates that the solar panels will be located on the roof of the garage sited on the north side of the residence and identifies the style, size, orientation, and number of solar panels.

Special Condition No. 4 requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including restrictions on colors, materials, and lighting. The condition will ensure that any future buyers of the property are made aware of the development restrictions on the site because the deed restriction will run with the land in perpetuity. Special Condition No. 5 expressly states that any future improvements to the single-family residence would require a coastal development permit such that the County and the Commission would have the ability to review all future development on the site to ensure that future improvements would not be sited or designed in a manner that would result in an adverse environmental impacts.

In addition to the recommended special conditions regarding the protection of visual resources, staff is recommending Special Condition No. 6 requiring implementation of standard Best Management Practices (BMPs) during construction to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction.

Therefore, as conditioned, staff recommends that the Commission find that the project is consistent with the certified Mendocino County LCP.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 9.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE

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

Motion:

I move that the Commission determine that Appeal No. A-1-MEN-08-009 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

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

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-08-009 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan.

II. STAFF RECOMMENDATION, MOTION AND RESOLUTION ON *DE NOVO*

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-08-009 subject to conditions.

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

PART ONE – SUBSTANTIAL ISSUE

STAFF NOTES:

1. Appeal Process

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area, such as designated “special communities.”

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

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located within a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,” including, among other categories, “highly scenic areas.” The approved development is located within an area designated in the LCP on the certified land use map as a “highly scenic area,” and, as such, is appealable to the Commission.

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

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

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

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

2. Filing of Appeal

Two appeals were filed including an appeal from (1) Commissioners Mike Reilly and Mary Shallenberger (Exhibit No. 9), and (2) Rixanne Wehren on behalf of Sierra Club, Mendocino Group (Exhibit No. 10). Both appeals were filed with the Commission on February 22, 2008 in a timely manner within 10 working days of receipt by the Commission of the County's Notice of Final Action on February 6, 2008 (Exhibit No. 11).

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On March 19, 2008, prior to the 49th day after the filing of the appeal, the applicants submitted a signed 49-Day Waiver waiving the applicants' right to have a hearing set within 49 days from the date the appeal had been filed.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received two appeals of the County of Mendocino's decision to conditionally approve the development from (1) Commissioners Mike Reilly and Mary Shallenberger (Appellant A), and (2) Rixanne Wehren on behalf of Sierra Club, Mendocino Group (Appellant B). The development, as approved by the County, consists of (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, wind-powered generator, solar panels, and propane tank, and (3) connection to an existing water system.

The project site is an approximately 300-acre parcel located on a ridge approximately 1,500 feet east of Highway One and approximately 1,000 feet north of the intersection of the highway and the north end of the Ten Mile River Bridge. The property is planned and zoned Rangeland (RL) and is located in a designated "highly scenic area."

The appeals raise contentions alleging inconsistency of the approved project with provisions of the County's certified LCP requiring (1) the protection of visual resources and (2) that all development be regulated to prevent any significant adverse effects, either individually or cumulatively on coastal resources, including environmentally sensitive habitat areas. The appellants' contentions are summarized below, and the full text of the two appeals is included as Exhibit No. 9 and Exhibit No. 10.

1. Project inconsistency with LCP visual resource protection policies

Appellant A and Appellant B contend that the approved project is inconsistent with policies of the LCP requiring protection of scenic and visual qualities of Mendocino County, including LUP Policy 3.5-1, and 3.5-3 and CZC Section 20.504.015(C)(1) and CZC Section 20.504.015(C)(3) requiring that new development in highly scenic areas be (1) sited and designed to protect views to and along the ocean and scenic coastal areas, including highways, roads, coastal trails, and vista points, (2) visually compatible with the character of surrounding areas, (3) subordinate to the character of its setting, and (4) designed to minimize reflective surfaces and blend in hue and brightness with the surroundings. Additionally, the appellants contend that the approved project is inconsistent with the development standards of LUP Policy 3.5-4 requiring that visual impacts of development on ridges be minimized.

The contentions raised by Appellant A regarding visual resource impacts center around the portion of the County's approval involving installation of a wind-generator facility as part of the approved development. The County's findings for approval provide no details

about the wind-powered generator facility and do not discuss how the facility is consistent with the visual resource policies of the certified LCP. Appellant A asserts that because details regarding the siting and design of the approved wind generator facility are not specified in the County's approval, virtually any design of wind tower(s) and other generating facilities could be built at any location on the parcel under the authorization granted by the County, thus raising an issue as to whether the approved wind energy facility would be consistent with the visual resource protection policies of the certified LCP.

Appellant B contends that the project approved by the County would be visible from other public locations in addition to Highway One and that the County failed to consider alternatives that would locate the development below the ridgeline and outside the viewshed of public vantage points. Appellant B also contends that the project would result in glare from the south-facing glass wall of the house and increased night lighting from car headlights traversing up the hillside to the top of the ridge such that the development would not protect views and be compatible with and subordinate to the character of the surrounding area.

2. Project inconsistency with LCP environmentally sensitive habitat policies

Appellant A also contends that the approved project is inconsistent with LUP Section 3.9-1 requiring that all development be regulated to prevent any significant adverse effects, either individually or cumulatively on coastal resources, including environmentally sensitive habitat areas.

Environmentally Sensitive Habitat Areas (ESHA) are defined in the Mendocino County LUP as "*any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*" CZC Section 20.496.010 further defines ESHA as including, in part, habitats of rare and endangered animals.

Appellant A notes that wind energy facilities can adversely impact wildlife, especially birds and bats, and their habitats (United States Fish and Wildlife Service, 2003). No wildlife surveys or other biological investigations have been conducted at the site for purposes of identifying the presence of any special status bird or bat species and therefore, it is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species. However, the site does include significant stands of trees, which commonly support bird and bat populations and the coast serves as a corridor for migratory birds.

As noted above, the County's approval does not include any detail regarding the siting and design of the approved wind generating facility and whether a design that minimized impacts on bird or bat species would be utilized. The County's findings for approval do not discuss how the wind energy facility is consistent with the environmentally sensitive

habitat policies of the certified LCP and with LUP Policy 3.9-1 requiring that all development be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

B. LOCAL GOVERNMENT ACTION

On January 24, 2008, the Mendocino County Coastal Permit Administrator (CPA) approved Coastal Development Permit #29-2007 (CDP) for the project with two special conditions (Exhibit No. 11).

Special Condition No. 1 requires the applicant to submit color samples that show the use of dark, natural tones that are non-reflective and blend with the surroundings prior to issuance of the CDP. Special Condition No. 1 also requires exterior lighting be downcast and shielded for the life of the project and that no changes to the approved exterior colors or lighting shall be made for the life of the project without approval from the CPA. Special Condition No. 2 requires the applicant to submit a detailed landscaping plan prior to issuance of the CDP that shows a vegetative screen between the residence and the slope to the south and west of the structure to soften the view of the proposed development from any public location including Highway One and the Ten Mile River and associated beach and trails.

The decision of the CPA was not appealed at the local level to the County Board of Supervisors. The County issued a Notice of Final Action, which was received by Commission staff on February 6, 2008 (Exhibit No. 11). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals. The County's approval of the project was appealed to the Coastal Commission in a timely manner on February 22, 2008, within ten working days after receipt by the Commission of the Notice of Final Local Action on February 6, 2008.

C. COMMISSION'S APPEAL JURISDICTION OVER PROJECT

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

i. Sensitive Coastal Resource Area

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

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

areas" include the following:

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

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

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

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

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

designate SCRAs, local government approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

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

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

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

The appeal of Mendocino County Coastal Development Permit (CDP) No. 29-2007 was accepted by the Commission on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Adopted Land Use Map No. 8 (Westport) designates the

area inclusive of the site that is the subject of Mendocino County CDP No. 29-2007 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “located in a sensitive coastal resource area” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDP No. 29-2007 for the applicants’ proposed development is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

D. SITE DESCRIPTION

The project site is located approximately six miles south of the town of Westport and six miles north of the city of Fort Bragg. The site is an approximately 300-acre parcel located on a ridge approximately 1,500 feet east of Highway One and approximately 1,000 feet north of the intersection of Highway One and the north end of the Ten Mile River Bridge (see Exhibit Nos. 1 & 2). The property is planned and zoned Rangeland (RL: 160-acre minimum) and is located in a designated “highly scenic area.” The surrounding area is largely characterized by undeveloped, open expanses of steep, forested ridges and grassy hillsides on the east side of Highway One that form the Ten Mile River watershed and by coastal terraces on the west side of the highway that afford spectacular, unobstructed views to and along the ocean.

The project site is approximately 830 feet in elevation and is composed of a mosaic of coastal prairie, coastal scrub, and North Coast coniferous forest. Dense stands of mature Douglas fir and Grand fir trees line the top of the ridge and form the backdrop of the subject development. The grassy hillside that slopes toward Highway One is largely void of trees and is used for agricultural grazing. The subject property is developed with an existing 9,000-square-foot agricultural barn located approximately half-way up the subject hillside and was constructed pursuant to County CDP No. 43-2004. The site is

also developed with an old gravel logging road that would serve as the driveway approach for the proposed residence.

According to a rare plant survey conducted at the property by Mad River Biologists dated July 18, 2003, the site supports populations of two rare plants including maple-leaved checkerbloom (*Sidalcea malachroides*) and short-leaved evax (*Hesperrevax sparsiflora* ssp. *brevifolia*). The location of these species is located well outside of the proposed development location.

E. PROJECT DESCRIPTION

The development as approved by the County consists of (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, wind-powered generator, solar panels, and propane tank, and (3) connection to an existing water system. As approved by the County, the residential structure would consist of masonry siding painted a dark tone with matching trim and a dark green masonry roof. (See Exhibit Nos. 3-5.)

The site of the County-approved residence is located on the top of the ridge approximately 1.8 miles east of Highway One. According to the County's findings, the subject site is visible from Highway One and from a public access trail located at the south end of the Ten Mile Bridge that leads to the dunes of McKerricher State Park.

As part of the County's review of the project, the applicants installed story poles at the site to depict the visual impact of the residence and garage. Following review by the County, the applicants made several changes to the project to minimize the visual impact including (1) siting the residence away from the brow of the ridge and locating it closer to the dense forest vegetation, (2) reducing the height of the structure to 13.5 feet, (3) shifting the footprint of the residence to avoid a gap in the treeline to prevent the residence from silhouetting the sky, and (4) siting the garage behind the residence to minimize the amount of structure visible from the highway.

F. SUBSTANTIAL ISSUE ANALYSIS

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

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

All of the contentions raised in the appeals present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County is inconsistent with (1) LCP provisions regarding the protection of visual resources, and (2) LUP Policy 3.9-1 which requires that all development be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources, including environmentally sensitive habitat areas.

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

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

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

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations concerning the consistency of the project as approved with the provisions of the LCP regarding (1) the protection of visual resources, and (2) the requirement that all development be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources, the

appeal raises a substantial issue of conformance of the approved project with the certified Mendocino County LCP.

a. Allegations Raising Substantial Issue

i. Project inconsistency with LCP visual resource protection policies

Appellant A and Appellant B contend that the approved project is inconsistent with policies of the LUP requiring protection of scenic and visual qualities of Mendocino County, including LUP Policy 3.5-1, and 3.5-3 and CZC Section 20.504.015(C)(1) and CZC Section 20.504.015(C)(3) requiring that new development in highly scenic areas be (1) sited and designed to protect views to and along the ocean and scenic coastal areas, including highways, roads, coastal trails, and vista points, (2) visually compatible with the character of surrounding areas, (3) subordinate to the character of its setting, and (4) designed to minimize reflective surfaces and blend in hue and brightness with the surroundings. Additionally, the appellants contend that the approved project is inconsistent with the development standards of LUP Policy 3.5-4 and CZC Section 20.504.015(C)(8) requiring that visual impacts of development on ridges be minimized.

The contentions raised by Appellant A regarding visual resource impacts center around the portion of the County's approval involving installation of a wind-generator facility as part of the approved development. The County's findings for approval provide no details about the wind-powered generator facility and do not discuss how the facility is consistent with the visual resource policies of the certified LCP. Appellant A asserts that because details regarding the siting and design of the approved wind generator facility are not specified in the County's approval, virtually any design of wind tower(s) and other generating facilities could be built at any location on the parcel under the authorization granted by the County, thus raising an issue as to whether the approved wind energy facility would be consistent with the visual resource protection policies of the certified LCP.

Appellant B contends that the project approved by the County would be visible from other public locations in addition to Highway One and that the County failed to consider alternatives that would locate the development below the ridgeline and outside the viewshed of public vantage points. Appellant B also contends that the project would result in glare from the south-facing glass wall of the house and increased night lighting from car headlights traversing up the hillside to the top of the ridge such that the development would not protect views and would not be compatible with and subordinate to the character of the surrounding area.

LCP Policies and Standards:

LUP Policy 3.5-1 states in applicable part:

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

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. The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision...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... (emphasis added)

LUP Policy 3.5-4 states in applicable part (emphasis added):

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of

tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

LUP Policy 3.5-6 states in applicable part:

Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible. Highly scenic areas delineation is approximate and shall be subject to review and correction if necessary at the time of a land development proposal or application.

...

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

Highly Scenic Areas.

(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:*

...

(1) *The entire Coastal Zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except the Westport Beach subdivision...*

...

(C) *Development Criteria.*

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

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

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

...

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

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

...

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

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

...

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

...

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

Coastal Zoning Code Section 20.444.025(A) states in applicable part:

(A) ... Wind generators and their associated towers, air emission towers and smoke stacks may be built and used to a height of one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division.

Coastal Zoning Ordinance Section 20.504.035 states in applicable part:

(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.

Discussion

The appellants allege that the approved development is inconsistent with the above-identified LCP provisions pertaining to visual resources. The project site is located within the designated “highly scenic area” as described in LUP Policy 3.5-3 which includes the entire coastal zone from the Ten Mile River estuary north approximately 12 miles to Hardy Creek except the Westport Beach subdivision and the Town of Westport within the urban/rural boundary. The subject site is located on the east side of Highway One and thus, the approved development would not block views to and along the coast from any public vantage point. Rather, the visual issues raised by the appeal center around whether the development would be compatible with and subordinate to the character of the surrounding area and whether the project is consistent with LCP policies regarding development on ridges.

The LCP visual resource protection policies cited above set forth various standards that are applicable to the project. LUP Policy 3.5-1 and Zoning Code Sections 20.504.010 and 20.504.015 require that new development be visually compatible with the character of surrounding areas and subordinate to the character of its setting. LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on ridges be minimized by prohibiting development that projects above the ridgeline unless no alternative site is available below the ridgeline, in which case the visual impacts shall be reduced by utilizing existing vegetation, optimizing the structural orientation, landscaping, and protecting existing tree masses which define the ridgeline silhouette.

The views to and along the coast from this stretch of rolling, winding Highway One are sweeping and vast due to the largely undeveloped nature of the area. The open coastal terraces to the west and steep, grassy hillsides to the east create the rural, agricultural character of the area. LUP Section 4.2 describes the area encompassing the project site and states:

“Major development in this area is constrained due to the topography, the agricultural and timber resources and the highly scenic character of much

of this segment of the coast. North of the Ten Mile River the coastal zone boundary is 1,000 yards from the shoreline, nearly all of it visible from Highway 1. This stretch is grand in scale, containing spectacular meetings of land and sea as the highway climbs to provide sweeping views of the Lost Coast and drops to narrow gulches near the shore...This plan has given further protection to the scenic and rural qualities of this area by...designating specific areas between Hardy Creek and the Ten Mile River as highly scenic areas within which new development must be subordinate to the character of its setting consistent with Policy 3.5-3."

The County describes the project as being visible from Highway One and from a public access trail located at the south end of the Ten Mile Bridge that leads to the dunes of Mackerricher State Park. As part of the County's review of the application, the applicant installed story poles at the site, outlining the height and perimeter of the residence in its proposed location. As noted in the "Project Description" finding above, the applicants made several revisions to the proposed project during the review and approval by the County to minimize the visual impact of the residential development. These revisions included (1) siting the residence away from the brow of the ridge and locating it closer to the dense forest vegetation, (2) reducing the height of the structure to 13.5 feet, (3) shifting the footprint of the residence to avoid a gap in the treeline to prevent the residence from silhouetting the sky, and (4) siting the garage behind the residence to minimize the amount of structure visible from the highway.

The County also conditioned the permit in a manner to further reduce the visual impacts of the project. These conditions (1) limit building materials to dark, non-reflective colors and materials, (2) require exterior lighting be downcast and shielded, and (3) require submittal of a detailed landscaping plan that provides a vegetative screen between the residence and the slope to the south and west of the structure to soften the view of the proposed development from any public location including Highway One and the Ten Mile River and associated beach and trails.

The changes to the project proposed by the applicant and the conditions imposed by the County resulted in significantly reducing the visual impact of the project. However, the project's prominent location at the top of a ridge in the highly scenic area of the Ten Mile River watershed continues to raise issues of whether the development is consistent with all of the applicable LCP policies regarding development on ridges and in highly scenic areas.

As noted above, the appellants assert that the project as approved is inconsistent with the above-cited LCP policies in two main respects. First, the appellants contend that the development as approved by the County would not protect views of the scenic area and would not be compatible with and subordinate to the character of the surrounding area inconsistent with LUP Policy 3.5-1 and 3.5-3 and Zoning Code Sections 20.504.010 and 20.504.015. Second, Appellant B contends that the project would be inconsistent with LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) because the approved

house would be sited on top of the ridge and would be visible to the public and the appellant believes there are alternative development sites that would not create such impacts.

Compatible with and Subordinate to the Character of the Surrounding Area

As noted above, the contentions raised by Appellant A regarding visual resource impacts center around the County's approval of a wind-generator facility as part of the approved development. The County's findings for approval provide no details about the approved wind-powered generator and do not discuss how the facility is consistent with the visual resource policies of the certified LCP, including policies requiring that new development in highly scenic areas be compatible with and subordinate to the character of the surrounding area.

As details regarding the siting and design of the approved wind generator facility are not specified in the County's approval and none of the exhibits attached to the County staff report show the location or details of the design of the approved wind-powered generator, Appellant A asserts that virtually any design of wind tower(s) and other generating facilities could be built at any location on the parcel under the authorization granted by the County. In the absence of any clarifying details, the authorization to install "a wind powered generator" would allow the applicants to develop any manner and number of wind turbines and towers, in any location on the site, designed in any fashion, using any kind of materials of any color, whether reflective and visually obtrusive or not. CZC Section 20.444.025 sets forth provisions for height exceptions and states, in applicable part, that "...Wind generators and their associated towers...may be built and used to a height to one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division." Thus, the approved permit allows for wind generator towers that could be as tall as 100 feet.

The facility that is ultimately built under the County's approval would in many ways be inconsistent with the requirements of LUP Policies 3.5-1 and 3.5-3 and CZC Sections 20.504.010 and 20.504.015 that development in highly scenic areas shall provide for the protection of coastal views, minimize the visual impact of development on hillsides and ridges, and be subordinate to the character of its setting. For example, an extremely tall facility built with reflective materials, a tower or other facility painted with bright colors, or a turbine with particularly large blades, would stand out from its surroundings and not be subordinate to the character of its setting and would not minimize visual impacts. In addition, a wind energy facility, be it a turbine tower or generator unit, constructed in a prominent location on the site rather than in an area that is screened by topographical features and trees would not be subordinate to the character of its setting and minimize visual impacts.

Regarding the approved residential development, Appellant B asserts that the siting and design of the residence itself would introduce a source of glare and nighttime light

intrusion such that the development would not be subordinate to the natural setting and minimize reflective surfaces as required by LUP Policy 3.5-3 and CZC Section 20.504.015. The appellant notes that the design of the residence involves a south-facing wall comprised nearly entirely of glass, which when viewed from Highway One and other public vantage points, could cause visually obtrusive glare during certain sunlight conditions. The appellant also notes that headlights from automobiles traversing the hillside to access the ridge top site would not be visually compatible with or subordinate to the character of the setting, as there is no other existing development at the top of the subject ridge.

Minimize Impacts of Development on Ridges

Appellant B further contends that the County failed to consider alternatives that would locate the development below the ridgeline and outside the viewshed of public vantage points. The appellant asserts that the large parcel size (over 300 acres) would likely afford an alternative location for siting the proposed residence.

LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on ridges be minimized by prohibiting development that projects above the ridgeline unless no alternative site is available below the ridgeline, in which case the visual impacts shall be reduced by utilizing existing vegetation, optimizing the structural orientation, landscaping, and protecting existing tree masses which define the ridgeline silhouette.

The County's findings do not include a thorough analysis of alternative locations, but suggest that there are less visible locations to site the development. Specifically, the County's findings state "*Although there are less visible locations that may be developed, the one that is proposed would not require additional grading or scarifying of the natural hillside.*" The County did not address potential alternative locations that would be less visible, that would avoid the need for landform alteration, and that would site the development below the ridgeline as required by LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8). For example, potential alternative locations below the ridgeline include siting the residence near the existing barn, or in the level area eastward from the proposed site on the backside of the ridge. As the County's findings for approval fail to demonstrate that these, or other alternative sites, are not available below the ridgeline, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8).

Many appeals from Mendocino County raise issues of visual resource protection, and in acting on these appeals *de novo*, the Commission has denied some projects because of inconsistencies with visual resource protection policies. The protection of visual resources is required under Section 30251 of the Coastal Act, and in certifying LUP Policy 3.5-1, the Commission concurred with the introductory language of that policy that the scenic and visual quality of the Mendocino County coastal area be considered

and protected as a resource of public importance. As noted previously, LUP Section 4.2 describes this stretch of coast encompassing the project site as “*grand in scale, containing spectacular meetings of land and sea...*” The Commission often conditions permits it approves to require the applicant to relocate, redesign, or screen proposed development specifically to protect views of the ocean and scenic coastal areas. In addition, the approved development would be visible from State Highway One, the sole continuous highway through the Mendocino County coastal zone. Highway One brings visitors from throughout the region, state, and world to the coast to enjoy its beauty. Thus, the appeal raises issues of regional and statewide significance. Furthermore, as the County’s findings did not fully address the wind-generator portion of the project, or alternative locations to site the proposed project that would minimize visual impacts, there is not a high degree of factual support for the County’s decision that the project is consistent with the visual resource policies of the certified LCP.

Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding visual resource protection, including, but not limited to, LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Sections 20.504.010 and 20.504.015 as the approved development raises a substantial issue as to whether the development would be (1) sited and designed to protect views to and along scenic coastal areas, including highways, coastal trails, and vista points, (2) visually compatible with the character of surrounding areas, (3) subordinate to the character of its setting, and (4) whether feasible alternatives exist that would minimize the visual impact of ridgetop development.

ii. Project inconsistency with LCP ESHA policies

Appellant A contends that the portion of the approved project involving installation of a wind-powered generator is inconsistent with LUP Section 3.9-1 requiring that all development be regulated to prevent any significant adverse effects, either individually or cumulatively on coastal resources, including environmentally sensitive habitat areas.

LCP Policies and Standards:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

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

LUP Policy 3.9-1 states in applicable part:

...all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

Discussion:

It is widely recognized that alternative energy, such as wind-generated energy as the applicant proposes, is considered to have certain environmental advantages over traditional power sources in that it eliminates pollution and hazardous air emissions associated with burning fuel. However, wind energy facilities can adversely impact wildlife, especially birds and bats, and their habitats (United States Fish and Wildlife Service, 2003). Direct killing can occur to bats and birds, particularly raptors, from striking moving blades. When birds approach spinning turbine blades, a phenomenon called "motion smear" occurs, which is caused by the inability of the bird's retina to process high speed motion stimulation. This occurs primarily at the tips of the blades, making the blades deceptively transparent at high velocities. This increases the likelihood that a bird will fly through this arc, be struck by a blade and be killed (Hodos et al. 2001).

Environmentally Sensitive Habitat Areas (ESHA) are defined in the Mendocino County LUP as "*any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*" CZC Section 20.496.010 further defines ESHA as including, in part, habitats of rare and endangered animals. The County staff report indicates that a rare plant survey was conducted by Mad River Biologists and the consultant's report indicates that no rare plants would be affected by the development. However, it is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species, as no wildlife surveys or other biological investigations have been conducted at the site for purposes of identifying the presence of any special status bird or bat species. However, the site does include significant stands of trees, which commonly support bird and bat populations and the coast serves as a corridor for migratory birds.

