

**CALIFORNIA COASTAL COMMISSION**

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# Th11a



**Prepared May 10, 2011 (for May 12, 2011 hearing)**

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**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, Deputy Director  
Ruby Pap, District Supervisor  
Renée Ananda, Coastal Program Analyst

**Subject: STAFF REPORT ADDENDUM for Item Th11a  
Appeal Number A-2-MAR-11-020 (Dar, Bolinas)**

The purpose of this addendum to the staff report is to supplement the findings to provide clarifications to certain Local Coastal Program (LCP) issues brought up in the appeal and in two letters received from the Appellants dated May 6, 2011. Staff continues to recommend that the Commission determine that no substantial issue exists with respect to the grounds on which appeal A-2-MAR-11-020 was filed. Additional text is shown in underline and deleted text is shown in ~~strikethrough~~.

**1. Amend the last paragraph on page 1, as follows:**

Findings: On March 15, 2011 Marin County Board of Supervisors approved a coastal development permit (CDP) for the construction of a 740-square-foot detached one-bedroom second unit, with an attached 424-square-foot one-car garage and the conversion of the existing attached 313-square-foot second unit into space for use as a den and laundry room. The project work includes a gravel walkway, driveway, relocation of an existing wooden utility shed, in addition the planting of nine fruit trees (apple, pear, peach, cherry, fig, and plum)...

**2. Amend the paragraph at the top of page 2, as follows after “and landscaping with native trees:”**

The project also includes construction of a wood fence. Marin County’s approval (Exhibit 3) is appealable to the Coastal Commission, pursuant to Coastal Act Section 30603 (a) (1), because the project is between the first public road and the sea.

**3. Amend the top two paragraphs on page 3 of 7, as follows:**

requires clustering of development or siting on ARP zoned sites to preserve visual, agricultural, and open space character; and LUP Policy 30 (please refer to Exhibit 4 for the exact contentions of the appeal).

The purpose of the C-ARP zoning district is to promote the concentration of residential and accessory uses in order to maintain the maximum amount of land available for agricultural use



California Coastal Commission  
May 2011 Meeting in Sonoma  
Staff: R.T. Ananda

and to maintain the visual, natural resource, and wildlife habitat values of a property and its surrounding areas.

**4. Amend the first paragraph under Visual Resources, on page 3 of 7, and add additional paragraphs after it, as follows:**

Certified zoning ordinance Section 22.57.024(1)(a), the standards for the C-ARP zoning district, requires buildings either be clustered *or sited* in the most accessible, least visually prominent and most geologically stable portion or portions of the site. The site for the detached second unit is located on the southeast portion of the property in close proximity to the existing driveway adjacent to an existing 28-foot tall oak tree. It would be located within the developed portion of the property, leaving the oak woodland habitat on the northern portion of the 5.024-acre property undeveloped. Section 22.57.024(1)(a) does not restrict clustering to only one portion of a site, as it allows structures to either be clustered **or sited** in the most accessible, least visually prominent, and most geologically stable portion of the site. ~~and~~ The standard allows for consideration of screening by existing vegetation to minimize the visual effects of a development. The subject approval satisfies the cited standard because the second unit, while not clustered with the existing residence, is sited in the most accessible portion of the site, is not visually prominent from public vantage points, and is sited in a geologically stable portion of the site, as described below. It would also be sited outside the oak woodland habitat close to an existing driveway and partially screened by a 28-ft. tall oak tree.

Further, the site analysis contained in the record shows that ~~locating~~ clustering the project adjacent to the existing residence would require the removal of trees in the area of the undeveloped oak woodland habitat.<sup>1</sup> There are two other locations (east and north of the residence) that would allow for clustering the newly proposed second unit with the existing residence however these two areas are not suitable for siting development because of their steep slopes and poor soil stability.<sup>2</sup> A third location, west of the residence would require removal of oak trees.<sup>3</sup> Commission staff visited the site and confirmed that these current conditions prevent the clustering of the newly approved second unit with the existing structure.

The visual screening provided by the oak tree where the project is proposed to be sited is not a means to ignore clustering requirements of the LCP, as the Appellants contend. Clustering with the existing residence in this case could affect potential habitat as well as create or contribute to erosion. The Appellants also identify an alternative that would entail converting the existing carport into a second unit and would require no cutting of trees. The property analysis plan shows that remodeling the existing carport for use as a second unit would require relocating the displaced garage and storage to the open area west of the leach field identified as having good soil and solar exposure which would be good for agriculture.<sup>4</sup> This alternative could therefore result in an adverse effect on agriculture land.

<sup>1</sup> Dworsky/Dar Affordable Housing -2<sup>nd</sup> Unit Renovation Marin County Board of Supervisors Hearing, March 1, 2011, Property Analysis Plan Location #1 and Property Analysis Plan Location #2

<sup>2</sup> SalemHowes Associates, Inc., Report Geotechnical Investigation Dar Residence 50 Mesa Road Bolinas, CA, 2 (dated July 11, 2003, Revised June 4, 2010)

<sup>3</sup> Dworsky/Dar Affordable Housing -2<sup>nd</sup> Unit Renovation Marin County Board of Supervisors Hearing, March 1, 2011, Property Analysis Plan Location #3

<sup>4</sup> Dworsky/Dar Affordable Housing -2<sup>nd</sup> Unit Renovation Marin County Board of Supervisors Hearing, March 1, 2011, Property Analysis Plan Location #4

The Appellants contend that the site is located on a ridgeline that is prominent and can be seen from Highway 1. The site is on a mesa not a ridgeline. The view from Highway 1 at turnouts between post-mile markers 16.51 and 15.0 looking westward across Bolinas Lagoon (towards the site) is of a large residence and trees. The second unit is sited on the property between 152 feet and 154 feet elevation with the garage at approximately 155 feet, which is lower than the location of the other alternatives considered. The site does not adversely affect public views from Highway 1 or coastal visual resources.

**5. Amend first paragraph under Agriculture, on page 4 of 7, as follows:**

Section 22.57.024(1)(i) requires that agricultural uses be encouraged in ARP zones and that usable agricultural land be identified and efforts made to preserve or promote its use. Section 22.57.024(1)(a) states that where useable agricultural land exists, residential development shall be clustered *or sited* so as to minimize disruption of agricultural uses. Unlike the more protective Agriculture Production Zone (APZ), where the principal use of the lands shall be agricultural, agriculture production is not required in the ARP zone, and the Agricultural – Residential Planned District (ARP) zone allows more flexibility, residential uses single – family dwellings are principally permitted, and residential structures aren’t required to be clustered with other structures as long as they are sited in an area that minimizes agricultural disruption. The standard does not contain a strict ‘avoidance of agricultural lands clause,’ but does require disruption to be minimized.

The portion of the property best suited for agriculture is the central open area that contains the existing septic system and leach field and this area would not be developed under the subject approval and the area located to the west of it due to it having both good soil and solar exposure.<sup>5</sup> The primary and reserve leach field areas would not be further developed and would have the potential for future agricultural use with shallow-rooted plants<sup>6</sup>. The eastern property boundary is also considered suitable for agricultural use. The Applicants plan to farm this portion of the property with fruit trees, and the area extends to the north in a more open and exposed area. The approved project site is not used for agriculture and has poor soil quality and limiting factors such as the potential for erosion and clayey soil conditions that affect the permeability of the soil. A site evaluation conducted by Jeffery A. Creque, Ph.D., Land Stewardship Consultant, indicates that the solar exposure of the site limits its use for agricultural purposes. The second unit would not be located in the area of the property best suited for agricultural use and would minimize disruption of existing or possible future agricultural uses. Due to the factors described above, Marin County had a high degree of legal and factual support for its decision, and no substantial issue is raised with respect to conformance with zoning Section 22.57.024(1)(i).

The Appellants May 6, 2011 letters contend that the project would displace approximately 5,000 square feet of usable agricultural land. The approved project is for a second unit (with the garage) totaling 1,164 square feet. Approximately 3,200 square feet of additional area would be

<sup>5</sup> Jeffrey A. Creque, Ph.D., CA State Board of Forestry License #M-75, letter report to applicant 2/8/2011

<sup>6</sup> Susan D. Day, Ellen Silva. *Planting on Your Septic Drain Field*. Virginia Cooperative Extension, Publication 426-617. <http://pubs.ext.vt.edu/426/426-617/426-617.html>

dedicated to planting fruit trees and California bay laurel trees. Due to the factors described above, Marin County had a high degree of legal and factual support for its decision, and no substantial issue is raised with respect to conformance with zoning Section 22.57.024(1)(i).

**6. Amend second full paragraph under Agriculture, on page 4 of 7, by adding the following at the end of the paragraph:**

The Appellants contend in their May 6, 2011 letters that the County approval violates LCP Policy II-30 by allowing the existing second unit to be de-clustered away from the main residence. They additionally assert that approval of the original construction and development of the property was in compliance with this policy. The approval for the existing residence required clustering in conformity with the design standards (LCP 22.57.024) not the LCP Policy II-30. The referenced LUP policy changed the A-5 designation to an APR-5 zone in the IP to “encourage greater flexibility in the design of future land divisions within the area. New land divisions shall be designed to provide the maximum feasible clustering of ...” Therefore, the referenced LUP policy applies to land divisions and rezoning of the property only.

**7. Amend last paragraph of Agriculture continued on the top of page 5 of 7, as follows:**

...following reasons, as confirmed by staff of the Marin Agricultural Land Trust (MALT) and provided in MALT’s “Custom Soil Resource Report for Marin County, California” prepared for the site (APN 193-020-51): (1) the site does not contain Class I or II soils, unless it is irrigated cropland and there is no evidence of irrigated crops; (2) the parcel does not have a Storie Index Rating of 80-100 as the highest rated soils on the property are rated good, or 60-79 on the Storie Index; and (3) the annual carrying capacity of one animal unit per acre would require an irrigated pasture.

The Appellants correctly state that the site does have an irrigation system. The property, however, does not show evidence of having irrigated pastureland. The area of the property best suited for agriculture is the large central open area currently occupied by the septic system and leach field. The currently undeveloped open areas to the west of the leach field and the eastern edge of the property also have good soil and solar exposure. The approved project site is not used for agriculture and limiting factors such as the potential for erosion and clayey soil conditions affect the permeability of the soil. A site evaluation conducted by Jeffery A. Creque, Ph.D., Land Stewardship Consultant, indicates that the location for the second unit has good soils but is shaded most of the day during winter months by the eucalyptus trees south of the site on neighboring property. The oak tree also casts afternoon shade on the site from noon on, year round. The solar exposure of the site therefore, limits its use for agricultural purposes. Dr. Creque recommends focusing agricultural efforts in the open area west of the leach field.

Therefore, the County’s decision is adequately supported by the factual and legal evidence in its administrative record. There is no substantial issue raised with respect to agricultural use. Therefore, the appeal does not raise a substantial issue of conformity of the approved development with respect to the agricultural use provisions of the certified LCP.

**8. Amend second paragraph of Natural Resource Protection (Habitat Protection) on page 5 of 7, second paragraph as follows:**

LCP Unit 1, Section II, Policies on Habitat Protection, (policies 22 through 26), provide for the protection of habitat. These policies require protection of upland grassy feeding areas, avoidance

of significantly inhibiting wildlife movement and access to water. According to the County's administrative record, the property is located in an area that contains some sensitive wildlife resources and is adjacent to (but not within) a buffer area for monarch butterfly. The grove of eucalyptus trees located to the south of the property across Mesa Road is identified as a buffer area for monarch butterfly. The second unit would not affect this wildlife habitat because the buffer area is not located close to the actual project site. There is also a densely vegetated oak woodland area on the northern portion of the property that provides habitat for wildlife, but it is not designated ESHA in the LCP. The project would not have an adverse effect on this habitat because it is located on the southeast portion of the property away from the oak woodland.

The Bolinas Community Plan specifically identifies the Bolinas mesa area as a quail refuge. The Bolinas Quail State Refuge is shown on the Bolinas Topographic Map (USGS Quad ID 37122h6). The refuge is located southwest of Bolinas and is not located anywhere near the project site. The project would not affect this habitat. In addition, the LCP Natural Resources Map for the area does not designate the site as an ESHA and shows that the site is not identified as a quail refuge or a foraging and roosting area for shorebirds. The second unit would be constructed next to the existing driveway while the majority of the existing grassy area (on the central portion of the property) would remain open. The construction of the project would not involve the removal or disruption of habitat or vegetation. ~~The certified LCP Natural Resource Map does not designate the site as an ESHA.~~ . . .

**9. Amend full paragraph under Geologic Stability (Hazards), and add additional paragraphs after it, starting on page 6 of 7, as follows:**

Section 22.57.024 (1)(a) requires that buildings be sited in the most geologically stable portion or portions of the site. The County's administrative record indicates that the entire property is located within an Alquist-Priolo Special Studies Zone within the boundaries of the San Andreas Fault Zone.<sup>7</sup> The geotechnical evaluation referenced by the Appellants was prepared for the existing residence in ~~2004~~ 2003. While it isn't specific to the site for the second unit it does provide that the report was supplemented June 4, 2010 to bring it into conformance with the requirements of the 2007 California Building Code and to update it for the design and construction of the subject second unit.<sup>8</sup> The site visit to update the 2003 report was conducted in May 2010, at which time geo-probes across the site were performed. Bedrock was located consistently at a depth of 3± feet below the surface. Sites within the San Andreas Fault Zone and an Alquist-Priolo Special Studies Zone do not require special studies for single-family wood frame dwellings not exceeding two stories. The report addresses the property at 50 Mesa Road (along with those at 20 and 40) in its evaluation of surface fault rupture. The report concludes that the risk of exposure to active faults or surface fault rupture at the properties identified above is the same as any other location on the Big Mesa and that based on the geomorphology, interpolation between exploration and USGS mapping the geologist inferred that the western boundary of the fault zone passed through the property above 50 Mesa Road. There were no geomorphic features observed in the field or on air photos, or geologic features in the literature that would suggest the presence of a potentially active splinter fault trace on the property.

The Appellants contend in their May 6, 2011 letters that the site selected is not the most geologically stable and there is no valid permissible reason to allow it to be constructed there. However, based on

<sup>7</sup> SalemHowes Associates, Inc., *Report Geotechnical Investigation Dar Residence 50 Mesa Road Bolinas, CA, 3*

<sup>8</sup> SalemHowes Associates, Inc. *Supplement to: Report, Geotechnical Investigation, 50 Mesa Road, Bolinas 11 July 2003(dated June 4, 2010)*

the geotechnical information in the record, the western locations on the lot are not necessarily more stable than the approved project site. Geologic stability is no better or worse at any site within the property, except for the more sloped oak woodland area on the northern portion of property. This area is not feasible to build in because the soil is more easily eroded, and it provides habitat for wildlife in the area. The geotechnical investigation additionally states “aside from the proximity to the San Andreas Fault, we did not observe any local geologic hazards that would affect the site. We judge that following the recommendations in this report and standard Marin County construction practices a structure can be safely constructed on this site without adversely impacting slope stability or changing the drainage in any measurable manner”.<sup>9</sup>

The County’s administrative record shows that consideration was given to the western portion of the property however the relocation of utilities and the driveway would require more grading. The western portion is in close proximity to a propane tank and fire hydrant which are restrictive. The administrative record additionally has evidence that locating the project adjacent to the existing residence would require the removal of trees in the area of the undeveloped oak woodland habitat. The Applicant’s geotechnical evaluation determined the project to be feasible and safe if constructed with properly engineered structural components. As approved, final plans will be reviewed again for compliance with the building code for seismic requirements prior to issuance of a building permit.

**10. Amend first full paragraph, on page 6 of 7, as follows:**

LCP Unit 1, Section IV, Public Services, Water Supply, Policy 5 requires that prior to the construction of projects using individual water wells, the applicant demonstrate that a sustained water yield of 1.5 gallons per minute per residential unit. Certified zoning ordinance Section 22.56.130 requires that coastal project permits be granted upon determining that water service to the project is of an adequate quantity and quality to serve the use. The Marin County Environmental Health Services Division staff determined that the common water supply system approved for the subdivision is adequate for the approved development. The County administrative record contains an evaluation of water supply and the capability of meeting the water needs for the subdivision, prepared by Miller Pacific Engineering Group, dated June 6, 1990. The report states that the water supply system will provide for three four-bedroom residences in the subdivision with a demand of approximately 50,000 gal/week for each residence. It states that the system will adequately supply for indoor and “modest” outdoor uses. Resolution No. 2011-15, Finding XV. A. States that the Community Development Agency, Environmental Health Services Division staff determined that the common water supply system approved for the Spanish Bit Subdivision is adequate. The existing residence on the property is three bedrooms and the County found that there is adequate water for the one-bedroom second unit. There is adequate factual and legal evidence in support of the County decision and the appeal does not raise a water supply issue of regional or statewide significance. Therefore, the appeal raises no substantial issue of conformity of the approved development with the LCP with respect to water supply.

**11. Amend Substantial Issue Conclusion, on page 7 of 7, as follows:**

Overall, based on a consideration of the evidence in the record and the five factors that generally guide the Commission’s substantial issue reviews, the appeal raises no substantial issue. First,

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<sup>9</sup> SalemHowes Associates, Inc., Report Geotechnical Investigation Dar Residence 50 Mesa Road Bolinas, CA, 2

The extent and scope of the approved development is small; the project is an approximate 1200 square foot second residential unit a maximum of 15 feet in height, located on an approximate 5 acre parcel in an area with larger single family homes.

Second, the County had a high degree of legal and factual support for its decision. Commission staff have reviewed the local record, the appellants' original appeal and subsequent submissions, evaluated the applicable LCP standards, and visited the project site; based on this review the County's conclusions in light of this legal and factual record is supported, and do not raise a substantial legal or factual issue.

Third, the significance of the coastal resources affected by the project is not high. ~~and there are no significant coastal resources affected by the County's decision.~~ The project is located in a residential agricultural zone on an approximate five acre parcel. The site is adjacent to other smaller parcels with no significant agricultural activity. The total ground disturbance of the second unit is relatively minor. There are currently no prime agricultural soils and the parcel provides relatively small potential for new agriculture. Approximately half of the property is sensitive woodland, not available for agriculture. The remainder of the property is either developed or of equal agricultural value, except that the proposed development site is less amenable to planted crops because of shading. Therefore, the proposed unit siting does not present a substantial impact to coastal agriculture. The project also will not present any substantial public view impact, and will be screened from public view. As found and conditioned by the County, the project is typical of residential development in the Bolinas community and the exterior materials will be "unobtrusive brown, reddish brown, and copper patina colors". Lighting will be directed downward and hooded. With respect to geological (seismic) hazards, the proposed second unit site is no more hazardous than any other location on the property and will be required to meet required codes for safety, and thus does not present a substantial hazard concern.

Fourth, the County's decision does not present an adverse precedent for future interpretations of its LCP. Second units are specifically allowed within the Bolinas area and in this particular residential agricultural zoning. As discussed above, the County record provides adequate factual and legal support for its conclusions, including an analysis of alternative sites for the project. Given the specific resource impacts of the project, the County's interpretation and application of the LCP to the project is reasonable and not an adverse precedent. Were a future project to present more significant agricultural or public view impacts, the LCP provides for case-by-case determination of project siting and approval to address and/or avoid potential impacts in the particular context.

Finally, in this case, the appeal does not raise issues of regional or statewide significance. Again, based on the nature and small scale of the project, the lack of any significant coastal resource impact, and the absence of any significant legal issue of interpretation or LCP application, the appeal presents essentially a local issue. Were there any significant public view, agricultural, or any other coastal resource impacts, the project could potentially raise an issue of statewide importance, particularly on a cumulative basis, but this is not the case here. The LCP provides for clustering or siting of projects to address such potential impacts, and in this case the County's approved site does not present an issue of regional or statewide importance.

The Commission finds, for all of the above-stated reasons, that the Appellants' contentions raise no substantial issue ~~of the~~ concerning the County-approved project's conformity with the policies of the Marin County certified LCP.



Thlla

**Bob and Courtney Cart  
40 Mesa Rd, P.O. Box 40  
Bollinas, CA 94924**

**May 6, 2011**

**Chairperson Sara Wan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219**

Re: Response to Coastal Commission Staff Report, April 22, 2011 regarding Dar/Dworksy Coastal Permit and Design Review with conditions. (APN193-020; 52 Mesa Road Bollinas)

Dear Chairperson Wan and Commissioners:

Our grounds for the appeal do present a substantial issue. We contend that Commission Staff incorrectly recommended no substantial issue. This letter summarizes several factual errors made by Commission Staff in their April 22 report. An accompanying letter by our attorney, Derek Weller, details the failures to apply the LCP and county code, and demonstrates that the county did not provide reasonable legal basis and facts to support its decision.

Before addressing issues in the Staff report, it is important to note that the extent of the project is not small as a percentage of the total developable land area. In fact, this project would cause the loss of a significant portion of the land available for agriculture AND there are alternate locations that meet the letter and intent of the code, if not the developer's wishes. C-ARP zoned parcels are all small by design. The very purpose and intent of C-ARP zoning is to protect the coastal resources contained within these small agricultural holdings. The primary mechanism for that protection is clustering and clustering was required 7 years ago when the subject property was developed and the second unit built attached to the primary residence. To allow it to be de-clustered in such a manner as to reduce ANY potential agricultural use without first providing solid evidence that alternatives are not suitable is terrible precedent to set.

This project would cause permanent loss of a significant remaining amount of potential agricultural area and loss of natural habitat area and other coastal resources mentioned in the appeal. By allowing the LCP clustering mandate to be ignored, because the size of the development is small, is the same as saying that the zoning of small coastal C-ARP properties need not follow LCP requirements because by definition, the projects are small which by this precedent would cause a determination of no substantial issue. This would effectively set the precedent that even projects that clearly violate the intent of the LCP like this one - that takes a clustered parcel and de-clusters - it would be allowed. This would mean there is no enforcement of the LCP for this zoning. If the County wants to treat the land as purely residential and the Coastal Commission thinks that small agricultural

holdings cause no substantial issue, then the Coastal Act is not being enforced. By the LCP by the Commission because no substantial issue can exist on small parcels could have a ripple effect across the state especially with second unit developments. The purpose of C-ARP is protected by clustering, which clearly means to concentrate development. For the Commission to say this is not the case since the project is small and would thus create no substantial issue is a travesty. De-clustering is NOT a permitted development and that is all that is happening here. This is a substantial issue and needs to be addressed with a de novo hearing.

The following is a brief review of some of the errors in the Coastal Commission Staff Report, April 22, 2011:

Page 1, Findings: The project does not include relocation of a generator shed. It included the mandatory relocation of a 314sqft storage shed illegally placed on the property line easement. In addition to this shed, and separate from the County decision on the subject project, the County also required a generator shed to be properly permitted since it was built without permit.

Page 2: Findings: The project plan includes construction of a 6' solid wood fence of 160' in length set back 6' from the property line and a 9-tree fruit orchard. This fence was added onto the original site plan as the amended and approved Site Plan A1.0. The fence has already been constructed and was 300' long and not set back from the property line as proposed and exceed 6' in height in places and is far less in others.

Page 3 Visual Resources:

- 1) Clustering is not limited to a single location, but the intent is clearly to allow multiple locations only if in so doing the maximum amount of potential or existing agricultural use is preserved. In this case, the second cluster as far from the main residence as possible in the only undisturbed open level area on the site would clearly decrease potential agricultural use. Further this destruction is unnecessary and suitable alternatives that meet every letter of the LCP exist clustered near the main house **WITHOUT REMOVING A SINGLE TREE**. This is an easy project to fix without loss of coastal resources.

Note that the staff report does not directly address the need to concentrate buildings on the site. That is the intent and purpose of the C-ARP zoning and it was not directly addressed in the staff report. The concentration of residential structures IS a required action and it is not being done here to the risk of significant coastal resources and it sets a precedent that will cause more loss.

- 2) While visual screening is encouraged, this is not a method to allow clustering of buildings to be ignored. It is a welcomed method to reduce the visual impact of development. This would set a precedent that clustering may be met strictly by screening development with existing vegetation. This is clearly not the intent.

- 3) The County did not eliminate locations by the house due to the need to cut trees. They county only claimed that the approved location was suitable and that it was not necessary to consider other locations. It was however argued at the DZA hearing that fire fuels would be a risk near the house, but it was not ever suggested that cutting trees was the problem. The Fire Chief did not eliminate the location around the house for fire fuels and provided information about the Defensible Space Ordinance that refuted that claim. No trees must be cut to develop a more suitable second unit project adjacent to the existing residence that meet the LCP. One obvious solution is to expand and convert the existing carport which would require no cutting AT ALL. There are also, multiple other suitable locations to relocate the carport. The County did not discuss the alternatives, did not provide reasonable facts or legal basis to disqualify those locations and only claimed that there was no need to look at alternatives since the selected location was suitable. The problem is that the selected location causes an unnecessary loss of potential agricultural area and does not cluster as required under the LCP.
- 4) Commission Staff did not visit the appellant's side of the property line and made no mention of looking across the lagoon at the ridgeline where it is indeed prominent. The project area is on a visually prominent ridgeline as seen from Highway 1. The Oak tree is west of the structure and would not provide any screening from Highway 1 to the east. While there are other developments, the LCP does not provide any language that allows the policy to be ignored because there are already developments in view nearby.
- 5) Certain private views are indeed protected by the LCP. Please see LCP Policy II-21 "To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway".

The words, "**maximum extent feasible**" are very clear and this project would impair the view of the Lagoon from 60 Mesa Rd. It is also visible from Hwy 1. How can this be ignored?

Page 4, Agriculture:

- 1) The fact that the zoning is C-ARP and not C-APZ has no merit in this decision. The zoning for C-ARP is what applies to this project site. The protection of potential agriculture is not limited to the best or worst sites. It is meant to protect all viable agricultural use. The approved project includes a fruit orchard that shows the potential. The soil quality is not poor. The solar exposure is adequate and visiting staff should have noted the dense growth of grasses that proves both soil and light adequacy.
- 2) The site is defined as Prime Agricultural Land by the terms of the Coastal Act referenced in the LCP. The Storie Index is based on depth of topsoil. The applicant filed a report by a geotechnical engineer who cited an earlier report by Herzog who actually did dig test pits at the approved location. The depth of soil by that report puts topsoil depth well within the over 80% threshold to prove prime agricultural land. The Herzog report was cited, but evidently not reviewed. A review is necessary and we can also provide a copy of that report if requested.

- 3) There is irrigation in place along the full length of the driveway and up to the proposed building location and has been for many years. The main irrigation line runs along the south side of the driveway and feeders run along the north side of driveway. The black lines are readily apparent to anyone looking for them.

Page 5: Natural Resource Protection (Habitat Protection):

- 1) The Staff report clearly identifies that the LCP protects upland grassy feeding areas, but it skips making any assertion that this is not an upland grassy feeding area, and it most certainly is. Instead, it accepts the County's incorrect logic that since a protected monarch butterfly area is nearby, but not at this site, then this site has nothing to protect. That is dangerous and poor logic. Different sites have different species to protect. The fact that one species is not found does not mean all species are void. Further, the Staff Report does not respond to the assertion that this upland grassy feeding area is defined as a ESHA in the LCP. Please see our original appeal to the Commission for details.
- 2) The mention of "Bolinás Quail State Refuge" is new. The quail refuge mentioned by the appellant is the Quail Refuge on the entire big mesa set by the California Department of Fish and Game. This refuge continues all the way down to Bolinas Olema Road where the sign is still displayed. The project does displace the quail habitat.

Page 6: Water Supply:

- 1) The county did not say that adequacy was met, they said that no new permit was required. In 21 years since the 1990 well report, the well has greatly reduced its output. The current adequacy was not evaluated as per LCP requirements.

Page 6: Geologic Stability:

- 2) The western section of the site that meets the most geologically stable portion was not adequately considered. At the DZA hearing, Jeremy Tejerian stated that the relocation of the utilities was not a reason to eliminate that site, rather it was that the selected site was the preference of the developer and was per se reasonable. This is not permitted by the LCP. The site selected is not the most geologically stable and there is no valid and permissible reason to allow it to be constructed there.
- 3) There is no evidence in the administrative record that shows that expanding and converting the carport would require tree cutting.

We hope you will consider the information here as well as that in Derek Weller's May 6 letter as you consider the substantial issue for this case. The LCP requirements for clustering are being ignored and this small agricultural holding faces a significant loss of potential agricultural use and other coastal resources. There is no legitimate reason to allow this to happen, as alternatives that protect the coastal resources and meet LCP requirements are readily available. Allowing the project to continue without a de novo hearing set a precedent across the state that would lead to further loss of coastal resources. Please reconsider staff's recommendation.

Thank you,

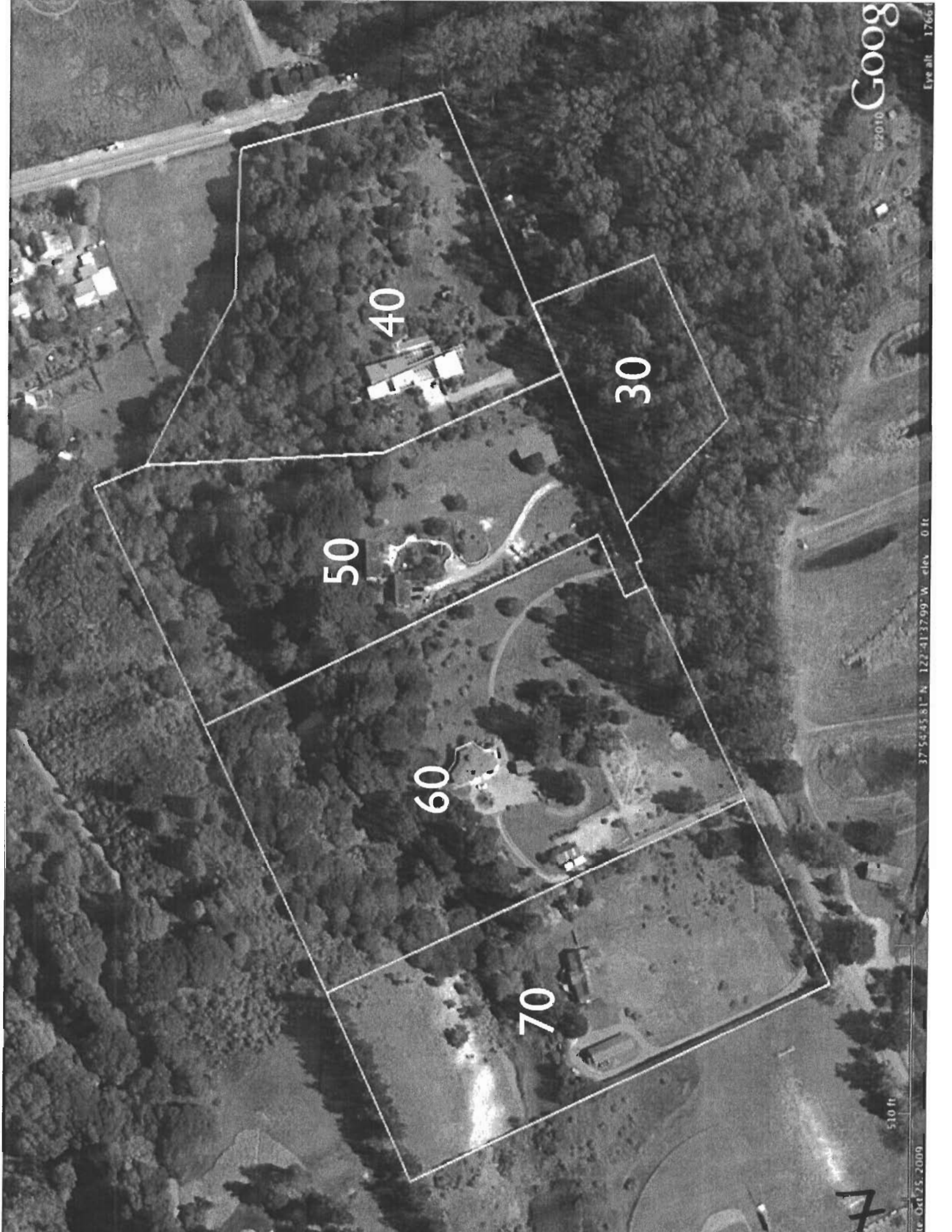
Signature on file

✓ Bob & Courtney Cart ✓

# **BOS Appeal Hearing Presentation**

March 1, 2011

**Dworsky Design Review, Coastal  
Permit & Second Unit Permit**



40

30

50

60

70

510 ft

Paradise Valley  
Produce ~15 acres

Gospel Flats  
Farm ~10 acres

Star Route  
Farm

Blackberry  
Farm (4 acres)

Veg, Veg, Fruit  
Poultry

Horses

Goats

Poultry ~1 acre

Tacherra Ranch  
Cattle, Poultry

Goats & Bees  
~1 acre

Gospel Flats  
~1 acre

Goo

1696 ft

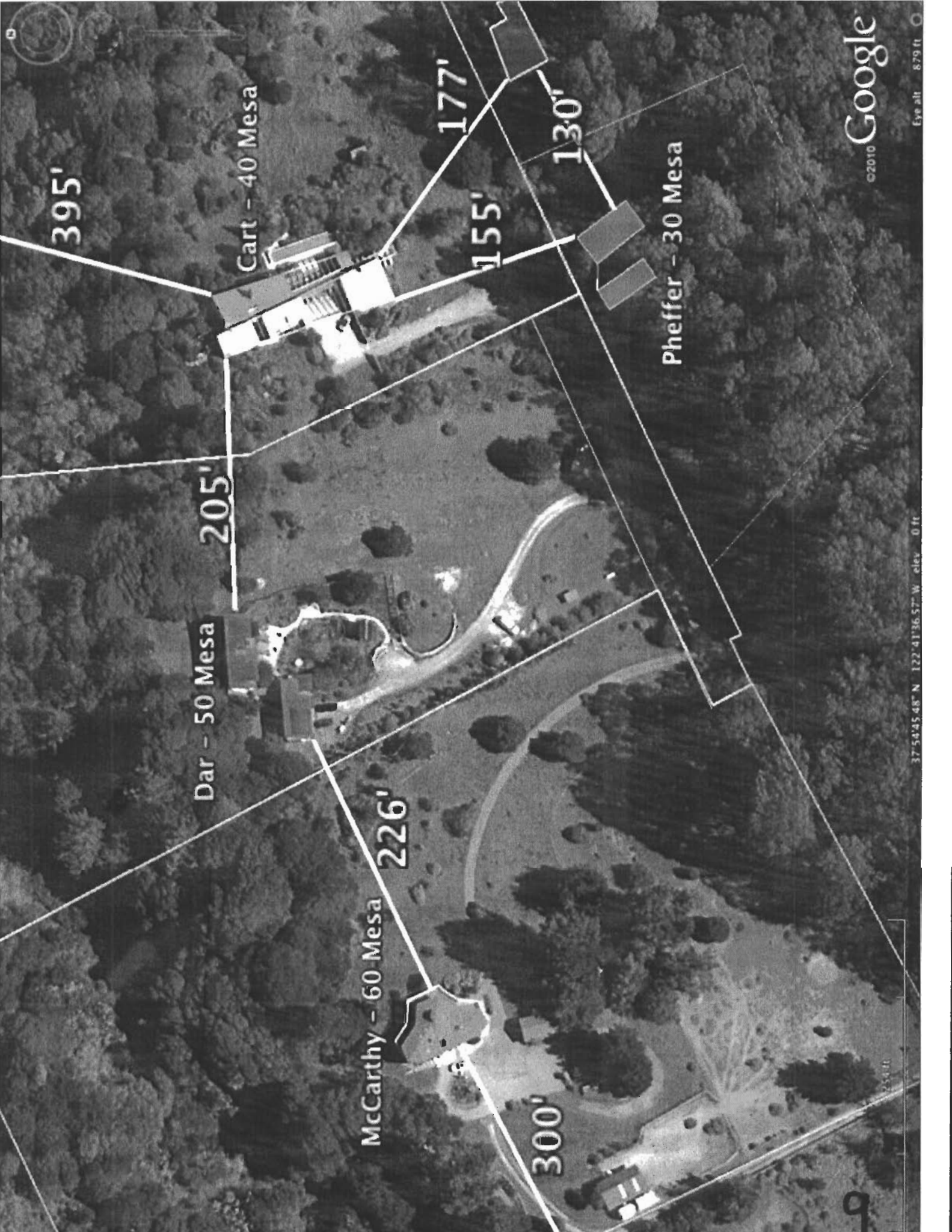
Query Date: Oct 25, 2009

37°54'54.91" N 122°41'45.26" W elev. 0 ft

Eye Alt. 5

8





395'

Cart - 40 Mesa

177'

155'

130'

Pheffer - 30 Mesa

205'

Dar - 50 Mesa

226'

McCarthy - 60 Mesa

300'

Google

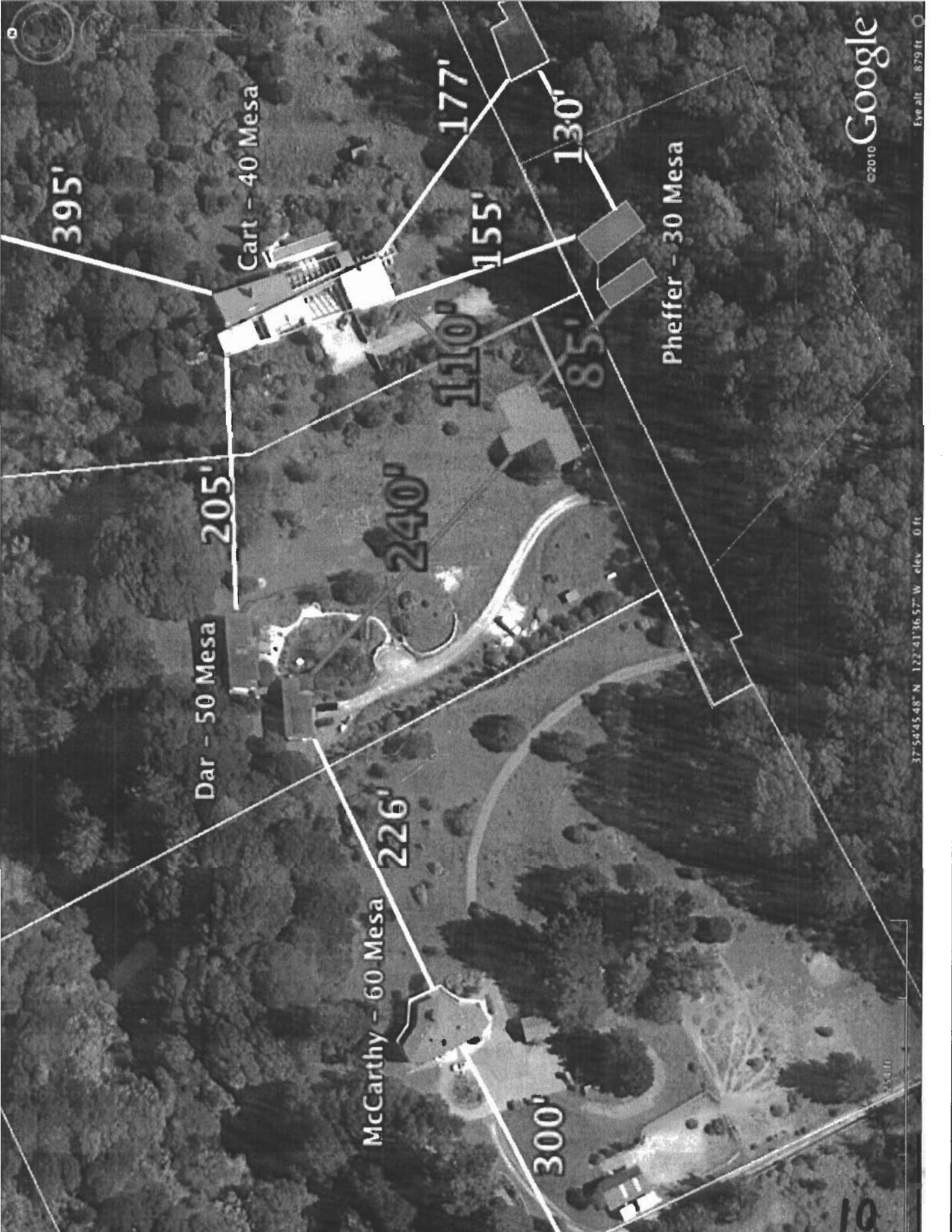
©2010

Eye alt 879 ft

37°54'45.48" N 122°41'36.57" W elev 0 ft

254 ft

9



395'

Cart - 40 Mesa

177'

130'

Pheffer - 30 Mesa

155'

110'

85'

Dar - 50 Mesa

205'

240'

226'

McCarthy - 60 Mesa

300'

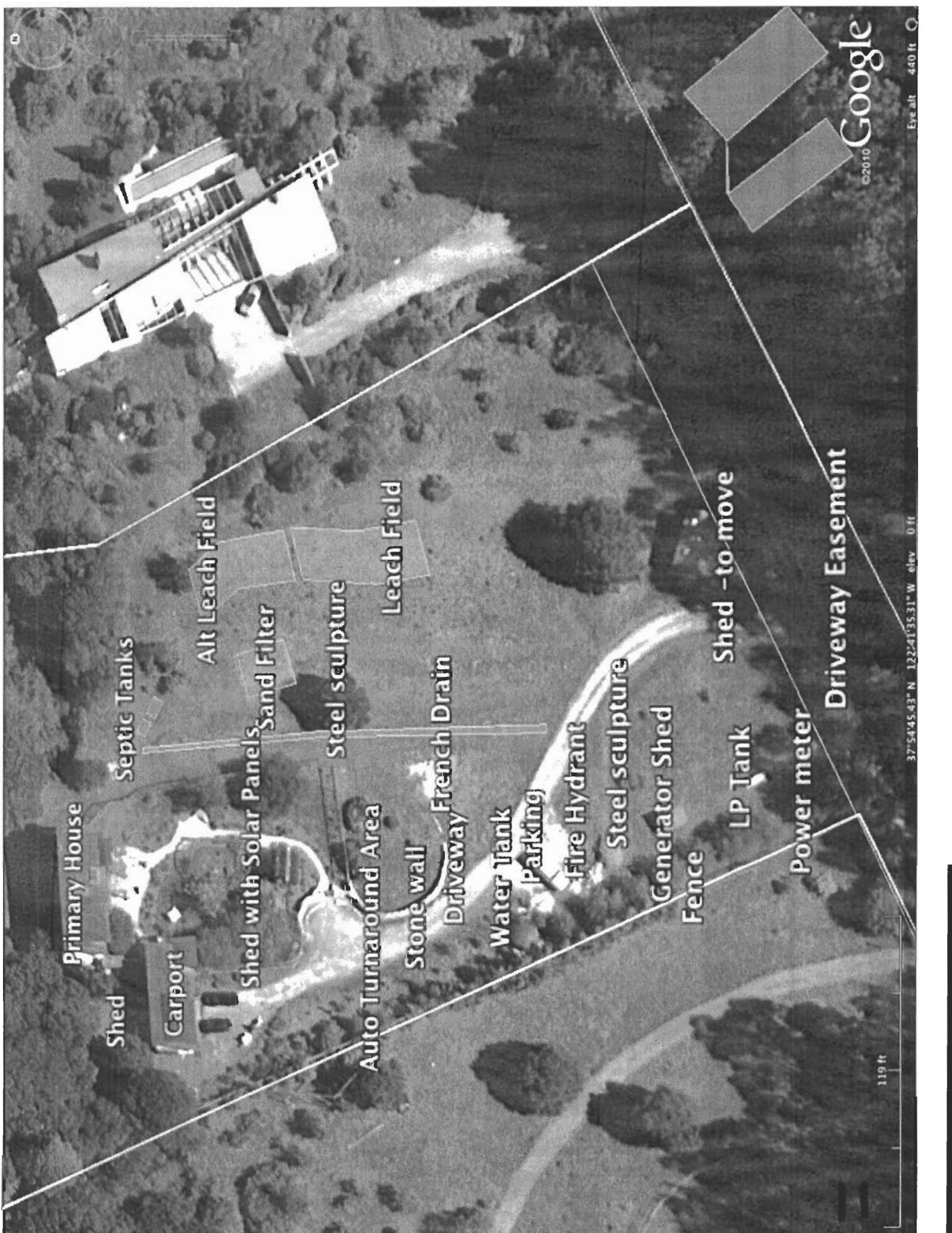
Google

©2010

37°54'45.48" N 122°41'36.57" W elev. 0 ft

Eye alt. 879 ft

10



Primary House

Shed

Carport

Shed with Solar Panels

Septic Tanks

Alt Leach Field

Sand Filter

Steel sculpture

Leach Field

Auto Turnaround Area

Stone wall

Driveway French Drain

Water Tank

Parking

Fire Hydrant

Steel sculpture

Generator Shed

Fence

Shed - to move

LP Tank

Power meter

Driveway Easement

119 ft

©2010 Google

37°54'45.43" N 122°41'35.31" W elev 0 ft

Eye alt 440 ft

Primary House

Shed

Carport

Shed with Solar Panels

Auto Turnaround Area

Stone wall

Driveway

Water Tank

Fire Hydrant

Steel sculpture

Fence

LP Tank

Power meter

Driveway Easement

Septic Tanks

Alt Leach Field

Sand Filter

Steel sculpture

Leach Field

French Drain

Only Undisturbed Area!