The US Fish and Wildlife Service (USFWS) prepared a guidance memo entitled, "*Service Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines,*" dated May 2003. The memo sets forth guidelines prepared to assist Service staff in providing technical assistance to the wind energy industry to avoid or minimize impacts to wildlife and their habitats through: (1) proper evaluation of potential wind

energy development sites; (2) proper location and design of turbines and associated structures within sites selected for development; and (3) pre- and post-construction research and monitoring to identify and/or assess impacts to wildlife. The memo further indicates that implementation of the USFWS recommendations by the wind industry is voluntary and that use of the guidelines is on a case-by-case basis.

The Commission notes that regarding turbine design and operation, the USFWS guidelines recommend, in part, as follows:

Use tubular supports with pointed tops rather than lattice supports to minimize bird perching and nesting opportunities. Avoid placing external ladders and platforms on tubular towers to minimize perching and nesting. Avoid use of guy wires for turbine...support towers. (emphasis added)

As noted above, it is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species, and thus, Commission staff has not consulted with the USFWS regarding the proposed project. The Commission notes that although the USFWS guidelines and recommendations are not binding policy, the recommendations seem to suggest that certain designs of wind energy facilities are more favorable than others with regard to the protection of wildlife. For example, the American Bird Conservancy recommends that “wind turbines...be monopoles, and not of lattice construction, and use no guy wires” (www.abcbirds.org/policy/windenergy.htm).

As noted above, the County’s findings for approval fail to specify what particular design of wind generating facility the applicant proposed and in what location, and thus, whether the siting and design would minimize impacts on bird or bat species.

As details regarding the siting and design of the approved wind generator facility are not specified in the County’s approval, and as virtually any design of wind turbine tower(s) whether designed to minimize the potential for bird and bat strikes or not, could be built at any location on the parcel under the authorization granted by the County, the degree of legal and factual support for the local government’s decision is low. Furthermore, as the cumulative impact of the loss of sensitive wildlife species over time throughout the coastal zone has been significant, the appeal raises issues of statewide significance rather than just a local issue.

Therefore, for all of the above reasons, the Commission finds that the project as approved by the County raises a substantial issue of conformance with LUP Policy 3.9-1, which requires that all development be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

2. Conclusion

The foregoing contentions raised by the appellants have been evaluated against the claim that the approved development raises a substantial issue in regard to conformance of the local approval with the certified LCP. Therefore, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with LCP policies regarding visual resource protection, including, but not limited to, LUP Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 as the approved development raises a substantial issue as to whether the development would be (1) sited and designed to protect views to and along scenic coastal areas, including highways, coastal trails, and vista points, (2) visually compatible with the character of surrounding areas, and (3) subordinate to the character of its setting, and (4) whether feasible alternatives exist that would minimize the visual impact of ridgetop development.

Conclusion of Part One: Substantial Issue

The Commission finds that for the reasons stated above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with respect to the policies of the certified LCP regarding the protection of visual resources and environmentally sensitive habitat areas.

PART TWO—DE NOVO ACTION ON APPEAL

STAFF NOTES:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP and/or the public access policies of the Coastal Act, the local government's approval no longer governs, and the Commission must consider the merits of the project. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP). Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above into its findings on the *de novo* review of the project.

3. Amended Project Description Submitted by Applicants for de novo Review

For the purposes of *de novo* review by the Commission, the applicants submitted an amended project description dated April 7, 2008 and April 23, 2008 that (1) eliminates the wind-powered generator from the project, (2) clarifies that the proposed building materials include dark stone siding and dark mottled asphalt roof shingles, and (3) proposes a landscaping plan that involves planting trees to screen the residence.

The amended project description addresses issues raised by the appeal where applicable, and provides additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. Landscaping Plan

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO.

A-1-MEN-08-009, the applicant shall submit to the Executive Director, for review and written approval, a final landscaping plan that substantially conforms to the proposed landscape plan entitled "*Landscaping Plan 28901 N. Highway 1, Fort Bragg, CA 95437*" attached as Exhibit No. 7 of the staff report, but shall be revised to include the following provisions:

- i. Unless required to abate a nuisance consistent with Coastal Act Section 30005(b), no limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning;
- ii. All plantings and all existing trees on the parcel within 300 feet of the approved residence shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the existing trees within 300 feet of the approved residence or any of the trees and plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height;
- iii. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. 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 planted or allowed to naturalize or persist on the parcel. 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;
- iv. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used;

- v. A final landscape site plan showing the species, size, and location of all plant materials that will be retained and newly planted on the developed site, any irrigation system, delineation of the approved development, and all other landscape features such as, but not limited to, site topography, horticultural plantings, decorative rock features, pathways, and berms and/or raised beds.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Design Restrictions

- A. All exterior siding, trim, fascia, and roofing of the proposed house and garage shall be composed of the materials proposed in the application (i.e., dark asphalt shingle roofing and dark stone exterior siding). The current owner or any future owner shall not paint or stain the house or garage with products that would lighten or otherwise change the basic color of the house or garage from the approved colors and materials without an amendment to this permit. To minimize glare, no reflective glass, exterior finishings, roofing, or roof-mounted structures are authorized by this permit; and
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel. No exterior lights shall be installed on the south or southwest facing side of the house.

3. Solar Panel Plan

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-08-009**, the applicant shall submit to the Executive Director, for review and written approval, a plan for the installation of the proposed solar panels that demonstrates that the solar panels will be located only on the roof of the garage sited on the north side of the residence and identifies the style, size, orientation, and number of solar panels.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without

a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Deed Restriction

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-08-009, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Future Development Restrictions

This permit is only for the development described in Coastal Development Permit No. A-1-MEN-08-009. Any future improvements to the single-family residence, including, but not limited to, installation of a wind-powered generator, additional solar panels, or fencing, will require a permit amendment or a new coastal development permit.

6. Best Management Practices and Construction Responsibilities

The permittee shall comply with the following construction-related requirements:

- (a) Any and all excess excavated material resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
- (b) Straw bales, coir rolls, or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants downslope toward the Ten Mile River;
- (c) On-site vegetation shall be maintained to the maximum extent possible during construction activities;

- (d) Any disturbed areas shall be replanted or seeded as soon as feasible following completion of construction of the house, pumphouse, driveway, and septic system, but in any event no later than May 1st of the next spring season consistent with the final approved landscape plan required by Special Condition No. 1 above;
- (e) All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff; and
- (f) The canopy and root zones of existing living trees on site shall be protected through temporary fencing or screening during construction.

7. Conditions Imposed By Local Government

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby declares and finds as follows:

1. Site Description

The Site Description finding of the Substantial Issue portion of this report is hereby incorporated by reference.

2. Project Description

For the purposes of *de novo* review by the Commission, the applicants submitted an amended project description dated April 7, 2008 and April 23, 2008 that (1) eliminates the wind-powered generator from the project, (2) clarifies that the proposed building materials include dark stone siding and dark mottled asphalt roof shingles, and (3) proposes a landscaping plan that involves planting trees to screen the residence. (See Exhibit Nos. 7, 12, & 13.)

As revised for purposes of *de novo* review, the proposed project involves (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, solar panels, and propane tank, and (3) connection to an existing water system. The proposed residence and garage would be comprised of dark, stone siding and dark asphalt shingled roof materials. The site would be accessed via an existing gravel driveway and no grading, landform alteration, or tree removal is required.

The applicants also propose a landscaping plan that includes planting approximately 15 trees located to the south and southwest of the proposed residence to screen the development from view from Highway One (Exhibit No. 7). The applicants propose that these trees will be maintained and replaced in-kind in the event of die-off. The applicants further propose that no exterior lighting would be installed on the south/southwest side of the residence and all lighting will be down-facing and of low wattage.

3. Visual Resources

LCP Policies and Standards:

LUP Policy 3.5-1 states in applicable part:

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

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. The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision...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... (emphasis added)

LUP Policy 3.5-4 states in applicable part (emphasis added):

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

LUP Policy 3.5-6 states in applicable part:

Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible. Highly scenic areas delineation is approximate and shall be subject to review and correction if necessary at the time of a land development proposal or application.

...

LUP Policy 3.5-15 states in applicable part:

Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible. [emphasis added]

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

Highly Scenic Areas.

(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:*

...

- (1) The entire Coastal Zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except the Westport Beach subdivision...

...

(C) *Development Criteria.*

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

...

- (5) Buildings and building groups that must be sited in highly scenic areas shall be sited:
- (a) Near the toe of a slope;
 - (b) Below rather than on a ridge; and
 - (c) In or near a wooded area.

...

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

...

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

...

Discussion:

The subject site is an approximately 300-acre parcel located on a ridge approximately 1,500 feet east of Highway One and approximately 1,000 feet north of the intersection of Highway One and the north end of the Ten Mile River Bridge. The property is planned and zoned Rangeland (RL: 160-acre minimum) and is located in a designated “highly scenic area.” The project site is approximately 830 feet in elevation and is composed of a mosaic of coastal prairie, coastal scrub, and North Coast coniferous forest. Dense stands of mature Douglas fir and Grand fir trees line the top of the ridge and form the backdrop of the subject development. The grassy hillside that slopes toward Highway One is largely void of trees and is used for agricultural grazing.

The proposed project involves (1) construction of a 3,174-square-foot single-family residence and a 933-square-foot attached garage with an average maximum height of 13.5 feet from grade, (2) installation of a septic system, solar panels, and propane tank, and (3) connection to an existing water system.

The proposed development would be visible from several places along northbound Highway One, which is the primary public vantage point. According to the County, the development would also be visible from portions of a trail that leads to the dunes at McKerricher State Park. The views to and along the coast from this stretch of rolling, winding Highway One are sweeping and vast due to the largely undeveloped nature of the area. The open coastal terraces to the west and steep, grassy hillsides to the east create the rural, agricultural character of the area. LUP Section 4.2 describes the area encompassing the project site and states:

“Major development in this area is constrained due to the topography, the agricultural and timber resources and the highly scenic character of much of this segment of the coast. North of the Ten Mile River the coastal zone boundary is 1,000 yards from the shoreline, nearly all of it visible from Highway 1. This stretch is grand in scale, containing spectacular meetings of land and sea as the highway climbs to provide sweeping views of the Lost Coast and drops to narrow gulches near the shore...This plan has given further protection to the scenic and rural qualities of this area by...designating specific areas between Hardy Creek and the Ten Mile River as highly scenic areas within which new development must be subordinate to the character of its setting consistent with Policy 3.5-3.”

As cited above, the LCP sets forth numerous policies regarding the protection of visual resources, including several policies specific to development in designated highly scenic areas, and several policies specific to development on ridges. LUP Policy 3.5-1 states that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. Additionally, LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting.

LUP Policy 3.5-3 similarly requires that new development located within areas designated highly scenic must be subordinate to the character of its natural setting and requires any development permitted in these areas to provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. Coastal Zoning Code (CZC) Section 20.504.015 reiterates these requirements. LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on ridges be minimized by prohibiting development that projects above the ridgeline unless no alternative site is available below the ridgeline, in which case the visual impacts shall be reduced by utilizing existing vegetation, optimizing the structural orientation, landscaping, limiting development to one story, and protecting existing tree masses which define the ridgeline silhouette.

The LCP policies and standards governing the protection of visual resources at the site, which is located on a ridge in a designated highly scenic area require conformance with a number of visual criteria, including criteria related to: (1) minimizing the impacts of development on ridges; (2) minimizing landform alteration; (3) utilizing tree planting to screen development; (4) utilizing appropriate building materials, colors, and lighting; (5) protecting views to and along the coast; and (6) ensuring the development is visually compatible with and subordinate to the character of its setting. For the reasons discussed below, the Commission finds that the development as conditioned is consistent with both the LUP policies and zoning standards affecting development within highly scenic areas and the LUP policies and zoning standards affecting development on ridges.

1. Minimize Impacts of Development on Ridges

The subject site is an approximately 300-acre, steeply sloping parcel located near the top of an east-west trending ridge above the Ten Mile River in a designated highly scenic area. As cited above, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) set forth standards for development on ridges.

The County's LCP does not contain a specific definition of "ridge" or "ridgeline" in a manner that would clarify whether, for purposes of visual impact analysis, the ridgeline is to be limited to the topographic slope of the ground, or whether defining a ridgeline is to

be inclusive of existing trees and other structures that may rise above the topographic slope of a ridge. However, LUP Policy 3.5-4 and subsection (8)(c) of CZC Section 20.504.015(C) specifically prohibit the removal of tree masses “which destroy the ridgeline silhouette,” thereby suggesting that existing trees are to be considered in defining the ridgeline for purposes of visual impact analysis.

The applicants installed story poles at the subject site to delineate the perimeter and height of the proposed residence. Based on a site visit to view the story poles, Commission staff determined that no portion of the residence would be silhouetted against the open sky and the structure would not project any higher than existing trees. The proposed residential development would be a maximum of 13.5 feet high and would be set against a backdrop of dense, mature trees at the top of the ridge. Whether or not the existing trees are considered part of the ridgeline, the proposed residence would project above the top of the topographic ridgeline.

LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that development that projects above the ridgeline be permitted only when no alternative site is available below the ridgeline. The applicants and Commission staff considered several alternative sites that would locate the development below the ridgeline including (1) adjacent to the existing barn, (2) on the hillside below the top of the ridge, (3) on the forested slopes, and (4) at a level site further north beyond the top of the ridge. For the reasons discussed below, none of these sites would be feasible less environmentally damaging alternatives to the proposed development location on the ridgeline.

Siting Development Adjacent to Existing Barn

As noted in the site description finding above, the applicants’ property is currently developed with an agricultural barn located in a level area approximately half-way up the hillside at the lower portion of the subject parcel. The barn is largely screened by existing trees and during a recent site visit, Commission staff found that the barn was not visible from nearly all locations along Highway One. Siting the proposed residence adjacent to the barn would cluster the structures; a siting standard typically utilized to minimize the overall visual impact and footprint of development. The applicants indicate that percolation testing conducted during the development of the barn determined that the site was adequate to support an accessory bathroom in the barn, but that the site soils are not adequate to support a septic system for a residence.

in a letter dated April 23, 2008, Dave Jensen, Environmental Health Specialist with the Mendocino County Department of Environmental Health, indicates that he is familiar with the soil conditions at the subject site having visited the site several times to locate an area acceptable for the installation of a septic system. Mr. Jensen states that in reviewing the soils in the area around the barn, he found the soil conditions west of the barn to be unacceptable and that only upon further investigation was an area north of the barn deemed sufficient to support a septic system to accommodate the accessory bathroom in the barn. Mr. Jensen states, “*We eventually found an area on the slope directly north of*

the barn with sufficient space for a one-bedroom septic system. Even so, a diversion drain and a waiver to standard groundwater setbacks were required.” Mr. Jensen goes on to state that upon reviewing the soil conditions at the proposed house site on the ridge, he found them to be “significantly better” and was able to approve the proposed residential septic design. Mr. Jensen notes that while he has not sampled every possible location on the lower portion of the property, the high clay content, shallow groundwater levels, and slope constraints make the relocation of the proposed septic system problematic. Mr. Jensen further states, “In my professional opinion, the soil conditions at the proposed septic site on the uphill parcel are superior to anything I have found or expect to [find] further down the hill.” (See Exhibit No. 14.)

Additionally, the applicants indicate that this lower portion of the parcel is the most valuable in terms of the agricultural grazing use of the site. While the soils in this location are not suitable to support a residential septic system, according to the applicants, the soils in this area are superior to the soils at the top of the ridge and along the forested slopes for growing high quality feed for agricultural purposes. Thus, even if a septic system were feasible, locating the residential development in this location would compromise a valuable portion of the site used for agriculture; a use that is also protected under provisions of the Coastal Act and the County’s LCP.

Siting Development on the Southwestern Hillside Below the Ridgeline

The subject site supports dense forest vegetation at the top of the ridge and a grassy hillside that slopes toward the west/southwest. Unlike the top of the ridge, the hillside downslope from the proposed house site is void of trees. As a result, siting the residence below the ridgeline on the sloping hillside would cause the development to be even more visible from Highway One than the ridge top location, as not only would it be closer to the highway, but it would also be entirely exposed with no vegetative or topographic features to screen it. Even if vegetative screening were proposed and/or required to block a house from view in this location, a cluster of vegetation itself would create a visual anomaly amidst the otherwise grassy hillside. Siting the residence in this alternative hillside location would be in direct conflict with other development standards of the LCP, including CZC Section 20.504.015(C)(6) requiring that the visual impact of development on hillsides be minimized by, in part, concentrating development near existing major vegetation. Furthermore, residential development sited in this location would not be compatible with the surrounding area or subordinate to the character of the natural setting as required by the applicable LCP policies cited above.

Siting Development on the Forested Hillside Below the Ridgeline

As noted previously, the subject site comprises approximately 300 acres. The property slopes steeply toward the north, east, and west, much of which is densely vegetated with coniferous forest and understory vegetation. While visiting the site, Commission staff confirmed that siting the residence on these slopes out of view from Highway One would involve significant grading and vegetation removal to create a suitable building location.

Similar to the alternative hillside discussion above, siting the residence along these steep slopes would be inconsistent with other development standards of the LCP, including CZC Section 20.504.015(C)(6) requiring that the visual impact of development on hillsides be minimized by, in part, prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms.

Siting Development North Over the Top of the Ridge

During a visit to the site, Commission staff noted a level area located near the top of the existing driveway and set further north over the top of the ridge. When considering this alternative development location, the applicants indicated that this site would not be feasible because of the limited solar access it affords. As noted previously, the subject site is off the grid and the applicants propose to generate electricity using solar panels attached to the roof of the garage. This site is relatively long and narrow and is surrounded on three sides by tall forest vegetation. Due to the shading from the forest canopy, the site would not provide enough sunlight to effectively or efficiently serve the residential development.

Therefore, the Commission finds that for the reasons discussed above, no alternative site is available below the ridgeline. Thus, when no alternative site is available, as in this case, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that development be sited and designed to reduce visual impacts by (1) utilizing existing vegetation, (2) optimizing the structural orientation, (3) landscaping, (4) limiting development to a single story above the natural elevation, and (5) protecting existing tree masses which define the ridgeline silhouette.

Reducing Visual Impacts When No Alternative Site is Available Below the Ridgeline

As noted above, the existing mature forest vegetation at the top of the ridge is a significant defining element of the ridgeline in this location and provides a screening backdrop to the proposed residence as viewed from northbound Highway One. The proposed project does not involve removal of any trees. Additionally, the applicants propose a landscape plan that includes planting an additional 15 trees spaced in front of the south and southwest portion of the house along the entire length of the structure, thereby further screening the view of the residence along the ridgeline. To ensure that the applicants implement the landscaping concept as proposed, and to ensure that the final plan includes provisions specific to ensure appropriate planting and maintenance of the landscaping and the protection of existing tree masses which define the ridgeline silhouette, the Commission attaches Special Condition No. 1. Special Condition No. 1 requires the applicants to submit a final landscaping plan for the review and approval of the Executive Director prior to issuance of the permit amendment that substantially conforms to the proposed landscape concept plan included as Exhibit No. 7, but is revised to include provisions that (i) prohibit limbing or pruning of the visually screening trees already existing or planted pursuant to the approved landscaping plan unless a permit

amendment is obtained and issued prior to the commencement of limbing and pruning or additional planting unless required to abate a nuisance consistent with Coastal Act Section 30005(b); (ii) require all plantings and all existing trees within 300 feet of the approved residence on the parcel be maintained in good condition throughout the life of the project to ensure continued compliance with the landscape plan and that if any of the existing trees within 300 feet of the approved residence or any of the trees and plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height; and (iii) require all proposed plantings be obtained from local genetic stocks and of native, non-invasive species.

Special Condition No. 1 also requires submittal of final landscape site plan showing the species, size, and location of all plant materials that will be retained and newly planted on the developed site, any irrigation system, delineation of the approved development, and all other landscape features such as, but not limited to, site topography, horticultural plantings, decorative rock features, pathways, and berms and/or raised beds.

The proposed residence would be limited to one story above natural elevation as required by LUP Policy 3.5-4 and CZC Section 20.504.015(C)(8) and would not exceed 13.5 feet in height. The proposed development has been sited to optimize its orientation for solar access, as the site is located off the conventional power grid. With the existing vegetative backdrop and the additional proposed tree planting described above, the Commission finds that requiring a revised orientation of the residence is not necessary in this case to further minimize visual impacts consistent with LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8).

Therefore, as conditioned, the Commission finds that the proposed project is consistent with LUP Policy 3.5-4 and CZC Section 20.504.015(C)(8), as (1) no alternative site is available below the ridgeline, and (2) visual impacts of the development on the ridgeline will be reduced by utilizing existing vegetation, installing landscaping, limiting the development to one story above natural elevation, and protecting existing tree masses which define the ridgeline silhouette.

2. Minimize Landform Alteration

LUP Policies 3.5-1 and 3.5-4 and CZC Section 20.504.015(C) (6)(c) require that new development in highly scenic areas minimize the alteration of natural landforms. The proposed residence has been sited in a relatively level location. Construction of the proposed residence would not involve significant grading or vegetation removal beyond clearing the grassy site. Additionally, the proposed residence would be served by an existing gravel driveway that was a former logging road. No new driveway access or associated grading would be required.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with LUP Policies 3.5-1 and 3.5-4 and CZC Sections 20.504.015(C) (6)(c) and 20.504.020(D) because the proposed development would not involve the alteration of natural landforms.

3. Utilizing Tree Planting to Screen Development

LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10) encourage tree planting to screen buildings provided that the trees would not block coastal views from public areas. As discussed above, the applicants have proposed a conceptual landscaping plan that includes planting additional vegetation to screen portions of the development as viewed from northbound Highway One. In particular, the proposed landscaping plan would screen the south/southwest portion of the residence as viewed from the highway by planting 15 trees on the slope in front of the residence across the entire width of the structure. The proposed landscaping plan also includes planting additional trees to the north and northeast of the building site to further enhance the existing forested ridgeline silhouette as viewed from the highway. As the subject site is located east of Highway One and approximately 1.8 miles east of the coastline, these trees would not block coastal views from public areas.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with LUP Policy 3.5-5 and CZC Section 20.504.015(C)(10), as the proposed project includes landscaping to screen the proposed residence in a manner that would not block coastal views from public areas.

4. Building Materials, Colors, and Lighting

LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3) require that new development in highly scenic areas minimize reflective surfaces. CZC Section 20.504.015(C)(3) further requires that in highly scenic areas, building materials shall be selected to blend in hue and brightness with their surroundings. Additionally, LUP Policy 3.5-15 and CZC Section 20.504.035 set forth standards for exterior lighting.

As noted in the project description finding, the applicants propose to use dark, earthtone colors and materials for the exterior of the residence and garage (Exhibit No. 6). Specifically, the proposed residence would include dark stone siding and dark black/brown mottled asphalt shingle roofing. The proposed colors and materials would blend in hue and brightness with the dark brown and green colors of the forested backdrop. The Commission attaches Special Condition No. 2 to ensure that only the proposed building materials and colors are used in the construction of the development. The Commission finds that if the applicant or future owner(s) choose to change the materials or colors of the house to lighter, non-earth tone colors or materials, 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. Thus, Special Condition No. 2 further requires that the current owner or any future owner shall not repaint or stain

the house with products that would change the color of the house from the proposed and approved colors without a permit amendment.

As proposed, the south-facing elevation as viewed from Highway One is comprised largely of glass. The applicants propose to install double glazed non-reflective glass windows with over-hanging eaves. Overhangs on the south side of the house will prevent direct sunlight from hitting the glass during the months of the year at which the sun is high, thereby minimizing potential glare. To ensure that the proposed development does not result in increased glare as viewed from the highway, Special Condition No. 2(A) prohibits the use of reflective glass, exterior finishings, roofing, or roof-mounted structures. To further minimize potential glare from any exterior lighting, Special Condition No. 2(B) requires that all exterior lights be the minimum necessary for the safe ingress and egress of structures and be low-wattage, non-reflective, shielded, and be cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel and that no lights be installed on the south or southwest-facing side of the house as proposed by the applicants.

The proposed project includes the installation of solar panels. Solar panels can be a source of glare if not sited and designed appropriately to minimize their reflectivity. The applicants propose to locate the solar panels on the garage, which is sited behind the house to the north and out of view from Highway One. Thus, it is highly unlikely that the solar panels would cause a visual impact. However, there is no detail as to the style, size, orientation, or number of solar panels proposed. Therefore, to ensure that the proposed solar panels are sited and designed to minimize reflective surfaces as required by LUP Policy 3.5-3 and CZC Section 20.504.015(C)(3), Special Condition No. 3 requires the applicant to submit a plan for the installation of the proposed solar panels that demonstrates that the solar panels will be located on the roof of the garage sited on the north side of the residence and identifies the style, size, orientation, and number of solar panels.

Furthermore, Special Condition No. 4 requires that the applicants record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property, including restrictions on colors, materials, and lighting. The condition will ensure that any future buyers of the property are made aware of the development restrictions on the site because the deed restriction will run with the land in perpetuity.

Therefore, the Commission finds that as conditioned, the proposed project is consistent with LUP Policies 3.5-3 and 3.5-15 and CZC Sections 20.504.015(C)(3) and 20.504.035, as (1) building materials and colors would blend in hue and brightness with their surroundings, (2) reflective surfaces would be minimized, and (3) exterior lighting would be designed to minimize glare and not shine beyond the boundaries of the parcel.

5. Protecting Views To and Along the Coast and Scenic Coastal Areas

LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015(C)(1) require permitted development to be sited and designed to protect views to and along the ocean and scenic coastal areas from public areas including highways and roads.

The subject parcel is geographically situated such that the proposed residential development would not significantly affect views to the ocean from public areas including highways, roads, coastal trails, beaches, or coastal streams. As described above, the subject site is located on the east side of Highway One and therefore, the proposed development would not obstruct any views to or along the coast between the highway and the ocean.

The subject site is designated highly scenic and as described in LUP Policy 4.2 cited above, is part of a significant scenic coastal area of Mendocino County. The applicants installed story poles at the site to depict the dimensions of the proposed residential development. Commission staff found that when viewed from Highway One near the Ten Mile River Bridge, the story poles were difficult, if not impossible, to discern without the use of binoculars. Thus, while the residence may be minimally visible from locations along northbound Highway One, and possibly from portions of the beach and dunes located over a mile to the west of the site, the impact would be less than significant.

Therefore, the Commission finds that the proposed development, as conditioned, would not result in significant adverse impacts to public views to and along the ocean and scenic coastal areas inconsistent with the provisions of LUP Policy 3.5-1 and 3.5-3, and CZC Section 20.504.015(C)(1).

6. Visually Compatible with and Subordinate to the Character of its Setting

LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015 require that new development in highly scenic areas be visually compatible with and subordinate to the character of its setting.

Several aspects of the proposed project, as conditioned, would cause the development to be visually compatible with and subordinate to the character of its setting. As discussed in detail above, the proposed development would be sited and designed to reduce visual impacts by (1) utilizing existing vegetation, (2) limiting development to a single story above the natural elevation, and (3) protecting existing tree masses which define the ridgeline silhouette. Additionally, as also discussed in detail above, the development, as conditioned, would utilize exterior materials of dark, natural colors that would blend with the surrounding forested landscape and minimize reflective surfaces in a manner that would cause the development to be visually compatible with and subordinate to the character of its setting. Furthermore, the applicant proposes a landscaping plan that

includes planting additional trees to screen portions of the development as viewed from northbound Highway One.

The Commission finds that while the proposed project as conditioned would not result in significant adverse visual impacts, future development or further improvements to the residence at the site could result in potential adverse visual impacts if such new development or improvements are not properly sited and designed. The Commission further notes that Section 30610(a) of the Coastal Act and Chapter 20.532.020(C) of the County's Coastal Zoning Code exempt certain improvements to single-family residences from coastal development permit requirements. Pursuant to this exemption, once a residence has been constructed, certain improvements that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, in this case because the project site is located within a highly scenic area, future improvements to the approved project would not be exempt from permit requirements pursuant to Section 30610(a) of the Coastal Act and Section 13250 of the Commission's regulations. Section 30610(a) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations. Section 13250 specifically authorizes the Commission to require a permit for improvements to existing single-family residences that could involve a risk of adverse environmental effect.

In addition, Section 13250(b)(1) indicates that improvements to an existing single-family residence in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore, are not exempt. As discussed previously, the entire subject property is within an area designated in the certified Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, Special Condition No. 5 this condition expressly states that any future improvements to the single-family residence would require a coastal development permit such that the County and the Commission would have the ability to review all future development on the site to ensure that future improvements would not be sited or designed in a manner that would result in an adverse environmental impacts.

Furthermore, to ensure that any future buyers of the property will be aware of the limitations of Special Condition Nos. 1 and 2 regarding landscaping and design restrictions such that the development would continue to be visually compatible with and subordinate to the character of its setting for the life of the project, the Commission imposes Special Condition No. 4. This condition requires that the applicants execute and record a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Therefore, the Commission finds that as conditioned, the proposed development would be visually compatible with and subordinate to the character of its setting as required by LUP Policy 3.5-1 and 3.5-3 and CZC Section 20.504.015.

Conclusion

Therefore, for all of the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the policies of the certified LCP regarding (1) new development on ridges and in highly scenic areas, including LUP Policies 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015.

4. Water Quality

Summary of LCP Provisions

LUP Policy 3.1-25 states:

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

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

- (B) To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
- (C) Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*

Discussion:

LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. CZC Section 20.492.020 sets forth sedimentation standards to minimize sedimentation of off-site areas. Specifically, CZC Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation. CZC Section 20.492.020(C) suggests the use of temporary mechanical methods as a means of controlling sedimentation.

The proposed project involves the construction of a 3,174-square-foot single-family residence, an attached 933-square-foot garage and associated residential development. As discussed previously, the subject parcel is located near the top of a ridge above the Ten Mile River. Runoff originating from the development site that is allowed to drain down the hillside toward the river could contain entrained sediment and other pollutants in the runoff that would contribute to degradation of the quality of coastal waters. As the parcel proposed for residential development does not currently contain any developed impervious surfaces, the majority of stormwater at the site infiltrates prior to leaving the site as surface runoff. However, the increase in impervious surface area from the proposed development would decrease the infiltrative function and capacity of the existing permeable land on site. The reduction of permeable surface area would lead to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Sediment and other pollutants entrained in stormwater runoff from the development that is carried down the hillside toward the Ten Mile River would contribute to degradation of the quality of coastal waters and any intervening sensitive habitat. Other than removing vegetation from within the building envelope, the applicants propose to retain the majority of the site in its natural, vegetated condition and to plant additional landscaping throughout the site, which would continue to allow for infiltration of stormwater, thereby greatly reducing the potential that runoff from the completed development would affect coastal waters.

Therefore, sedimentation impacts from runoff would be of greatest concern during construction. Construction of the proposed development would expose soil to erosion and entrainment in runoff, particularly during the rainy season. To ensure that best management practices (BMPs) are implemented to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction, the Commission attaches Special Condition No. 6. This condition requires the implementation of Best Management Practices (BMPs) to control erosion and sedimentation during and following construction. These required BMPs include (a) disposing of any excess excavated material resulting from construction activities at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit; (b) installing straw bales, coir rolls, or silt fencing structures to prevent runoff from construction areas from draining down the hillside toward the Ten Mile River, (c) maintaining on-site vegetation to the maximum extent possible during construction activities; (d) replanting any disturbed areas as soon as feasible following completion of construction of the house, pumphouse, driveway, and septic system, but in any event no later than May 1st of the next spring season consistent with the final approved landscape plan required by Special Condition No. 1; (e) covering and containing all on-site stockpiles of construction debris at all times to prevent polluted water runoff; and (f) protecting the canopy and root zones of existing living trees on site through temporary fencing or screening during construction.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled

and minimized. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because stormwater runoff from the proposed development would be directed away from the hillside that drains to the ten Mile River.

5. Locating New Development

Summary of LCP Provisions

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

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

Zoning Code Section 20.368.025 provides for one single-family dwelling per 160 acres located in the Rangeland (RL) zoning district.

Discussion:

The subject parcel is planned and zoned in the Land Use Plan and Coastal Zoning Code as Rangeland (RL). Coastal Zoning Code Section 20.368.010 allows single-family residential development as a principal permitted use in the RL zoning district. CZC Section 20.368.025 allows a development density of one single-family dwelling per 160 acres. The proposed project involves the construction of a single-family residence on an approximately 300-acre parcel. Therefore, the proposed single-family residential use is consistent with the LUP and zoning designation for the site.

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

The proposed development would be served by an existing on site water source. The proposed project includes the installation of a septic system, including a primary and replacement leachfield. The Mendocino County Division of Environmental Health has determined that the proposed septic system would be adequate to serve the proposed development.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse cumulative impact to environmentally sensitive wildlife species consistent with LUP Policy 3.9-1 requiring new development to be regulated to prevent significant adverse cumulative impacts on coastal resources, the Commission attaches Special Condition No. 1(A)(iv) prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-MEN-08-009.

As discussed above, the proposed development has been conditioned to include mitigation measures, which will minimize all significant adverse environmental impacts. Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1, 3.8-1, and with Zoning Code Section 20.368.025, because (1) the proposed single-family residential use is consistent with the LUP and zoning designation for the site, (2) there would be adequate services on the site to serve the proposed development, and (3) the project would not contribute to adverse cumulative impacts on highway capacity, scenic values, water quality, or other coastal resources.

6. California Environmental Quality Act

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, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP. 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.

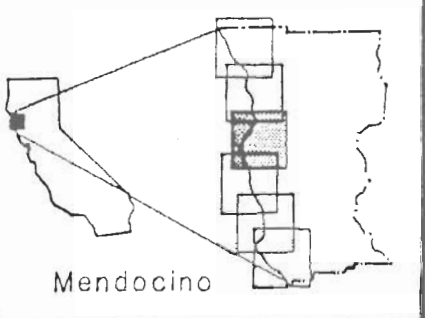
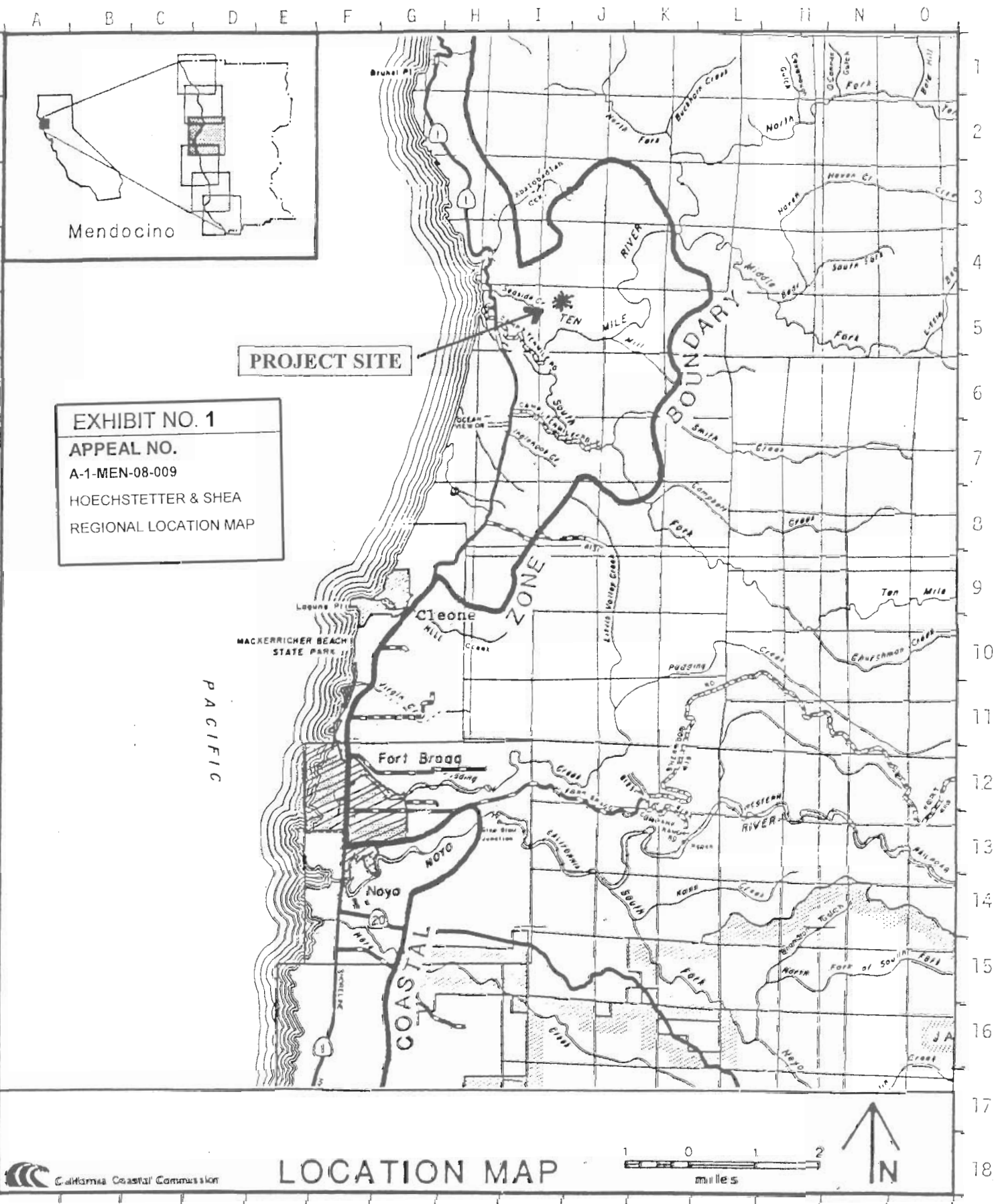
EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Site Plan
4. Elevations
5. Floor Plan
6. Proposed Exterior Materials
7. Proposed Landscape Plan
8. Map of Special Status Plant Species
9. Appeal (Commissioners Reilly & Shallenberger)
10. Appeal (Rixanne Wehren; Sierra Club, Mendocino Group)
11. Notice of Final Local Action & County Findings
12. Applicants' Letter Removing Wind Generator from Proposed Project (April 23, 2008)
13. Correspondence & Photos from Applicants (April 7, 2008)
14. Letter from Dave Jensen, Mendocino County DEH (April 23, 2008)
15. Ex-Parte Communications Disclosure (Commissioner Clark)

ATTACHMENT A

STANDARD CONDITIONS

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



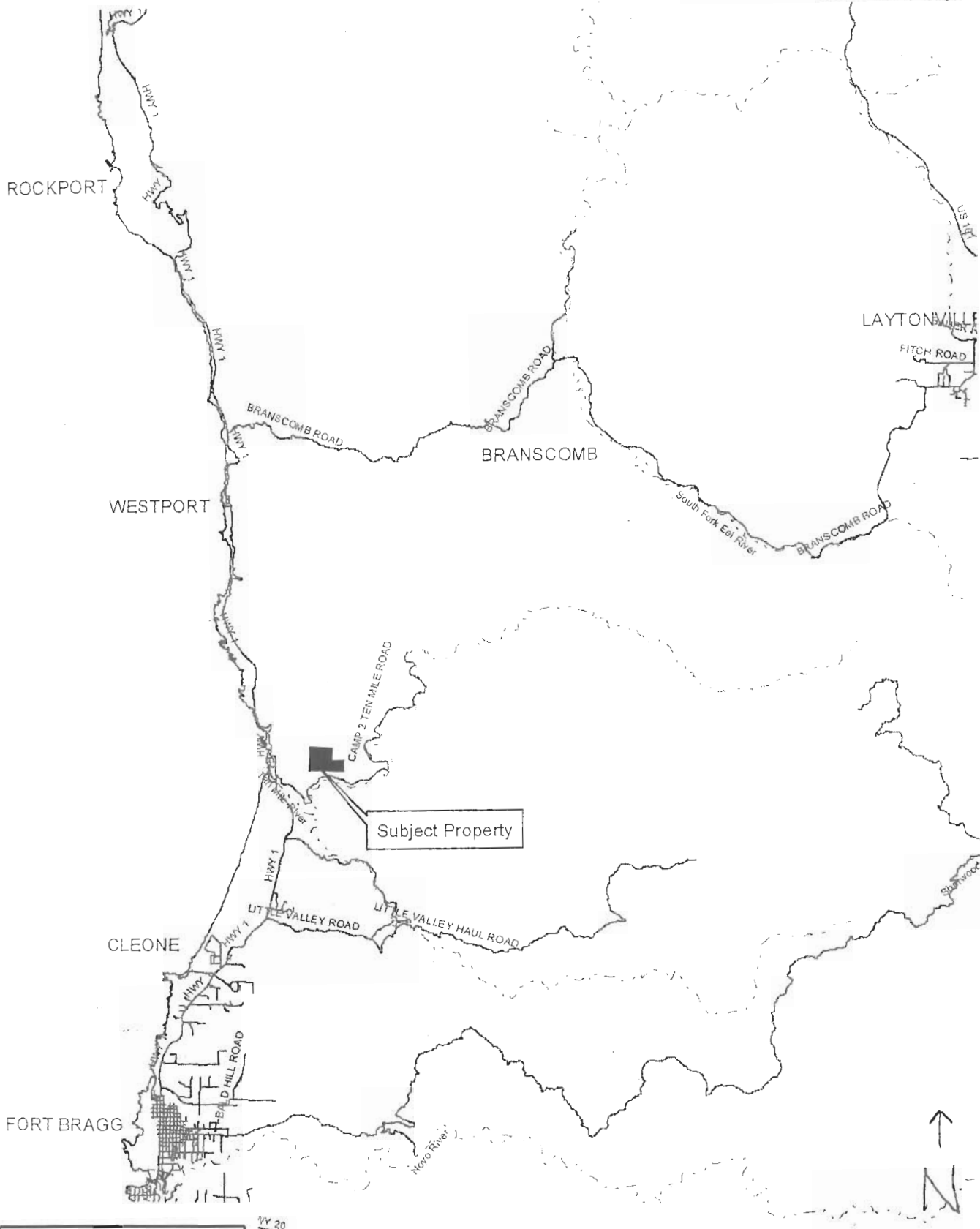
Mendocino

PROJECT SITE

EXHIBIT NO. 1
APPEAL NO.
A-1-MEN-08-009
HOECHSTETTER & SHEA
REGIONAL LOCATION MAP

PACIFIC





LOCATION MAP

EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

VICINITY MAP

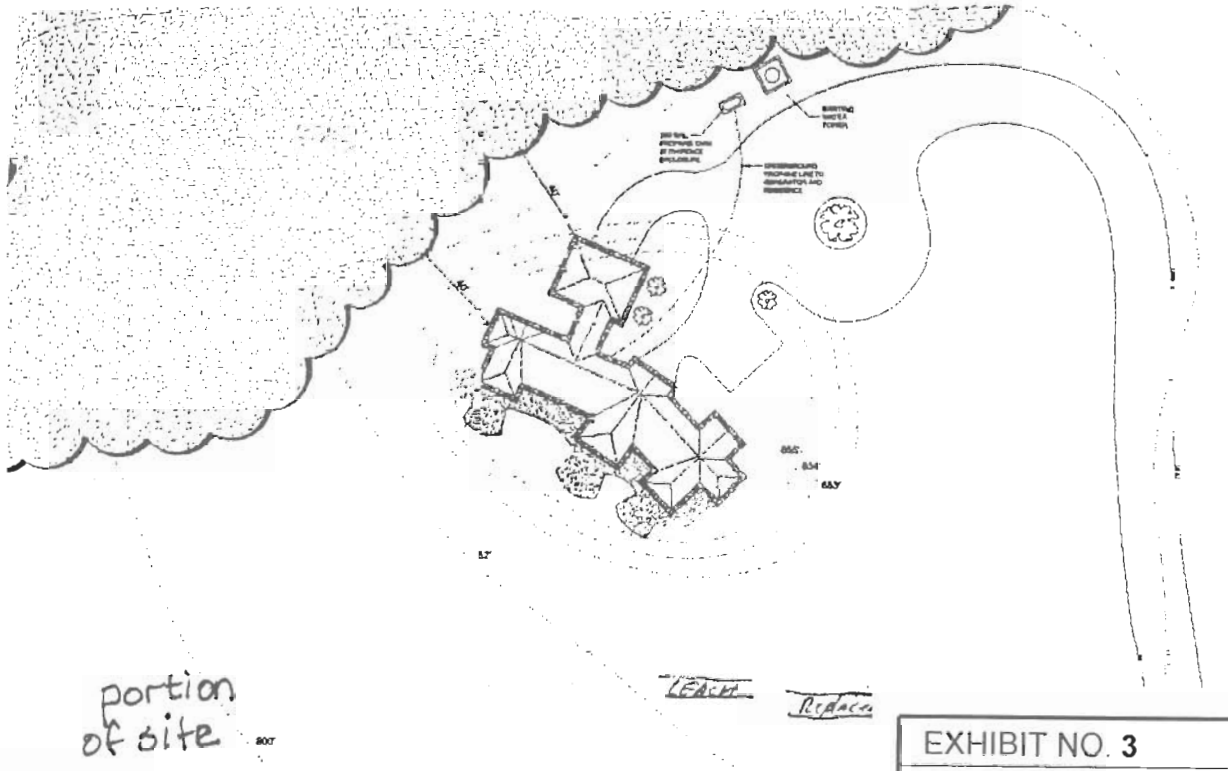
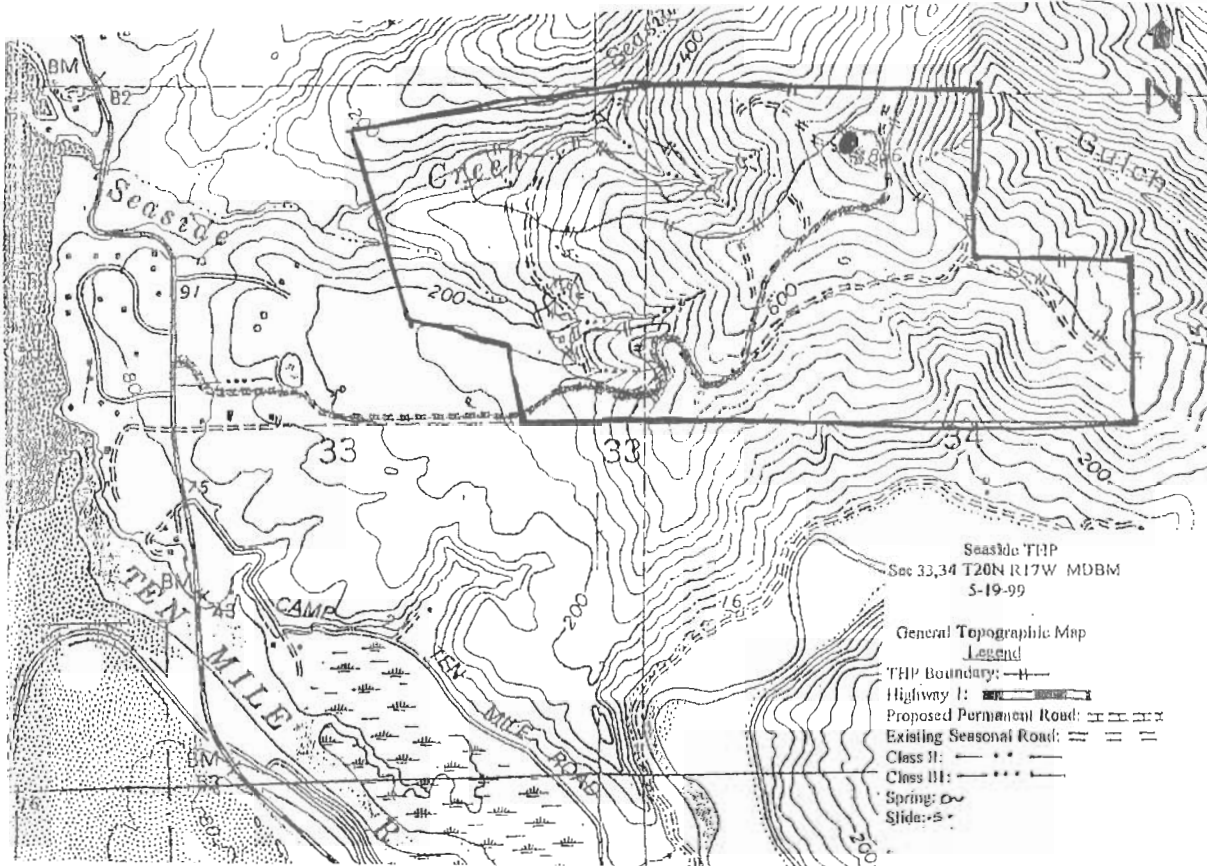
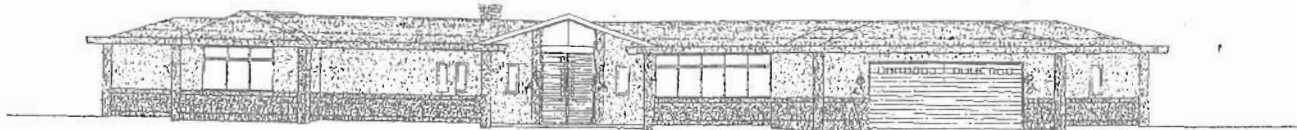