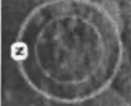
Generator Shed

Shed to move

Junk Pile

142 ft

37°54'45.52" N 122°41'35.46" W elev 0 ft



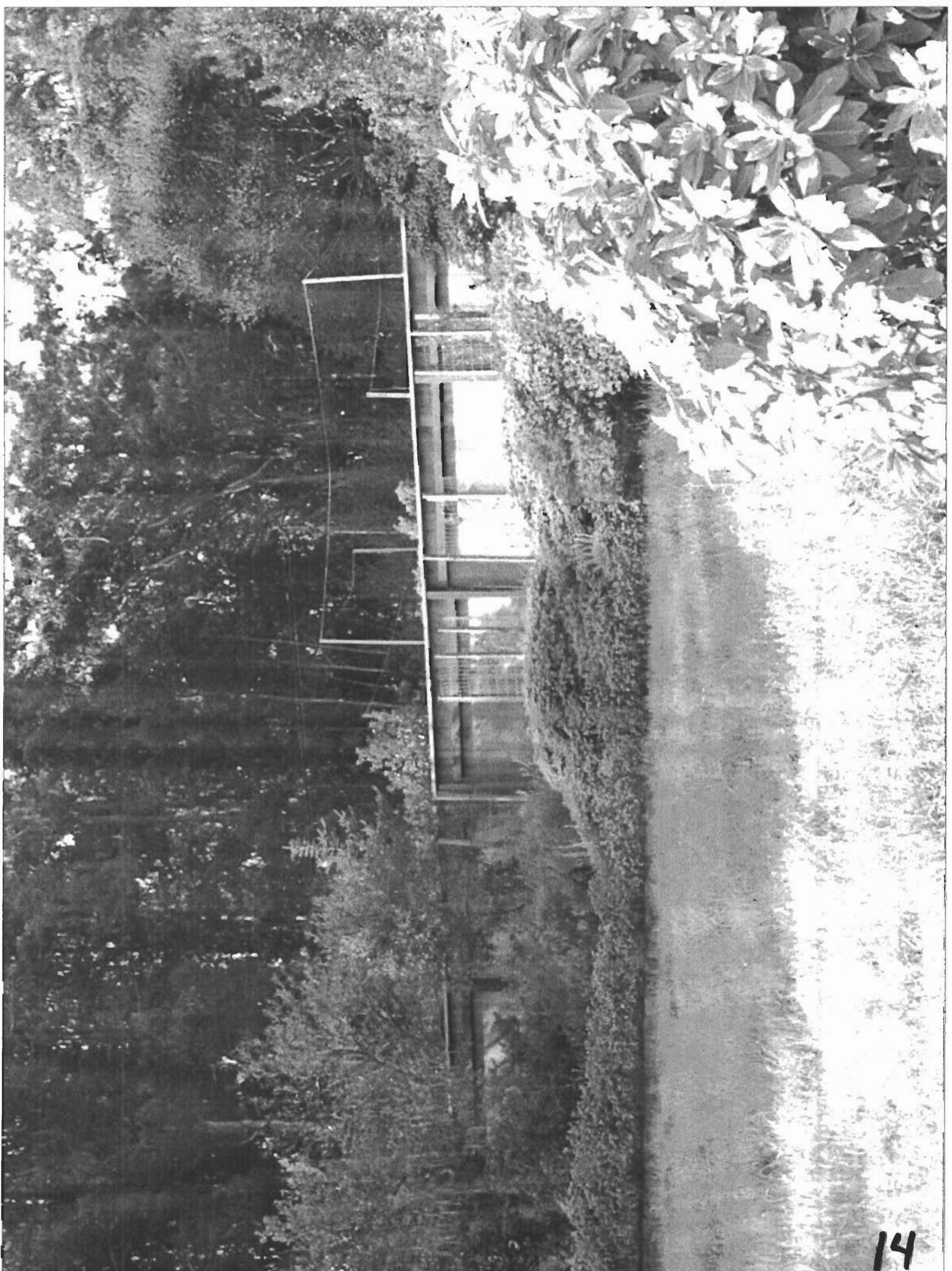
©2010 Google

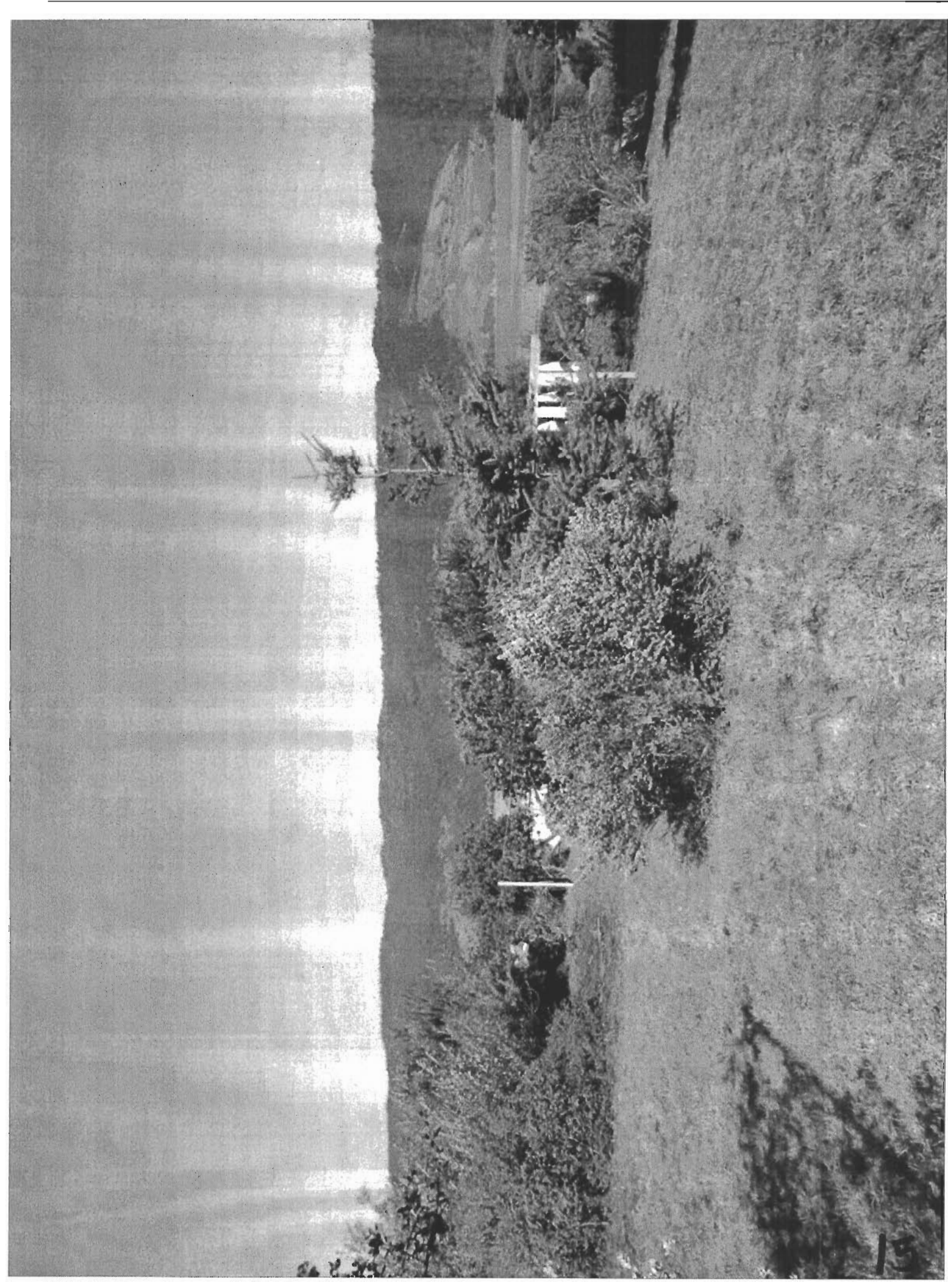
Eye alt: 667 ft

37°54'45.45" N 122°41'36.47" W elev: 0 ft

180 ft

13

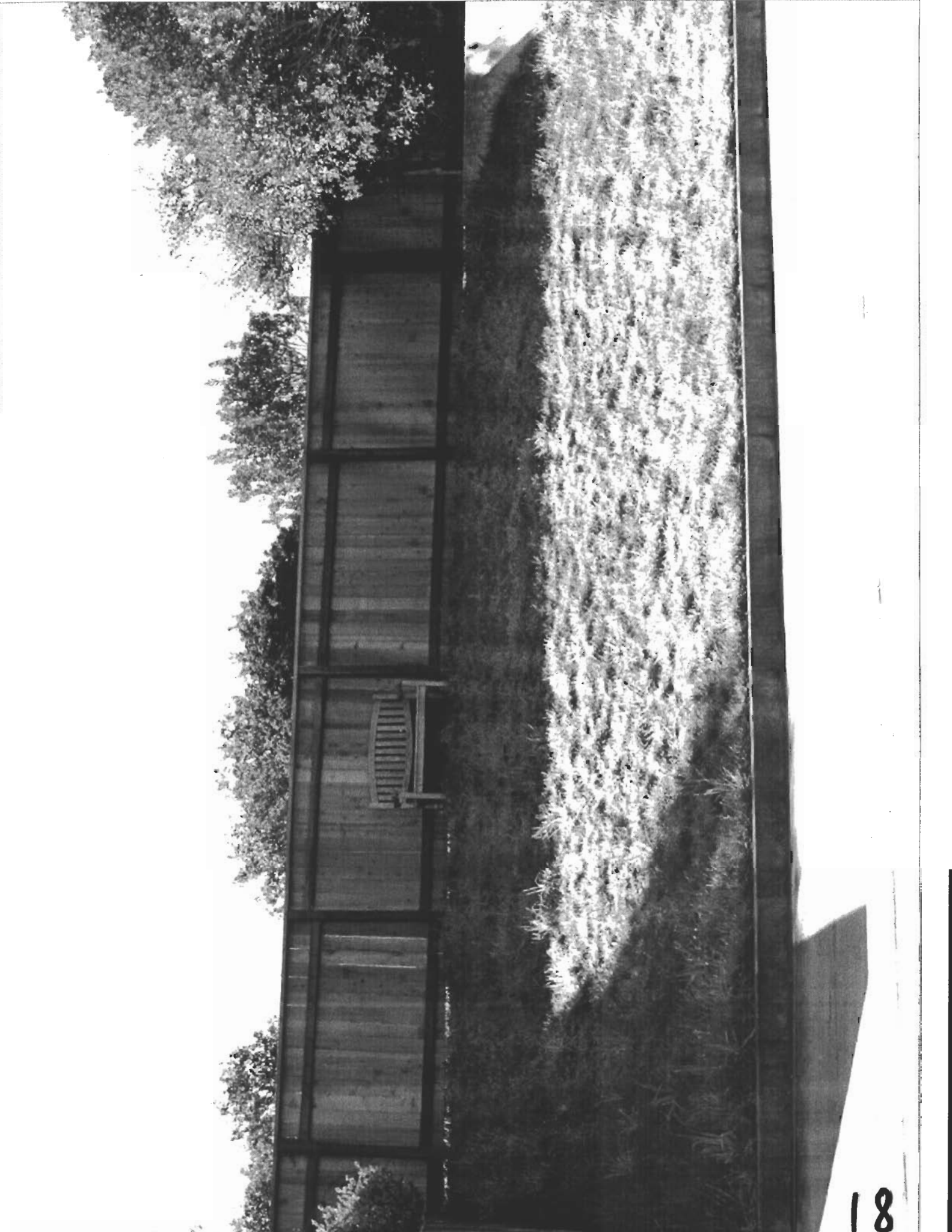


















Building Site

100'

60'

Fence As Proposed

109 ft



GO

©2010

Elev

Fence As Built

240'

60'

Building Site

109 ft

22

37°54'45.71" N 122°41'34.51" W elev 0 ft



Fence As Built

240'

100'

60'

Fence As Proposed

Building Site

37°54'45.21" N 122°41'34.51" W elev 0 ft

109 ft

23

# Proposed Site NOT most geological stable

Source: Marin County <http://mmgis.marinmap.org/>

● — Alluvial

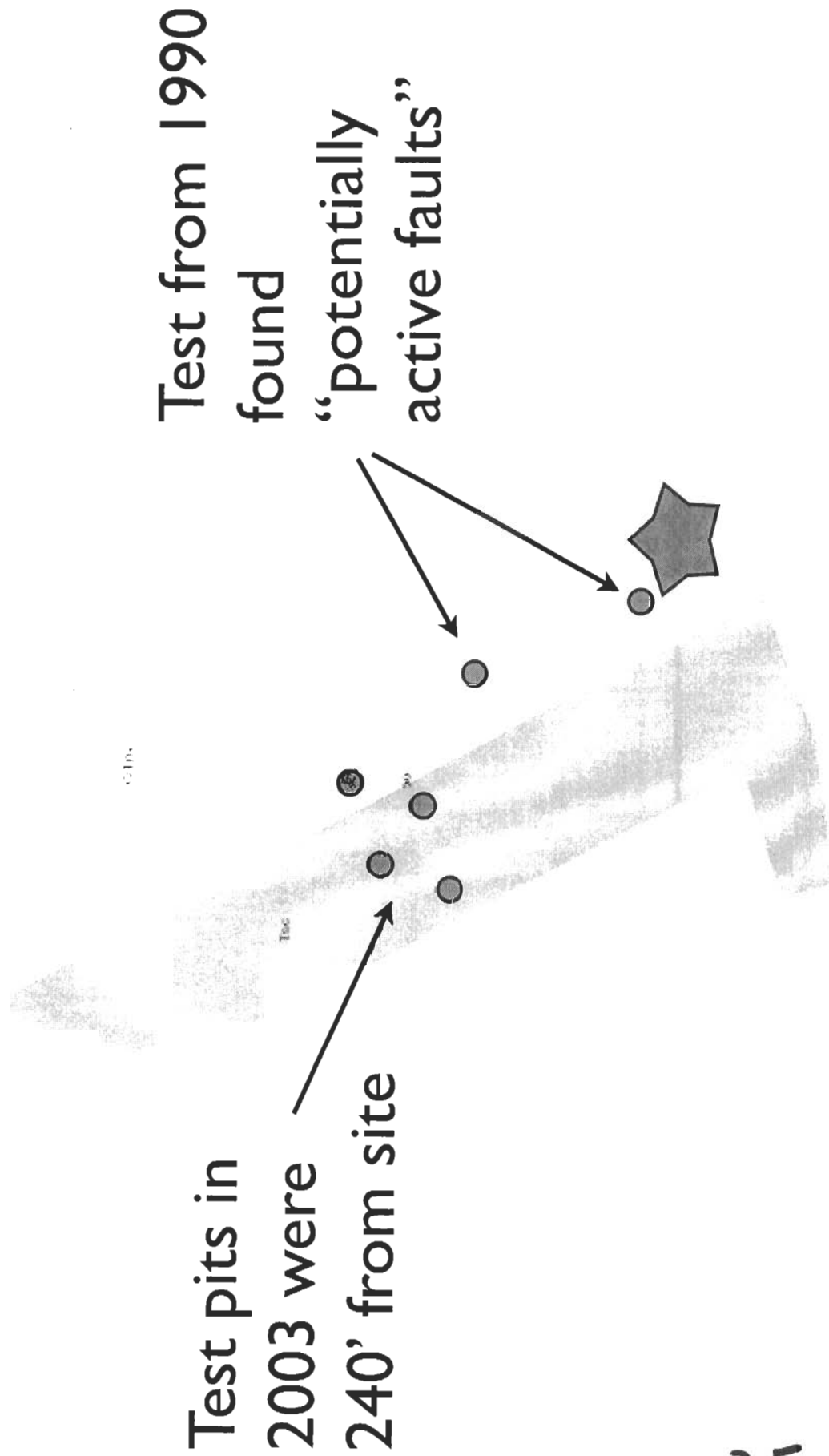


Merced Formation  
**Less stable!**

Santa Cruz Mudstone —●  
**Most Stable!**

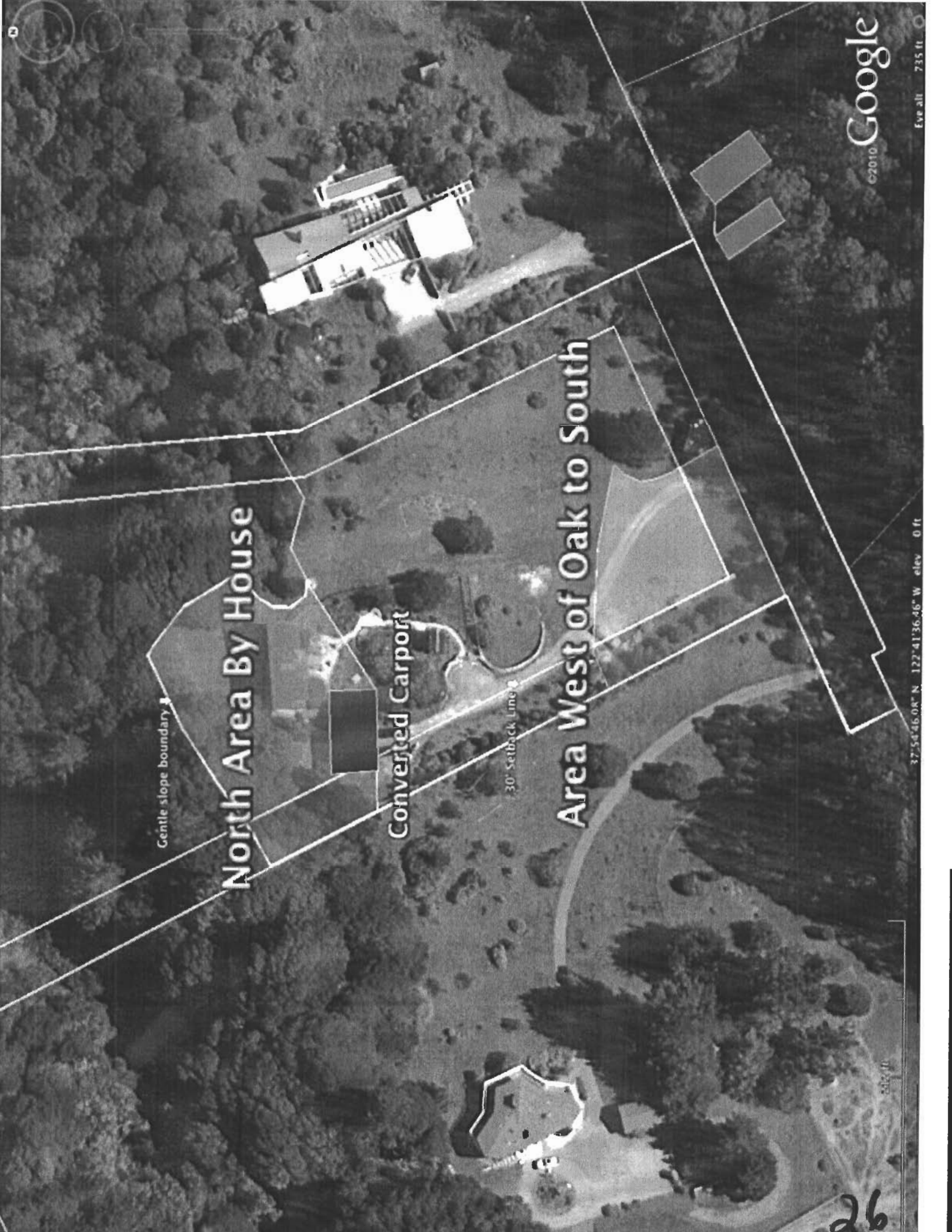


# Not Most Geologically Stable



Test pits in  
2003 were  
240' from site

Test from 1990  
found  
"potentially  
active faults"



Gentle slope boundary

North Area By House

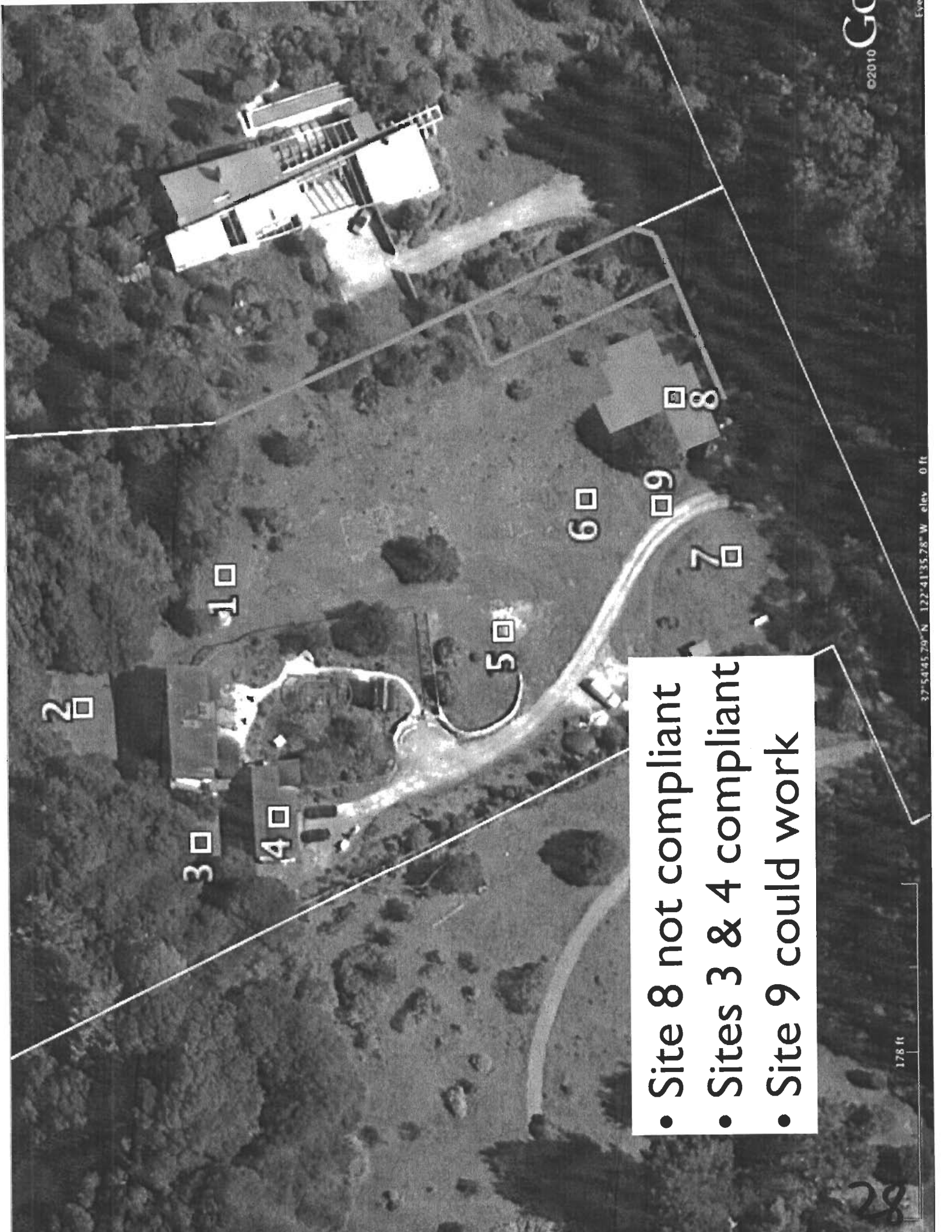
Converted Carport

30° Setback Line

Area West of Oak to South

# Detailed Site/Code Analysis:

Compliance to Code of Select Alternative Locations										
Code	Description	Locations								
		1	2	3	4	5	6	7	8	9
22.57.02 11	Purpose. concentration of residential and accessory use	Y	Y	Y	Y	N	N	N	N	N
22.57.02 11	Purpose. maintain the maximum amount of land available for agricultural use	Y	Y	Y	Y	N	N	N	N	N
22.57.02 11	Purpose. maintain visual, natural resource and wildlife habitat values of property and surrounding areas.	Y	Y	Y	Y	N	N	N	N	N
22.57.02 41 1.a	Clustering. most accessible	N	N	Y	Y	N	N	N	N	N
22.57.02 41 1.a	Clustering. least visually prominent	Y	Y	Y	Y	N	N	N	N	N
22.57.02 41 1.a	Clustering. most geologically stable	N		Y	Y		N	Y	N	Y
22.57.02 41 1.a	Clustering. screened by existing vegetation	Y	Y	Y	Y	N	N	Y	Y	Y
22.57.02 41 1.a	Clustering. minimize disruption of Ag uses.	Y	Y	Y	Y	N	N	N	N	N
22.57.02 41 1.b.	Ridgelines. least visible from nearby highways	Y	Y	Y	Y	N	N	Y	N	Y
22.57.02 41 1.b.	Ridgelines. least visible from developed areas	Y	Y	Y	Y	N	N	N	N	N
22.57.02 41 1.d.	Roads, utilities maximize undivided Ag land	Y	Y	Y	Y	N	N	N	N	Y
22.57.02 41 1.g.C.	Access. Minimum driveway length	N	Y	Y	Y	Y	N	Y	N	Y
22.57.02 41 1.i.	Promote Ag. and Open Space Uses	Y	Y	Y	Y	N	N	N	N	N
22.82.04 01 A.	consistent with the countywide plan and community plan and local coastal program	Y	Y	Y	Y	N	N	N	N	N
22.82.04 01 B.	not unsightly or creating disharmony with its locale and surroundings	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 01 C.	It will not interfere with the development, use, enjoyment of properties in vicinity	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 01 C	It will not impair orderly and pleasing development of neighborhood as a whole	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 01 F. 1.	minimize adverse effects. The scale, mass, height, area	N	Y	Y	Y	N	N	N	N	N
22.82.04 01 F. 2.	minimize adverse effects. Drainage systems and appurtenant structures	Y	Y	Y	Y	Y	Y	Y	Y	Y
22.82.04 01 F. 4.	minimize adverse effects: Areas, paths for the general circulation of persons, animals	Y	Y	Y	Y	Y	Y	Y	Y	Y
22.82.04 01 F. 5.	minimize adverse effects: Sun exposure and light pollution	Y	Y	Y	Y	Y	Y	Y	Y	Y
22.82.04 01 F. 5.	minimize adverse effects: diminution of views	Y	Y	Y	Y	N	Y	Y	N	Y
22.82.04 01 F. 5.	minimize adverse effects: diminution of privacy	Y	Y	Y	Y	Y	Y	Y	Y	Y



- Site 8 not compliant
- Sites 3 & 4 compliant
- Site 9 could work

178 ft

32°54'45.79" N 122°41'35.78" W elev 0 ft

28

# Alternatives Analysis for 2<sup>nd</sup> Unit Project at 52 Mesa Rd, Bolinas

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2/26/2011  
Bob Cart

## 1. Introduction

In addition to many other issues raised elsewhere, a significant problem with the Design Review, Coastal Permit and 2<sup>nd</sup> Unit Permit application for the project at 52 Mesa Rd, Bolinas is the proposed location. Certain sections of the Code require alternative site analysis, yet no such assessment of locations has been provided. This document provides a discussion of site alternatives in terms of applicable Code. It is clear from these findings that the proposed project location does not meet Code requirements.

The Code requires an analysis based when superlative words like "most" and "least" are used. For example, a key paragraph says (emphasis added),

*"Clustering. Buildings shall be clustered or sited in the **most** accessible, **least** visually prominent and **most** geologically stable portion or portions of the site".*

This code removes discretion in the interpretation, as it does not say "more" or "less" or "reasonably so". It is thus not possible to establish if the proposed site is "most" or "least" of anything without comparison to alternatives.

This issue was raised at the Planning Commission hearing, yet still no adequate alternative site analysis has been provided. The CDA staff report to the Board of Supervisors does include an attachment from Joseph Lambert, Ms. Dar's architect that offers 8 sites and provides pros and cons for each. However, Lambert's presentation does not evaluate Code compliance of each site, provides misleading information, and fails to ascertain Code compliance of any site.

In this document I review Mr. Lambert's presentation and comment on facts provided and omitted. While Ms. Dar proclaimed to the contrary, I have no interest in "designing" her project. My efforts here are necessary as no analysis has been provided nor compelled by the County despite the need to do so. This factual review will show that the proposed location is not consistent with the Code and that alternative locations are better suited alternatives exist.

## 2. Issues within Mr. Lambert's Presentation dated 3/1/2011

The closest thing to an alternatives assessment to date is Mr. Lambert's presentation entitled "Affordable Housing - 2<sup>nd</sup> Unit Renovation" delivered with the staff report<sup>1 2</sup>. This

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<sup>1</sup> It is interesting that Mr. Lambert presents this development as if the unit designed as planned would be "affordable". The cost of this development would place it outside the reasonable rental of low to moderate incomes as per HUD Guidelines.

<sup>2</sup> The proposed project is a relocation and expansion of a 2<sup>nd</sup> unit and not a renovation.

report makes a variety of points without adequate or consistent treatment of the code. It goes to show how the developer is attempting to balance a subset of Code requirements with her personal interests.

Mr. Lambert's report falls short of a reasonable analysis and makes several misleading assertions. Mr. Lambert incorrectly uses the term "easement" with regard to several features yet no such easements have been recorded. He implies that setbacks exist but no evidence has been provided to substantiate that claim. There are other misleading suggestions:

- A. The leach field shown is greatly exaggerated in size. The "10' Easement" shown is not true. The northern half of the actual field area is undeveloped and is an alternate field. An unused alternate field may be relocated. Also note that agricultural uses such as poultry and many row crops are safely grown over leach fields.
- B. The "septic tanks" are also enlarged with a "5' Easement" that is not factual.
- C. The fire hydrant is shown with a 50' easement that is not factual. Bolinas Fire Chief, Anita Tyrell Brown said there is no specific setback requirement from a fire hydrant. Requiring a 50' hydrant setback would disqualify most buildings in Marin County.
- D. There is no such "15' Easement" for a propane tank as stated.
- E. The utilities in the southwest corner can be relocated at nominal cost. Moving the propane tank would only cost approximately \$500 as per estimate from McPhails. The water and electric lines do not need to be moved as they are near the western fence. Jeremy Tejerian acknowledged at the DZA hearing after public comments that moving all these utilities would not be a reason to avoid what is now site #7 or #9.
- F. The "300sf Utility Shed" shown was located in violation of the code and must be relocated as per Gerry Morena of Marin County CDA Code Enforcement Division. It is not appropriate to use for clustering as it will need to be relocated itself to a site clustered with other development to comply with the code.
- G. The proposed fence has already been built without approval. Neal Osborne has stated in writing that the fence is part of this Design Review. Developer may attempt to claim this fence as a basis for clustering or to suggest it reduces visual prominence or improves privacy for the proposed location. Inappropriate!
- H. The specific sites chosen for Mr. Lambert's analysis with the exception of the proposed location have been positioned to make them appear to be less useful to clear fabricated "easements".

### 3. Location Discussion

Location#1: Lambert says cons for Location 1 are that it suffers dangerous soil stability, but no evidence is provided. No evidence of any easements is provided nor the need to move the "drain dissipater". The fire fuels risk is misleading as the Fire Chief has made it clear that the county Defensible Space ordinance is easy to achieve by reducing fire ladder to under 10' and thinning dense vegetation. Location#1 would be better if moved further west and south as leach field is not as shown.

Location#2: No evidence was provided for soil stability. Parking access is not ideal but better than site #1. Fire fuels risk is not an issue as per above. The Code does not protect privacy of hot tub use. This site merits further review.

Location#3: Reduced solar access may be minimized with suitable window design and the code only requires this to be considered in the design per 22.82.040I F. It does not rule out this site. That the "program" is too big raises an issue with regard to other adverse affects

per 22.82.0401 F and inconsistency with the Visual Resources and Community Character of 22.56.1301 O. Fire fuels is a nonissue as stated. The Code does not protect against filling in an otherwise open area adjacent to the house, especially if such use increases concentration such that existing or future potential agricultural use is maximized as per 22.57.0241 1.i. and 22.57.0241 1.a. and 22.82.0401 A.

Location#4: This site deserves special attention since the cons provided are not addressed by the Code and it appears that a reasonable modification of this location could meet Code objectives and provide a project consistent with the community development patterns.

Location#5: This is not a reasonable location for numerous reasons.

Location#6: This site appears to be pushed out into the field because of the artificial "easement" for the hydrant that is not true and is misleading. Moving this location westward as per #9 below would take it out of view of the westward neighbor and reduce the division of agricultural areas and loss of agricultural space.

Location#7: This site is also artificially constrained by fabricated "easements" and utility setbacks. Relocation of utilities if needed could be done at low expense as confirmed by DZA Tejerian. Moving the driveway would allow it to be shortened consistent with 22.57.0241 1. This site would be no more visible than the proposed location from the shared private access lane. Existing dense vegetation screen it from neighbors. There is no code requirement to avoid the highest site. While it is true that this area could be used for agriculture, this location would diminish the loss of agricultural land as per 22.57.0241 1.b. "...This shall be accomplished through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land". Additionally, agricultural land division as per 22.56.1301 N. applies to the Spanish Bit Subdivision. Mr.

Location#8 (proposed): Using the illegally located 300sf utility shed as the basis for clustering is not appropriate. This is a potentially productive Ag use area as demonstrated by the developer and Lambert and Creque letters. This is the only open remaining level area on the site without development. Developer proposes fruit trees in the area. This could be expanded for livestock grazing and other agricultural opportunities. It is thus not appropriate for development if an alternative exists which is the case. This site does not minimize extension of utilities (site 7 is obviously closer to utilities). Good views from an accessory structure at the adverse effect of neighbors is not provided in the Code.

Location#9 is a new location to be considered. It would be set on the driveway by the oak tree between #6, #7, and #8. It would be out of view from all neighbors. It is consistent with the location suggested by Neal Osborne in preliminary merit comments. Most accessible to driveway and utilities and access. The south end of the existing driveway where curved could be relocated westward so as to make a straight line to shorten it and make consistent with code 22.57.0241 1. This location would also have a great view and privacy and be nestled by the same oak tree. This site was previously proposed so it is surprising it was not included in Mr. Lambert's analysis. Site # 9 meets code better than proposed site #8.

#### 4. Analysis of Relevant Code Sections Applied to Each Location

To assess alternatives in light of the Code, below is table with each site and compliance with relevant code sections. I used Mr. Lambert's 8 locations and added one more.

Y	Code Compliant	N	Not Code Compliant
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Compliance to Code of Select Alternative Locations										
Code	Description	Locations								
		1	2	3	4	5	6	7	8	9
22.57.02 1I	Purpose. concentration of residential and accessory use	Y	Y	Y	Y	N	N	N	N	N
22.57.02 1I	Purpose. maintain the maximum amount of land available for agricultural use	Y	Y	Y	Y	N	N	N	N	N
22.57.02 1I	Purpose. maintain visual, natural resource and wildlife habitat values of property and surrounding areas.	Y	Y	Y	Y	N	N	N	N	N
22.57.02 4I 1.a	Clustering. most accessible	N	N	Y	Y	N	N	N	N	N
22.57.02 4I 1.a	Clustering. least visually prominent	Y	Y	Y	Y	N	N	N	N	N
22.57.02 4I 1.a	Clustering. most geologically stable	N		Y	Y		N	Y	N	Y
22.57.02 4I 1.a	Clustering. screened by existing vegetation	Y	Y	Y	Y	N	N	Y	Y	Y
22.57.02 4I 1.a	Clustering. minimize disruption of Ag uses.	Y	Y	Y	Y	N	N	N	N	N
22.57.02 4I 1.b.	Ridgelines. least visible from nearby highways	Y	Y	Y	Y	N	N	Y	N	Y
22.57.02 4I 1.b.	Ridgelines. least visible from developed areas	Y	Y	Y	Y	N	N	N	N	N
22.57.02 4I 1.d.	Roads, utilities maximize undivided Ag land	Y	Y	Y	Y	N	N	N	N	Y
22.57.02 4I 1.g.C.	Access. Minimum driveway length	N	Y	Y	Y	Y	N	Y	N	Y
22.57.02 4I 1.i.	Promote Ag. and Open Space Uses	Y	Y	Y	Y	N	N	N	N	N
22.82.04 0I A.	consistent with the countywide plan and community plan and local coastal program	Y	Y	Y	Y	N	N	N	N	N
22.82.04 0I B.	not unsightly or creating disharmony with its locale and surroundings	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 0I C.	It will not interfere with the development, use, enjoyment of properties in vicinity	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 0I C	It will not impair orderly and pleasing development of neighborhood as a whole	Y	Y	Y	Y	N	N	Y	N	Y
22.82.04 0I F. 1.	minimize adverse effects. The scale, mass, height, area	N	Y	Y	Y	N	N	N	N	N
22.82.04 0I F. 2	minimize adverse effects. Drainage systems and appurtenant structures	Y	Y	Y	Y	Y	Y	Y	N	Y
22.82.04 0I F. 4.	minimize adverse effects: Areas, paths for the general circulation of persons, animals	Y	Y	Y	Y	Y	Y	Y	N	Y
22.82.04 0I F. 5.	minimize adverse effects: Sun exposure and light pollution	Y	Y	Y	Y	Y	Y	Y	N	Y
22.82.04 0I F. 5.	minimize adverse effects: diminution of views	Y	Y	Y	Y	N	Y	Y	N	Y
22.82.04 0I F. 5.	minimize adverse effects: diminution of privacy	Y	Y	Y	Y	Y	Y	Y	N	Y



The following list summarizes the code-specific criteria selected and discusses a few points with regard to each site.

*22.57.0211 Purpose. concentration of residential uses to maximize agricultural use.*

This element of clustering residential structures for maximizing agricultural and open space is defined in the Coastal Act, the LCP, and the County Code. It is clear what it means and suggesting that siting next to a tree meets this requirement is inaccurate.

*22.57.0241 1.a Clustering. most accessible*

The most accessible location would be adjacent to the primary residence. The second most accessible location would be closest to the primary access to the public road and utilities and this occurs at site #7.

*22.57.0241 1.a Clustering. least visually prominent*

The proposed location #8 is visible from three neighbors and is the only site visible from Highway 1. Locations 1-4 and 6 and 7 are not in view.

*22.57.0241 1.a Clustering. most geologically stable*

This site also suffers from reduced geological stability. This site also has a steeper grade than to the west and deeper soil. The extensive impervious area would also increase impact from runoff and may cause an adverse effect on the eastern neighbor. County records (<http://mmgis.marinmap.org/>) shows that the eastern half of this parcel is predominately Merced Formation, an unlithified sedimentary soil structure. The western half is shown as Santa Cruz Mudstone, a lithified stone. Stone bedrock is more stable. This is especially important in an area defined by the San Andreas fault. The developer provided geological report from Salem Howes that says, "In general, the risk of surface fault rupture decreases the further you are located from the 1906 trace". As the fault trace is to the east in the lagoon, siting further west reduces risk. In that report it is clear that inadequate analysis was provided for alternative sites. "Geo-probes" were only taken at proposed site, but not elsewhere to establish relative geological stability. Salem Howes also reports that Herzog identified active faults in 1990 in the southeast area hereby increasing risk and suggesting that this is not the most geologically stable location. The selected site is thus not proven as the most geologically stable as per 22.57.0241 1.a.

*22.57.0241 1.a Clustering. screened by existing vegetation*

Due to existing vegetation, only site # 8 is visible from Hwy 1 and only sites #5 and #8 are visible to neighbors.

*22.57.0241 1.a Clustering. minimize disruption of agricultural uses.*

Only sites 1-4 minimize ag use. Site #8 is the worst, as it would divide the largest remaining open space. West of the driveway for site #7 would have less impact. Location #6, if moved westward to the driveway would have a similarly lower impact on Ag use.

*22.57.0241 1.b. Ridgelines. least visible from nearby highways*

Only sites #6 and #8 would be visible from Hwy 1.

*22.57.0241 1.b. Ridgelines. least visible from developed areas*

Sites 1-4 are the least visible from developed areas. Number #5 and #8 are the worst. Sites #6 and #7 can be made to be reasonably out of view from all developed areas.

*22.57.0241 1.d. Roads and utilities to maximize undivided agricultural land*

The existing driveway already divides the open space somewhat. Siting at 1-4 has no impact on ag space and 6 if moved west and 7 would have a lower impact than #8.

*22.57.0241 1.g.C. Access. Minimum driveway length*

Locations 2-4 would have no impact on driveway. #5 and 8 would require additions. Location #6 could be moved on top of the existing driveway and a new driveway set to the west which would result in an overall shorter driveway than exists today. #7 could be accessed from the shared lane to the south.

*22.57.0241 1.i. Promote Agricultural and Open Space Uses*

Only sites 1-4 protect the open space. Location 6 (if moved west) and 7 would have less impact than Location 5 or 8.

*22.82.0401 A. consistent with the countywide plan and any applicable community plan and local coastal program*

The proposed location violates the intent of the Bolinas Community Plan and the Marin County Local Coastal Program with regards to concentration of residential uses amongst other items.

*22.82.0401 B. not unsightly or creating substantial disharmony with its locale and surroundings*

The fence as built is over 6' in places and less than 4' in others. It is solid and not in keeping with other fences on Ag land in Bolinas of 5 acres or more. It is a two tone color scheme and follows irregular design. The fence is ugly and seen as a spite fence. The proposed development location would have the effect of making the lot look like it was two separate home sites in a much more dense subdivision. This is not the intent of the zoning in this area.

*22.82.0401 C. It will not impair, or interfere with, the development, use, or enjoyment of other property in the vicinity*

The proposed site so close to the eastern neighbors front yard and driveway area will have a big impact on privacy and enjoyment. The large structure will be plainly visible where only natural open area existed. The fence built without permit has already had a big negative impact. The lights at night, the noise of close neighbors and general lack of privacy resulting from the proposed site would be adverse to the eastern and southern neighbors.

*22.82.0401 C It will not impair, or interfere with, the orderly and pleasing development of the neighborhood as a whole*

See prior two items for comments on this section.

*22.82.0401 F. 1. minimize adverse effects. The scale, mass, height, area*

While within code limits, the size of this second unit is greater than others in Bolinas. The large garage and large disturbed surface make it as large as the primary residence. The glass façade is the full 15 feet tall and has the affect of making the structure appear larger.

*22.82.0401 F. 2 minimize adverse effects. Drainage systems and appurtenant structures*

Location#8 as proposed is on the steeper side of the property where the lose topsoil is deeper both resulting in greater erosion. This erosion may cause runoff onto the eastern neighbor's property

*22.82.0401 F. 4. minimize adverse effects: Areas, paths for the general circulation of persons, animals*

The fence as built impacts the flow of animals and reduces access to the eastern neighbors' northern yard area.

*22.82.0401 F. 5. minimize adverse effects: Sun exposure*

The fence as built greatly reduces afternoon sun on the existing garden growing area of the eastern neighbor effectively shortening the sunlight day considerably and reducing crop yield. It also reduces the ability to grow screening plants just west of the fence. Further, the light from the glass facade at night will make an otherwise dark area illuminated polluting the night darkness.

*22.82.0401 F. 5. minimize adverse effects: diminution of views, vistas*

The proposed location is highly visible to the eastern neighbor and visible to the western and southern neighbor. This structure and fence would block the view to the natural open wildlife habitat space in the southwest corner.

*22.82.0401 F. 5. minimize adverse effects: diminution of privacy*

By siting the second unit at location #8 as proposed, it would be 85' from the southern neighbor and 110' from the eastern neighbor. People living that close would reduce privacy.

## **5. Summary**

From this analysis, it is clear that only locations #3 and #4 meet all the code requirements. Location #2 is also promising and if access could be improved #1 could be workable. Location #9 is the best of those away from the primary residential development with #7 not far behind. Sites #5, #6 are not workable. The very worst of all by this evaluation is the proposed site #8. It fails in all measures with the exception of screening by existing vegetation.

**Bob and Courtney Cart  
40 Mesa Rd  
Bollinas, CA 94924**

**Richard Pfeffer  
30 Mesa Rd  
Bollinas, CA 94924**

**Nancy McCarthy  
60 Mesa Rd  
Bollinas, CA 94924**

**December 7, 2010**

Marin County Community Development Agency  
Planning Commission

Re: Project ID 10-1084, APN 193-020-51

Dear Planning Commission,

This is a joint letter of the adjacent neighbors in opposition to the site selected for the Dworsky/Dar 2nd Unit as approved by Community Development Agency staff. This project has serious adverse impacts on the adjacent neighbors and the surrounding neighborhood as a whole, and does not meet many parts of Marin County Code including section 22.57.024 requiring buildings on the property to be clustered with one another and to be placed in the "least visually prominent" location. Please see the letter by Derek Weller dated October 27, 2010, outlining the various problems with this project as it is being proposed.

By approving this project, the DZA has failed to enforce the Code as written and it appears to be receiving some sort of special deference. We strongly feel that the Code and the neighborhood interests are being disregarded and quite frankly do not understand how this can happen - particularly when there is a simple solution that will satisfy the Code and the interests of the developer as well as the neighbors. As all of the affected neighbors, we strongly oppose the 2<sup>nd</sup> unit location and think there are clearly alternative and appropriate locations that have not been properly evaluated by County staff or the DZA as required by the Code and that address most, if not all, the Code violations and the neighbors' concerns. We ask that you grant the appeal and return this project to staff to finish the work needed to make this a project that serves everyone well.

The Code for our zoning area (22.57.0201: C-ARP-5 zone) requires new development to be sited in the least visually prominent location and to be clustered with existing development on the property. In our rural area, visual prominence of development is an important matter. The approved location is simply as far away as possible from the Dworsy/Dar primary house location and closely situated to two neighbors and visible to the third neighbor. As such, it clearly does not meet the intent of the clustering mandate. When you consider the 5+ acre lots in the area, to put the new house as close as possible to two of the adjacent homes is the MOST visually prominent location possible. In addition, the overall natural disturbance of the 2nd

unit is even larger than that of the main house and this is a major impact on our rural agricultural "neighborhood." While the location appears to have been selected to maximize privacy of developer and the best lagoon view, these are 2 ideals that are not the inherent right of the developer. There is no Code language that says the developer is entitled to maximum privacy from tenants or entitled to the best view, while there are specific Code requirements for clustering and siting structures in the least visually prominent location. The Code cannot be bypassed by the DZA.

The critical issues with approved site of 2nd unit:

- it is not the least visually prominent as required by the Code
- it is not clustered as required by the Code
- it is way too big for a Bolinas 2nd unit - it disturbs nearly 5,000 sf of existing natural area with its floor area, generous garage, decks, parking & landscaping
- position of house - does it even fit in the approved location? (see next paragraph)

The approved project is to be set back from the eastern property line by 51' from the line to the deck. A surveyor just last week found that the story poles were set 4 feet closer to the eastern property line than approved, yet the poles have not been repositioned. Why? Perhaps this is because the poles are nearly touching the oak tree even in their present position. DZA staff should have considered the fire risk at the approved location. For the site to meet defensible space requirements for fire protection as required by law, specimen trees need a 10' clearance from roof. The large oak would thus need to be cut back by at least 10' and perhaps more once the story poles are correctly positioned as per the approved plan. Such intense trimming may kill the tree. The DZA and staff did not complete this basic analysis. This application should be returned to staff to complete the analysis and determine a more suitable location for this project.

While not the job of the neighbors, we can show multiple locations that meet the Code as well as fire protection and still be consistent with rural character of our "neighborhood." A location adjacent to the primary house meets these goals. One way would be to convert and expand the carport into a second unit. This would not change fire risk. Also, moving the existing 2nd unit from the main house to the carport would provide the added space and privacy the developer desires while also meeting Code requirements related to visual prominence and clustering.

At the initial hearing, DZA Staff agreed with the developer that the risk of fire fuels was a concern for sites near the primary house. However, the DZA staff did not require any evidence and did not even cite the relevant defensible space fire code. After we discussed this with the fire chief and reviewed the state and county's defensible space requirements, it is clear DZA Staff gave opinion and made decisions at the hearing without reasonable and adequate facts. There is no good reason that the code cannot be followed such that the new development is sited adjacent to the main house. As long as there is 30' of clearance and at least 10' from any specimen trees from the roof, it would be safe. A conversion/expansion of carport can use much of existing footprint. The DZA staff acted inappropriately to allow the Code

related to clustering to be bypassed by using incomplete and uncorroborated facts regarding fire safety.

There is also plenty of space west of the large oak tree and south of the view shed of the western neighbor that would be far less visually prominent than the approved location and slightly better in terms of clustering. It doesn't meet the Code as well, but it provides a desired view (meadow view & broad lagoon view) and the neighbors would be less impacted. The southwest corner has sufficiently dense and mature plantings to "frame" a site on two sides rather than a just large single tree in proposed location. At the hearing, it was stated that drainage was an issue in the southwest location. This is not the case as the site has at least a 5% grade that is more than adequate. The only drainage issue is the poorly maintained driveway with ruts far below grade that fill after rain. That is not a site issue, but a maintenance issue. The DZA and staff did not consider this simple issue.

Please remember, this is not a new primary house, nor is it a new 2nd unit, it is just the moving of an existing 2nd unit from the primary house into an accessory structure. A modest carport conversion for 2nd unit purposes is consistent with Bolinas standards. It is not the norm in Bolinas or our rural neighborhood to have a property developed with a 2nd house and very large garage (424 sf) in a location at a maximum distance from the primary house. This is exactly what the Code is trying to avoid. The project is a large second residence with major displacement of natural area that is similar to the primary residence in its scale of impact.

While we have made multiple attempts to resolve our concerns with the developer, they have been unwilling to discuss alternate sites. We ask you to return this project to the CDA for further analysis of sites that meet the Code and hopefully the interests of all parties.

Sincerely,

Signature on file

Courtney & Bob Cart

Signature on file

Nancy McCarthy

Richard Pfeffer

LAW OFFICES OF  
**DEREK A. WELLER**

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(415) 453-1375 • (415) 456-1921 (fax)

February 27, 2011

*SENT VIA EMAIL TO: skinsey@co.marin.ca.us; sadams@co.marin.ca.us;  
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Board of Supervisors - County of Marin  
3501 Civic Center Drive, Room 329  
San Rafael, California 94903

Re: Appeal of Planning Commission Denial of Dworsky-Dar  
Coastal Permit & Design Review  
Project Address: 50 & 52 Mesa Road, Bolinas  
Hearing Date: March 1, 2011

Dear President Adams and Board of Supervisors:

Please accept this letter on behalf of Courtney and Bob Cart, the neighbors immediately adjacent to the proposed project site. The Carts, along with the other adjacent neighbors, are strongly opposed to this project as currently proposed and request that the Board of Supervisors deny the Applicant's appeal and sustain the Planning Commission denial of the project as proposed. Accompanying this letter, please find: (i) a letter from the Carts providing the background on this matter, (ii) a copy of a joint letter from the neighbors opposing the project, and (iii) a site alternatives analysis showing that the proposed site is not code compliant.

Please know that the Carts do not oppose the project in general and understand Applicant's objective to create a more viable second unit rental. However, the Carts and other neighbors are adamantly opposed to the proposed site location and the large scale of the new second unit development and read the clear meaning of the County Code and planning policies as prohibiting this project in its presently proposed location and large scale. Early on in the approval process, CDA staff recommended relocating the second unit to the south-west quadrant of the property to better comply with the clustering requirement, but Applicant refused and pushed forward with the current proposal. Note that the Planning Commission indicated in its deliberations that it believed CDA staff was right on this point.

Nevertheless, after receiving a great deal of detailed written material and oral testimony from all the parties, the Planning Commission agreed with the Carts and their neighbors that the proposed project does not meet the Code requirements, and concluded by a 5-2 vote that the required findings could not be made and denied the project.

The purpose of this letter is to address the following items:

1. Applicant's contention that there is no clustering requirement in the C-ARP zone.
2. The adequacy of the Design Review findings in the PC Resolution and the proposed BOS Resolution.
3. The accuracy of the Coastal Permit findings in the PC Resolution and the BOS Resolution along with a proposed additional finding.
4. Applicant's illegal construction of the fence portion of the project after PC denial and without required design review approval along with a proposed additional finding.

1. **Clustering Requirement.**

The Planning Commission found that the proposed second unit location (at the furthest point away from the primary residence) was not adequately clustered with the existing primary residence as required by the C-ARP Design Standards set forth in Interim Code 22.57.024I.1.a. That section states in part that “[b]uildings shall be clustered or sited in the most accessible, least visually prominent and most geologically stable portions or portions of the site.”

Applicant now claims that the “so called clustering requirement” does not actually require clustering or concentration of residential structures on C-ARP zoned parcels. This same argument was made to the Planning Commission and rejected. The notion that there is no clustering requirement in C-ARP zones directly conflicts with specific Code provisions, planning policies and historical County practice and code interpretation.

Applicant points to the language “clustered or sited” and concludes that use of the words “or sited” along with the words “portion or portions” means that residential structures are not required to be clustered, but instead may be sited on any “portions or portions” of the property whether clustered or not. The problem with this interpretation is that it renders the word “clustered” meaningless and surplusage, which is objectionable on the same grounds raised by Applicant. Accepting the Applicant’s interpretation would be no different than just striking the word “clustered” from Interim Code 22.57.024I.1.a. The correct interpretation seems to be that there is no real distinction between the use of the words “clustered” or “sited” and that in any event, both words must be interpreted consistently with the stated purposes of the C-ARP zoning and applicable planning documents, which specifically require “the concentration of residential and accessory uses.”

The stated purpose of the C-ARP zone is “to provide flexibility in lot sizes and building locations and thereby promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the surrounding area.” (Interim Code 22.57.021I) (emphasis added) “Concentration of residential and accessory uses” is clearly identified as the stated means for meeting the objectives of the C-ARP zones to maximize the amount of available agricultural land and preserve visual, natural resource and wildlife habitat values. The words “or sited” must be interpreted consistently with that stated purpose.

Interim Code 22.57.024I also requires that the Design Standards be imposed in a manner that implements the goals and policies of the Local Coastal Program, the Marin Countywide Plan and the Bolinas Community Plan. A close review of those planning documents and the LCP in particular reveals clear policies and goals applicable to agricultural zones stating: (1) that agricultural lands and natural areas and habitats are to be preserved; (2) that the conversion of agricultural lands and natural areas to residential use is to be prevented; and (3) that the primary mechanism for achieving these goals is to control residential development by clustering and concentrating structures to minimize loss of such agricultural lands and natural areas and habitats. Again, any interpretation or application of the clustering requirement must be consistent with these planning policies.

The Agriculture Policies contained in the LCP applicable to small agricultural holdings with “rural-residential” land uses in the C-ARP zone (as is the case here) specifically provide for the concentration of residential development to maximize the protection of agricultural lands and wildlife habitat areas. (See LCP Policy II-30, p. 35.) The LCP further provides that “[n]ew land divisions shall be designed to provide the maximum feasible clustering of new units.” The Applicant’s parcel is part of the four-lot Spanish Bit subdivision completed in 1989, which was a new residential subdivision subject to the LCP Policy II-30 and the implementing clustering requirements in the Interim Code. Likewise, the original development of Applicant’s property with the primary residence and attached second unit and approved by the County in 2004



clustered the second unit with the primary residence. The County presumably found Applicant's original residential development to be in compliance with the clustering requirement and the other C-ARP design standards. The Interim Code and the LCP do not allow the Applicant now, just 7 years later, to detach, significantly enlarge and de-cluster the second unit to the furthest away from the main residence.