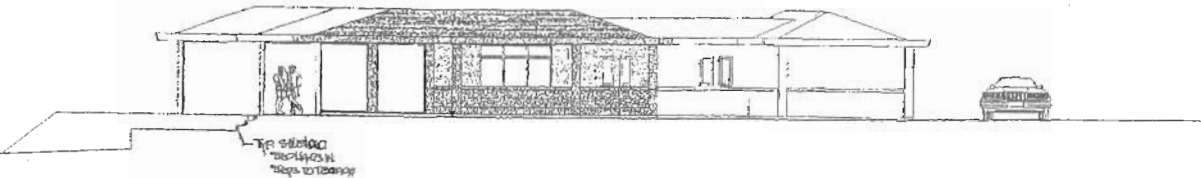
EXHIBIT B

EXHIBIT NO. 3
APPEAL NO.
A-1-MEN-08-009
HOECHSTETTER & SHEA
SITE PLAN

NOTE: ALL DIMENSIONS INDICATED ON THIS PLAN ARE
TO BE VERIFIED AND SURVEYED IN THE FIELD, PRIOR
TO START OF CONSTRUCTION FOR THIS PROJECT



NORTH (FRONT) ELEVATION



EAST (LEFT SIDE) ELEVATION



SOUTH (REAR) ELEVATION

EXHIBIT NO. 4

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

ELEVATIONS

ELEVATIONS

NOTE: ALL DIMENSIONS INDICATED ON THIS PLAN ARE
1) AS VERIFIED AND SURVEYED IN THE FIELD, PRIOR
2) START OF CONSTRUCTION FOR THIS PROJECT

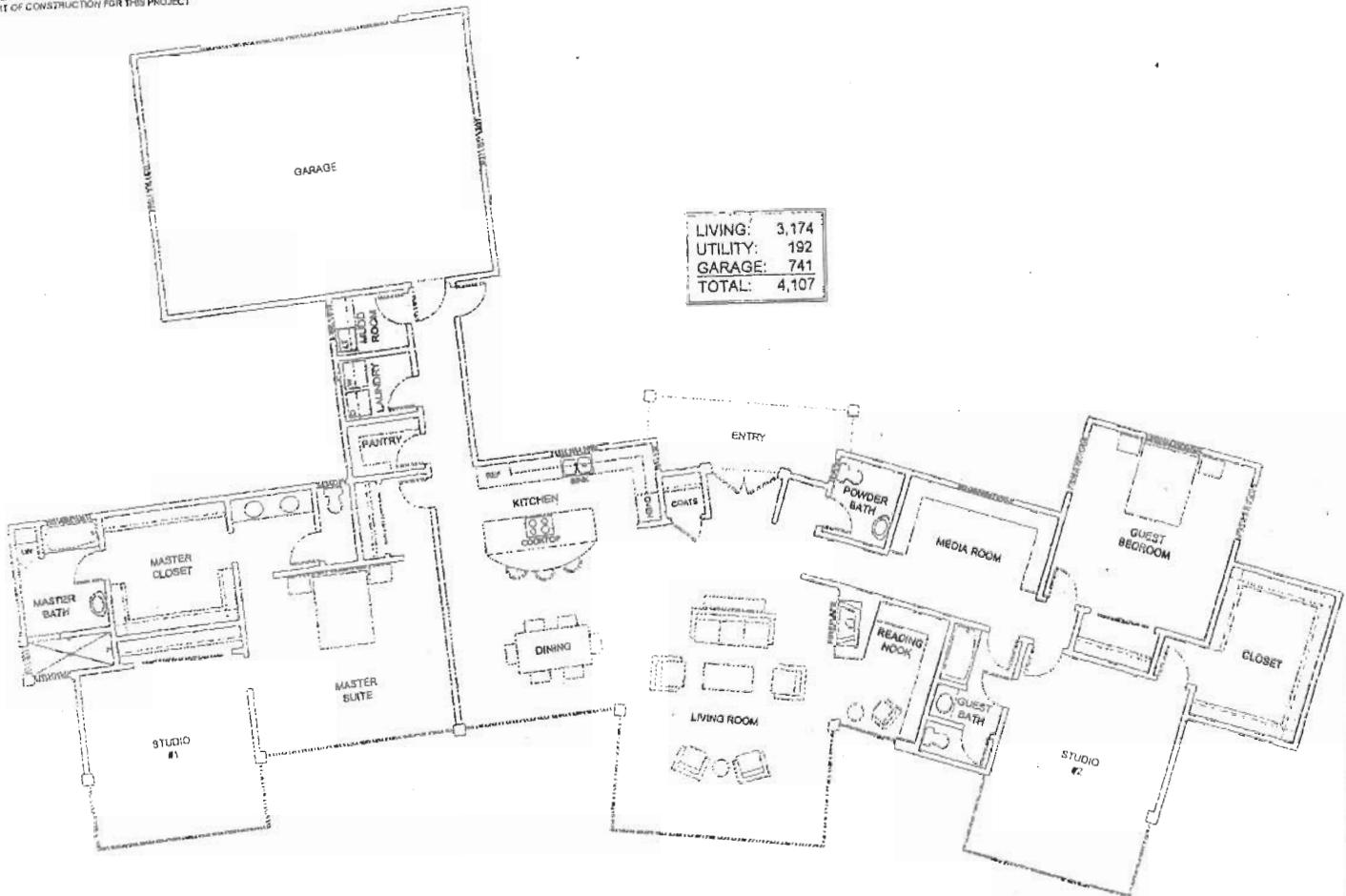


EXHIBIT NO. 5

APPEAL NO.

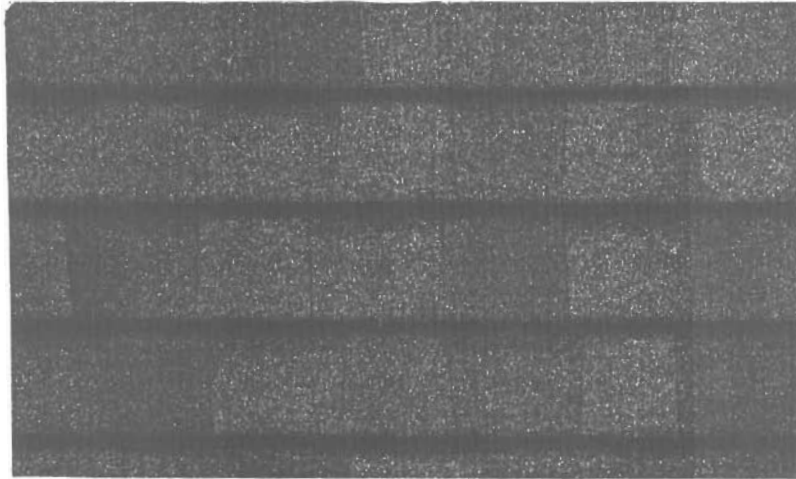
A-1-MEN-08-009

HOECHSTETTER & SHEA

FLOOR PLAN

FLOOR PLAN

Color of Proposed Asphalt Roof Shingles



Sample of Proposed Stone Exterior Siding



EXHIBIT NO. 6

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

PROPOSED EXTERIOR
MATERIALS

Harvey Hoechstetter & Lari Shea
 Landscaping Plan
 28901 N. Highway 1
 Fort Bragg, CA 95437

S

slope

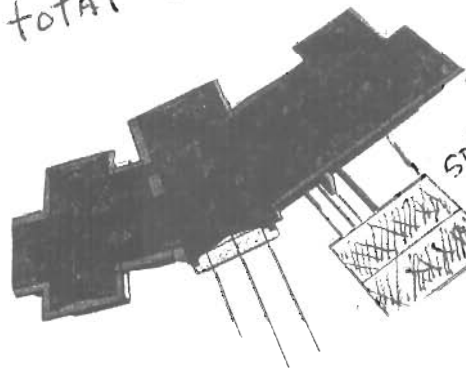
slope

gradual slope

EXISTING Forest

W

120 ft
 15 trees total S & S.W. of house



EXISTING Forest

Flat knoll building site

X = Redwood, Leland Cypress,
 Douglas fir & Sitka Spruce
 Trees planted in 2005 & 2006 as landscaping

pump house

EXISTING Forest

gate

X X X X X X X X X X

DRIVEWAY

22 trees planted N. & N.E. of building site

N
 EXISTING Forest

EXISTING Forest

X X X X X X X

EXHIBIT NO. 7
 APPEAL NO.
 A-1-MEN-08-009
 HOECHSTETTER & SHEA
 PROPOSED LANDSCAPE PLAN

slope

slope

DRIVEWAY

Temporary electric wire fence

Simcha NTMP

HONE SITE

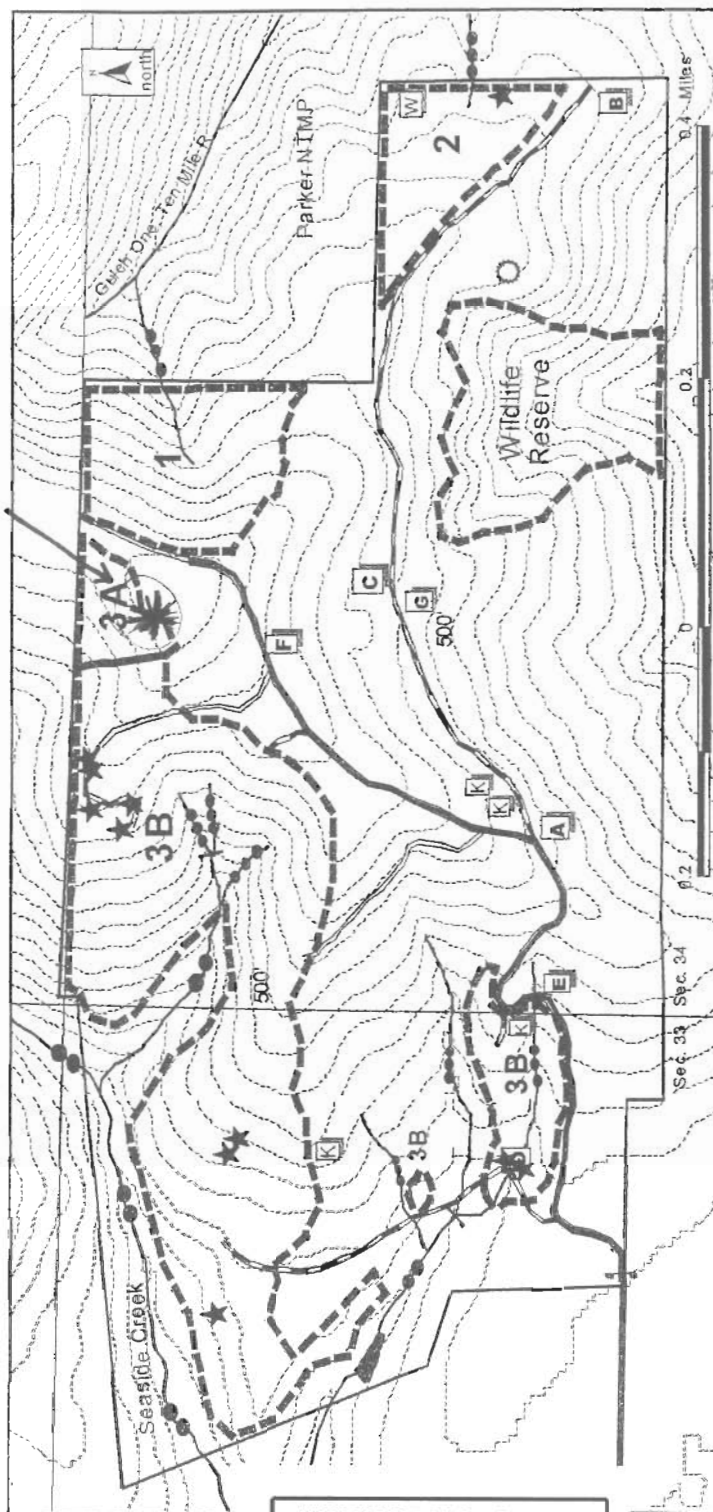


EXHIBIT NO. 8

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

MAP OF SPECIAL STATUS
PLANT SPECIES

Township 20 north
Range 17 west
Sections 33 & 34



Coast GIS Lab
2005 Rare Plant Survey
4/3/06 by [illegible]

LEGEND	
NTMP Unit boundaries	Simcha ranch roads
Simcha ownership boundary	existing permanent
Streams, class 2	existing seasonal
Streams, class 3	proposed seasonal
slide	Contours 40'
wet area	Pond
Entire area is Site II Timberlands, Moderate and High EHR	Gale
★ <i>Sidalcea malachroides</i> , maple-leaved checkerbloom	
○ <i>Hesperis matronalis</i> ssp. <i>brevifolia</i> , short-leaved evax	

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 I

Mailing Address:

City:

Zip Code:

Phone:

RECEIVED**FEB 22 2008****CALIFORNIA
COASTAL COMMISSION****SECTION II. Decision Being Appealed**

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Construct a 3,174 square foot single-family residence and a 933 square foot attached garage, with an average maximum height of 13.5 feet from grade. Install a septic system, connect to existing water system, install wind-powered generator and solar panels, as well as propane tank. Driveway is existing.

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

32900 North Highway One, Westport, Mendocino County (APN 015-140-62 & 015-130-57)

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

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

EXHIBIT NO. 9**APPEAL NO.****A-1-MEN-08-009****HOECHSTETTER & SHEA****APPEAL (COMMISSIONERS
REILLY & SHALLENBERGER)
(1 of 12)**

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-08-009

DATE FILED: 2/22/08

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: January 24, 2008

7. Local government's file number (if any): CDP #29-2007

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:

Harvey Hoechstetter and Hilary (Lari) Shea
24806 Ponderosa Drive
Westport, CA 95488

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) Norman L. de Vall
P. O. Box 3
Elk, CA 95432

(2) Rixanne Wheren
27401 Albion Ridge Road
Albion, CA 95410

(3)

(4)

2 of 12

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

See Attachment 2

3 of 12

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.)

(See Attachment 2)

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

SECTION V. Certification

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

Signed: 4 Signature on File
Appellant or

by

Date: February 22, 2008

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

Signed: _____

Date: _____

4 of 12

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.)

(See Attachment 2)

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

SECTION V. Certification

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

Signed: (Signature on File)
Appellar _____

Date: February 22, 2008

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

Signed: _____

Date: _____

5912

ATTACHMENT 1

SECTION I. Appellant(s)

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

Phone: (916) 322-0995

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

Phone: (707) 565-2241

6 of 12

ATTACHMENT 2

REASONS FOR APPEAL

The approval of Coastal Development Permit Application No. 29-2007 by Mendocino County is inconsistent with the certified Local Coastal Program (LCP), including LCP provisions regarding the protection of visual resources and environmentally sensitive habitat.

VISUAL RESOURCES

The approval of the coastal development permit by Mendocino County encompasses property within a highly scenic area designation, and is in conflict with visual resource policies and standards contained in the Mendocino LCP, including, but not limited to, LUP Policies 3.5-1, 3.5-3 and 3.5-4, and Coastal Zoning Ordinance Sections 20.504.015(C)(1), 20.504.015(C)(3), and 20.444.025.

Policies

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

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

LUP Policy 3.5-3 states in applicable part:

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

The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to Hardy Creek Bridge, except Westport Beach Subdivision...

...New development should be subordinate to the natural setting and minimize reflective surfaces. ...

7912

NOTE 1: The LUP Maps also designate the entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to Hardy Creek Bridge, except Westport Beach Subdivision 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 3.5-4 states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

...

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside...Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel. [emphasis added]

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

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

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

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

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Zoning Code Section 20.444.025 Height Exceptions states in applicable part:

(A) Radio and television aerials and antennae, and similar utility structures and necessary mechanical appurtenances may be built and used to a height not more than twenty-five (25) feet above the height limit established for the district in which the structures are located, provided, however, that no such structure in excess of the allowable building height shall be used for any commercial or advertising purposes. Wind generators and their associated towers, air emission towers and smoke stacks may be built and used to a height of one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division.

Discussion

The County of Mendocino approved Coastal Development Permit # 29-2007 for the construction of a 3,174-square-foot single-family residence and a 933 square foot attached garage, with an average maximum height of 13.5 feet from grade. The approved project includes installation of a septic system, connection to the existing water system, installation of a wind-powered generator and solar panels, and a propane tank.

The subject property is located east of Highway One along a ridge on the north side of the Ten Mile River Estuary, in an area designated "highly scenic" in the County's LCP. The largely undeveloped rural area is characterized by vast open space encompassing grassy and forested high coastal hills and the watershed surrounding the Ten Mile River. The County staff report notes that the development site is visible from State Highway One and the public access trail at the southern end of the Ten Mile Beach bridge that leads to the dunes.

The County's findings for approval provide no details about the approved wind-powered generator and do not discuss how the facility is consistent with the visual resource policies of the certified LCP. None of the exhibits attached to the County staff report show the location or details of the design of the approved wind-powered generator. In the absence of any clarifying details, the authorization to install "a wind-powered generator" would allow the applicant to develop any manner and number of wind turbines and towers, in any location on the site, designed in any fashion, using any kinds of materials of any color, whether reflective and visually obtrusive or not. CZC Section 20.444.025 sets forth provisions for height exceptions and states, in applicable part, that "...Wind generators and their associated towers...may be built and used to a height to one hundred (100) feet as measured from the ground to the highest point of the system consistent with environmental constraints and in conformance with all applicable regulations of this Division." Thus, the approved permit allows for wind generator towers that could be as tall as 100 feet.

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As details regarding the siting and design of the approved wind generator facility are not specified in the County's approval and virtually any design of wind tower(s) and other generating facilities could be built at any location on the parcel under the authorization granted by the County, the approved facility is not consistent with the visual resource protection policies of the certified LCP.

The facility that is ultimately built under the County's approval would in many ways be inconsistent with the requirements of LUP Policy 3.5-1, 3.5-3, and 3.5-4 and CZC Section 20.504.015 that development in highly scenic areas shall provide for the protection of coastal views, minimize the visual impact of development on hillsides and ridges, and be subordinate to the character of its setting. For example, an extremely tall tower, a tower built as a guyed lattice tower rather than as a monopole, a tower or other facility built with reflective materials, a tower or other facility painted with bright colors, or a turbine with particularly large blades, would stand out from its surroundings and not be subordinate to the character of its setting and would not minimize visual impacts. In addition, a wind energy facility be it a turbine tower or generator unit constructed in a prominent location on the site rather than in an area that is screened by topographical features and trees would not be subordinate to the character of its setting and minimize visual impacts..

ENVIRONMENTALLY SENSITIVE HABITAT

LCP Policies

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

LUP Policy 3.9-1

...All development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

Coastal Zoning Code Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas.

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areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

Discussion:

It is widely recognized that alternative energy, such as wind-generated energy as the applicant proposes, is considered to have certain environmental advantages over traditional power sources in that it eliminates pollution and hazardous air emissions associated with burning fuel. However, wind energy facilities can adversely impact wildlife, especially birds and bats, and their habitats (United States Fish and Wildlife Service, 2003). Direct killing can occur to bats and birds, particularly raptors, from striking moving blades. When birds approach spinning turbine blades, a phenomenon called "motion smear" occurs, which is caused by the inability of the bird's retina to process high speed motion stimulation. This occurs primarily at the tips of the blades, making the blades deceptively transparent at high velocities. This increases the likelihood that a bird will fly through this arc, be struck by a blade and be killed (Hodos et al. 2001).

Environmentally Sensitive Habitat Areas (ESHA) are defined in the Mendocino County LUP as *"any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."* CZC Section 20.496.010 further defines ESHA as including, in part, habitats of rare and endangered animals. The County staff report indicates that a rare plant survey was conducted by Mad River Biologists and the consultants report indicates that no rare plants would be affected by the development. However, it is not known at this time whether the project site contains habitat for any rare or endangered bird or bat species, as County's findings make no mention of wildlife surveys or other biological investigations having been conducted at the site for purposes of identifying the presence of any special status bird or bat species. However, the site does include significant stands of trees, which commonly support bird and bat populations and the coast serves as a corridor for migratory birds.

Certain wind energy facility designs are worse than others with regard to impacts on bats and birds. The US Fish and Wildlife Service (USFWS) prepared a guidance memo entitled, *"Service Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines,"* dated May 2003. The memo sets forth guidelines prepared to assist Service staff in providing technical assistance to the wind energy industry to avoid or minimize impacts to wildlife and their habitats through: (1) proper evaluation of potential wind energy development sites; (2) proper location and design of turbines and associated structures within sites selected for development; and (3) pre- and post-construction research and monitoring to identify and/or assess impacts to wildlife. The memo further indicates that implementation of the USFWS recommendations by the wind industry is voluntary and that use of the guidelines is on a case-by-case basis.

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The Commission notes that regarding turbine design and operation, the USFWS guidelines recommend, in part, as follows:

Use tubular supports with pointed tops rather than lattice supports to minimize bird perching and nesting opportunities. Avoid placing external ladders and platforms on tubular towers to minimize perching and nesting. Avoid use of guy wires for turbine...support towers. (emphasis added)

Similarly, the American Bird Conservancy recommends that “*wind turbines...be monopoles, and not of lattice construction, and use no guy wires*” (www.abcbirds.org/policy/windenergy.htm).

As noted above, it is not known what particular design of wind generating facility the applicant is proposing and whether a design that minimizes impacts on bird or bat species will be utilized.

As details regarding the siting and design of the approved wind generator facility are not specified in the County’s approval, and as virtually any design of wind turbine tower(s) whether designed to minimize the potential for bird strikes or not could be built at any location on the parcel under the authorization granted by the County, the approved facility does not prevent significant adverse effects to sensitive bird and bat species. Therefore, the approved project is inconsistent with LUP Policy 3.9-1, which requires that all development proposals be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

CONCLUSION

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

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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: Sierra Club, Mendocino Group

Mailing Address: P.O. Box 522

City: Mendocino

Zip Code: 95460

Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

CASE #: CDP #29-2007

DATE FILED: 5/25/2007

OWNER: Harvey Hoechstetter & Hilary (Lari) Shea

REQUEST: Construct a 3,174 square foot single-family residence and a 933 square foot attached garage, with an average maximum height of 13.5 feet from grade. Install a septic system, connect to existing water system, install wind-powered generator and solar panels, as well as propane tank. Driveway is existing.

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

LOCATION: In the Coastal Zone, 1500 + feet E of State Highway One, approximately 1,000 feet N of its intersection with the N end of Ten Mile River Bridge, at 32900 N Highway One, APN 015-140-62 and 015-130-57

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

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

EXHIBIT NO. 10

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

APPEAL (RIXANNE WEHREN;
SIERRA CLUB, MENDOCINO
GROUP) (1 of 8)

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-08-009

DATE FILED:

2/22/08

RECEIVED

FEB 22 2008

CALIFORNIA
COASTAL COMMISSION

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET, SUITE 200

EUREKA, CA 95501

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



DISTRICT:

North Coast

248

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: January 24, 2008

7. Local government's file number (if any): CDP #29-2007

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:

Harvey Hoechstetter and Hilary (Lari) Shea
24806 Ponderosa Drive
Westport, CA 95488

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) Sierra Club, Mendocino Group
PO Box 522
Mendocino, CA 95410

(2) Rixanne Wehren
Coastal Committee chair
27401 Albion Ridge Rd.
Albion, CA 95410

(3)

(4)

3 of 8

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.

Because of its relatively pristine condition and spectacular scenic beauty, the Ten Mile River area has been designated by the California Coastal Commission, the California State Coastal Conservancy and the Mendocino Land Trust as among their top ten coastal areas worthy of protection.

The Sierra Club, Mendocino Group has, for similar reasons, taken a special interest in the Ten Mile area. The Club has recently appealed County-approved projects to the Coastal Commission. The Hunt project (A-1-03-69) and the Lost Coast Trail Rides (A-Men-06-046) were both denied by the Coastal Commission because they significantly impacted the public view of this designated Highly Scenic area (HSA) and the applicants had alternative sites available for their projects.

This project brings up the same issues.

LCP 4.2 describes the planning area for this project as

...grand in scale, containing spectacular meetings of land and sea as the highway climbs to provide sweeping views of the Lost Coast and drops to narrow gulches near the shore. The most spectacular views have been permanently protected through public acquisition of lands lying between Highway 1 and the ocean.

This plan has given further protection to the scenic and rural qualities of this area by ruling out creation of new subdivisions and by the retention of rangelands and timberlands in large parcels and by designating ... areas between Hardy Creek and the Ten Mile River as highly scenic areas...

LCP 3.5-1 The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted developments 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...

New development in highly scenic areas... shall be subordinate to the character of its setting.

LCP 3.5-3 Any development permitted in [HSAs] shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams...