Finally, any potential ambiguity in Interim Code 22.57.024I resulting from the words "or sited" seems to have already been resolved by the Board of Supervisors. The comparable clustering provision in the new Title 22 requirements adopted by the Board of Supervisors and in effect for agricultural zones outside the coastal zone has dropped the words "or sited" from the prior version and retained only "cluster." (See County Code 22.08.040) Likewise, the new Title 22, Article V (Coastal Zones – Permit Requirements and Development Standards) adopted by the Board of Supervisors, but not in effect in the coastal zone until certified by the Coastal Commission, has also dropped the words "or sited" and retained only "cluster." These revisions make clear that the agricultural zoned district design standards are intended to require clustering and concentration of residential and accessory uses.

## **2. Design Review Findings.**

The Applicant's attorney claims that the Planning Commission Resolution PC11-001 and the proposed BOS Resolution contain findings that are not supported by substantial evidence. The required design review findings include findings of consistency with the C-ARP design standards under Interim Code 22.57.024I and consistency with the general design review standards under Interim Code 22.82.040I. As discussed below, the Planning Commission properly concluded that the required findings could not be made and their determination is supported by substantial evidence in the record.

### **A. Failure to Cluster.**

The Planning Commission found that the proposed second unit is not adequately clustered with the primary residence on the property as required under Code 22.57.024I. (See Resolution PC11-001, Sections XI and XII.A.) Applicant claims that this finding is unsupported because it reads a nonexistent clustering requirement into Interim Code 22.57.024I. As discussed in Section 1, Applicant's claim that there is no real clustering requirement is incorrect. Rather, the Code and planning documents specifically require clustering and concentration of residential and accessory structures on Applicant's property. The record reflects that the existing second unit is being detached and relocated ("de-clustered") to a location that is furthest away from the primary residence and is the least clustered of all potential sites on the property. The Planning Commission's finding on this point is clearly supported by the evidence.

### **B. Permanent Loss of Agricultural Lands.**

The Planning Commission also found that the project would diminish the amount of land available for potential agricultural uses on the property. (See Resolution PC11-001, Sections XI and XII.D.) Interim Code 22.57.024I requires that "[i]n areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses." There is no question that the proposed development site is "usable agricultural land." The report prepared by Jeffrey Creque, Ph.D. confirms this fact on page 2, second paragraph, where he concludes that although there may not be ideal soil conditions, the potential uses of the site do still include tree fruits, soft fruits, vegetable crops and small scale livestock. (See Staff Report, Attachment #5.) It is also shown on the face of the proposed plans that a large area of this "usable agricultural land" would be permanently converted to residential use as a result of the proposed project.

In considering this issue, the Planning Commission correctly recognized that the Code and planning policies require preventing conversion of agricultural land to residential development and that clustering and concentration of structures is the primary means for minimizing loss of potential agricultural lands. The Planning Commission found that the project fails to cluster with the existing primary residence, was excessively large for an accessory second unit, and permanently displaced a large area of potential agricultural lands. The evidence in the record clearly supports the Planning Commission's findings.

### **C. Least Visually Prominent Location.**

The Planning Commission found that the proposed second unit is not located in the "least visually prominent" portion of the property as required under Interim Code 22.57.024I. (See Resolution PC11-001, Sections XI and XII.B.) The simple reasoning here is that when Applicant obtained County approval for the construction of the original residence in 2004, a determination was made under Interim Code 22.57.024I that the least visually prominent area where residential uses would be concentrated is the area where the main residence is now.

The Carts also provided the Planning Commission with numerous written materials and oral testimony showing that the proposed location is in fact the most visually prominent location on the property in terms of views from the adjacent neighbors, views from the adjacent driveway, and views from Highway 1. On one side it is placed immediately adjacent to the shared property line right next to the only flat outdoor usable area on the Carts' property, and on the other side is immediately adjacent to the Carts driveway. It is also adjacent to and visible from the Pfeffer's home. The second unit will be visible to them any time they enter or leave their home or they use their outdoor areas. The record also shows that the second unit is visible from Highway 1. Moreover, the written materials and slide presentation provided by the Carts show that there are alternative sites on the property in the south-west quadrant and closer to the primary residence that are less visually prominent.

The Planning Commission received all this information and more, and analyzed the project site and concluded that the proposed site was not in the least visually prominent location, pointing out in deliberations that a site in the south-west area or closer to the primary residence would better satisfy the requirements of Section 22.57.024I. All this information is included in the Staff Report and in the record before the Board of Supervisors, and is more than satisfactory to support this finding.

In addition, throughout the approval process, Applicant has disputed this point but has not provided any contrary evidence and has refused all along to engage in any comparison of alternative sites in terms of Code compliance. Applicant has claimed that the proposed site is selected to protect Nancy McCarthy's view corridor, but Ms. McCarthy is opposed to this project and alternative sites have been shown that also protect her views along with views from other neighbors and the public from Highway 1. Applicant also claims that certain other locations are not satisfactory in terms of visual prominence, but Applicant has not provided any explanation or evidence supporting those contentions. In sum, the evidence in the record supports the Planning Commission's finding on the issue of visual prominence and no meaningful contrary evidence has been provided to support a contrary finding.

### **D. Excessive Bulk and Inconsistency with Surrounding Area.**

Interim Code 22.82.04I sets forth the general findings required for Design Review approval. The findings require, among other things, a determination that the proposed project "is consistent with the countywide plan and any applicable community plan and Local Coastal Program," "will not impair, or interfere with . . . the orderly development of the neighborhood as a whole," and "will minimize or eliminate adverse physical or visual effects . . . [including]

those produced by design and location characteristics of . . . the scale, mass, height, area and materials of buildings and structures . . . [and] other developments and improvements which may result in a diminution or elimination of . . . views, vistas and privacy." (emphasis added) The Planning Commission made a number of findings related to the location and design of the project that support its conclusion that the required design review findings could not be made.

First, the Planning Commission found that the project does not meet the design standards in Interim Code 22.57.024I (discussed above) and that it is in direct conflict with the planning goals and policies contained in the Bolinas Community Plan, Local Coastal Program and Countywide Plan. (See Resolution PC11-001, Sections XI and XII.C.) The planning goals and policies contained in these plans clearly require concentration of residential and accessory structures, maximum preservation of potential agricultural lands (particularly prevention of loss of agricultural lands due to residential development) and preservation of the natural and wildlife habitat areas. Interim Code 22.57.021I further identifies one of the main purposes of the C-ARP zoning is to "maintain the visual, natural resource and wildlife habitat values of the property and surrounding areas." In addition to the failure to cluster and the permanent loss of agricultural lands discussed above, the record also shows that the proposed project will permanently displace a large area of the only remaining undisturbed portion of Applicant's property that is currently predominantly in its natural state and used by a variety of wildlife. This and other evidence in the record clearly support the finding that the project is not consistent with the Marin Countywide Plan, the Bolinas Community Plan and Local Coastal Program, Unit I.

The Planning Commission also found that the proposed project design and location would result in a structure with excessive bulk for a detached accessory structure, would appear as a separate development, and would not be compatible with other residential buildings in the vicinity. (See Resolution PC11-001, Sections XI and XII.C.) These findings were made in support of the Planning Commission's conclusion that the project was not adequately clustered and would disturb a large area of potential agricultural lands and natural habitat areas, contrary to the requirements of Interim Code 22.57.024I.

These findings also supported the Planning Commission's conclusion that the proposed second unit development taken as a whole is too large in terms of bulk, scale and the overall area of development, and that it could not make the required findings referenced above. The record reflects that the proposed new second unit development maximizes the legally allowable living space, includes an additional large garage with storage and laundry areas, has a number of sizable decks and patios, and includes a fenced in and landscaped area, all of which encompasses a total area of development of approximately 5,000 square feet. The Planning Commission also raised concerns about the legal validity of excluding the storage and laundry areas from the calculation of living space to maximize the size of the project while staying within the legally maximum allowable living space.

These findings also supported the Planning Commission's conclusion that the location and design of the project was not compatible with the character and development pattern of the neighborhood. The Planning Commission acknowledged that the Spanish Bit subdivision was developed as a four-lot subdivision that maximized the development capacity of the property, and that the appearance and development pattern of the area is one of a four-lot subdivisions with residential structures clustered in particular areas on each property. In looking at the proposed project, the Planning Commission concluded that the new second unit development was inconsistent with the development pattern and character of the surrounding area because, unlike other properties with clustered residential structures, the proposed project was not clustered and instead looked like a separate subdivision (albeit not a legal subdivision). The Planning Commission also concluded based on evidence presented that the proposed second unit was not compatible with other residential buildings in the area based on the fact that all other existing second units in the area are much smaller in terms of the overall size and developed area and are located either attached to or immediately adjacent to the primary residence. This and other

evidence in the record supports the Planning Commission's conclusion that the required design review findings could not be made.

#### 4. Coastal Permit Findings.

In denying the project, the Planning Commission denied Applicant the grant of the requested Coastal Permit on the grounds that the project was not consistent with the Local Coastal Program (See Resolution PC11-001, Section XII.C.) Despite this denial, however, Section X of the PC Resolution nonetheless included affirmative findings in support of granting the Coastal Permit. These findings should not have been included in the PC Resolution and should be replaced with findings supporting the denial of the Coastal Permit.

Section 22.56.025I requires a finding that the proposed project is consistent with the requirements and objectives of the Local Coastal Program. This required finding, however, is not included in the Coastal Permit findings listed in Section X of the PC Resolution or in the proposed BOS Resolution. As discussed above, the proposed project fails to satisfy the LCP goals and policies requiring concentration of residential uses, maximum preservation of potential agricultural lands and preservation of natural resource and wildlife habitats. As such, the Carts suggest that the Board adopt a finding to be added to Section X of the Resolution as follows:

#### **SUGGESTED ADDITIONAL FINDING:**

**The proposed project is not consistent with the goals and policies of the Local Coastal Program as required under Interim Code Section 22.56.025I because the new second unit is not adequately clustered with the primary residence, does not adequately preserve potential agricultural lands and natural and habitat areas on the subject property. The Board does not affirm or make any of the Coastal Permit determinations or findings described in Section X of this Resolution.**

The remainder of the required Coastal Permit findings are set out in Interim Code 22.56.095I and require an affirmative determination on a variety of development requirements. These findings are all listed in Section X of the proposed Resolution and are all incorrectly made in the affirmative. The Planning Commission did not address any of these issues under the Coastal Permit findings and instead denied the project for its inconsistency with the LCP. All the affirmative findings currently in the Resolution should be excluded from the proposed BOS Resolution, which is accomplished by the above suggested finding.

In addition, a number of the affirmative findings cannot be made. Interim Code 22.56.130.A requires a finding that "water service to the proposed project is of an adequate quantity and quality to serve the proposed use." There has been no evaluation or determination that the private water well, shared by Applicant, the Carts and DiPaolos, will support the new additional use. Environmental Health Services has concluded that a new or amended permit is not required because the number of units has not increased but has not looked at current actual available water supply. Certainly the much larger second unit with new surrounding landscape areas will require much more water than the existing small second unit. Interim Code 22.56.130.I also requires that new development "be sited to avoid wildlife habitat areas." This project is sited in a known area frequented by wildlife habitat. Finally, Interim Code 22.56.130.I requires protection of views from Highway 1 and that the scale and design of new development "be compatible with the character of the surrounding natural or built environment." This project is visible from Highway 1, and as discussed above, is inconsistent with the surrounding built environment as well as the natural environment.

## 5. **Illegal Fence & Design Review Determination.**

Applicant's proposed project plans include a six foot high solid wood fence proposed to be located to start at the north of the shared driveway easement and continue north for 100' adjacent to the shared property line between Applicant's and the Carts' properties and set back off the property line a distance of six feet. It also includes a 60' portion of fencing along the driveway easement. (See PC Staff Report, Attachments #5 & #6). The purpose of the fence as described by Applicant was to provide a view screen between the proposed new second unit and the Carts' home and driveway. At the DZA hearing on this project, Attorney for the Applicant made the claim that the fence could be moved to the property line, but the project plans were never changed. There was also discussion of requiring the fence to be of an open design, but this was not resolved. Approval for the proposed fence was rejected by the Planning Commission. The fence now remains part of the project proposal for purposes of this appeal as has been confirmed by Staff Planner Neal Osborne.

Despite the fact the proposed project and fence have been denied design review approval, immediately following the Planning Commission decision, the Applicant nonetheless proceeded to construct a six-foot high solid wood fence without obtaining the legally required design review approvals. See Interim Code 22.82.020I, requiring design review approval for all new physical improvements, including fences. Moreover, Applicant was well aware that the fence had been rejected as part of the project and was informed of the legal requirement for prior design review approval before commencing construction. Applicant, however, chose to ignore the legal requirements and proceed anyway.

The fence actually constructed by Applicant varies from the proposed design. Its height is over six feet in some places and less than four feet in others. It has been moved to the property line and is not set back from the Carts' property line as shown in the plans. It also stretches a length of 240 feet on the shared property line, whereas the proposed fence was only 100 long. The solid fence actually constructed is not the fence design proposed, has failed to achieve approval and is illegal.

More importantly, the as-built fence does not satisfy the required design review standards under Interim Code 22.82.040I. That section requires findings that the proposed fence is "not unsightly or creating substantial disharmony with its local and surroundings," "will not impair, or interfere with, the development, use or enjoyment of other property in the vicinity, or with the orderly and pleasing development of the neighborhood as a whole" and "will minimize or eliminate adverse physical or visual effects . . . [on] the movement or general circulation of . . . animals . . . or improvements which may result in a diminution or elimination of . . . views [and] vistas."

None of the parcels in the Spanish Bit subdivision have solid wood fencing dividing them. The Carts have also surveyed the Bolinas area and have found no other 5-acre or larger agricultural lots with solid wood fencing. Rather, they all have no fencing or open fencing. A select few smaller agricultural parcels (1-2 acres) do have solid wood fencing, but those parcels also have predominantly open fencing. The purpose for the open fencing is to maintain the open agricultural character of the agriculturally zoned parcels and to allow for the free flow of wildlife. The six-foot solid wood fence (and at places higher) that was illegally built by Applicant is inconsistent with the character of the agricultural parcels within the Spanish Bit subdivision and elsewhere in the surrounding agricultural zoned parcels. It also cuts off the free flow and inhibits the movement of wildlife that have historically used the area, and has dramatic adverse impacts on the views of the Carts who now stare into a six-foot fence where there once were views of open grasslands and nature.

On hearing this appeal, CDA staff has indicated that the fence remains a part of the project proposal and that the Applicant will request the Board of Supervisors to approve the as-

built fence. The Carts strongly urge the Board to reject such a request, address Applicant's illegal actions, and make an affirmative finding that the as-built fence does not meet design review standards. The Applicant has thumbed her nose at the legal process and should not be granted a retroactive approval for her actions.

Following is the text of the suggested finding that may be added to Section XV of the proposed BOS Resolution:

**SUGGESTED ADDITIONAL FINDING:**

**The Board of Supervisors further finds that the solid wood fence constructed by Applicant after the Planning Commission denial of the proposed project was built without required design review approval in violation of Section 22.82.020I, and that the as-built fence is inconsistent with the design review standards under Section 22.82.040I because the solid wood fence is inconsistent with the open agricultural character of the surrounding agricultural areas, is inconsistent with the predominantly open style fencing found in the surrounding agricultural areas, inhibits the movement of wildlife habitat, and adversely impacts the character of the neighborhood and the views and vistas of the adjacent property owners.**

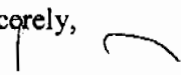
**IV. Conclusion**

In sum, this project is not designed to fit within the requirements of the County Code, but is instead designed and located to maximize the size of the second unit development and to maximize the distance and privacy between Applicant's own home and the new rental unit, all at the expense of the neighbors and neighborhood and in direct conflict with the Code. To obtain approval, Applicant is now trying to interpret important requirements out of the Code and is trying to push through a strained argument that the Code requirements are somehow satisfied. In the end, Applicant's parcel is zoned C-ARP and the proposed project does not meet the design standards or design review requirements required for that zone.

In reaching a decision on this matter, please consider the foregoing discussion along with the Carts' separate letter and prior submittals. I believe that you will conclude that the project as proposed does not meet the applicable Code requirements and planning policies, and should therefore be denied. The Carts and other neighbors strongly believe that there are other site locations on Applicant's property that better meet the legal requirements and do not adversely impact the neighbors or neighborhood. Those alternative sites may not maximize Applicant's own personal desires and objectives, but they do better comply with the legal requirements.

Thank you for your consideration on this matter.

Sincerely,

  
Signature on file

Derek A. Weller

Enclosures

cc: Courtney & Bob Cart

Thlla

LAW OFFICES OF  
**DEREK A. WELLER**

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May 7, 2011

Chairperson and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

Re: Appellants Response to Coastal Commission Staff Report, dated April 22, 2011,  
Appeal No. A-2-MAR-11-020 (Dar, Bolinas) concerning Appeal by Bob & Courtney  
Cart of Marin County Board of Supervisors Resolution No. 2011-15 approving  
Dar/Dworksy Coastal Permit and Design Review. (APN 193-020; 52 Mesa Road  
Bolinas)

Dear Chairperson Wan and Commissioners:

This letter is submitted on behalf of the appellants, Bob & Courtney Cart, in response to the recommendations and analysis contained in the Coastal Commission Staff Report, dated April 22, 2011. Accompanying this letter for your review are PDF copies of the written materials and slide presentation submitted prior to the Board of Supervisors hearing. Please also refer to our Appeal submittal included as Exhibit No. 4 to the Staff Report. We believe that these additional materials will make clear that this appeal does raise a substantial issue for the following reasons:

- (1) By reversing the Planning Commission denial of this project and allowing the existing residential second unit to be detached from the main residence and relocated to a site 240 feet away at a point furthest from the main residence, the Board of Supervisors has failed to enforce the LCP-Certified zoning regulations requiring clustering and concentration of buildings on parcels within the Coastal-Agricultural Residential Planned District (C-ARP). The County zoning code requires clustering of buildings on the subject parcel. However, the County has approved the de-clustering of the existing second unit far away from the main house on the grounds it would be clustered next to a tree, a driveway and a shed that is to be removed. This decision cannot be supported legally or factually.
- (2) After close of the public comment period at the Board of Supervisors hearing, the County staff presented a new interpretation of the clustering requirement in support of the project approval that had not previously been put forth by the County, thereby denying appellants and the public an opportunity to address the grounds for approval. This new analysis was relied on by the Board of Supervisors in reversing the Planning Commission but was never presented previously and was omitted from the Resolution.
- (3) The County's interpretation of the clustering requirement put forth after close of public comment and relied upon by the Board of Supervisors is inconsistent with the express language and purpose of the LCP-Certified zoning provisions requiring clustering and concentration of residential structures. The County's interpretation essentially writes the clustering requirement out of the code to allow siting of structures anywhere on the parcel, in effect eliminating one of the primary land use tools designed and implemented for the purpose of protecting coastal resources. This interpretation sets a dangerous precedent that could be used to justify future losses of important coastal resources.

- (4) The LCP-Certified zoning provisions for new developments in the C-ARP district require an analysis of alternative building sites to determine which site meets the code requirements. County staff asserts that it has balanced a number of code requirements and found the project acceptable on balance - even though the clustering requirement is not met and agricultural lands and habitat areas would be lost. Despite many requests throughout the approval process, however, the County has never revealed what they were balancing or how they were reached their conclusion. The Appellants on the other hand, have provided an extensive alternatives analysis (copy include here) that shows the proposed project site to be the least Code compliant site on the property. In reversing the Planning Commission denial of this project, the Board of Supervisors has still not provided any explanation of how it reached its conclusion.
- (5) The Board of Supervisors approval of the project violates LCP Policy II-30 by allowing the existing second unit to be de-clustered away from the main residence and to permanently displace an approximately 5,000 square foot area of existing usable agricultural lands. LCP Policy II-30 requires concentration of development to maximize preservation of agricultural lands, and that new land divisions shall provide maximum feasible clustering of new units. The original construction and development of the property approved by the County just over 7 years ago complied with LCP Policy II-30 by clustering and concentrating the main residence and the second unit in their current location. That LCP compliance is now being circumvented by de-clustering the second unit to the opposite side of the property away from the main residence.
- (6) The failure to enforce the clustering requirement will result in the permanent loss of a large area of useable agricultural lands in violation of the LCP-Certified zoning regulations requiring that buildings be clustered to "maintain the maximum amount of land available for agricultural use." Alternative project sites exist on the property that will not displace agricultural lands and that have not been adequately evaluated by the County. It is not true that the potential alternative sites will require removal of trees.

The above issues are further detailed below and provide factual proof that the LCP and County Code are not being followed:

1. County Has Failed to Enforce the LCP-Certified Zoning Provisions that Require Clustering & Concentration of Buildings on the Project Parcel.

The LCP-certified Marin County Zoning Code provisions applicable in the C-ARP district state the purpose of the C-ARP zone as follows (emphasis added):

22.57.021 Purpose. This zone provides flexibility in lot sizes and building locations and thereby promotes the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the surrounding area. (Code section 22.57.021I)

The C-ARP code provisions establishing the applicable design standards then go on to provide (emphasis added):

22.57.024(1) Project Design. Buildings shall be clustered or sited in the most accessible, least visually prominent and most geologically stable portions or portions of the site. (Code section 22.57.024I)

The project here proposes to eliminate the existing residential second unit attached to the main residence (converting it to living space in the main residence) and to replace it with a much



larger second unit development at a location at the furthest point 250 feet away from the main residence. The Marin County Planning Commission denied the project by a 5-2 vote on the grounds (among others) that the second unit is not adequately clustered with the main residence as required under section 22.57.0241. The Board of Supervisors reversed that decision, however, and approved the project as proposed at a location that is not clustered with and at a point furthest from the main house, and that results in the development of approx. 5,000 square feet of otherwise undisturbed agricultural lands and natural habitat areas.

The Board of Supervisors Resolution approving the project incorrectly found the project to be consistent with the C-ARP zoning standards because it is adequately clustered next to the existing driveway, a storage shed and an oak tree. See Resolution No. 2011-15, ¶¶ XVII.A. & D. The zoning code, however, expressly requires clustering of "buildings" with other "buildings," not clustering of buildings with a driveway or oak tree. The existing shed is the only possible "building" on the property in the vicinity of the proposed project site, but the project itself proposes to relocate that shed to the south-west area of the property away from the proposed project site and away from the main residence (further de-clustering buildings on site). Moreover, that shed has been found by County code enforcement to be illegally placed within a roadway easement area and is required to be relocated. The County's decision approving the project lacks factual and legal support because the LCP-certified zoning code requirements cannot be satisfied by clustering the new second unit next to a tree, the driveway or an illegal shed planned to be relocated. The zoning code requires that the second unit be clustered with the other buildings on the project site and that requirement is not satisfied.

2. County Presented Code Interpretation after Close of Public Comment - Denying the Public the Right to Address the Grounds for Project Approval.

At the Board of Supervisors hearing on this matter and after the close of the public comment period, the Community Development Director, Thomas Lai, for the first time during the entire approval process, orally presented a new and innovative interpretation of the clustering requirement that was relied upon by the Board of Supervisors in approving the project. Although Mr. Lai's analysis was never included in any staff report or elsewhere, it was clear from the presentation that the Board of Supervisors was already aware of his analysis before the hearing commenced and that it was orchestrated to be presented after close of public comment. As a result, the appellants and the public in general were denied an opportunity to address Mr. Lai's code interpretations or to provide any comment at all. We feel that this was an abuse of process, urge the Commission to closely evaluate the County's interpretation, and believe in doing so the Commission will find the County's interpretation to be inconsistent with the LCP-Certified zoning regulations and policies.

Note also that Mr. Lai's analysis was not included in the Board of Supervisor Resolution so in not part of the Board of Supervisors decision. Rather, the Resolution simply states that the clustering requirement is satisfied because the new second unit is clustered next to a tree, driveway, a shed that will not remain, and the neighbors' homes (discussed further below).

3. The County's Interpretation Conflicts with the Language & Purpose of the LCP-Certified Zoning Code Requirements.

During his presentation after close of public comment, Mr. Lai provided the Board of Supervisors with an analysis and opinion of why he felt the project satisfied the clustering requirement and how the code could be interpreted to allow for this project. The Board then relied on his interpretations to approve the project. As explained below, the code interpretations put forth by Mr. Lai are inconsistent with the plain language and purpose of the LCP-Certified zoning provisions.

First, Mr. Lai pointed to the fact that the new second unit is clustered next to an oak tree, the driveway and existing shed, and described the proposed project site as an already developed area. As explained above, the clustering requirement is not satisfied by clustering next to trees or a driveway, or next to a shed that is to be removed. The existence of a 300 square foot shed in an otherwise undisturbed area of more than 5,000 square feet also does not render the area an already developed area.

Mr. Lai also suggested that the clustering requirement is satisfied because the new second unit is clustered with the neighbors' homes on the adjacent parcels. He noted that if you viewed the area without reference to lot lines, it would appear the new second unit is clustered with the neighbors' homes. This is because, although the new second unit is at a point furthest from the applicant's house, it is much closer to her neighbors' homes (see diagram). Nevertheless, Code section 22.57.024(1) requires clustering of "buildings" on "the site," not clustering with off-site buildings on adjacent properties. Mr. Lai's interpretation ignores the plain language of the zoning code. Allowing clustering with buildings on adjacent properties is an incorrect interpretation and application of the LCP-Certified zoning code requirements.

Finally, Mr. Lai suggested that the Code language itself can be interpreted to allow the main residence and the new second unit to be located apart from each other in different "portions" of the property. The Coastal Commission Staff Report also appears to accept this interpretation, stating that "Section 22.57.024(1) does not restrict clustering to only one portion of the site." (See Staff Report, p. 3.) As discussed below, this interpretation is at direct odds with the purpose and intent of the LCP-certified C-ARP zoning code requirements.

The interpretation put forth by Mr. Lai points to the language in Section 22.57.024(1) that says that buildings shall be "clustered or sited . . . . [on] portions or portions of the site." (emphasis added) Based on this language, he concludes that the code may be interpreted to allow structures to be placed on multiple "portions" of the property, as is proposed with this project. At first glance, this may appear to be a reasonable interpretation, but on further analysis it is clear that this is not a reasonable interpretation of the code where there are only two residential structures proposed on the property.

Zoning code interpretations are legally required to be made in a manner consistent with the intent and purpose of the zoning code. Here, the purpose of the C-ARP zone as stated in Section 22.57.021 is to "promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the surrounding area." (emphasis added) "Concentration of residential and accessory uses" is clearly identified as the stated means for meeting the objectives of the C-ARP zones. As such, the words "or sited" and "portions" must be interpreted consistently with the stated purpose of concentrating residential and accessory uses.

Where there are only two proposed structures involved, as is the case here, it is not possible to cluster or concentrate residential uses at two locations on the site far away from each other. If the property included numerous structures, such as four or more buildings for example, then it would be possible to cluster in multiple locations. It appears that the proper interpretation is that the code does allow for multiple "clusters", but that it would be necessary to have more than two structures in order to have multiple clusters, which is not the case here.

Zoning code interpretations are also required to be made in a manner that gives effect to every word and clause, and interpretations are to be rejected where they render particular terms as surplusage or meaningless. The County's interpretation here points to the language "clustered or sited" and "portion or portions" and concludes that the main residence and new second unit are not required to be clustered, but instead may be sited on any "portions or portions" of the property whether clustered or not. The problem with this interpretation is that it renders the

word “clustered” meaningless and surplusage, contrary to rules of statutory interpretation. Accepting the County’s interpretation would be no different than simply striking the word “clustered” from code to allow structures to be “sited” on any “portions” of the parcel. In effect, the County’s interpretation writes the clustering requirement out of the code and eliminates one of the primary land use tools included in the zoning code that is designed and implemented for the purpose of protecting coastal resources.

Any ambiguity in the code resulting from the words “or sited” has already been addressed and resolved by the Board of Supervisors. The new Title 22, Article V (Coastal Zones – Permit Requirements and Development Standards) adopted by the Board of Supervisors, but pending Coastal Commission certification, has dropped the words “or sited” from the code and retained only “clustered.” This revision makes clear that the agricultural zoned district design standards are intended to require clustering of residential and accessory uses, and does not support an interpretation that would render the word “clustered” meaningless.

4. County Failed to Conduct Alternatives Analysis as Required by LCP-Certified Zoning Code Requirements.

The LCP-Certified zoning provisions for new development in the C-ARP district include numerous requirements that mandate an analysis of alternative building sites on the property in order to determine whether the proposed project complies with the Code requirements. These include, among others, requirements that new development be clustered in a location that is “most accessible”, “least visually prominent” and “most geologically stable,” that “maintains the maximum amount of land available for agricultural use” and that “minimizes disruption of existing or possible future agricultural uses.” (See Code sections 22.57.021 and 22.57.0241) By their terms, these Code provisions require an analysis of alternative building sites.

Included with the Appellants submittal to the Board of Supervisors (and included here) is a full list of all applicable LCP-Certified code requirements together with an analysis of code compliance for nine alternative building sites, including the proposed building site. This analysis clearly shows that the proposed building site is the least Code compliant of all the possible alternative sites on the property.

As part of the presentation to the Board of Supervisors made after close of the public comment, the County staff (for the first time) articulated a position that they had analyzed all the applicable code requirements and that it was necessary to balance a number of competing code requirements in order to determine compliance. Staff then concluded that the proposed project was in compliance – on balance – despite the fact the project clearly conflicted with a number of specific code requirements (i.e., not clustered, not least visually prominent, and destroys existing agricultural lands and natural habitat areas).

The County, however, has never provided any basis for its analysis or conclusion. The County has never explained and the Board of Supervisors Resolution does not contain any information on which code provisions they analyzed, which provisions conflicted, which alternative sites were analyzed, or what that analysis consisted of. Rather, the County staff simply says they balanced the code requirements and found the proposed project to be well balanced. How they reached that conclusion has never been revealed.

On the other hand, Appellants have provided an extensive alternatives analysis that clearly shows that the proposed building site is not the best site in terms of compliance with the LCP-Certified code requirements.

5. The Approved Project Violates LCP Policy II-30.

LCP Policy II-30 applicable to small agricultural holdings with "rural-residential" land uses in the C-ARP zone (as is the case here) requires concentration of residential development to maximize the protection of agricultural lands and habitat areas. (LCP, p. 35.) LCP Policy II-30 further requires that "[n]ew land divisions shall be designed to provide the maximum feasible clustering of new units." (LCP, p. 35.)

Marin County Board of Supervisors approval of the project violates LCP Policy II-30 by allowing the existing second unit to be de-clustered to a location on the property that is the least clustered with the main residence and that permanently displaces an approximately 5,000 square foot area of existing usable agricultural lands. The approved project simply does not concentrate residential structures and does not maximize protection of agricultural lands and habitat areas.

In addition, the original construction and development of the property approved by the County in 2004 complied with LCP Policy II-30 by clustering and concentrating the main residence and the second unit in their current location. The current project as approved will now de-cluster that second unit to the opposite side of the parcel, thereby circumventing the property's prior compliance with the clustering requirements contained in LCP Policy II-30.

The Coastal Commission Staff Report says that LCP Policy II-30 does not apply because the proposed project does not involve a new land division. This is not the correct interpretation, however. It is not logical that a development could be approved and completed in 2004 in compliance with the LCP policies, and then just over 7 years later a new project approved that would reverse the results of the prior LCP compliance. Rather, the logical conclusion is that LCP Policy II-30 continues to apply to require that the main residence and second unit remain clustered and concentrated.

6. Failure to Enforce the Clustering Requirement Will Result in the Permanent Loss of Agricultural Lands.

As pointed out above, one of the stated purposes of the LCP-Certified zoning code requirements in the C-ARP zone is to cluster buildings so as "to maintain the maximum amount of land available for agricultural use." (See Code section 22.57.021; emphasis added.) Code section 22.57.024(1) further requires that "[i]n areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses." (See Code section 22.57.024(1); emphasis added.)

There is no question that the proposed site is "usable agricultural land." The report submitted to the County by the applicant and prepared by Jeffrey Creque, Ph.D. confirms this fact on page 2, where he concludes that although there may not be ideal soil conditions, the potential uses of the site do include tree fruits, soft fruits, vegetable crops and small scale livestock. (See BOS Staff Report, Attachment #5.) As such, the County is required under the LCP-Certified zoning requirements to ensure that the proposed project "minimizes disruption" of these "possible future agricultural lands" and to "maintain the maximum amount of land available for agricultural use." The approved project, however, will permanently develop an approximate 5,000 square foot area of "usable" agricultural lands and does not attempt to minimize disruption or maximize preservation of these agricultural lands.

In approving the project, the Board of Supervisors Resolution states that the project will "not substantially reduce the amount of land available for potential agricultural uses on the property." (See BOS Resolution ¶ XVII and XVII.D.) However, as stated above, the project will in fact result in substantial loss of agricultural lands. Moreover, the standard is not whether the project

will "substantially" reduce the amount of agricultural lands. The standard is whether the project "maintains the maximum" and "minimizes disruption" of potential agricultural lands, and the County has not evaluated the project on this basis. The approved project does not satisfy the required standards for preservation of potential agricultural lands, particularly where it has been shown that alternative site locations exist adjacent to the primary residence that will not result in the loss of any potential agricultural lands.

The Coastal Commission Staff Report states that the proposed project site does not consist of "Prime Agricultural Land" as defined under the Coastal Act. As discussed above, this is largely irrelevant because the correct standard is whether the lands are "usable" agricultural lands. However, we believe this conclusion is not correct. The Storie Index is based on depth of topsoil. The applicant filed a report by a geotechnical engineer who cited an earlier report by Herzog who actually dug test pits at the approved location. The depth of soil per that report puts topsoil depth well within the over 80% threshold to establish the area as prime agricultural land.

The Coastal Commission Staff Report also states that the alternative site location will require removal of trees. None of the alternative locations identified in our prior submittals would require the removal of any trees. Rather, the alternative sites we suggested would result in greater protection of the existing agricultural and natural habitat areas.

Thank you for your consideration on this matter.

Sincerely,

Signature on file

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Derek A. Weller

Enclosures

**ARIANNE DAR**  
**Post Office Box 476**  
**Bolinas CA 94924**

Thilla

May 4, 2011

Renée T. Ananda  
Coastal Program Analyst  
North Central Coast District  
California Coastal Commission  
45 Fremont, Ste. 2000  
San Francisco CA 94105-2219

Re: 50/52 Mesa Road, Bolinas, Marin County

Dear Ms. Ananda:

Thank you for taking the time to understand my project at 50/52 Mesa Road. The purpose of this letter to express my concern for my neighbors repeated misrepresentations of my intentions and the projects particulars at several public hearings, and in particular the letter submitted with their recent appeal to the Coastal Commission. I am hoping that your staff report has cleared up any confusion caused by the Carts letter dated March 30, 2011.

Nonetheless, I would like to inform the Commissioners that several of the Carts allegations are either false or misleading, and offer brief refutation.

1. Project is not large. The Carts have alleged that the project exceeds 6,000 square feet. The proposed second unit is just under the allowable limit of 750 square feet and its garage is also less than the 500 square feet allowed by Marin County planning. The Carts have alleged that the project exceeds 6,000 square feet by deceptively adding up all land proposed to be associated with the proposal including lands that are undisturbed or proposed as new trees or a new orchard of fruit trees.

It should also be noted that any associated patio areas are designed with pervious ground cover to eliminate solid ground cover and dramatically reduce the potential for surface water run-off. The roof is also designed as a garden-roof for the same purpose.

Furthermore, the Carts have mischaracterized a 300 linear foot privacy fence as a 1,200 square foot enclosure. They also allege that the design of the fence is highly unusual despite the fact that their own fence on the adjacent southern boundary is very similar – a six foot tall solid-faced wooden fence.

2. No t an Undisturbed Area. The Carts falsely allege that the proposed site is the last undisturbed part of the five-acre parcel. A site visit will make it perfectly clear this is not true. The proposed site is dominated by two existing driveways across my property and a 313 square foot shed which was part of the original plans approved for the property in 2005. The vast majority of the five acres is in fact undisturbed.

As any project is going to disturb something, this site was selected because it specifically minimizes disruptions to the existing conditions and utilities.

3. Pr oject is Clustered. Based upon directives and advice from the Marin County Planning Department, and the experience of my architect (licensed in CA for 17 years) who has been involved with many project in the Coastal Region, the proposed site is entirely consistent with the LCP and specifically with the clustering requirements as they are written in-full and intended. The clustering requirement of the LCP were followed in the original siting of the project and developed at the various levels of review as suggested by staff.
4. Site Analysis Was Presented. The Carts have argued that an alternative site analysis is required for a project like mine. Despite the fact that an alternative site analysis in not required, my architect provided for me and presented to the Board of Supervisors an analysis of my full property designating the pros and cons of every potential site (8) available. Any claims that this was not done or that the Board of Supervisors did not consider it is blatantly false.
5. Site is Least Visually Prominent. The site analysis presented to the Board of Supervisors shows that the chosen site is, in accordance with other requirements of the code, the least visually prominent. It might not be the least visually prominent for the Carts however at each level of review, including the planning commission, it was pointed out that the Cart's privacy has been preserved. Simply put, the proposed location is behind the Carts; not in their view. It is only in their view when driving through the easement across my land.  
  
You can only see the second unit from Highway One if you point a camera in the direction of the large visually prominent Cart residence, put the camera in maximum zoom and then digitally enhance the photo. Please see the attached photo.
6. Li mited Loss of Coastal Resources. As detailed in the assessment by range biologist Jeff Creque, my property is not the "prime agriculture" the Carts have alleged.

My land looks down upon the alluvial area which constitutes the "breadbasket of Bolinas." If my land was included in that designation years ago, it was probably because my parcel and those farms are all North of Mesa Road. But that is where the similarities end. My property is an open grassy mesa meadow surrounded by an enormous eucalyptus grove shading the southern part of my parcel and a wooded oak hillside to the North. The farms to the north of my property are at sea level where my property is over 100 feet higher in elevation. As made clear in evidence provided and testimony of the Board of Supervisors, my property has very different soils and abilities for food production.

That said, if I were able to produce significant food on my property it would not be in the area of the second unit, and any productive land has been preserved. The proposed location also preserves and protects the wooded hillside for wildlife habitat including quail and deer.

7. Not Located on Ridgeline. My property has two characteristics – a large open grass meadow and a wooded hillside. The second unit is sited in an area low on the land and on the edge grassy meadow, preserving any effect on anything the Carts perceive as a ridgeline. Alternative building sites suggested by the Carts are in fact higher in elevation and more visible from Highway One and local roads. The approved site is not visible from either.
8. Illegal Structures. As part of the approved construction of my primary residence, a 313 s.f. shed was located near the south-western easement of the property. At that time, the corner of this structure was inadvertently placed **two** feet from its approved location and into an access easement, which was only discovered upon a recent land-survey taken to determine the exact location of the storey poles. It is scheduled to be moved.

These are just a few of the many misrepresentations alleged by the Carts. To address them all would be too exhaustive to write and probably more so to read. If you have any additional questions, or require further verifiable information, I would be happy to provide what you need.

Sincerely,

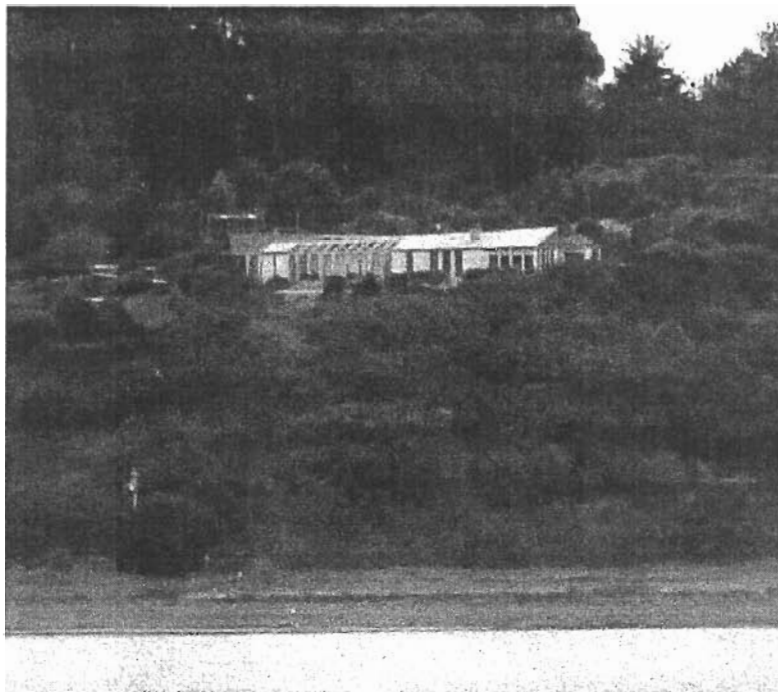
Signature on file

Arianhe Dar



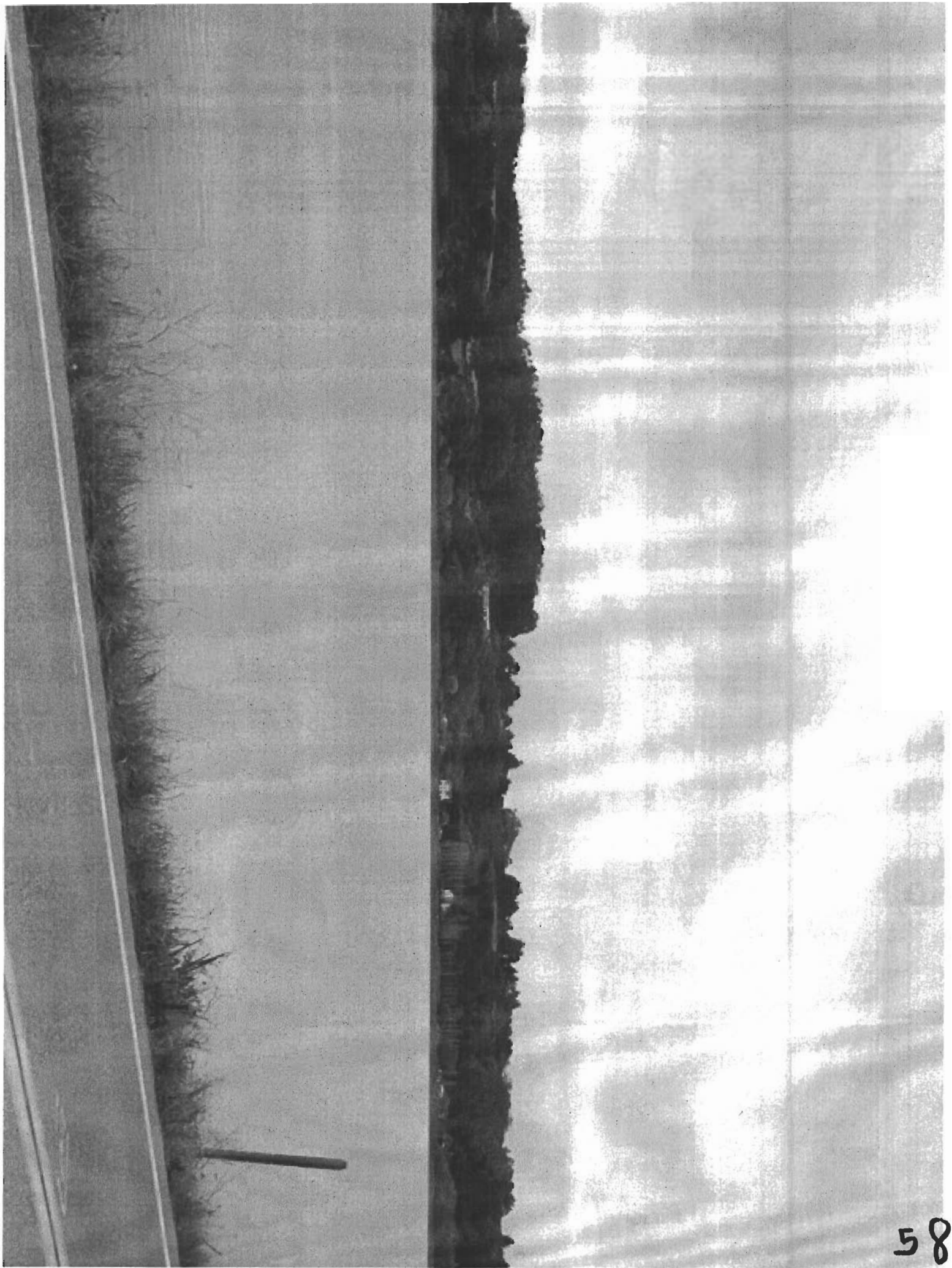
The Carts have falsely asserted that the second unit would be "plainly visible from 1.5 mi section of Hwy 1."

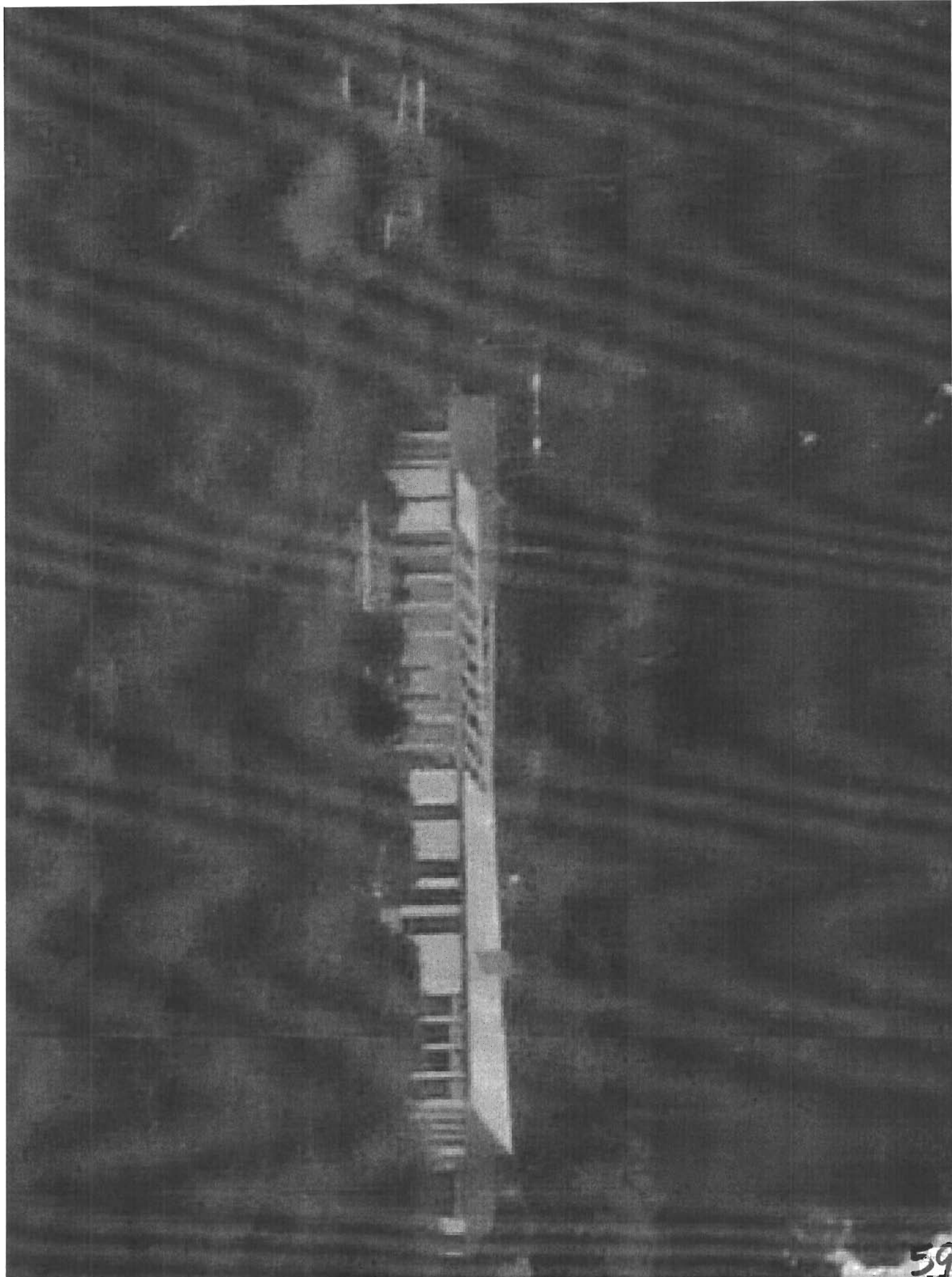
In this digitally enhanced photo, taken from across the lagoon on Highway One, you can see the storey poles to the left and rear of the Cart residence:



Here is the same photo without the digital enhancement. The Cart residence is directly in the center of the photo:







**CALIFORNIA COASTAL COMMISSION**

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# Th11a



Filed: April 1, 2011  
49<sup>th</sup> Day: May 20, 2011  
Staff: RTA – SF  
Staff Report: April 22, 2011  
Hearing Date: May 12, 2011

**Prepared April 22, 2011 (for May 12, 2011)**

**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, District Director  
Ruby Pap, District Supervisor  
Renée T. Ananda, Commission Staff

**Subject:** Appeal No. A-2-MAR-11-020 (Dar, Bolinas) Appeal by Bob & Courtney Cart of decision of County of Marin granting permit with conditions to Arianne Dar for construction of a 740-square-foot, detached second unit with 424-square-foot garage, at 52 Mesa Rd, Bolinas, Marin County. (APN 193-020-51)

**Recommendation:** Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-2-MAR-11-020 was filed. Staff recommends a YES vote on the following motion and resolution:

**Motion and Resolution.** I move that the Commission determine and resolve that Appeal Number A-2-MAR-11-020 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program.

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings: by such action, the Coastal Commission declines to take jurisdiction over the CDP for this project, the County's action becomes final and effective, and any terms and conditions of the County's decision remain unchanged. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Findings:** On March 15, 2011 Marin County Board of Supervisors approved a coastal development permit (CDP) for the construction of a 740-square-foot detached one-bedroom second unit, with an attached 424-square-foot one-car garage and the conversion of the existing attached 313-square-foot second unit into space for use as a den and laundry room. The project work includes a gravel walkway, driveway, relocation of an existing generator shed,



and landscaping with native trees. Marin County's approval (Exhibit 3) is appealable to the Coastal Commission, pursuant to Coastal Act Section 30603 (a) (1), because the project is between the first public road and the sea.

The project would be located on a 5.024-acre lot at 50-52 Mesa Road, in the town of Bolinas, in Marin County. The property is zoned Coastal Agricultural Residential Planned District (C-ARP-5). It is west of Bolinas Lagoon and is bounded by Olema-Bolinas Road on the east and Mesa Road to the south (Exhibit 1). There is an existing 1,913-square-foot, three-bedroom, single-family residence with an attached 313-square-foot second unit currently on the lot. Single-family residential development properties abut the site east and west of the site. The northern portion of the property is oak woodland habitat. The remainder of the site comprises an open grassy area and landscaping with native trees and shrubs throughout and along the property boundaries. The approved project footprint is located on the southeast side of the property (Exhibit 2).