LCP 3.5-4 Re Buildings in HSAs Because of its relatively pristine condition and spectacular scenic beauty, the Ten Mile River area has been designated by the California Coastal Commission, the California Coastal Conservancy and the Mendocino Land Trust as among their top ten coastal areas worthy of protection.

4 of 8

The hill on which the project is being proposed, because of the curvature of the coastline and because of its 850 foot height is highly visible from nearly the entire stretch of coast from Fort Bragg to Seaside Beach—all public lands. It is even visible from some streets in Fort Bragg.

Because of this extremely high visibility, this proposal deserves the utmost scrutiny. The file contains one simulated photo from the vantage point of only one public view. This photo shows the house as highly visible from Highway One. There are no photos illustrating its visibility from other public areas within MacKerricher State Park. The story poles erected at the original site are inadequate to assess the visual impacts of a nearly solid wall of south-facing glass of indeterminate length (scale seems missing in plans). Will this wall of glass serve as a huge beacon of light reflecting the afternoon sun?

An adequate analysis would consist of computer-generated simulations of the project overlaid, to scale, on photographs of the site from these various public points. Special attention needs to be paid to the effects of night time lighting from interior sources and from headlights of vehicles using the long steep road along the face of the hill.

The 9,000 square foot barn (CDP #43-04) recently constructed by the applicants on the flat below the current project site is highly visible from the MacKerricher Dunes State Park. This massive metal building is completely out of character and scale with the surrounding area. It significantly degrades the scenic qualities of this Highly Scenic area. When asked how she could have approved a project with such an overwhelming presence, the planner for this project replied that she didn't assess its potential visual impacts from the MacKerricher State Park dune area. (Personal communication)

We cannot afford another such oversight.

LCP 3.5-6 Development on a parcel located partly within the Highly Scenic Area...shall be located on the portion outside the viewshed if feasible

While the HSA is not clearly delineated in the Staff Report, it is clear that portions of the 308 acre parcel are not visible to the public.

The Staff Report fails to adequately address the above policy. It needs to be addressed since it has been the basis of denial for other projects in the same area. There are also several properties between Ten Mile river and Westport that could conceivably apply for similar structures on ridgetops if this application is successful. Therefore it is important to firmly establish a precedent of support for the LCP requirements.

In addition to a thorough visual analysis, we would like to review the required landscaping plan.

We also question the adequacy of a plant survey conducted 5 years ago. Species move; their designations can change. Does the plant survey need to be updated?

Thank you for your most careful consideration of this proposal.

5 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.

Signature on File

Signature of Appellant(s) or Authorized Agent

Date:

2/22/08

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

Section VI. Agent Authorization

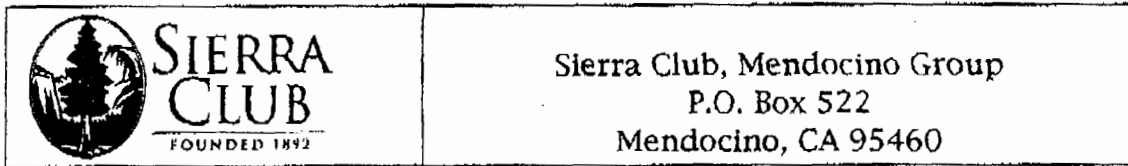
I/We hereby
authorize

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

Signature of Appellant(s)

Date:

6 of 8



Feb. 22, 2008

RECEIVED

FEB 22 2008

CALIFORNIA
COASTAL COMMISSION

Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

Re: CASE #: CDP #29-2007

DATE FILED: 5/25/2007 Mendocino County Coastal Development Administrator

OWNER: Harvey Hoechstetter & Hilary (Lari) Shea

Dear staff,

The Sierra Club, Mendocino Group is appealing the approval of the Hoechstetter/Shea house north of Ten Mile River by the Coastal Zone Administrator of Mendocino County. We find that the scenic resources of this magnificent area have not been protected in accordance with the Local Coastal Plan policies.

Although Harvey Hoechstetter and Lari Shea are well-respected and well-liked members of our community, have contributed much to the conservation efforts, and have tried to design their new home with the newest green technology; we still find that the impact on visual resources in a designated "highly scenic" area has not been adequately addressed to conform with the Local Coastal Plan. The Ten Mile River - to-Westport area is extremely important for the maintenance of the scenic Mendocino coast. We have successfully opposed other developments which would impact the scenic quality, and feel that we must be consistent in our policy of appealing development along the ridgetops.

We missed the appeal on the big green barn, and regret not having suggested its placement in a less obtrusive spot. This property is very visible from Mackerricher State Park and Seaside Beach and Highway

7 of 8

1, so it deserves the scrutiny we are asking from the Coastal Commission.

Thank you for considering our appeal.

Sincerely,

Signature on File

Rixanne Wehren
Coastal Committee chair



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

RAYMOND HALL, DIRECTOR
Telephone 707-964-5379
FAX 707-961-2427
www.co.mendocino.ca.us/planning

RECEIVED
FEB 06 2008
CALIFORNIA
COASTAL COMMISSION

February 4, 2008

NOTICE OF FINAL ACTION

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

CASE#: CDP #29-2007

OWNER: Harvey Hoechstetter & Hilary (Lari) Shea

REQUEST: Construct a 3,174 square foot single-family residence and a 933 square foot attached garage, with an average maximum height of 13.5 feet from grade. Install a septic system, connect to existing water system, install wind-powered generator and solar panels, as well as propane tank. Driveway is existing.

LOCATION: In the Coastal Zone, 1500 ± feet E of State Highway One, approximately 1,000 feet N of its intersection with the N end of Ten Mile River Bridge, at 32900 N Highway One, APN 015-140-62 and 015-130-57.

PROJECT COORDINATOR: Rick Miller

HEARING DATE: January 24, 2008

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. 11

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

NOTICE OF FINAL LOCAL
ACTION & COUNTY FINDINGS

(1 of 7)

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDP #29-2007 HEARING DATE: 1/24/2008

OWNER: Hoechstetter/Shea

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt
☐ Negative Declaration
☐ EIR

FINDINGS:

☒ Per staff report
☒ Modifications and/or additions

(justified #)

1)

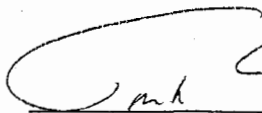
That the location of the project is further supported by the alternative energy component of the design

ACTION:

☒ Approved
☐ Denied
☐ Continued
2) Special Condition #2 addresses + mitigates visual concerns.

CONDITIONS:

☒ Per staff report
☐ Modifications and/or additions



Signed: Coastal Permit Administrator

STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 29-2007 (Hoechstetter/Shea)
November 19, 2007
CPA-1

OWNER: Harvey Hoechstetter and Hilary (Lari) Shea
24806 Ponderosa Drive
Westport, CA 95488

REQUEST: Construct a 3,174 square foot single-family residence and a 933 square foot attached garage, with an average maximum height of 13.5 feet from grade. Install a septic system, connect to existing water system, install wind-powered generator and solar panels, as well as propane tank. Driveway is existing.

LOCATION: In the Coastal Zone, 1500 \pm feet E of State Highway One, approximately 1,000 feet N of its intersection with the N end of Ten Mile River Bridge, at 32900 N Highway One, APN 015-140-62 and 015-130-57.

APPEALABLE AREA: Yes (conditional highly scenic area)

PERMIT TYPE: Standard

TOTAL ACREAGE: 308.5 acres

ZONING: RL:160

GENERAL PLAN: Range Land :160 acre minimum

EXISTING USES: Agricultural barn; grazing land for horses

SUPERVISORIAL DISTRICT: 4

ENVIRONMENTAL DETERMINATION: Categorically exempt, Class 3

BACKGROUND INFORMATION: The applicants previously applied for and secured a Coastal Development Permit (CDP 43-2004) for the construction of a 9,000 square foot agricultural barn with a maximum height from average natural grade of 20 feet on the subject site. The building included an area for storing tractors, horse trailers and assorted farm and horse equipment. Hay and grain will be stored within the structure. A tack area and a horse washing area is included in the structure. Four stalls are within the area as well, to be used for isolation purposes, veterinarian treatment areas, and for foal birthing. A home office area and half bath was constructed within the structure. The project included the installation of a septic system, minor grading of the site, 90' extension of the driveway from an existing internal road and extensive landscaping in order to soften the public's view of the barn area. This development is located halfway up the hill to the proposed residential building site. The agricultural barn is only partially visible from State Highway One.

A preliminary application conference (PAC 2-2007) was held March 19, 2007 at the proposed building site for the subject residence. Staff met with the owners and their agent, and discussed several possible concerns regarding the potential for visual impact the proposed development may create in an otherwise undeveloped area. Story poles for the original garage and residence were erected to assist staff in the visual assessment. In a letter dated March 28, 2007, the owners acknowledge that the original design proposed would be too visible. They agreed to redesign and relocate the structure in an effort to comply with the Local Coastal

347

Hazards

The site is located in a State Responsibility Area and potential hazards associated with fire protection on the subject property are addressed by CDF. A preliminary fire clearance form has been submitted by the applicant, CDF #242-04, which details addressing, driveway standards, defensible space and the maintenance thereof.

One identified hazard near the site is from an earthquake fault. The California Division of Mines and Geology's "Earthquake Fault Zones" map prepared pursuant to the Alquist-Priolo Act indicates that the parcel has a fault line running adjacent to the property in a northwesterly direction.

The Land Use Plan (LCP) contains policies relating to development on parcels subject to threats from geologic hazards.

Geologic hazards are defined by the LCP to include the following:

- *seismic hazard areas delineated on fault maps as subject to potential surface rupture, on soil maps indicating materials particularly prone to shaking or liquefaction, and in local and regional seismic safety plans*

The coastal zone is seismically active and vulnerable to earthquake hazards which include surface rupture, ground shaking, liquefaction and differential settlement, and tsunami inundation. The San Andreas fault parallels the coast offshore from the Humboldt County line to Manchester where it heads inland continuing southeasterly from the coastal zone. Further to the east are the Hayward, Rodgers Creek and Maacama faults. Both the San Andreas and Maacama faults are capable of producing strong earthquakes in the coastal zone. Notable historical events on faults crossing the coastal zone include the 1906 movement measuring, at its epicenter in Marin County, 8.3 on the Richter scale, and several earthquakes on the Maacama fault with a magnitude range of 4.5 - 5.5 during the past 50 years.

Section 20.500.020 of the Mendocino County Coastal Zoning Code discusses requirements for parcels sited within a geologic hazard area.

Faults. (1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.

(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.

As the setbacks from any fault line is greater than 50 feet (as scaled it appears that the fault line is closer to 1,000 feet away), the above-noted requirements will not be applied. Rather, the application of the Uniform Building Code during the building permit process would address safety and structural issues associated with development on this parcel.

Visual Resources

The site is located at a ridgetop, just to the north of the Ten Mile River, and commands a spectacular view of the ocean and the watershed along the Ten Mile area. The site is screened by existing, mature trees and the development is proposed to be set back from the brow of the hill. The proposed residence will be partially

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 29-2007 (Hoechstetter/Shea)
November 19, 2007
CPA-5

of trees is proposed for this development. Also, the proposed garage was relocated from the side of the single-family residence to be placed behind the structure. The garage is no longer visible to the public.

Staff has received a letter of concern, mainly noting the potential for negative visual impact in the area, due to the lack of development and the possibility of nighttime light intrusion. A copy of this letter is located in the CDP file.

Therefore, staff resolved to research similar projects that have been successfully accomplished with little or no impact to the viewshed. One such example is the "Eisenberger" project, located just past the town of Elk, also along a spectacular eastern landform that is highly visible from the highway. In this project, the house was proposed to be set back from the brow of the hill to better blend with the natural topography and the existing forest backdrop. No adverse visual impacts have been noted, even with night time lighting, as the exterior lighting is compliant with the Mendocino County Coastal Zoning Code's requirement of downcast and shielded fixtures, with no visible bulb. Additionally, the "Smiley" residential project, farther down the Mendocino Coast from the Eisenberger project, in the area known as Bridgeport Landing, is similar in landform and construction, with little visibility from State Highway One. Closer to the subject site is the Westport Beach subdivision, which is made up of rolling hills that lead upwards to magnificent ridgetops, parceled into 20-acre lots. Most of the development is located within the view of the public; however, due to strict regulation of the MCCZC visual resource policies (downcast and shielded exterior lighting, muted natural earthtones in construction materials, and judicious placement of structures to blend with the natural topography) these residential developments have largely been considered successful and subordinate to their settings. A majority of these developments have similar 1-story designs and exterior colors and finishes that blend with their surroundings.

Staff finds the proposed project, as conditioned below, to be consistent with the policies and codes that apply to the site. No trees would be removed to accommodate the proposed development.

The proposed structure would consist of masonry siding, painted a natural darker tone to blend with the surrounding flora, with the window and door trim to be matching. A dark green masonry roof would be installed. The proposed exterior materials and finishes should blend with the surrounding natural environment. Special Condition #1 is recommended to ensure that the applicant provides the Coastal Permit Administrator with color samples for his review and approval prior to the issuance of the CDP. The project would comply with the exterior lighting regulations of Section 20.504.035 of the Zoning Code, requiring that all exterior lighting details be downcast and shielded, as the applicant has submitted exterior lighting details showing covered exterior lighting fixtures. Special Condition #1 also ensures that the exterior light fixtures are consistent with those presented in this permit.

The applicant has already planted over 9,000 assorted native trees on site to create a more natural-looking parcel. Existing Douglas Fir and Grand Fir trees are in place behind the proposed location of the residence, which are anticipated to reach a height greater than that of the proposed structure. Staff recommends that a detailed landscaping plan (including a maintenance, watering and replacement schedule of not less than a 1:1 basis) be submitted to the CPA prior to the issuance of the Coastal Development Permit, as noted in Special Condition #2.

Special Condition #2 is also recommended to ensure the required landscaping is installed prior to final clearance of the building permit for the residence and maintained for the life of the project.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 29-2007 (Hoechstetter/Shea)
November 19, 2007
CPA-7

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 use is compatible with the long-term protection of resource lands.

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.

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 29-2007 (Hoechstetter/Shea)
November 19, 2007
CPA-9

2. Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Coastal Permit Administrator, a detailed landscaping plan that shows a vegetative screen between the residence and the slope to the south and west of the structure. This plan shall supply information as to the type, number, and location of screening vegetation. The purpose of this plan is to soften the view of the proposed development from any public location (such as the State Highway and the Ten Mile River and the associated beach and trails). The required landscaping is to be maintained for the life of the project.

Prior to the final building inspection, all landscaping shall be in place and the maintenance plan submitted for the life of the project. Should any of the trees or screening vegetation become diseased or die, they shall be replaced on a 1:1 ratio. No non-native or invasive species shall be planted or allowed to naturalize in this area.

Staff Report Prepared By:

11/7/07
Date

Rick Miller
Rick Miller
Senior Planner

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.)

747

Lari Shea & Harvey Hoechstetter
24806 Ponderosa Drive
Westport, CA 95488

April 23, 2008

Tiffany S. Tauber
Robert S. Merrill
California Coastal Commission
North Coast District Office
PO Box 4908
Eureka, CA 95502-4908
Voice; (707) 445-7833 Fax: (707) 445-7877

RECEIVED

APR 23 2008

CALIFORNIA
COASTAL COMMISSION

In reference to Local Permit # DCP #29-2007

Harvey Hoechstetter & Hilary (Lari) Shea

Location: 29801 North Highway 1, south of Westport, California
(Mendocino County) (APN(s) 015-140-62, 015-130-57)

To Whom It May Concern:

This letter is to confirm that Lari Shea and Harvey Hoechstetter have, since March 5th, 2008, asked to REMOVE any wind power or wind generator from our application to build a home at our property listed above. There seems to be some confusion as to the proper way to have the wind generator removed from our Coastal Commission Application, but let it be known that ever since we read the concerns in the appeal to our original application, we have determined to drop the wind generator from our project.

Sincerely,

Signature on File

Signature on File

Lari Shea and Harvey Hoechstetter

EXHIBIT NO. 12

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

APPLICANTS' LETTER
REMOVING WIND GENERATOR
FROM PROPOSED PROJECT
(APRIL 23, 2008)

Please reference letter dated March 5, 2008
We do not want a wind generator.

Lari Shea & Harvey Hoechstetter
24806 Ponderosa Drive
Westport, CA 95488

RECEIVED

APR 18 2008

CALIFORNIA
COASTAL COMMISSION

April 7, 2008

California Coastal Commission
North Coast District Office
PO Box 4908
Eureka, CA 95502-4908
Voice: (707) 445-7833 Fax: (707) 445-7877

EXHIBIT NO. 13

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

CORRESPONDENCE &
PHOTOS FROM APPLICANTS
(APRIL 7, 2008) (1 of 31)

In reference to: Local Permit # DCP #29-2007
Harvey Hoechstetter & Hilary (Lari) Shea
29801 North Highway 1, Fort Bragg, CA
Location: south of Westport, north of Fort Bragg, California
(Mendocino County) (APN(s) 015-140-62, 015-130-57)

To Whom it May Concern:

We would greatly appreciate an opportunity to respond to the issues brought up in appeals by the Sierra Club, Mendocino Group, and Commissioners Mary Shallenberger and Mike Reilly. We feel confident that further explanation will answer their questions and alleviate their concerns. We would like to address the specific issues raised as to whether our project is consistent with LCP policy, and whether we could choose an alternative site.

In regard to Coastal Committee Chair of the Sierra Club, Rixanne Wehren's letter: We are in total agreement with her desire to protect the scenic resources of this magnificent area. We have been appalled and dismayed at some of the highly visible, multiple story homes built in the open on ridge tops close to the ocean along Highway One from north of Westport to south of Elk. In the five years we've taken to design our own home, we have studied those bluff top houses which *do* blend in harmoniously with their natural surroundings, and plan to do the same. Please read the letters of support for our project from our five closest adjacent property owners, and from many other informed, environmentally conscious and concerned local citizens.

Specifically, we point out that our project is located at the east end of an already existing driveway, 1.8 miles inland from Highway One. The base of our driveway is directly across the road from the Ocean Meadows housing sub-division with many dozens of existing homes west of the highway on relatively small lots, which are visible from Ten Mile Beach, Seaside Beach, MacKerricher State Park, and Highway One, as well as from our own property. Our property is located behind, and directly east of three other separate properties, all of which have multiple ranch buildings including homes and outbuildings, as well as heavy equipment and ranch industrial machines. These three properties border us to the west, and separate us from Hwy. One. So, although we consider our own property extremely beautiful, it is difficult to call its location "pristine", surrounded as it is by dozens of other houses, outbuildings and equipment.

The Sierra Club letter states that the hill on which our project is proposed is visible from some streets in Fort Bragg. This is not true. They must be confusing our hill with that of Bald Hill Ranch, which is owned by the same family from which we purchased our land, but which is five miles closer, just outside of Fort Bragg. Our property and hill are not visible from Fort Bragg at all. Please see accompanying photos showing the only two places on Hwy 1 between Fort Bragg and the Ten Mile River at which our property is briefly visible while driving north from Fort Bragg.

At 820 feet of elevation, we are the lowest of the surrounding ridge tops. While horseback riding from our property, with my GPS I have measured surrounding ridges at 882, 1057, 1115, and 1308 feet of elevation.

I have owned a business located two miles north of Fort Bragg for the past 30 years. I produce horseback rides in MacKerricher State Park, from which we have views of the hillside property north of the Park which my husband and I purchased to build our home. Over the years, I have taken thousands of photographs of riders on the beach, some of which show "our" hillside in the background. We are extremely conscious of how much, from which angles, and from where our home will be visible. We plan to build an "invisible" home. It will seem nestled into the trees, bounded by a permanent forest of redwoods and Douglas fir behind, around and above our house, peering out from the 15 redwood and cypress trees we have already planted in front of where our house will be situated. We have already planted nearly two dozen additional trees "behind" our house to fill in any gaps in the tree line behind us from the lowest angles. Please see the accompanying landscape plan and many photographs showing this in detail.

While driving north on Highway One, our hill site is only briefly visible from two places between Cleone and the Ten Mile River, at the 66 and 69.12 mile markers. Please see the 8x10 photographs which show these places, and know that none are visible to people in a vehicle for more than a split second while driving. Most eyes will be on the road or looking west, not east.

As point of fact, there is no legally designated "public access trail at the southern end of the Ten Mile Beach bridge that leads to the dunes" as described in Ms. Wehren's letter. Cal Trans has not actively prevented people from (trespassing) across their property to enter MacKerricher State Park, but the Park itself does not have access to the highway or parking area south of the Ten Mile Bridge. As a matter of fact, I must point out that the Audubon Society and California State Parks actively discourage people from entering these sand dunes from the Ten Mile River to five miles south at Ward Avenue, due to their being prime Snowy Plover habitat. We never ride our horses into the dunes, for that reason.

We would also like to explain the reason we built a large equipment barn at the bottom of our property. We are combining two homesteads. We are lucky enough to own horses, cattle, dogs, cats, goats and much ranch equipment, including a tractor, trailer, a 4-wheeler, a 3-wheeler, 2 large horse trailers, 2 trucks, wheel barrows, fencing equipment, assorted ranch repair tools, tack for a dozen horses, and many bales of hay, etc. We hate seeing other ranches on which odds and ends of vehicles, fencing and equipment are scattered around everywhere. We built one big structure so we could keep everything under one roof, out of the elements, and out of sight. Then we planted thirteen Leland Cypress trees, the fastest growing, full bodied tree we could find to hide our barn from view from that narrow dune area. Our barn is totally out of view from the beach, and from Highway One south of the Ten Mile Bridge

In terms of the adequacy of the plant survey conducted on our whole property by Mad River Biologists 5 years ago: Our hill top location has been continuously grazed by horses, mowed to keep the thistles down, trampled by family weddings, volleyball games and reunion parties, and landscaped with hundreds of flowers, shrubs and trees. I doubt very much the value of an updated plant survey on the relatively small building spot in question.

Specifics as to whether this location should be approved for our home site:

Coastal Element Policies: Visual Resources; Special Communities and Archaeological Resources

LUP Policy 3.5-1 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.

This project satisfies these requirements, as detailed below.

LUP Policy 3.5-4, states in applicable part:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, **or in or near the edge of a wooded area**. (Our emphasis). Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

Our home site is on the upper corner of our property, which is zoned for Agriculture. We have located our agricultural outbuilding barn on the lower corner by the front entry to our property. We plan to leave the rest of the large open range land area of the property undeveloped, to be used for agricultural purposes. We will build next to the edge of the densely wooded area which will surround our home on three sides, and have planted 37 additional local forest trees to further hide view of our home site from the south/west.

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours;

Our already existing driveway follows natural contours.

(2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms;

No new grading, cutting or filling would be necessary to access this site. The site itself is nearly flat; therefore grading, cutting or filling would be kept to the absolute minimum. The rest of the property is mostly steep to extremely steep slope, which would necessitate much more grading, cutting or filling if developed.

(3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites;

We will not significantly alter any landform to accommodate our building, since the site is level.

(4) concentrate development near existing major vegetation,

Our home will be next to and surrounded by existing large forest.

and (5) promote roof angles and exterior finish which blend with hillside.

The 13.5 foot roof and exterior finish will be of dark, natural colors and non-reflecting materials, which will blend with the hillside behind and above us.

Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists;

We will not build in the large open range land areas, but will build at the edge of our property next to our forest.

(2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area.

We are 1.8 miles inland from Hwy 1, not near public areas along the shoreline. Our design is for one house in scale with the rural character of the area, house and garage clustered near existing vegetation on a natural landform.

Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;

Our single story home will not project above the ridgeline. We will use existing vegetation, structural orientation, and landscaping to further limit the visibility of our home.

(3) prohibiting removal of tree masses which destroy the ridgeline silhouette.

We will protect our home from wind and from sight by not removing any trees which will destroy the ridgeline silhouette or the forest surrounding our site. This site is the best suitable flat area on our property, minimizing the alteration of natural land forms. (LUP Policy 3.5-1-4, Section 30251 of the Coastal Act)

“Nothing in this policy shall preclude the development of a legally existing parcel.”

Zoning Code Section 20.504.015 © (1) states that:

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

Zoning Code Section 20.504.015 © (3) states that:

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

Our project satisfies each and every one of the above policies.

To reiterate the conditions we feel answer the questions raised in appeal:

1: The house is sited on a level terrace just in front of an established forest of tall redwood and Douglas fir trees which will never be cut, so the outline of the house will not protrude above the skyline when viewed from below. The location of the home has been moved further back on the meadow north of the bluff edge at the request of Staff.

2: As mentioned, we have planted 15 redwood and cypress trees which are already nearly 10 feet high, in front of the house site. By the time we break ground, they will be even higher. Therefore, the house will appear to "peek out" from among the trees, which will further disguise it from view. We have also already planted nearly two dozen redwood, Douglas fir and Sitka spruce trees behind the house, which will further camouflage the building. These trees will be maintained, and replaced with like planting in the event of die off.