The Appellants claim that the approved development is inconsistent with the policies of the certified Marin County Local Coastal Program (LCP) concerning clustering, visual resources, site geologic stability, agricultural use, natural habitat, neighborhood character, and adequate water supply (Exhibit 4).

Coastal Act Section 30625 (b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>1</sup> Commission staff has analyzed: (1) the County's Notice of Final Local Action; (2) the Appellants' contentions; (3) the Marin County administrative record; (4) the relevant requirements of the LCP; and (4) has visited the project site. The appeal raises no substantial issue with respect to conformance with the LCP, as discussed below.

### **Clustering / Agricultural Use / Visual Resources and Community Character**

The Appellant contends that the project is improperly clustered with trees and vegetation, a 300-square-foot shed that is to be removed, and with the adjacent neighbors' homes (which are not located on the project site). The Appellants also assert that the project location is on prime agricultural land and that the County's approval did not reasonably address the protection of agriculture. They further assert that allowing the development would result in a continued loss of a "*very special buffer between the larger ranch and farmlands to the north and the village of Bolinas*". The Appellants also contend, with respect to visual resources, that the County fails to protect visual resources because the second unit is not located in the least visually prominent portion of the property, negatively impacts views of the area from public vantage points, and is on a ridgeline as viewed from Highway 1 and points across the lagoon. All of these contentions assert inconsistency with the Certified LCP's zoning regulations section 22.57.024, which

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<sup>1</sup>The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

requires clustering of development on ARP zoned sites to preserve visual, agricultural, and open space character; and LUP Policy 30 (please refer to Exhibit 4 for the exact contentions of the appeal).

The purpose of the C-ARP zoning district is to concentrate residential and accessory uses in order to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource, and wildlife habitat values of a property and its surrounding areas.

#### Visual Resources

Certified zoning ordinance Section 22.57.024(1)(a), the standards for the C-ARP zoning district, requires buildings be clustered or sited in the most accessible, least visually prominent and most geologically stable portion or portions of the site. The site for the detached second unit is located on the southeast portion of the property in close proximity to the existing driveway adjacent to an existing 28-foot tall oak tree. It would be located within the developed portion of the property, leaving the oak woodland habitat on the northern portion of the 5.024-acre property undeveloped. Section 22.57.024(1)(a) does not restrict clustering to only one portion of a site and allows screening by existing vegetation to minimize the visual effects of a development. The subject approval adequately provides for this because the second unit would be outside the oak woodland habitat close to an existing driveway and partially screened by a 28-ft. tall oak tree. Further, locating the project adjacent to the existing residence would require the removal of trees in the area of the undeveloped oak woodland habitat.

Certified zoning ordinance Section 22.56.130 requires that new developments not impair or obstruct existing coastal views from Highway 1, that development be screened with appropriate landscaping that, when mature, does not interfere with public views to and along the coast, and requires compatibility with the character of the surrounding natural or built environment. The use of native plant materials is encouraged. Certified ordinance 22.57.024(1) (a), additionally, provides that prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings, or depressions in topography. Section 22.57.024(1) (b) prohibits construction on visually prominent ridgelines.

Commission Staff visited the project site and found that it is not located on a prominent ridgeline or within three hundred feet horizontally or 100-feet vertically of a visually prominent ridgeline. The project area is on a flat mesa. The views from Highway 1 across Bolinas Lagoon, Olema-Bolinas Road, and Mesa Road, toward the project location are predominated by heavy vegetation (mature trees) intermingled with residential structures. The second unit would be a maximum height of 15' above grade and would not require the removal of any existing vegetation. The structure would be partially screened by a 28-foot oak tree adjacent to it and the native trees to be planted as part of the project (for screening). It does not interfere with public views to or along the coast. The project site is within an area zoned agricultural residential, which allows for both types of land use, and this development characterizes the existing setting. The County approval requires that the exterior materials, colors, and design are compatible with the rural setting and found that the location, scale, and design of the second unit compatible with the rural residential area. The Appellants additionally present the issue of the neighbors' views being obstructed and contend that the project is not located in the least visible portion of the property. Private views, however, are not protected under the Coastal Act or the LCP. The new unit would not affect

significant coastal visual resources and there is sufficient factual and legal evidence in the County administrative record to support its decision. Therefore, the appeal raises no substantial issue of conformity of the approved development with the LCP with respect to coastal visual resources and community character.

#### Agriculture

Section 22.57.024(1)(i) requires that agricultural uses be encouraged in ARP zones and that usable agricultural land be identified and efforts made to preserve or promote its use. Unlike the more protective Agriculture Production Zone (APZ), agriculture production is not required in the ARP zone, and residential uses are principally permitted. The portion of the project site best suited for agriculture is the central open area that contains the existing septic system and leach field,<sup>2</sup> and this area would not be developed under the subject approval. The approved project site is not used for agriculture and has poor soil quality and limiting factors such as the potential for erosion and clayey soil conditions that affect the permeability of the soil. A site evaluation conducted by Jeffery A. Creque, Ph.D., Land Stewardship Consultant, indicates that the solar exposure of the site limits its use for agricultural purposes. The second unit would not be sited in conflict with any potential agricultural use of the site, because it would not be located in the area of the property suited for agricultural use. Due to the factors described above, Marin County had a high degree of legal and factual support for its decision, and no substantial issue is raised with respect to conformance with zoning Section 22.57.024(1)(i).

LCP Unit I Section II, Natural Resource Protection provides Policy 30 for small agricultural holdings with regard to zoning the ARP lands in the implementation plan, and future land divisions. This LCP policy is raised by the Appellants regarding their contention that the County fails to adhere to planning policies. This contention does not raise a substantial issue as the project does not involve a land division, and the policy does not apply to the subject development.

The Appellants also claim that the site contains prime agricultural land, but fail to cite an LUP Policy that the project is inconsistent with in this regard. Moreover, the site does not contain prime agricultural land as defined by the Coastal Act and Government Code Section 51201.<sup>3</sup> The two types of soil found on the property are Palomarin-Wittenberg complex and Olompali loam. The Palomarin-Wittenberg complex occurs on the steep slopes on the northern and eastern portions of the property and is inappropriate for agriculture. Olompali loam can be found on 2.5 acres of the property, of which only 1.5 acres potentially available for agriculture use. Evidence in the County administrative record from Jeffery A. Creque, Ph.D., Land Stewardship Consultant indicates that the soil has a land capability of IIIe-3 (15), specifically this soil type is highly erosive, has slow permeability, and is best suited for grazing, wildlife habitat, watershed values, recreation, and site development. The project site is not prime agricultural land for the

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<sup>2</sup> Jeffrey A. Creque, Ph.D., CA State Board of Forestry License #M-75, letter report to applicant 2/8/2011

<sup>3</sup> Government Code Section 51201 identifies what constitutes "prime agricultural land" which includes land that (1) qualifies for rating 80 through 100 in the Storie Index Rating, (2) supports livestock for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre (as defined by the U. S. Dept. of Agriculture), and (3) is planted with fruit or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars per acre.

following reasons, as confirmed by staff of the Marin Agricultural Land Trust: (1) the site does not contain Class I or II soils, unless it is irrigated cropland and there is no evidence of irrigated crops. (2) The parcel does not have a Storie Index Rating of 80-100. The highest rated soils on the property are rated good, or 60-79 on the Storie Index. (3) The annual carrying capacity of one animal unit per acre would require an irrigated pasture. The site does not show evidence of irrigation. Therefore, the County's decision is adequately supported by the factual and legal evidence in its administrative record. There is no substantial issue raised with respect to agricultural use. Therefore, the appeal does not raise a substantial issue of conformity of the approved development with respect to the agricultural use provisions of the certified LCP.

### **Natural Resource Protection (Habitat Protection)**

The Appellants contend that the County did not comply with LCP policies protecting "natural habitats." They additionally believe that the project would "*produce a significant loss of wildlife*". They assert that the Natural Resources Map for the LCP shows the property is located in an environmentally sensitive area (ESHA). The Appellants also contend that the site is an upland grassy feeding area for great blue heron and quail. They additionally state that the site is used as habitat for several other animal species, such as bobcats, black tail deer, and coyotes.

LCP Unit 1, Section II, Policies on Habitat Protection, (policies 22 through 26), provide for the protection of habitat. These policies require protection of upland grassy feeding areas, avoidance of significantly inhibiting wildlife movement and access to water. According to the County's administrative record, the property is located in an area that contains some sensitive wildlife resources and is adjacent to (but not within) a buffer area for monarch butterfly. The grove of eucalyptus trees located to the south of the property across Mesa Road is identified as a buffer area for monarch butterfly. The second unit would not affect this wildlife habitat because the buffer area is not located close to the actual project site. There is also a densely vegetated oak woodland area on the northern portion of the property that provides habitat for wildlife, but it is not designated ESHA in the LCP. The project would not have an adverse effect on this habitat because it is located on the southeast portion of the property away from the oak woodland. The Bolinas Community Plan specifically identifies the Bolinas mesa area as a quail refuge. The Bolinas Quail State Refuge is shown on the Bolinas Topographic Map (USGS Quad ID 37122h6). The refuge is located southwest of Bolinas and is not located anywhere near the project site. The project would not affect this habitat. The second unit would be constructed in proximity to the existing driveway while the majority of the existing grassy area (on the central portion of the property) would remain open. The construction of the project would not involve the removal or disruption of habitat or vegetation. The certified LCP Natural Resource Map does not designate the site as an ESHA. The County approval is also conditioned, requiring protection of existing vegetation in the vicinity of the project. The extent of the development is small the County had a high degree of factual and legal support for its decision, and there are no significant coastal resources affected by the County's approval. Therefore, the appeal does not raise a substantial issue of conformity of the approved development with the LCP with respect to habitat protection.

### **Adequate Water Supply**



The appellant contends that the County did not require any determination or showing of actual adequate water supply or yields as required by the LCP.

LCP Unit 1, Section IV, Public Services, Water Supply, Policy 5 requires that prior to the construction of projects using individual water wells, the applicant demonstrate that a sustained water yield of 1.5 gallons per minute per residential unit. Certified zoning ordinance Section 22.56.130 requires that coastal project permits be granted upon determining that water service to the project is of an adequate quantity and quality to serve the use. The Marin County Environmental Health Services Division staff determined that the common water supply system approved for the subdivision is adequate for the approved development. The County administrative record contains an evaluation of water supply and the capability of meeting the water needs for the subdivision, prepared by Miller Pacific Engineering Group, dated June 6, 1990. The report states that the water supply system will provide for three four-bedroom residences in the subdivision with a demand of approximately 50,000 gal/week for each residence. The existing residence on the property is three bedrooms and the County found that there is adequate water for the one-bedroom second unit. There is adequate factual and legal evidence in support of the County decision and this small scale project does not raise a water supply issue of regional or statewide significance. Therefore, the appeal raises no substantial issue of conformity of the approved development with the LCP with respect to water supply.

#### **Geologic Stability (Hazards)**

The Appellants contend that the approved development is not clustered on the most geologically stable portion or portions of the site as required by the LCP.

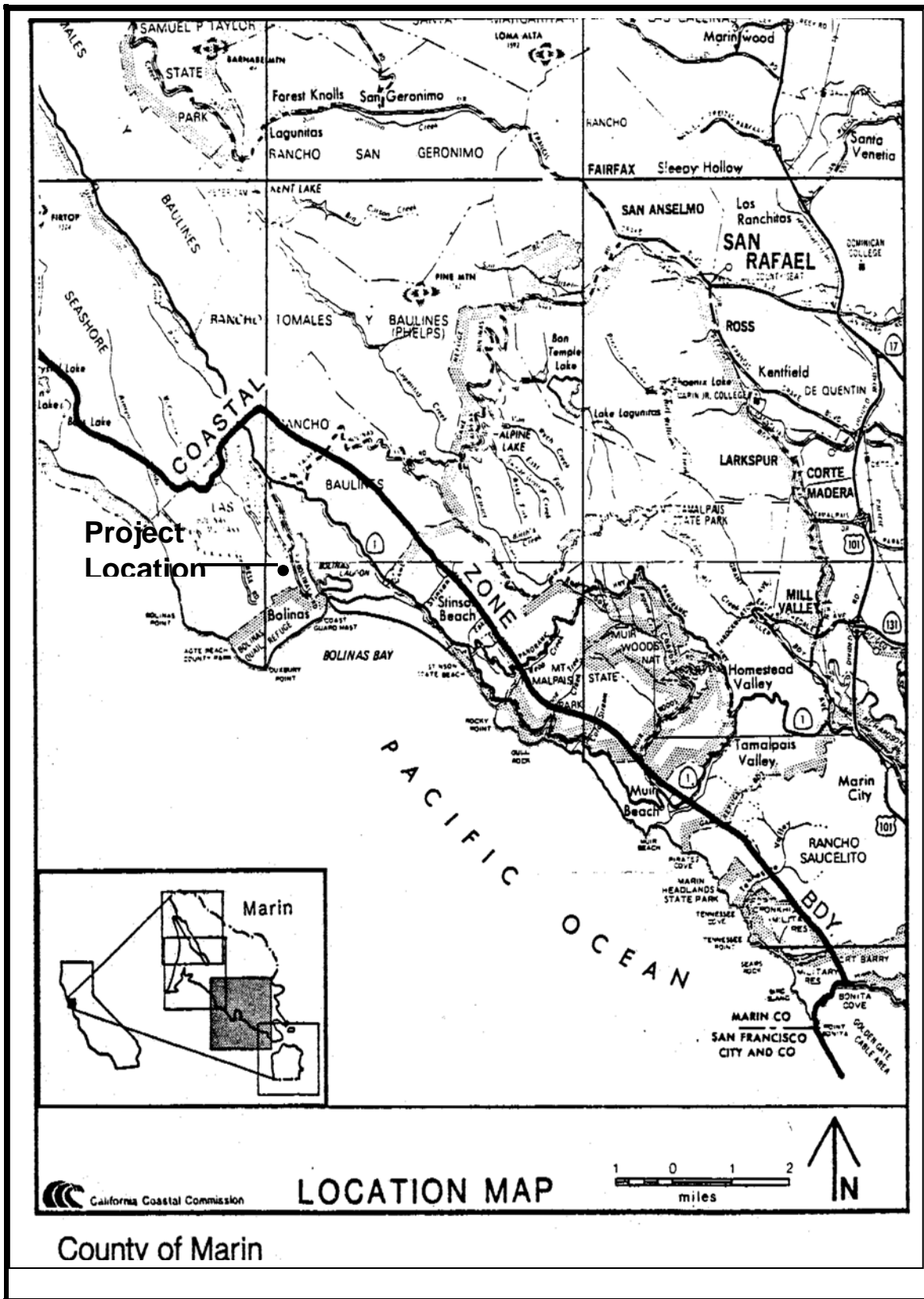
Section 22.57.024 (a) requires that buildings be sited in the most geologically stable portion or portions of the site. The County's administrative record indicates that the second unit is located within the Alquist-Priolo Earthquake Zone along the San Andreas Fault Zone. The geotechnical evaluation referenced by the Appellants was prepared for the existing residence in 2004. While it isn't specific to the site for the second unit it does provide that sites within the San Andreas Fault Zone and an Alquist-Priolo Special Studies Zone do not require special studies for single-family wood frame dwellings not exceeding two stories. The report addresses the property at 50 Mesa Road (along with those at 20 and 40) in its evaluation of surface fault rupture. The report concludes that the risk of exposure to active faults or surface fault rupture at the properties identified above is the same as any other location on the Big Mesa. Section 22.57.024 allows for siting a development in more than one portion of a property. The County's administrative record shows that consideration was given to the western portion of the property however the relocation of utilities and the driveway would require more grading. The western portion is in close proximity to a propane tank and fire hydrant which are restrictive. The administrative record additionally has evidence that locating the project adjacent to the existing residence would require the removal of trees in the area of the undeveloped oak woodland habitat. The Applicant's geotechnical evaluation determined the project to be feasible and safe if constructed with properly engineered structural components. As approved, final plans will be reviewed again for compliance with the building code for seismic requirements prior to issuance of a building permit. The County's administrative record provides adequate factual and legal evidence in support of its decision, the extent of this project is small, and there are no significant

coastal resources affected by the project. Therefore, the appeal raises no substantial issue of conformity of the approved development with the LCP with respect to geologic stability (hazards).

**Substantial Issue Conclusion:** The extent and scope of the approved development is small, the County had a high degree of legal and factual support for its decision, and there are no significant coastal resources affected by the County's decision. The Commission finds, for all of the above-stated reasons, that the Appellants' contentions raise no substantial issue of the County-approved project's conformity with the policies of the Marin County certified LCP.

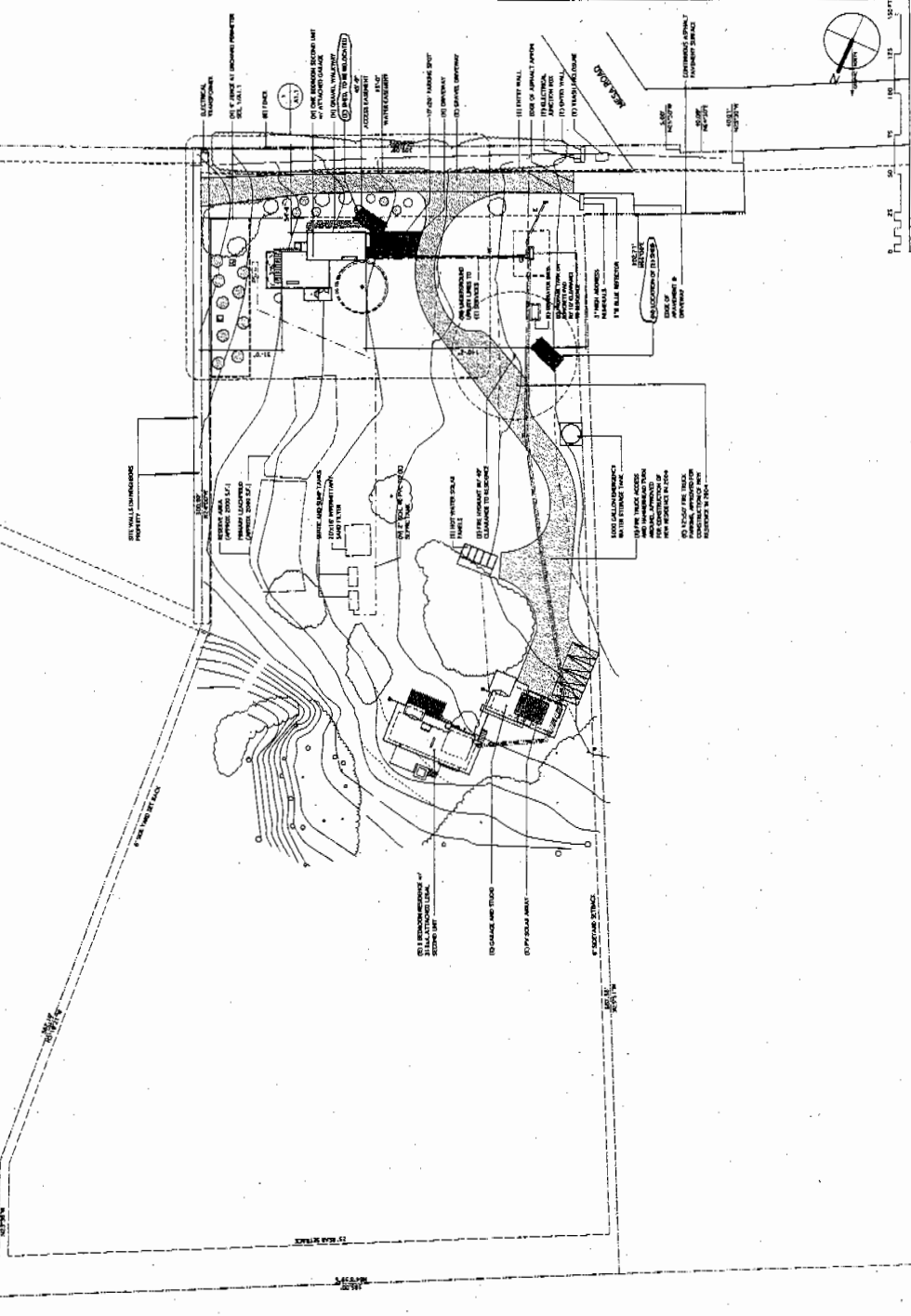
**Exhibits:**

1. Regional Location Map
2. Site Plan
3. Marin County Notice of Final Local Action
4. Appeal filed by Bob and Courtney Cart
5. Applicable LCP policies



**SECOND UNIT  
ADDITION  
FOR  
ARIANNE DAR**

ZONE: UNDEVELOPED



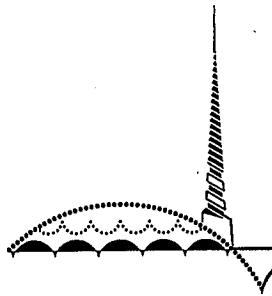
ENGINEER/ARCHITECTURE  
 517 2nd Street  
 OAKLAND CA 94612  
 510.436.1984

DATE: 12.22.2010  
 PROJECT: 12.22.2010 SECOND REVIEW  
 DRAWING: 12.22.2010 SECOND REVIEW

TITLE: **PLAT/SITE PLAN**  
 SCALE: AS SHOWN

**A1.0**

2-MAR-10-184



MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY  
BRIAN C. CRAWFORD, DIRECTOR

**NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT**

SENT BY CERTIFIED MAIL

March 16, 2011

California Coastal Commission  
North Coast Central District  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**RECEIVED**

MAR 17 2011

CALIFORNIA  
COASTAL COMMISSION

**Project Information**

Applicant's Name: Arianne Dar on behalf of Alan Dworksy  
Project ID: 10-0184  
Project Location: 52 Mesa Road, Bolinas (Marin County AP 193-020-51)  
Project Description: Construct a detached accessory structure for use as a second unit and garage.

**Final Action Information**

Final Local Action: Approved with Conditions  
Final Action Body: Board of Supervisors  
Date of Action: March 15, 2011

**Coastal Commission Appeal Information**

This Final Action may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission's North Coast Central District Office in San Francisco. Please telephone (415) 904-5260 for more information.

Sincerely,

Neal Osborne  
Planner

I:\CurrentPlanners\N Osborne\Project\_Applications\CP\Dworksy\_CP\_DM\_SU\_10-0184\Notice\_Decision\_to\_Coastal\_Commission.doc

Attachment: Marin County Board of Supervisors Resolution No. 2011-15

C: Arianne Dar  
Bob Cart

**RESOLUTION NO. 2011-15**  
**RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS**  
**GRANTING THE SMITH APPEAL,**  
**OVERTURNING THE PLANNING COMMISSION'S GRANT**  
**OF THE CART APPEAL FROM THE DEPUTY ZONING ADMINISTRATOR'S DECISION,**  
**AND APPROVING THE DWORKSY COASTAL PERMIT AND DESIGN REVIEW**  
**WITH CONDITIONS**

**ASSESSOR'S PARCEL 193-020-51**

**50 and 52 MESA ROAD, BOLINAS**

\*\*\*\*\*

**SECTION 1: FINDINGS**

- I. WHEREAS, Arianne Dar, on behalf of the property owner Alan Dworsky, submitted an application for Coastal Permit and Design Review to construct a detached second dwelling unit with an attached one-car garage, and remove the kitchen from the existing attached 313 square foot second dwelling unit, add 83 square feet by enclosing the breezeway, and change the use of this space to a den and laundry room. The existing 3-bedroom residence has 1,913 square feet of floor area on the 5.024 acre property. The new detached second unit would have 740 square feet of floor area and the garage would have 424 square feet. The maximum height of the second unit would be 15 feet above grade. The second unit would maintain the following property line or access easement setbacks: 9.5 feet front (south) access easement, 51 feet side (east), 140 feet side (west), and 624 feet rear (north). The subject property is located at 50 and 52 Mesa Road, Bolinas, and is further identified as Assessor's Parcel 193-020-51.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on October 28, 2010, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Marin County Deputy Zoning Administrator determined the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3(a) of the CEQA Guidelines because it entails the construction of a detached second dwelling unit and garage accessory to an existing single-family residence that would not result in significant grading, tree removal or other adverse impacts on the environment.
- IV. WHEREAS, the Marin County Deputy Zoning Administrator determined the proposed project is consistent with the policies in the Marin Countywide Plan, the Local Coastal Program Unit I, the Bolinas Community Plan, made affirmative findings and approved the Coastal Permit and Design Review.
- V. WHEREAS, on November 3, 2010, Bob and Courtney Cart submitted a timely Petition for Appeal from the Deputy Zoning Administrator's decision stating in summary that the project:

- A. Is inconsistent with the C-ARP zoning standards, the Marin Countywide Plan (CWP), and the Bolinas Community Plan (BCP), and the Local Coastal Program (LCP) Unit I; and
- B. Is not in compliance with the standards for a Coastal Permit in pursuant to Marin County Code (MCC) Sections 22.56.130I and 22.57.024I.