3: We will use dark, natural colors for the exterior of the house.

4: We will have no exterior lighting on the south/west side of the house. What exterior lighting we will have will be down facing and of low wattage. No "farm lights" will be installed.

5: The home will not be used for commercial purposes.

6: No radio transmitting antennae or flag pole will be installed.

7: Our solar array will not be visible from Highway 1, Ten Mile Beach, MacKerricher State Park, or any other property. Our summit site is usually out of the fog when lower portions of our land are socked in, so is most suitable for solar power. If we built at some other site on our property, we would have to degrade the view of the land by bringing in multiple telephone and electricity poles to bring power to our house.


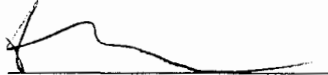
8: We will install double glazed non-reflective glass windows, with over-hanging eaves. Overhangs on the south side of the house will prevent direct sunlight from hitting the glass during months of the year at which the sun is high, so there will be no reflection whatsoever. During winter months, when the sun is at a lower angle, the angle of reflection will hit the ground in front of our house, not be directed out to neighboring properties

9: Our driveway is already established... an existing gravel logging road with sufficient culverts and turn-outs. We will not need any new or additional grading or soil disturbance in order to access this site. The driveway circles around below the house, and approaches from the back side of the house, which will shield headlights from view from the highway or park.

10: We plan to utilize solar power for 100% of our electrical needs, backed up by a quiet generator. Our cell phones work perfectly at this location. Electrical runs and telephone lines, if ever installed in the future, will be undergrounded.

11: Any fencing will be of natural wood color, and designed so that it cannot be seen from Highway 1 or MacKerricher State Park.

12: Because our building site is nearly level, grading and the disruption of soil will be held to a minimum. No trees will be cut to build our house. The contour of the land will not be changed.

 Signature on File
Signed:  Harvey Hoechstetter

100% of adjacent property owners are in full support of our project

Interested Parties who have expressed written opinions:

Adjacent property owners:

Faith (Fay) Olson
Ten Mile Camp One Rd.
Fort Bragg, CA 95437
707-964-0406

Nan Deniston, partner
Parker Ten Mile Ranch, LP
Business address: 1950 Primrose Avenue
South Pasadena, CA 91030
626-441-3335

Willard Jackson
Business address: PO Box 430
Middlebury, VT 05753
802-462-3445

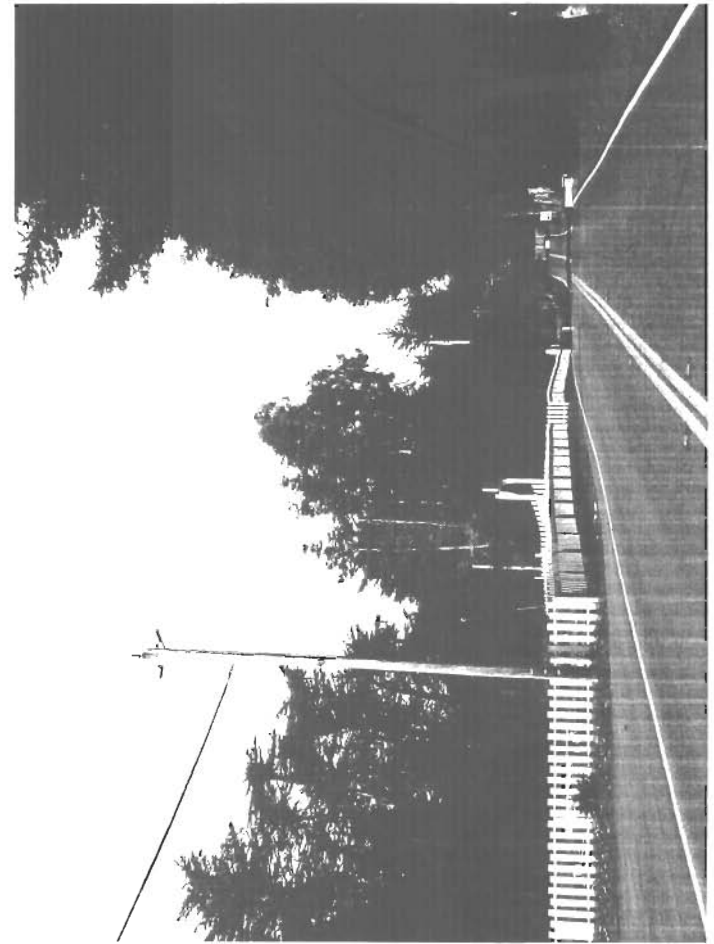
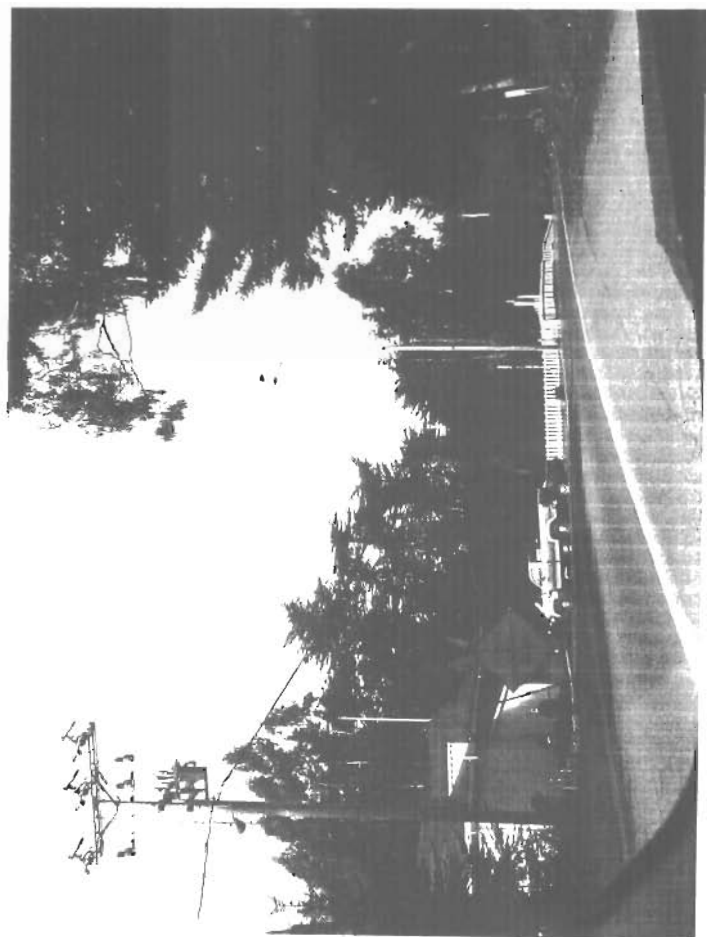
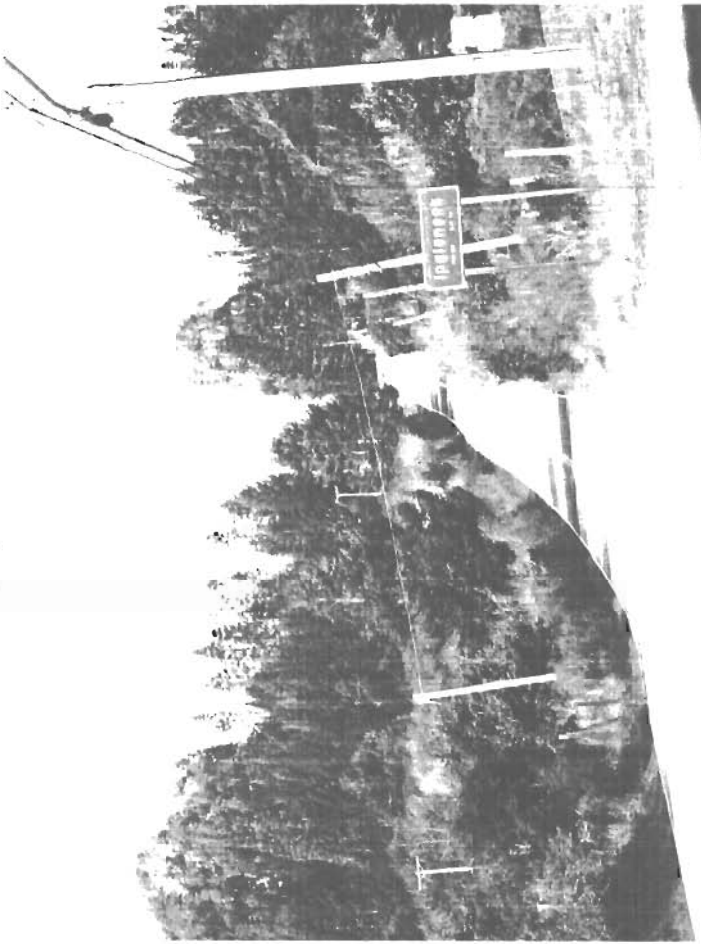
Michael McGuire
29001 N. Hwy 1
Fort Bragg, CA 95437
707-964-2834

William (Billy) and Veronica Clayton III
30000 Pacific Coast Hwy 1
Fort Bragg, CA 95437
707-964-7479

Plus; Spoke in favor of our project at local CCC meeting:

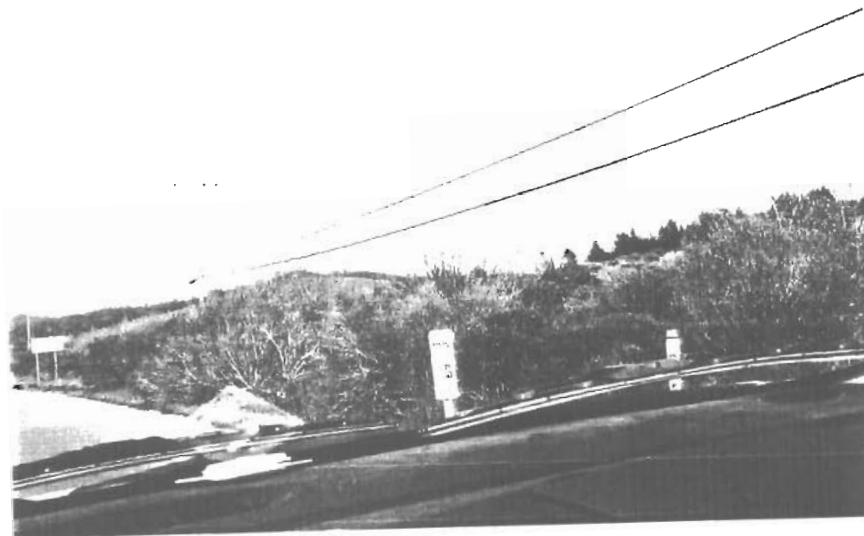
Brenda Kamber
Mitchell Creek Rd.
Fort Bragg, CA 95437
707-964-5464

Showing view driving north from known landmarks, Cleone to Ten Mile. No view of our property is possible.

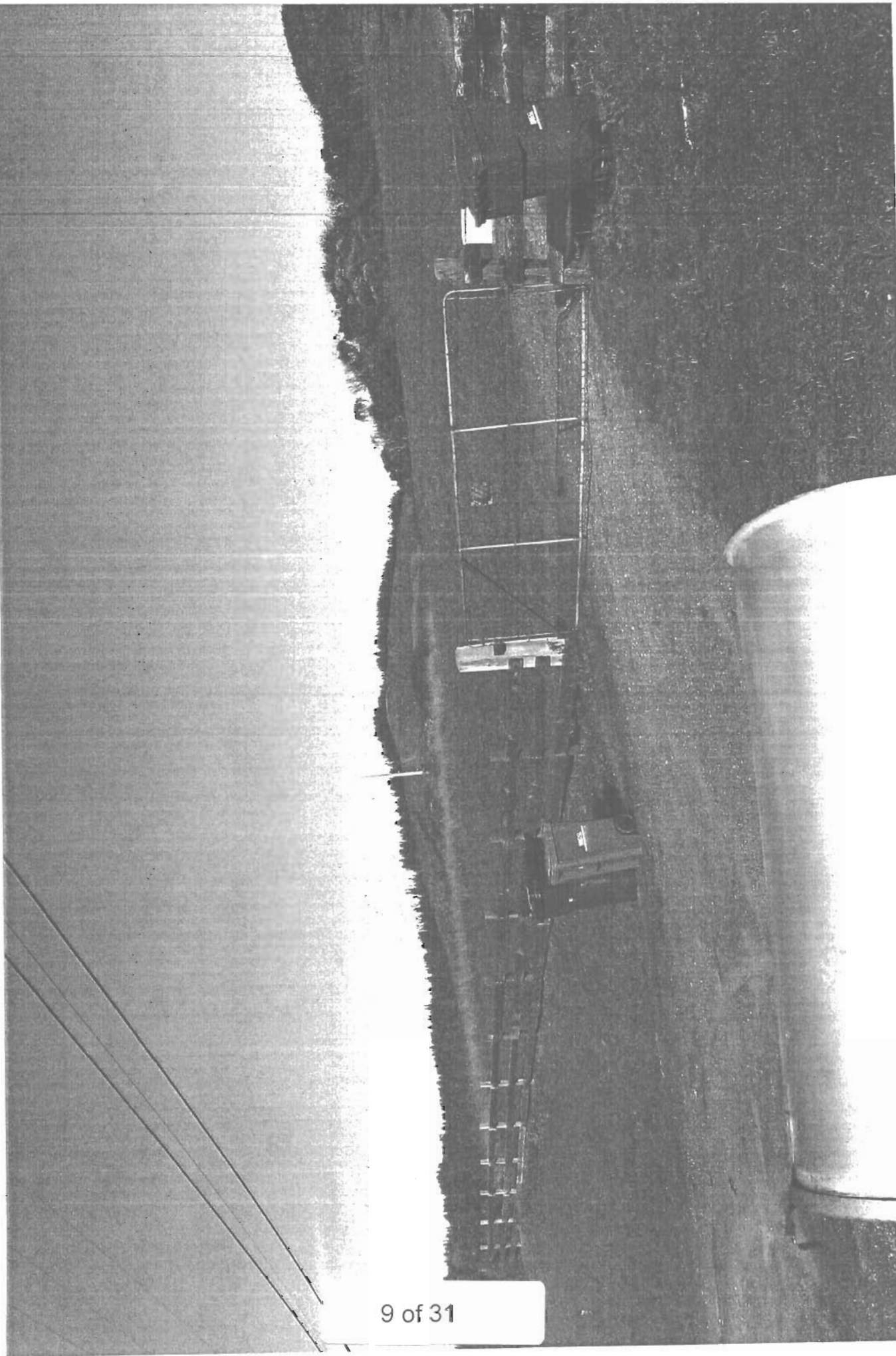




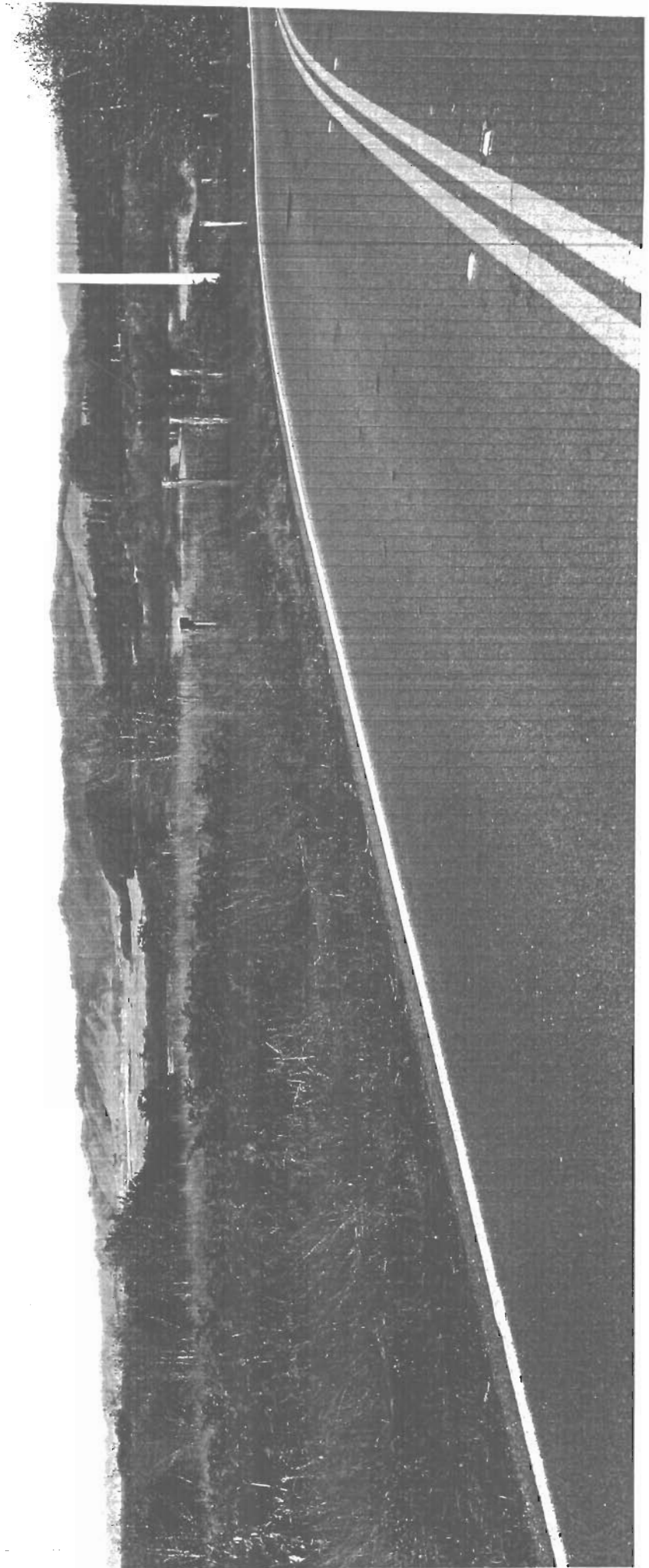
Approaching the last turn in the Hwy before the Ten Mile River, property begins to come into view, but is still hidden by vegetation until just before the bridge. Most eyes would at that point be looking West towards the Pacific Ocean or due north towards the mountains ahead instead of East towards our land.



As seen from Hwy 1 at mile marker 69.12, just south-west of our property, just before the Ten Mile Bridge. Please note, trees have already been planted to fill in the "gap" in vegetation at the top of the hill, and our house is sited to the north of the gap, which is to the left in this photo. Note, barn cannot be seen from any of these photos.



The first view of our property from Hwy 1, north of Fort Bragg. Before this point, which is just north of Simpson Road at mile marker 66.5, the property is not visible due to other ridges, land contours and vegetation.

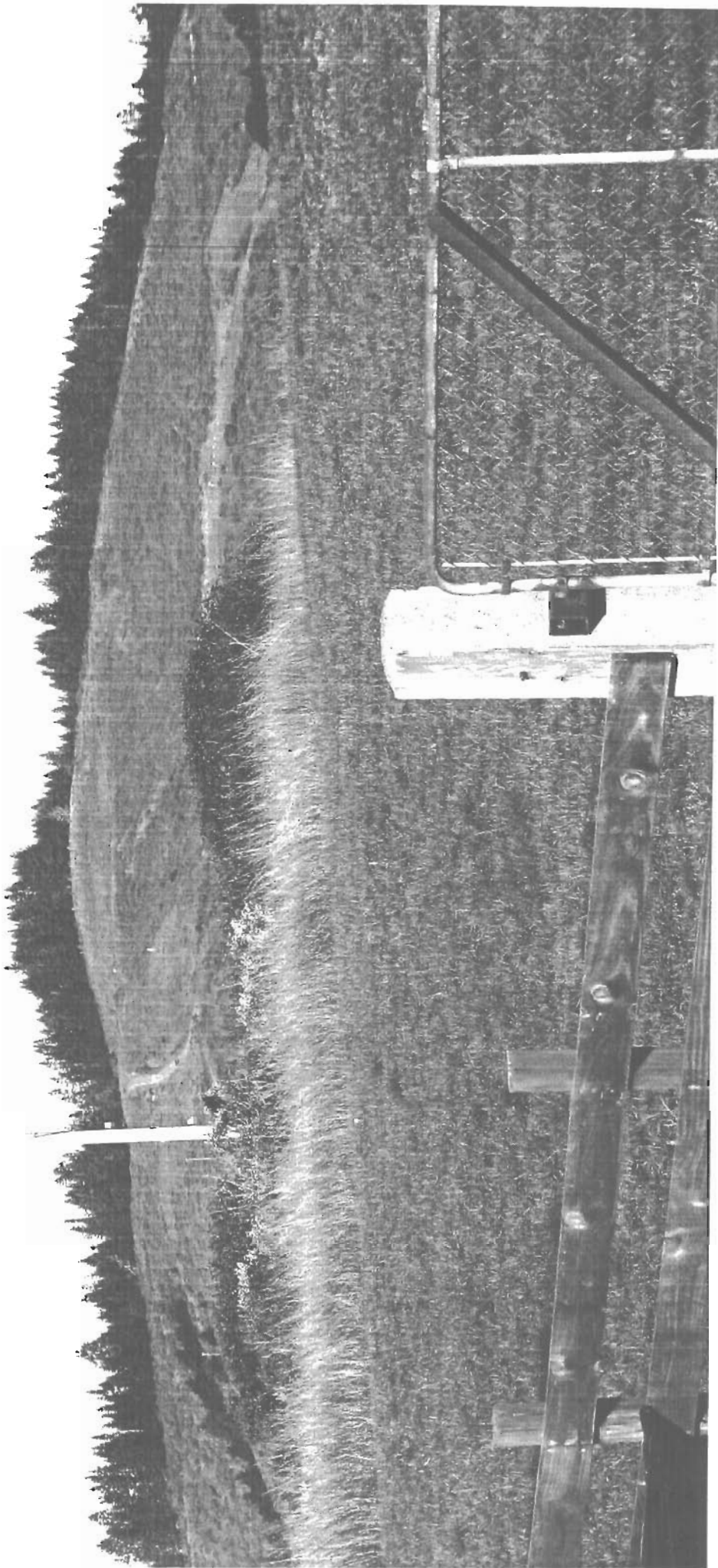


View of our property from mile marker 66.12, just south of the Ten Mile Bridge. We have already planted redwood, Sitka spruce, Douglas fir and cypress trees in the "low spot" to fill in the slight gap in vegetation behind and in front of where our house will be placed. Our house is situated towards the taller trees at the top of the ridge, in this photo to the left of the gap in vegetation.

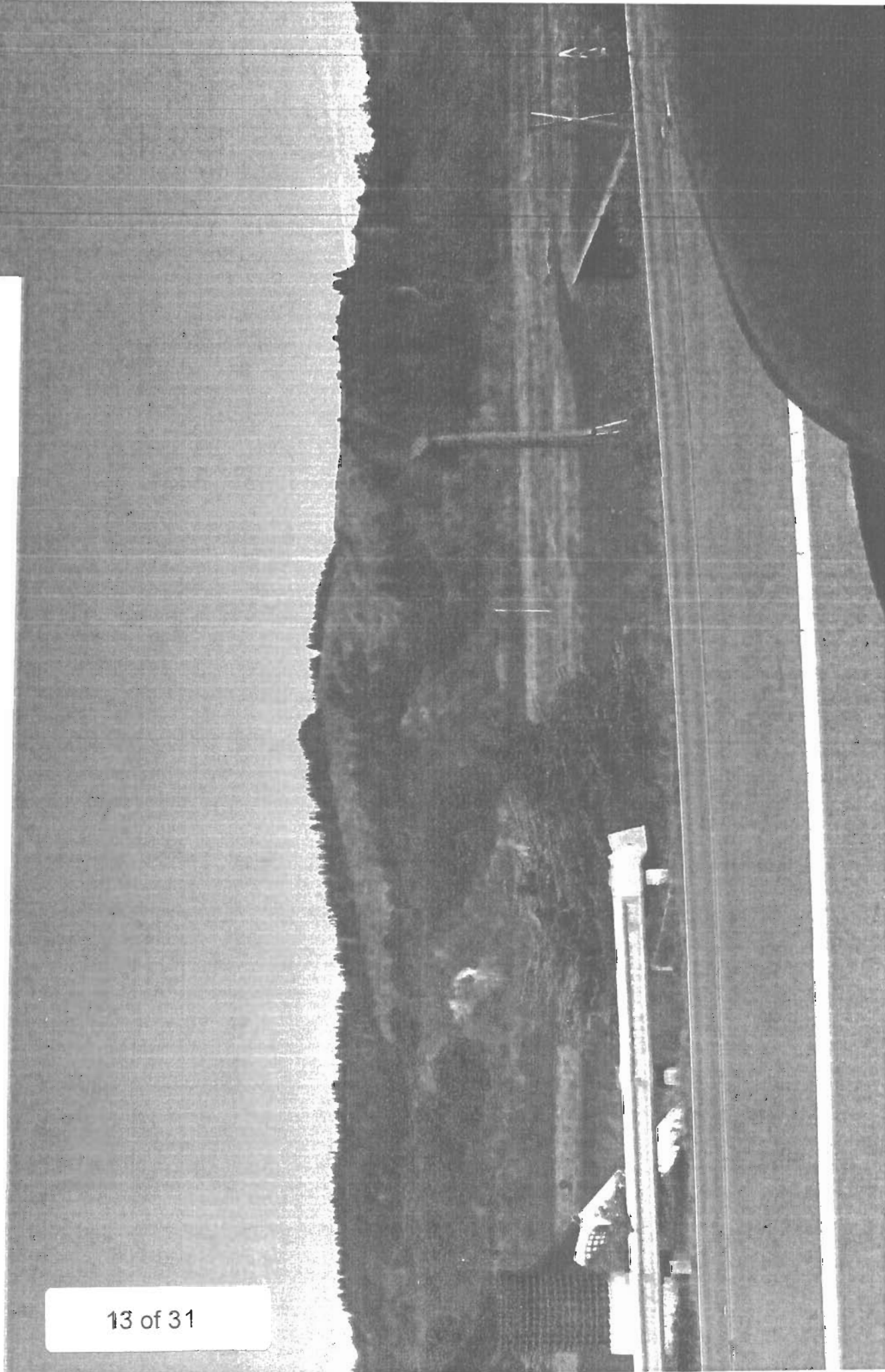


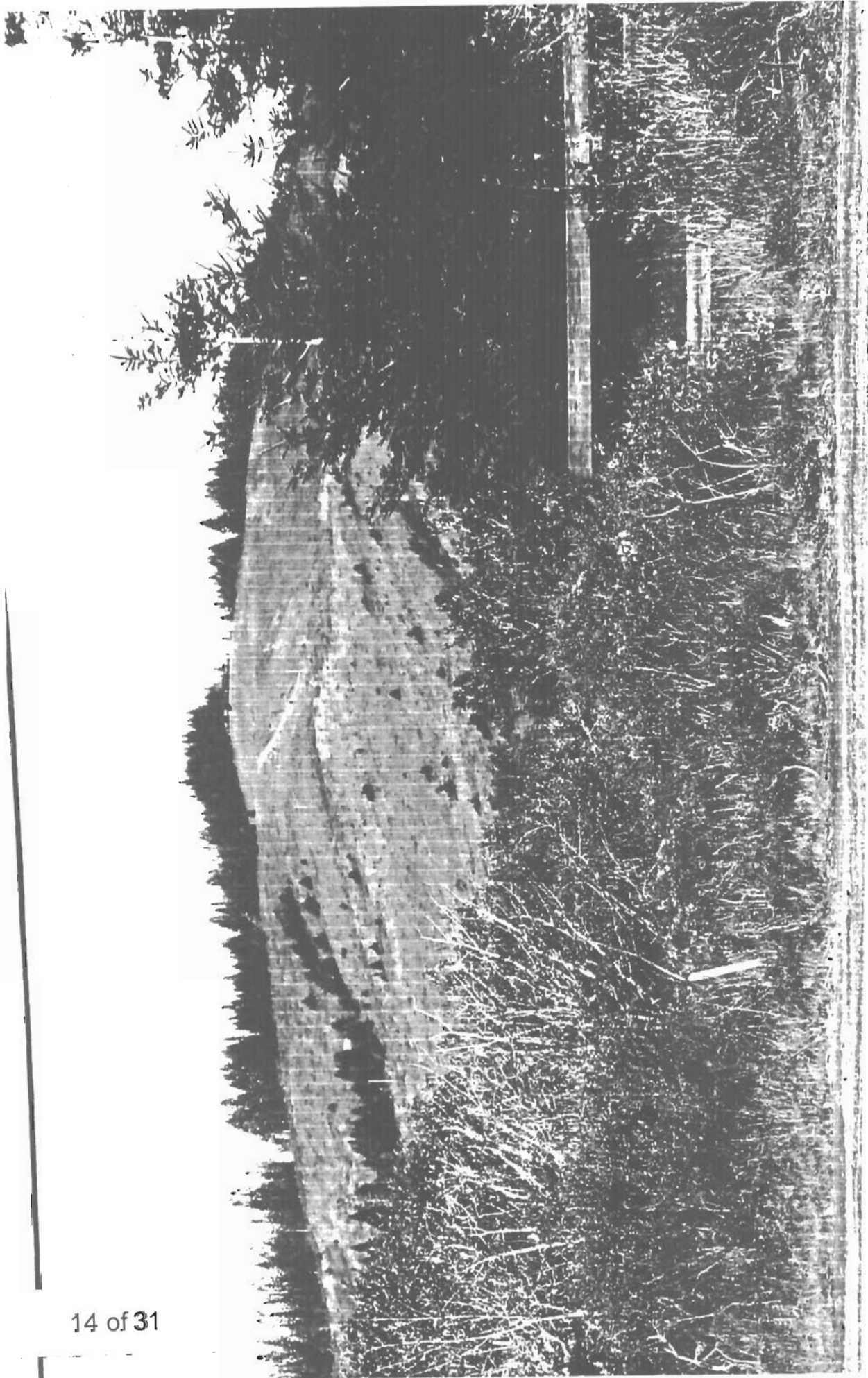
Zooming in on our building site, photo also taken from the 66.12 mile marker just south of the Ten Mile Bridge. Our house will be in front of the taller trees at the top of the hill. The driveway comes up to the plateau beneath the house site, then goes east below the house, out of sight, circling around to come in from the north, hidden by the house.

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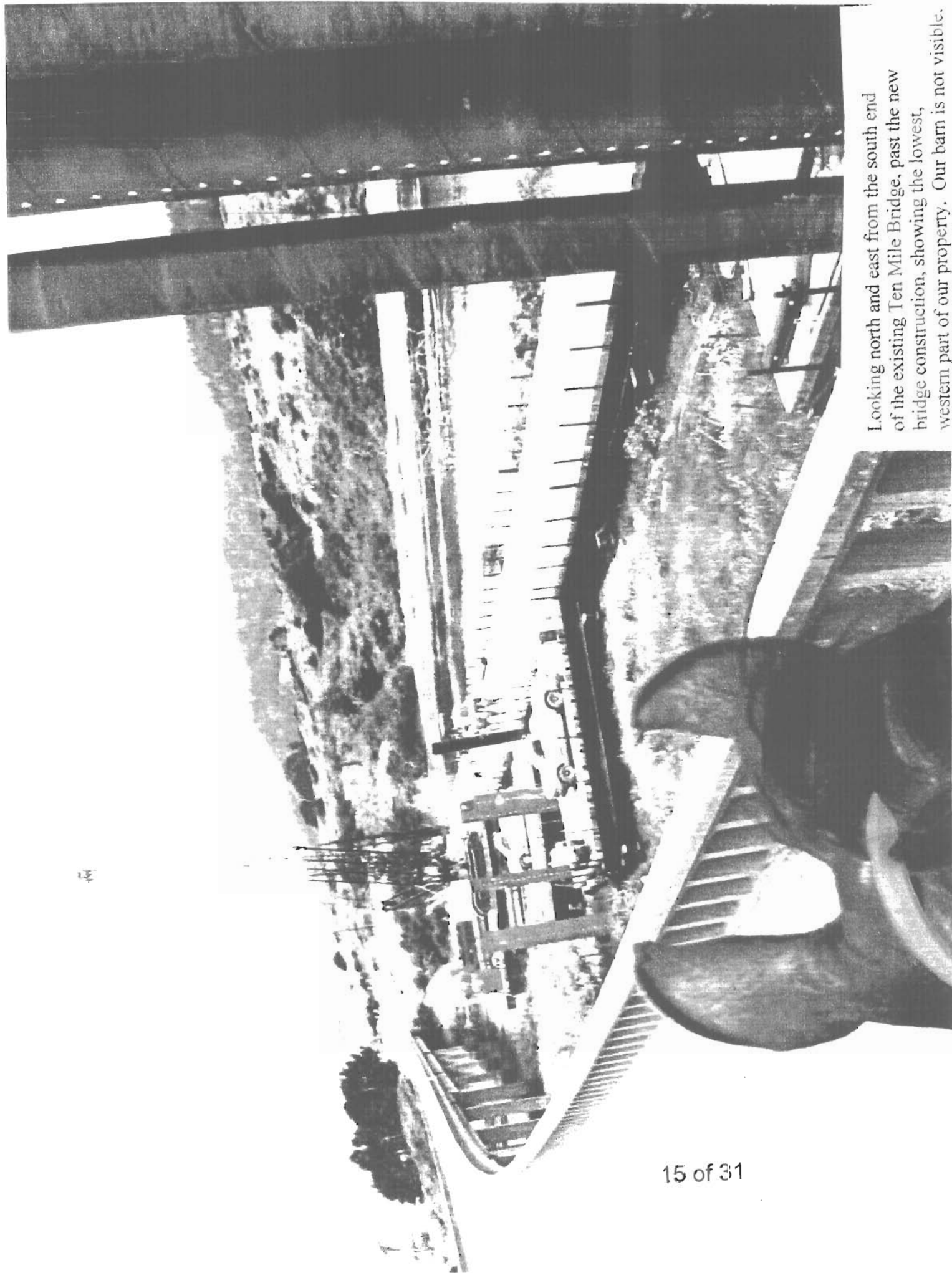


Building site as seen from parking area just south of Ten Mile Bridge, showing construction equipment of new bridge. Please note the utility poles which define the southern edge of our property. We hope to use alternative energy sources so that we do not need to place new power poles across the hillside to bring power to any building site. We are most likely to be successful in using alternative energy sources the higher on the ridge we build.

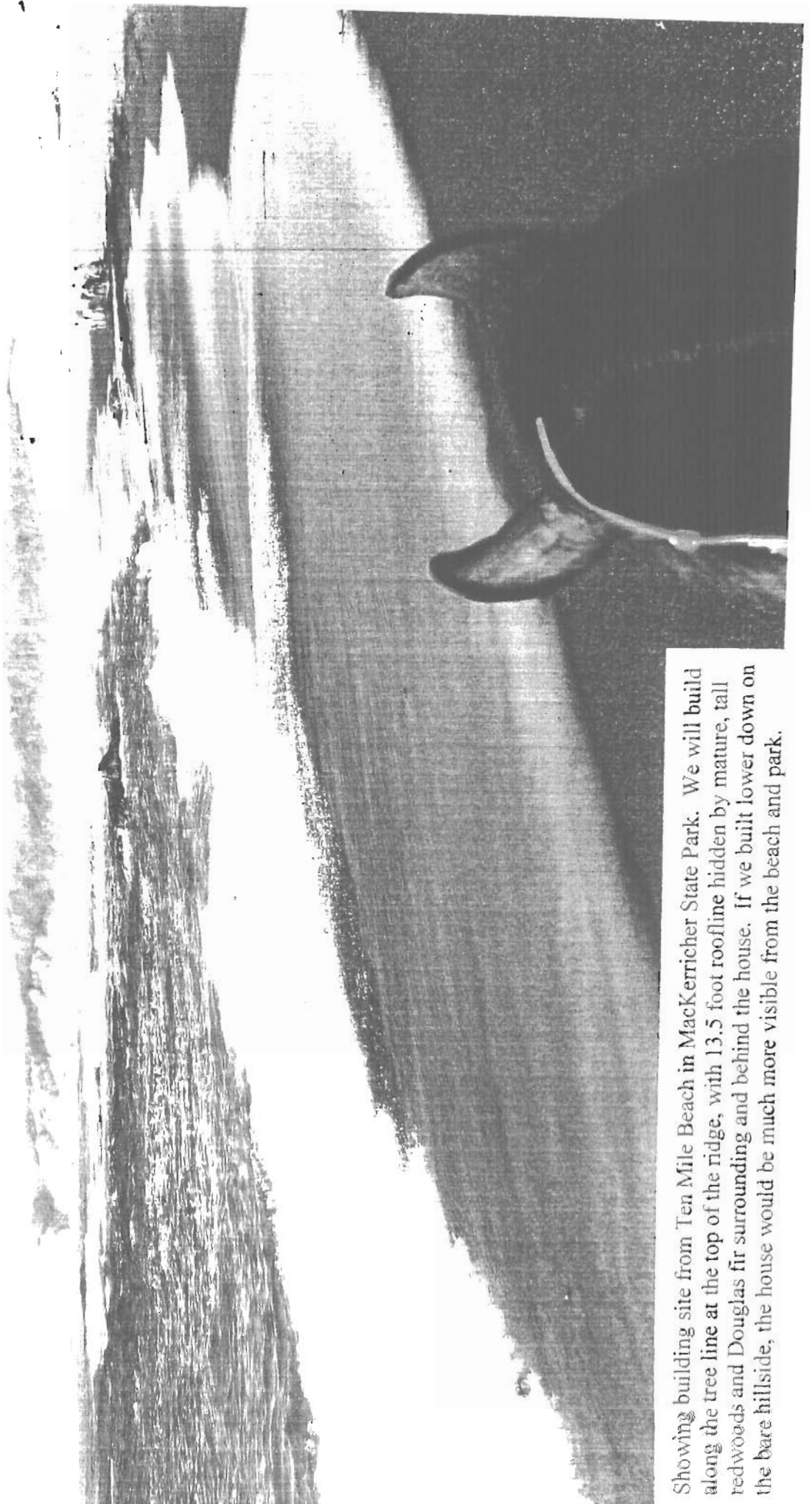




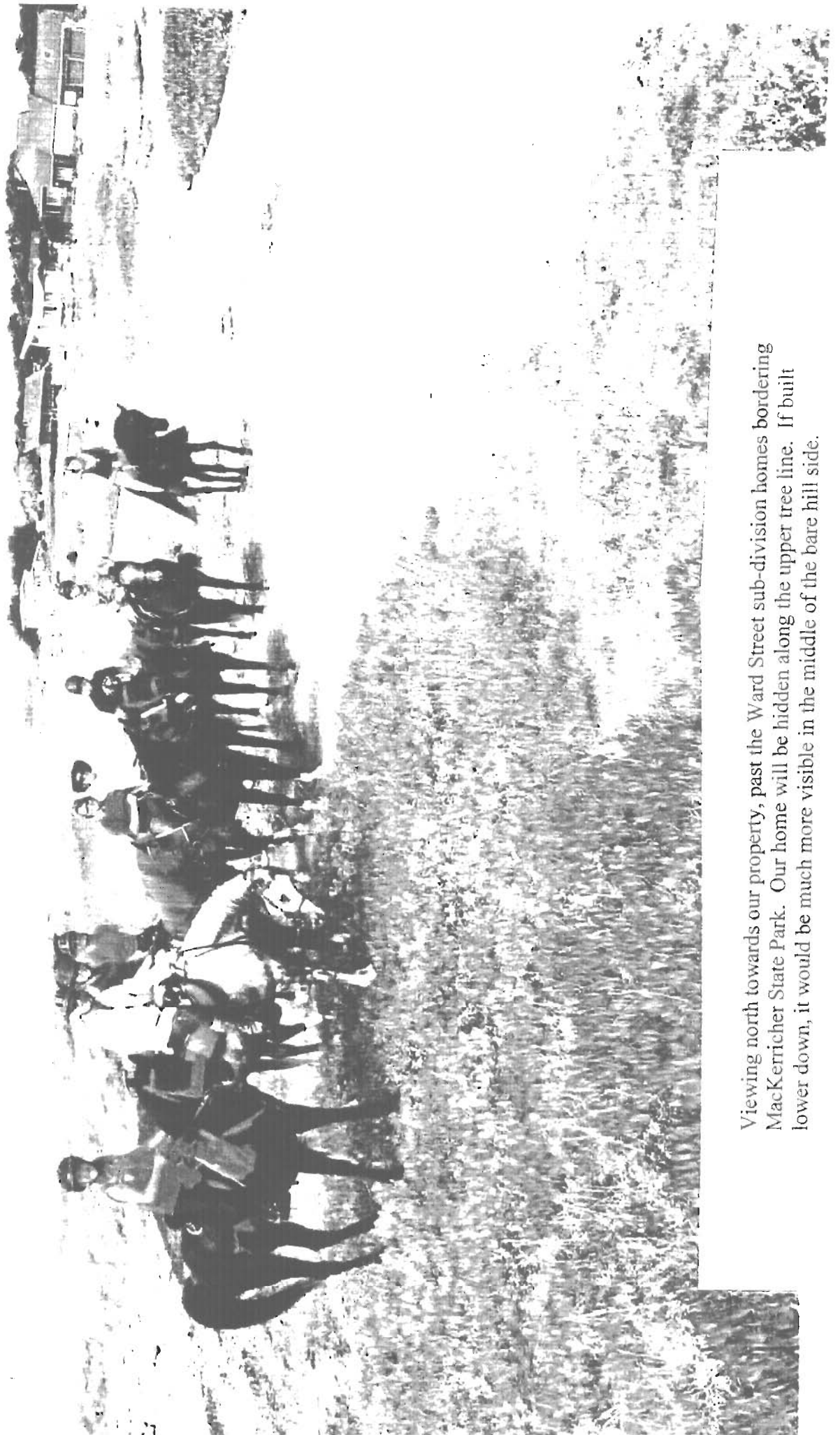
Harvey Hoechstetter and Lari (Hilary) Shea; residential home
28901 N. Hwy 1, Fort Bragg, CA 95437; Location: 1.7 miles east of Hwy. 1, between Westport and Fort Bragg
Computer generated simulation of project before landscaping, to scale, showing visibility from Hwy 1
just south of the Ten Mile River



Looking north and east from the south end of the existing Ten Mile Bridge, past the new bridge construction, showing the lowest, western part of our property. Our barn is not visible.



Showing building site from Ten Mile Beach in MacKerricher State Park. We will build along the tree line at the top of the ridge, with 13.5 foot roofline hidden by mature, tall redwoods and Douglas fir surrounding and behind the house. If we built lower down on the bare hillside, the house would be much more visible from the beach and park.



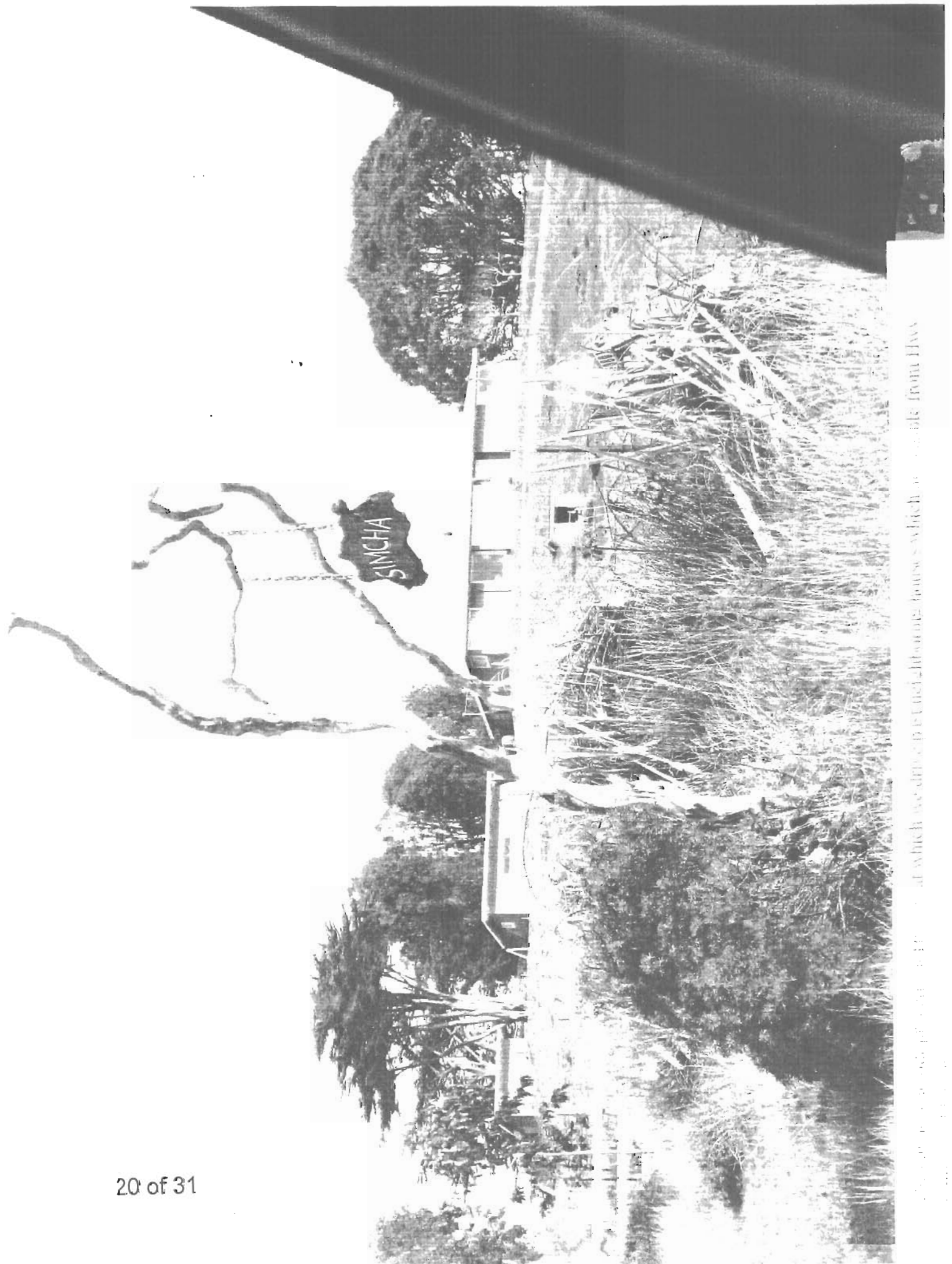
Viewing north towards our property, past the Ward Street sub-division homes bordering MacKerricher State Park. Our home will be hidden along the upper tree line. If built lower down, it would be much more visible in the middle of the bare hill side.



Looking up at the north side of our property from Seaside Beach just north of Ten Mile River and Bridge, showing the Ocean Meadows sub-division houses in the foreground. Our house will be nestled in the trees around the corner at the top, nearly 2 miles distant from this view.



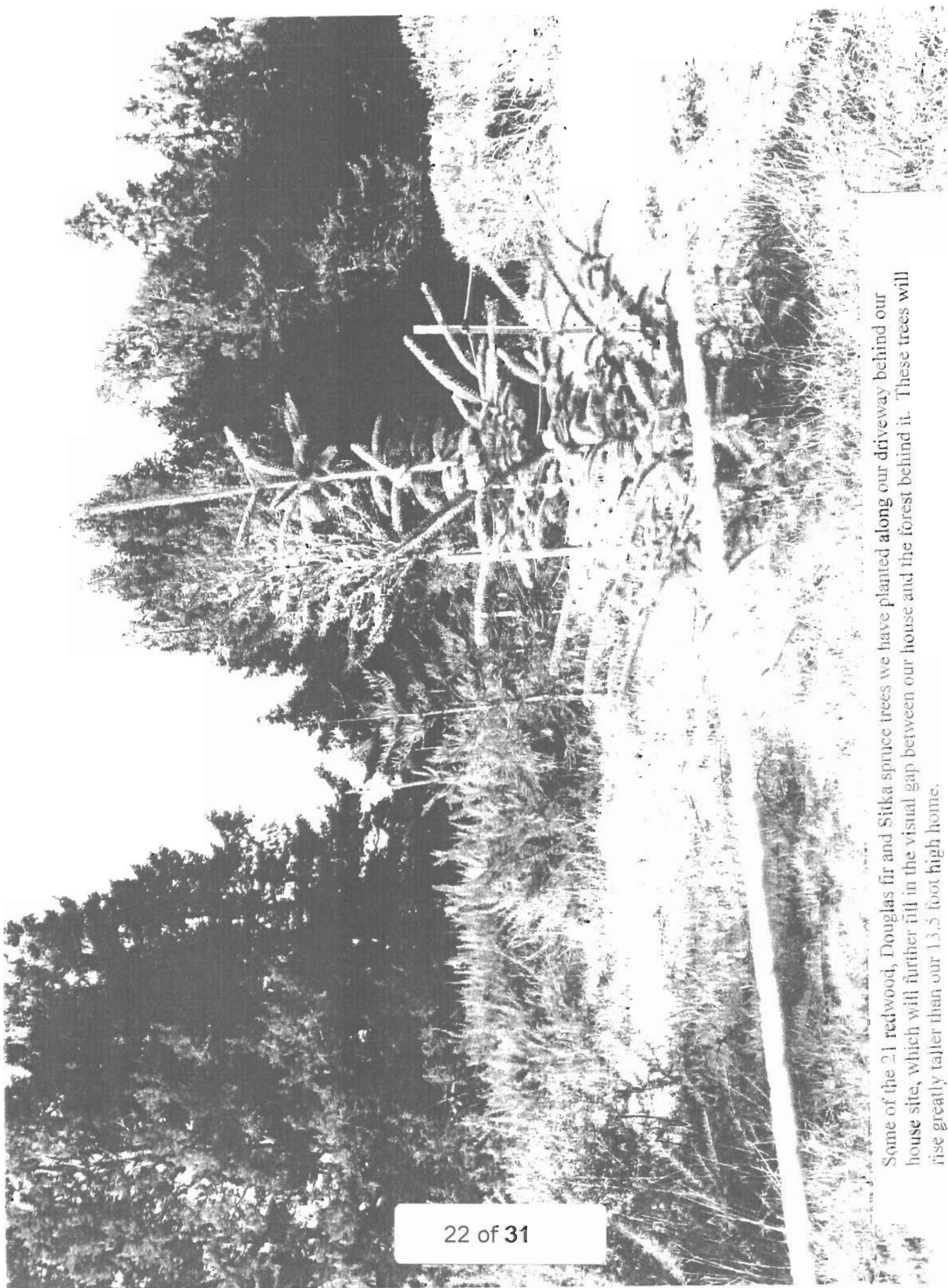
Looking up at our property, east of Ten Mile Bridge. Neither our barn nor the house site is visible.



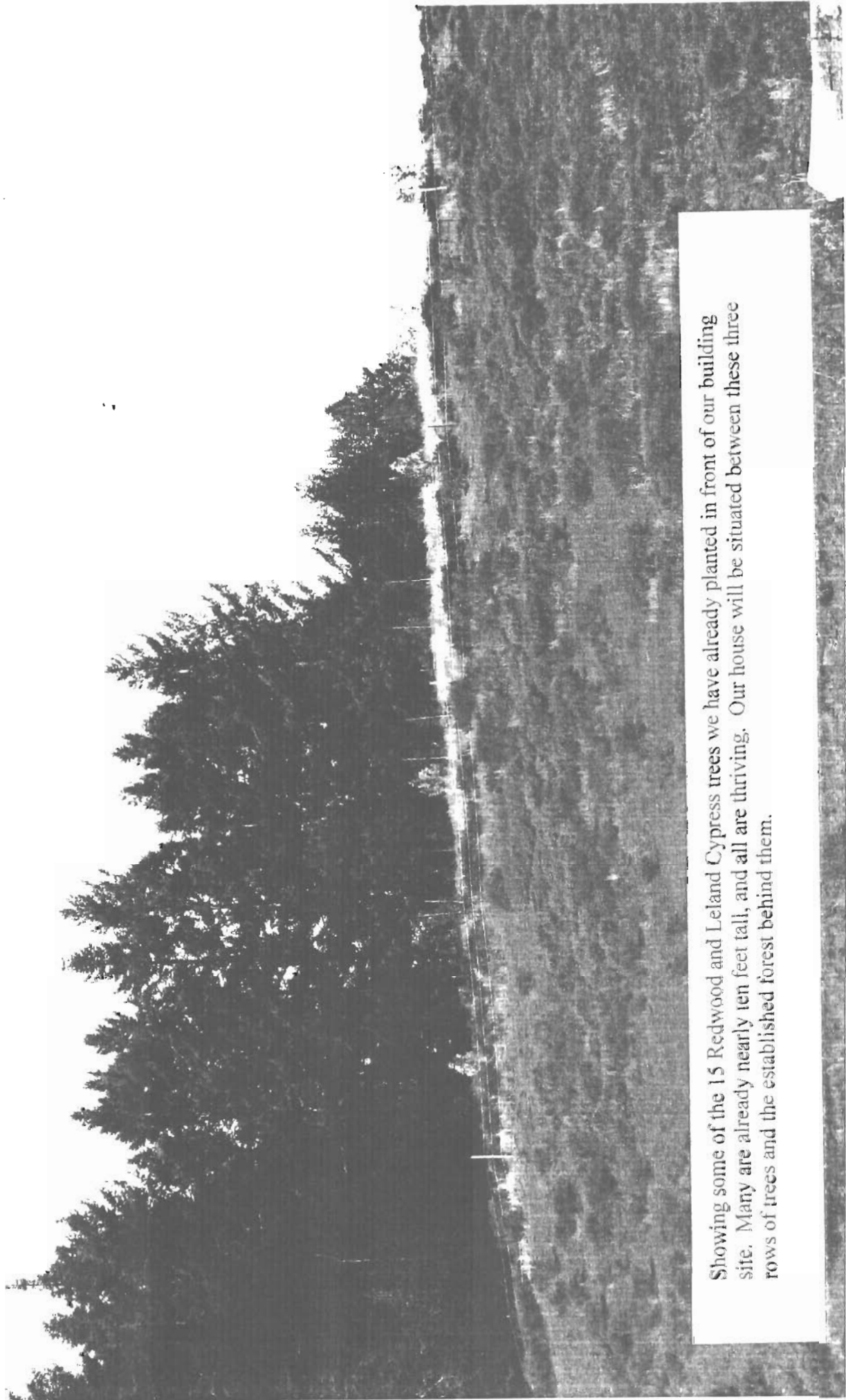
The sign is a wooden post with a dark, irregularly shaped sign that reads "SINCHA". The sign is located near a small, light-colored building with a dark roof. The building is surrounded by trees and vegetation. The background shows a line of trees and a clear sky. A dark, curved object, possibly a part of a vehicle, is visible in the top right corner.



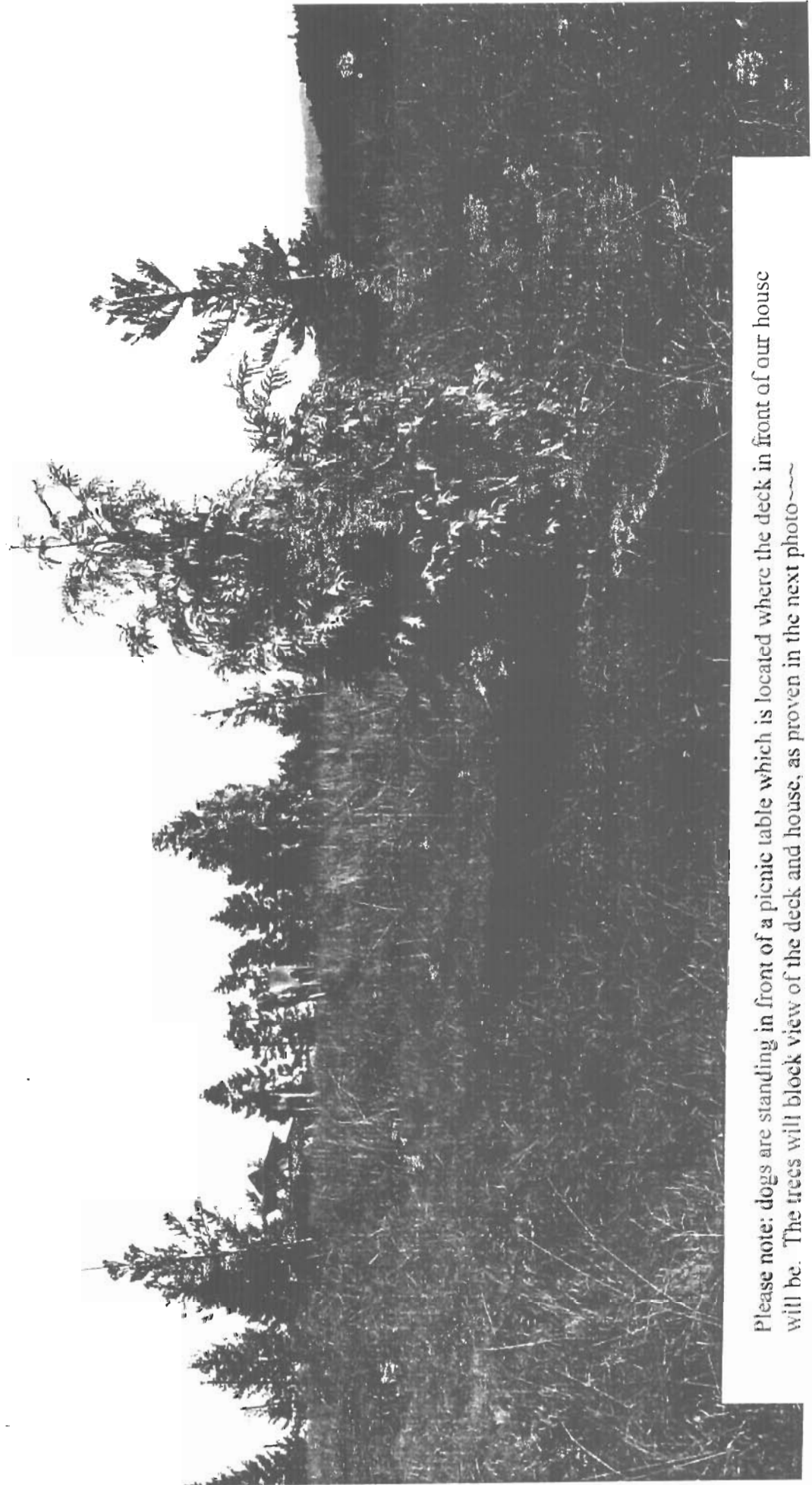
Another view of our property from Seaside Beach, looking past some of the Ocean Meadows sub-division houses just north of the Ten Mile Bridge.




Some of the 21 redwood, Douglas fir and Sitka spruce trees we have planted along our driveway behind our house site, which will further fill in the visual gap between our house and the forest behind it. These trees will rise greatly taller than our 13.5 foot high home.



Showing some of the 15 Redwood and Leland Cypress trees we have already planted in front of our building site. Many are already nearly ten feet tall, and all are thriving. Our house will be situated between these three rows of trees and the established forest behind them.



Please note: dogs are standing in front of a picnic table which is located where the deck in front of our house will be. The trees will block view of the deck and house, as proven in the next photo~~~



Harvey is standing on the 3 ft. high picnic table. The top of his hands are approximately 11 feet above ground level. Our home will be 13.5 ft. high. Clearly, the trees in front and the trees behind will nearly completely hide our home from view from neighboring properties.

Jan 18, 2008

Willard T. Jackson
P.O. Box 430
Middlebury, VT 05753
Tel. 802 462 3445

California Coastal Commission
c/o Rick Miller - Project Manager
790 S. Franklin St.
Fort Bragg, Calif 95437

26 of 31

Dear Rick,

I'm writing this letter in support of Jari Shain's proposal to build a home on her 300 plus acres adjacent to my southern boundary near Ten Mile River in Fort Bragg. Jari has been an excellent neighbor and supporter of the environment for many years. We have had several conversations regarding the proposal and I have visited the site.

The structure will be one story and only 13 feet high. Also, Jari has planted about 30 trees in front of the building site. There are existing trees, actually a deep woods, behind where the house will be. The house colors will be earth tones. Considering these features, the structure should blend in very well with the surrounding landscape. Further more the farm road to the site is existing and well graded and hardly noticeable from Route 1. All in all it's a good project in my opinion and worthy of

To whom it may concern,
Our family sold back and
forwared the property in question, which
borders ~~me~~. From what I see, they
have done some nice things to the
property. Building a house only makes
sense on a 300+ acre property. The
things ~~they~~ have done have all been
first class, with permission and permits.
Good responsible citizens, unlike the
parties trying to stop them.

I ~~see~~ state of the ART improvements
in a beautiful location with ^{the} site
~~barely~~ visible from the highway or anywhere
else from the "Public Eye"

Sincerely -

W Signature on File ~~was~~

Mike McGuire

copy

Jan, 22, 2008

Calif Coastal Comm.
c/o Rick Miller
790 S. Franklin ST.
Ft. Bragg
Ca. 95437

Ladies & Gentlemen:

I am an adjacent property owner
to Lori Shea & Harvey Hochstetter.

I have no objection to their blg. plans
for the dwelling they are requesting to build.

They have been very forthcoming with these
plans at all stages of development. I feel they
would be good stewards of the land and have
concern & consideration for the effect of such building
on the nearby neighbors & on the people driving by
on highway 41.

Sincerely,

Signature on File

RAY OLSON

**Parker Ten Mile Ranch
Fort Bragg, California
Business Address: 1950 Primrose Avenue
South Pasadena, California 91030
(626)441-3335, (626)441-3635 Fax**

CONFIDENTIAL

January 18, 2008

California Coastal Commission
c/o Rick Miller, Project Coordinator
790 S. Franklin Street
Fort Bragg, CA 95437

Re: Case #CDP #29-2007: Lari Shea/ Harvey Hoechstetter's application for building permit

Dear Commission Members:

My family owns the ranch property directly to the northeast of Simcha ranch and our properties share approximately 1 mile of common boundary. Simcha summit is one of my family's favorite hiking destinations and we have often enjoyed its lovely views and setting (with the landowner's permission).

Since they became our neighbors, Lari and Harvey have been consistently open and forthcoming about their plans at Simcha ranch. The specifics of their building plans, site location, access and visual footprint have been provided to us willingly. We support their building project since it not only demonstrates a high level of design sensitivity to its setting and visual impact, but also incorporates natural, sustainable materials and low energy demand. Lari and Harvey are to be commended for their plans to harvest the natural wind and solar energy of the site to provide power to their home. Their lighting scheme and lower than allowable roofline are also positive demonstrations of their concern for the home's overall impact on the neighbors and their environment. We consider their project to be a very high quality one that ultimately reflects their belief in careful stewardship of their land.

The coastal commission should consider this building project one that exceeds established standards for the area and one that successfully integrates esthetics, code compliance and land ethics. We support all these values and encourage the commission to approve the permit.

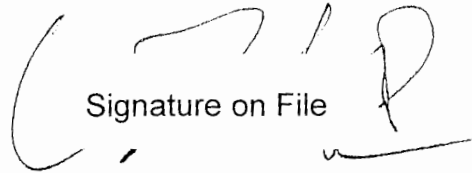
Respectfully,

Nan Deniston, partner
Parker Ten Mile Ranch, LP

B.

IF you wish to CONTACT US; OR WISH
FOR US TO SPEAK ON THEIR BEHALF AT
ANY MEETINGS FEEL FREE TO CONTACT
US.

YOURS TRULY


Signature on File

PH. 707 964 7479

VERONICA² WML CLAYTON III
30000 PACIFIC COAST HWY N
FT BRAGG CA 95437

copy

JANUARY 16, 2008

TO WHOM IT MAY CONCERN,

WE ARE NEIGHBORS OF HARVEY HECHSTETTER AND LARI SHEA'S SIMCA RANCH. BECAUSE OF OUR COMMON OBSESSION WITH HORSES WE HAVE KNOWN AND RESPECTED LARI FOR CLOSE TO A DECADE, THOUGH WE HAVE ONLY BEEN NEIGHBORS FOR LESS THAN 5 (YRS). WE SHARE OUR NORTHERN (THEIR SOUTHERN) BOUNDARY FOR MORE THAN 1/2 MILE.

WE DECIDED TO PURCHASE OUR PROPERTY FOR A NUMBER OF REASONS; ONE OF WHICH BEING THAT LARI & HARVEY WOULD BE OUR NEIGHBORS.

AS NEIGHBORS & FRIENDS WE HAVE FOUND LARI & HARVEY TO BE CONSISTENTLY THOUGHTFUL AND CONSIDERATE.

I REGARD TO THEIR DREAM HOME PROJECT. THEY HAVE BEEN ABSOLUTELY OPEN TO US WITH ALL OF THEIR IDEAS AND PLANS; AND, WE FULLY APPROVE. WE COULD NOT ASK FOR A BETTER NEIGHBOR AND WE HOPE YOU CAN WORK WITH THEM TO A POSITIVE FULFILLMENT OF THEIR DREAM. THOMAS
VERONICA & WILLIAM L. CHAYZON

Copy

Signature on File ON

UKIAH OFFICE

501 LOW GAP ROAD, ROOM 1326
UKIAH, CA 95482
(707)463-4466
FAX (707)463-4038



FORT BRAGG OFFICE

790-A1 S FRANKLIN STREET
FORT BRAGG, CA 95437
(707) 961-2714
FAX (707) 961-2720

COUNTY OF MENDOCINO
HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH BRANCH
ENVIRONMENTAL HEALTH DIVISION

Ms. Tiffany Tauber
Mr. Bob Merrill
California Coastal Commission
North Coast Division Office
P.O. Box 4908
Eureka, CA 95502-4908

April 23, 2008

RECEIVED
APR 23 2008
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 14

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

LETTER FROM DAVE JENSEN,
MENDOCINO COUNTY DEH
(APRIL 23, 2008) (1 of 2)

Subject: CDP #29-2007, 29801 North Highway One, Fort Bragg (Hoechstetter & Shea)

I understand that the approval of CDP 29-2007 has been appealed, and that there may be questions concerning whether the Hochstetter/Shea residence could be moved down the hill near the horse barn that they recently built on their adjoining parcel. Mr. Hoechstetter has asked me to send you a brief letter of clarification regarding the soil conditions and septic systems at both parcels. I am employed by the Mendocino County Division of Environmental Health and was responsible for the review and approval of both septic systems in question. Please understand that my purpose in writing this letter is simply to share with you my knowledge of those conditions. I am not advocating either resolution of the pending appeal.

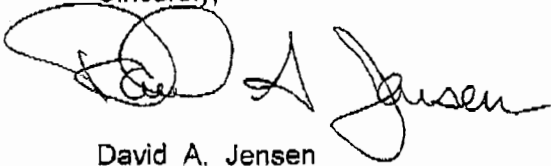
Regarding the lower parcel, Assessor's Parcel Number 015-130-57, I have visited this parcel several times to locate an area acceptable for the installation of a septic system. I received an initial septic design proposal from KPFF Consulting Engineers of Fort Bragg, California, on July 26, 2004. That original design called for a leach field to be installed west of the current barn, near the property line. I visited that site the next day and was found the soil conditions to be marginal. I returned on July 28 with Mr. Scott Miller, then manager of the Land Use Team, and confirmed that the soil conditions in that area were unacceptable. During the next few months, I met KPFF's soils engineer on the site multiple times and looked for alternative locations for a septic field. We eventually found an area on the slope directly north of the barn with sufficient space for a one-bedroom septic system. Even so, a diversion drain and a waiver to standard groundwater setbacks were required. The system was finally approved on January 14, 2005.

On May 18, 2007, I visited the proposed house site further up the hill on Parcel 015-140-62. I found the soil conditions there to be significantly better and was able to approve the septic design prepared by Carl Rittiman and Associates without delay. I have not sampled every possible location on the lower stretches of the upper lot, but I fear that the high clay content, shallow groundwater levels, and slope constraints will make the relocation of the approved proposed septic system problematic. In my professional opinion, the soil conditions at the proposed septic site on the uphill parcel are superior to anything I have found or expect to further down the hill. If the house is to be moved, the County will likely require a full soils evaluation be performed by a professional soils engineer or other qualified person in preparation for the issuance of a new septic design.

Ms. Tiffany Tauber and Mr. Bob Merrill
California Coastal Commission
April 23, 2008

I hope this information has been of help. Please contact me with any question regarding this or any other matter. You may reach me directly at 707-961-2616.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Jensen". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Jensen" written in a slightly more formal but still cursive style.

David A. Jensen
Environmental Health Specialist

cc: Harvey Hoechstetter
File

2 of 2

EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia
Sierra Club

Person(s) receiving communication: Commissioner Larry Clark

Location of communication: Telephone

Time/Date of communication: April 8, 2008, 4:30 pm

Type of communication: Teleconference

Name or description of the project(s)/topics of discussion:

RECEIVED

APR 22 2008

CALIFORNIA
COASTAL COMMISSION

c. City of Laguna Beach LCP Amendment No. LGB-MAJ-1-07c (Fuel Modification & Assorted Implementation Plan Revisions). Public hearing and action on City of Laguna Beach LCP Amendment to change fuel modification provisions of the Land Use Plan and modify Implementation Plan (IP) provisions for Residential Hillside Protection Zone, sign and parking regulations, Arch Beach Heights Specific Plan (lot combinations), Second Residential Unit and Flood Damage Prevention ordinances, and add new IP sections for Artists' Live/Work Units, short-term lodging, telecommunications facilities, bed & breakfast inns, and delete obsolete zones including Residential Hillside Zone and M-1 Industrial Zone, among other changes. (MV-LB)

Request that the Commission support staff modifications dealing with impacts on public views, open space and public parklands. Specifically, we support deleting all references to goat grazing as an accepted fuel modification method for two general reasons: (1) grazing of any kind transforms ESHA and other Southern Maritime Chaparral adjacent to homes into a zone dominated by non-native annuals. These "weeds" dry out into easily ignitable "flash fuel" and must be re-grazed every year. (2) Laguna Beach does not adequately manage its current goat grazing. In 2006, the Nature Reserve of Orange County sent a detailed letter to the City of Laguna Beach outlining proper management of this grazing which has been completely ignored.

Please support staff on their recommended modifications.

a. Permit No. 6-05-140-A (San Diego safety buoys) Request by City of San Diego to revise permit for installation of safety buoys in water to change public access signage on beach along frontage of La Jolla Beach and Tennis Club (2000 Spindrift Drive), between western extensions of Paseo Dorado and Avenida de la Playa, La Jolla, San Diego, San Diego County. (LRD-SD)

EXHIBIT NO. 15

APPEAL NO.

A-1-MEN-08-009

HOECHSTETTER & SHEA

EX PARTE COMMUNICATIONS
DISCLOSURE (COMMISSIONER
CLARK) (1 of 3)

Requesting permit denial as proposed because of detrimental effects permit approval would have on both the public hearing process and public beach access to and along public trust lands.

1. Approval under the Stipulated Agreement would give unprecedented Commission support to the creation of a private beach on public trust lands. Oceanfront property owners, using a scant amount of scientific and tidal data with no winter or summer readings, would now have a Commission-approved precedent to flag and mark their own property.

Approval would be detrimental to the public hearing process. Applicants chose neither to appear nor to submit written documents to the 2005-2006 public hearings on this matter, choosing instead to jump to court. Such action would not only leave the public in the dark, but would set an ominous precedent for wealthy coastal property owners to create an unbearable financial burden on the public hearing process for both the public and the Commission.

2. Install signage language approved by the Commission in July, 2006, at the street end of Av. de la Playa on the northwest side of the wall of the Beach Club, where the majority of beachgoers enter the beach. Proposed signage is confusing re color coding, private property rights, and flags. Even though the Stipulated Agreement clearly states these do not delineate the MHW line or a private beach for legal purposes, the Map clearly has that impact and effect.
3. Remove the wooden barricade. It was not reviewed through the CDP process when constructed in the 1980's, as we believe it should have been, under the Administrative Regulations Subchapter 7, Section 13252 (a), to replace a former stuccoed concrete wall built prior to the adoption of the Coastal Act. Since the 1980's, the structure has served either to deter the public entirely, or to force them seaward into the ocean around the western end of the barricade in order to access dry sandy beach to the south.

The Marine Room/Roseland Ave. access stairway to the south of the beach is steep, narrow, and often under tidal surge. Nor is there public parking other than on-street parking for adjoining residences. Removal of the barricade at Av. De la Playa is therefore all the more important to facilitate public access to the beach.

4. We request the Commission to reiterate the ongoing availability of Section 30211 of the Act re a Prescriptive Easement action, which was raised before the Commission by a member of the public at the 2006 public hearing. We believe such an action remains available to the public in regard to this project as clarified in part by former Commission Chair Meg Caldwell in paragraph 2, Page 556 of the "Ecology Law Quarterly", Vol. 34:533.

**a. Appeal No. A-1-MEN-08-9 (Hoechstetter-Shea, Mendocino Co.)
Appeals by Commissioners Shallenberger and Reilly and Sierra Club,
Mendocino Group from decision of County of Mendocino granting
permit with conditions to Harvey Hoechstetter & Hilary (Lari) Shea for
construction of 3,174 sq. ft. single-family home and 933 sq. ft.**

2 of 3

attached garage, with average-max. height of 13.5-ft. from grade, and installation of wind-powered generator, solar panels, propane tank and septic system (connected to existing water system), at 29801 North Highway One, Westport, Mendocino County. (TST-E)
[POSTPONED]

Signature on File

10 APR 08

3 of 3