The appeal also asserted that the DZA:

- C. Did not make all the required findings in MCC Sections 22.82.040I (A through G);
  - D. Failed to apply the applicable codes, but balanced the privacy, land use, and other interests of the property owner;
  - E. Failed to adequately evaluate alternatives;
  - F. Failed to adequately evaluate the project's impacts on neighboring properties;
  - G. Did not comply with MCC Chapter 22.45I;
  - H. Erred because the new second unit is not permitted under the BCP until the moratorium on new water meters is lifted; and
  - I. Improperly gave deference to the project and applied the code in a lenient manner as if it were a new second unit.
- VI. WHEREAS, the Marin County Planning Commission held a duly noticed public hearing on January 10, 2011, to consider the merits of the appeal, and hear testimony in favor of, and in opposition to, the appeal and the project.
- VII. WHEREAS, the Marin County Planning Commission determined the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3(a) of the CEQA Guidelines because it would be the construction of a detached second dwelling unit and garage accessory to an existing single-family residence that would not result in significant grading, tree removal or other adverse impacts on the environment.
- VIII. WHEREAS, the Marin County Planning Commission determined the proposed project is not consistent with the Marin Countywide Plan because it would result in development which would not conform to the governing standards related to building location.
- IX. WHEREAS, the Marin County Planning Commission determined the proposed project is not consistent with the Bolinas Community Plan because it would adversely affect the surrounding built environment with regard to views from adjacent properties.
- X. WHEREAS, the Marin County Planning Commission determined the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (Section 22.56.130I of the Marin County Code).

- XI. WHEREAS, the Marin County Planning Commission determined the proposed project is not consistent with the mandatory findings for Design Review approval (Section 22.82.0401 of the Marin County Code) as described below.

The project is not consistent with the required findings cited above because the second unit and garage would result in a structure with excessive bulk for a detached accessory structure, and is not adequately clustered with other buildings on the subject property. Construction of a detached second unit, garage, and fence accessory to a single-family residence would conform to permitted uses in the zoning district that governs the subject property and would be situated solely on the subject property. The proposed second unit and garage would not be in the least visually prominent location and would appear as a separate residential development. Finally, the design of the proposed improvements would not be compatible with other residential buildings in the vicinity, and would diminish the potential use of the land for agriculture.

The proposed development would maintain an excessively large separation of 264 feet from the main residence with a garage that is large for a one bedroom second unit, resulting in a development that would be out of character with other second unit structures in the surrounding community.

- XII. WHEREAS, the Marin County Planning Commission granted the Cart Appeal based on the following findings:

- A. The project would not be consistent with the purposes of the C-ARP zoning standards of the Interim Zoning Code as it involves the construction of a relatively large accessory residential building that is not adequately clustered with the existing single-family residence, as required by Section 22.57.024.1.a(1).
- B. The second unit would not be located on the least visually prominent portion of the property.
- C. The project would not be consistent with the plan policies of the Marin Countywide Plan, the Bolinas Community Plan, and the Local Coastal Program, Unit I.
- D. The project would not be clustered on the site with existing development and landscaping, and the findings for Design Review have not been made affirmatively in Section XI above. By not clustering the second unit with the existing residence, the project would also reduce the amount of land available for potential agricultural uses on the property.

- XIII. WHEREAS, on January 18, 2011, Todd Smith, on behalf of the applicant Arianne Dar, submitted a timely Petition for Appeal from the Planning Commission's decision stating in summary that the project is consistent with the Coastal Permit and Design Review requirements and should be approved.

- XIV. WHEREAS, the Marin County Board of Supervisors held a duly noticed public hearing on March 1, 2011, to consider the merits of the Smith Appeal, the project proposal, and hear testimony in favor of, and in opposition to, the appeal and the project.



XV. WHEREAS, the Marin County Board of Supervisors determined that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (Section 22.56.1301 of the Marin County Code) as described below.

A. Water Supply:

The Community Development Agency, Environmental Health Services Division staff determined that the common water supply system approved for the Spanish Bit Subdivision is adequate. Conditions of approval will require an upgrade to the water system permit to correct Assessor's Parcel Numbers, the fourth residence that was approved in 2004, and any treatment design changes that may have occurred.

B. Septic System Standards:

Marin County Environmental Health Services regulates individual sewage disposal systems in the area of the subject property. Marin County Environmental Health Services reviewed the proposed project and recommended approval with conditions that require the installation of a new sump tank and provision of the required 5-foot setback from the septic system on the subject property.

C. Grading and Excavation:

The project site has a gradual 5% slope and minor grading is proposed for 51 cubic yards of excavation and 52 cubic yard of fill. The excavation would occur for installation of the structure's foundation, below grade cisterns, the driveway, patios, and walkways. All grading and excavation work would be subject to the review and approval of the Department of Public Works, Land Use and Water Resources Division, to ensure consistency with Marin County requirements.

D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is located in an area of high archaeological sensitivity. However, the small amount of grading proposed would not likely disturb cultural resources because most of the site has previously been disturbed. A project condition requires that in the event cultural resources are discovered during construction, all work shall stop immediately and the services of a qualified consulting archaeologist shall be engaged to assess the value of the resource and to develop appropriate protection measures.

E. Coastal Access:

The project is located more than 1/2-mile inland of the Pacific Ocean at an elevation of approximately 155 feet and would not impede coastal access.

F. Housing:

The proposed project would result in the removal of a residential second unit located adjacent to the main residence with a new detached and larger second unit and garage that would provide housing opportunities for people of low or moderate income. The project would not affect the availability of affordable housing within the Bolinas community.

G. Stream Conservation Protection:

The project site is not located near a creek or in an area subject to the streamside conservation policies of the Marin Countywide Plan or Local Coastal Program.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit I of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is located adjacent to a buffer area in the eucalyptus grove to the south for the federally listed endangered Monarch Butterfly (Danaus plexippus). However, the project will have no impact to the habitat buffer area because it involves the construction of a detached second unit and garage accessory to a single-family residence on grassy yard area of a developed site within the existing Spanish Bit Subdivision that is outside of the buffer area. The Natural Diversity Database also indicates the site may have possible habitat for sensitive species Ricksecker's water scavenger beetle (Hydrochara rickseckeri), Robust Walker (Pomotioopsis binneyi) a semi-aquatic snail, and American badger (Taxidea taxus). The habitat associations for these species do not exist on the project site and the small-scale scope of the project would not adversely affect the existing habitat. The beetle and semi-aquatic snail require very specialized wetlands of perennial seeps or shallow streams that do not exist on the project site. The site may have suitable habitat for the badger, but staff observed no burrows during a site inspection, and the small project would not adversely affect potential habitat with avoidance of the primary grassland area.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is not located in an area containing rare plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is located in the habitat area for rare, threatened, or endangered plant species. The Coast yellow leptosiphon (Leptosiphon croceus), while not on a federal or state list, is identified by the California Native Plant Society as seriously endangered in California. This plant may have suitable habitat in Coastal bluff scrub and Coastal prairie, but the plant survey completed by Terry Huffman of the Huffman-Broadway Group, Inc. for the "Wetland Evaluation Dar Property, 50 Mesa Road, Bolinas, California" on April 16, 2004 found no leptosiphon plants within the project site. In addition, the relatively small-scale project would not have an adverse impact on the habitat of native plant communities.

K. Shoreline Protection:

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse affects to the shoreline. The project would not require additional shoreline protection.

L. Geologic Hazards:

The project site is located within the Alquist-Priolo Earthquake Zone along the San Andreas Fault Zone and would be subjected to strong ground shaking during a proximate seismic event. The applicant submitted a geotechnical evaluation prepared by Vincent Howes that determined the project to be feasible and safe if constructed with properly engineered structural components. The Marin County Community Development Agency - Building Inspection Division will determine seismic compliance with the California Building Code during review of the building plans. In addition, as a condition of project approval, the applicant shall execute and record a waiver of liability holding the County, other governmental agencies and the public, harmless of any matter resulting from the existence of geologic hazards.

M. Public Works Projects:

The proposed project does not entail expansion of public roads, flood control projects, or utility services.

N. Land Division Standards:

No land division is proposed as part of this project.

O. Visual Resources:

The project would be located in the southeast portion of the property near the location where an existing shed would be removed and relocated to a site near the west side property line. The structures would be relatively small residential and accessory structures, and would not result in substantial visual effects from public vantage points. The adjacent property owners would see the small residential structure through a landscape screen, but the visual effect is not found to be adverse and is typical of a residential development in the Bolinas community. The exterior materials would be unobtrusive brown, reddish brown, and copper patina colors. The lighting for the exterior would be directed downward and hooded.

P. Recreation/Visitor Facilities:

The project site is governed by C-ARP-5 (Coastal, Agricultural Residential, Planned District) zoning regulations that allows for residential uses and a second unit. The project would have no affect on recreation or visitor facilities.

Q. Historic Resource Preservation:

The existing residence on the subject property was constructed less than 10 years ago and is not historically significant.

XVI. WHEREAS, the Marin County Board of Supervisors determined that the proposed project is consistent with the mandatory findings for Design Review approval (Section 22.82.0401 of Marin County Code) as described below:

The project is consistent with the required findings cited above because the detached accessory residential structure and garage would result in structures with heights, and bulk proportionately appropriate to the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of a detached accessory structure for use as a second unit accessory to a single-family residence would conform to permitted uses in the zoning district that governs the subject property and would be situated solely on the subject property. The proposed accessory structure would minimize drainage alterations, grading and excavation, and other adverse physical effects on the natural environment. Finally, the design of the proposed improvements would be compatible with other residential buildings in the vicinity, would respect the surrounding natural environment, and would not adversely affect views from other properties in the vicinity.

The proposed development would be of a comparable height, size, and scale with other structures in the surrounding community. Additionally, the accessory structure would not substantially affect the existing light or privacy of surrounding residences because the structure would not exceed a height of 15 feet above grade and additional landscaping and a privacy fence would be installed. Finally, the project would minimize potential adverse visual impacts because it would be constructed of building materials that match the existing residence with subdued colors that compliment the surrounding natural and built environment.

XVII. WHEREAS, the Marin County Board of Supervisors grants the Smith Appeal and overturns the Planning Commission decision to deny the Dworsky Coastal Permit and Design Review based on the following factors:

Bases of Appeal:

As stated in Section XIII above, the appeal alleges that the location and design of the proposed second unit and attached garage proposed for the Dworsky property would be consistent with the Coastal Permit and Design Review standards because it would be clustered with an existing oak tree, shed, and driveways, and would fit into the rural residential character of the neighborhood without substantial effects to the potential use of the land for agriculture.

Response to Appeal:

The bases of appeal have merit because the project would comply with the purposes of the C-ARP-5 zoning in Marin County (Interim) Code Section 22.57.021.

A. The project would be consistent with the purposes of the C-ARP zoning standards of the Interim Zoning Code because it involves the construction of an accessory residential building for use as a second unit that is adequately clustered with the existing developments and oak tree, as required by Section 22.57.024.1.a(1).

- B. The second unit would be located on the least visually prominent portion of the property as viewed from the adjacent upslope property where the primary view is easterly towards Bolinas Lagoon.
- C. The project would be consistent with the plan policies of the Marin Countywide Plan (Policy AG-1.1 -- Limit Residential Use and Policy AG-1.6 -- Limit Non-Agricultural Development), the Bolinas Community Plan (Land Use Policy 2 -- Establish agricultural zoning), and the Local Coastal Program, Unit I (Policy 30 -- Small Agricultural Holdings).
- D. The project would be clustered on the site adjacent to the existing driveway, a 300 square foot storage shed, and landscaping that includes a 28-foot tall oak tree. The findings for Design Review including compatibility with the neighborhood character have been made affirmatively in Section XVI above. By clustering the second unit with the existing developments and oak tree, the project would not substantially reduce the amount of land available for potential agricultural uses on the property.

## SECTION 2: DECISION

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors grants the Smith Appeal, overturns the Planning Commission's decision to grant the Cart Appeal, and approves the Dworsky Coastal Permit and Design Review subject to the following conditions.

## SECTION 3: CONDITIONS OF APPROVAL

1. Plans submitted for a Building Permit for the approved project shall substantially conform to plans on file in the Marin County Community Development Agency, Planning Division, identified as Exhibit A, "Second Unit Addition for Arianne Dar" consisting of nine sheets prepared by Joseph Edward Lambert, Licensed Architect, WQRKS://architecture, date stamped August 31, 2010.

The subject property is located 50 Mesa Road, Bolinas, and is further identified as Assessor's Parcel 193-020-51. Unless a public emergency services provider recommends otherwise or unique circumstances necessitate a change, the street address for the second unit that is approved herein shall be 52 Mesa Road, Bolinas.

2. Approved exterior building materials and colors shall substantially conform to the color/materials sample board which is identified as "Exhibit B," prepared by Joseph Edward Lambert, Licensed Architect, WQRKS://architecture, and on file with the Marin County Community Development Agency Planning Division, including:
  - a. Siding: Redwood beveled siding, and board and batten siding
  - b. Roof: Living Roof
  - c. Trim: Dark bronze anodized doors and windows
  - d. Gutters, Downspouts and Flashing: Copper

All flashing, metal work, and trim shall be treated or painted an appropriately subdued, non-reflective color.

3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Coastal Permit and Design Review Conditions of Approval as notes.

4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall record a Waiver of Public Liability holding the County of Marin, other governmental agencies, and the public harmless because of potential losses experienced by geologic actions.
5. BEFORE ISSUANCE OF A BUILDING PERMIT for any of the work identified in Condition of Approval 1 above, the applicant shall install temporary construction fencing around the dripline of the existing trees and shrubs in the vicinity of any area of grading, construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect existing vegetation during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency, Planning Division.
6. BEFORE FINAL INSPECTION, the applicant shall remove the kitchen facilities from the existing second unit attached to the main residence and shall submit photographs to verify removal of the kitchen sink, counters, and stove.
7. All flashing, metal work and trim shall be an appropriately subdued, non-reflective color and all exterior lighting shall be downward directed and hooded.
8. During construction, the applicant shall take all appropriate measures, including watering of disturbed areas and covering the beds of trucks hauling fill to or spoils from the site, to prevent dust from grading and fill activity from depositing on surrounding properties.
9. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
10. No trees, except those approved for removal with this project, shall be removed except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent safety hazards to people and property.
11. Any new utilities proposed to serve the approved project shall be underground.
12. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

13. All construction activities shall comply with the following standards:
14. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
15. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
16. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul the approval of the second unit and garage, driveway, privacy fence, and landscaping, for which action is brought within the applicable statute of limitations.
17. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.

Department of Public Works, Land Use and Water Resources

18. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall fulfill the following requirements:
  - a. The plans shall be reviewed and approved by Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. Certification shall be either by the engineer's stamp and signature on the plans, or by stamp and signed letter.
  - b. Submit Erosion and Siltation Control plans.
  - c. Provide more detail on the grading & drainage plan for the project. Include a clear delineation of the grading limits; roof downspout outfall management; details on the proposed swale; etc. The drainage and grading plans shall be designed by either a registered Engineer or Architect.
  - d. Provide a note on the plans stating that the Design Engineer and/or Architect shall certify to the County in writing prior to final inspection that all grading, drainage, and retaining wall construction was completed in accordance to approved plans and field.

direction. Also state that the driveway, parking, and all other site improvements shall be inspected by a DPW engineer prior to final inspection.

- e. Provide a utility shut-off separate from the main dwelling.

Marin County Environmental Health Services

- 19. Install new sump tank and maintain required setbacks prior to final of Building Permit. The septic system is designed for 5 bedrooms (existing 4 bedroom residence and proposed second unit).
- 20. The domestic water permit for the common water system, originally issued by EHS for three houses, will need to be updated to address changes in parcel numbers, APN, the fourth residence that was approved in 2004, and any treatment design changes that may have occurred. Prior to clearing the Building Permits for construction, the applicant shall apply for and obtain an upgraded water system permit.

**SECTION 3: VESTING**


NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest the Dworsky Coastal Permit and Design Review approval by obtaining a Building Permit and substantially completing all of the approved work before March 1, 2013, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date and the Community Development Director approves it.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the issuance of such permit. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the Planning permit (and no extensions have been granted), the Building Permit and planning approvals may become null and void. Should you have difficulty meeting the deadline for completing the work pursuant to a Building Permit, the applicant may apply for an extension at least 10 days before the expiration of the Planning permit.

**SECTION 4: VOTE**

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin held on this 15th day of March, 2011, by the following vote:

AYES: SUPERVISORS Judy Arnold, Charles McGlashan, Susan L. Adams  
NOES: NONE  
ABSENT: SUPERVISORS Harold C. Brown, Jr., Steve Kinsey

  
\_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

ATTEST  
  
\_\_\_\_\_  
CLERK



**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5260 FAX (415) 904-5400  
TDD (415) 597-5885



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

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

**SECTION I. Appellant(s)**

Name: **BOB & COURTNEY CART**

Mailing Address: **P.O. BOX 40**

City: **Bolinas**

Zip Code: **CA**

Phone: **949 24**

**RECEIVED**

**SECTION II. Decision Being Appealed**

**APR 01 2011**

**CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST**

1. Name of local/port government:

**COUNTY OF MARIN**

2. Brief description of development being appealed:

**Re-location of small (313sf) attached 2nd unit from primary residence 264' away to an undisturbed corner of property. The new 2nd unit has nearly the maximum floor area (740 sf) & large garage (424 sf) and disrupts natural area with its extensive hardscape & landscape.**

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

**52 Mesa Rd, Bolinas (Marin County AP 193-020-51); cross st, Olema-Bolinas Rd**

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

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

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

<b>TO BE COMPLETED BY COMMISSION:</b>	
APPEAL NO:	<u>A-2-MAR-11-020</u>
DATE FILED:	<u>4/1/11</u>
DISTRICT:	<u>North Central Coast</u>

**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: March 15, 2011

7. Local government's file number (if any): CDA Project ID 10-0184

**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:

Arianne Dar  
P.O. Box 476  
Bollinas, CA 94924

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) Amy Trainer, Executive Director  
Environmental Action Committee  
P.O. Box 609  
Pt Reyes Station, CA 94956

(2) Nancy McCarthy  
P.O. Box 178  
Stinson Beach, CA, 94970

(3) Wendy di Paolo  
P.O. Box 482  
Stinson Beach, CA, 94970

(4) Richard Pfeffer  
P.O. Box 766  
Bollinas, CA 94924

(5) Derek Weller  
1000 Fourth Street, Suite 600  
San Rafael, California 94901

**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 ATTACHED 4/1/11 LETTER TO Coastal Commission from Bob & Courtney Cart***

**BASIS OF APPEAL:**

**The County incorrectly & selectively applied policies of the LCP & C-ARP zone. It balanced these policies with the interests of the developer and has thus put coastal resources at risk. The County failed to reasonably follow LCP and other local planning policies:**

- A) Failure to adhere to clustering requirement**
- B) Failure to protect visual resources**
- C) Failure to adhere to planning policies for protection of coastal resources**
- D) Failure to protect agricultural use**
- E) Failure to protect natural habitat**
- F) Failure to protect neighborhood character**
- G) Fence construction allowed to commence prior to approval**
- H) Water adequacy not established**
- I) Geographic stability not established**

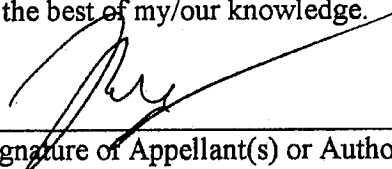
**SUBSTANTIAL ISSUE:**

It sets a dangerous precedent for Marin County and other coastal counties to ignore LCP requirements. If allowed this would result in a substantial statewide issue challenging that second units may be developed without observing LCP requirements. This would diminish the effect of the LCP and would lead to further loss of coastal resources.

**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 of Appellant(s) or Authorized Agent

Date: March 29, 2011

**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: \_\_\_\_\_

**Bob and Courtney Cart**  
PO Box 40  
Bollinas, CA 94924

**March 30, 2011**

**Chairperson Sara Wan**  
**California Coastal Commission**  
**45 Fremont Street, Suite 2000**  
**San Francisco, CA 94105-2219**

Re: Appeal of Resolution of the Marin County Board of Supervisors (Resolution no. 2011-15) granting the Smith Appeal, overturning the Planning Commission's grant of the Cart Appeal from the Deputy Zoning Administrator's decision, and approving the Dworksy Coastal Permit and Design Review with conditions. (Assessor's Parcel 193-020-51, 50 and 52 Mesa Road, Bollinas)

Dear Chairperson Wan and Commissioners:

We appeal the above Resolution adopted by the Marin County Board of Supervisors as it reflects the County's failure to follow basic policies and zoning standards of the certified LCP. If permitted, the project would result in loss of coastal resources. We ask that the Coastal Commission find that a substantial issue exists and schedule a de novo public hearing.

## 1. INTRODUCTION

Coastal Commission review is needed because the County, wrongly approved a project that would dramatically expand the size of an existing attached second dwelling unit and relocate it as far as possible from the primary unit causing certain and unnecessary loss of coastal resources. This de-clustering is inconsistent with LCP policies. The project would result in the loss of significant coastal resources including prime agricultural land, sensitive habitat and visual resources. The LCP specifically protects this site due to its ridgeline setting visible from public roadways, open grassy hillside area and upland grassy foraging and natural habitat area.

A second unit development does not allow LCP policies to be ignored. The County suggested that the need for housing is greater than the need to protect coastal resources. The County claimed that the second unit would not pose a significant loss of coastal resources, but failed to identify or review any such losses. We identified several suitable building sites that meet all the LCP requirements and also protect coastal resources, but the County disregarded this data, failed to reasonably consider alternate locations and simply accepted the developer's preferred location. This decision made no attempt to minimize loss of coastal resources as required under the LCP.

The County failed to follow basic policies and standards in the LCP and approved the largest possible second unit at the greatest possible distance from the primary residence resulting in a loss

of sensitive coastal resources. If the project is allowed, it will establish a dangerous precedent for Marin County and other coastal counties that the LCP may be disregarded for second unit projects.

## 2. PROJECT SUMMARY

The project is on a rural 5-acre lot in the Spanish Bit Subdivision of Bolinas. The proposed development site is at the eastern edge of the Bolinas "Big Mesa," 650 feet upslope from and overlooking the Bolinas Lagoon. The site is on the open grassy hilltop and ridgeline as viewed from Highway 1 across the Lagoon. This C-ARP agricultural zone provides a buffer zone between higher density residential development to the south and larger agricultural uses to the north.

The second unit and garage and extensive hardscape have a bulk similar to the primary residence. This project would disturb over 6000 square feet of surface area for the house, hardscape, landscaping and a 1200 square feet solid 6' fence (300' fence with a 2 foot spacing on each side). The size of the attached garage and second unit maximize all dimensions and far exceed those of other second units in the area. The result has the visual effect of a higher density subdivision, thus destroying the agricultural/rural character and of the neighborhood. The 300' fence included in the project has already been built. Its solid design is highly unusual between C-ARP parcels of 5 acres or larger in Bolinas and restricts movement of wildlife and blocks sunlight to the neighbor's garden.

Each of the four lots of the Spanish Bit Subdivision contribute to real and scenic agricultural values with the presence of goats, horses, poultry, and vegetable gardens and fruit orchards. The subdivision was established under the same certified LCP and the clustering requirement was specifically met as seen from the current development pattern of residential structures in the subdivision. The lots are divided in two roughly equal parts. The southern part is a nearly level open grassy area bounded by native plants and shrubs and the north is a heavily wooded canyon area with seasonal riparian stream and wildlife area. This development pattern of each of the four parcels in the Subdivision has buildings clustered away from Mesa Road near the start of the canyon and leave open undisturbed grassy area to the south.

The existing primary residence, second unit and carport are clustered at the north of the grassy area close to the start of the canyon. The proposed project would break this pattern by relocating the existing second unit to a location in the open southeast corner 264' from the main residence - as far as possible away. The proposed site is the only remaining undisturbed grassy area due to leach fields, driveways and utilities on the site. This undisturbed southeast area is prime potential agricultural land. It is an upland grassy feeding providing important forage for Great Blue Herons within a designated Quail Refuge. The site is also visually prominent to the neighbors and from public roadways and would disrupt the existing rural feel of this agricultural zoned area (C-ARP 5). Allowing the proposed development there is clearly inconsistent with the LCP.

## 3. BACKGROUND

The three adjacent neighbors support the project in general, but strongly oppose the proposed location and County's failure to enforce it's own LCP code requirements which would cause a senseless loss of coastal resources. After the County Deputy Zoning Administrator approved the

project, we appealed to the Planning Commission. The Planning Commission correctly analyzed the issues and the intent of LCP and granted the appeal with a vote of 5:2 saying that the:

- Clustering design standard for the C-ARP zoning was not followed
- Selected site was not the least visually prominent as required,
- Project would not be consistent with the LCP and other local plans, and
- Project would reduce the amount of land available for agriculture.

The Planning Commission explained that the project would have the visual appearance of a new subdivision and inconsistent with neighborhood pattern. The developer appealed the Marin County Board of Supervisors who wrongly granted the appeal and approved the project.

#### 4. SUBSTANTIAL ISSUE

The County ignored LCP requirements and did not provide adequate facts or reasonable legal basis for its decision. The County approved the project because it found the site to be acceptable without regard for the LCP. The County accepted the certain loss of significant coastal resources without reasonable attempts to consider better alternative locations that would minimize losses.

The coastal resources that would be lost are in an environmentally sensitive habitat area, in a federally designated quail refuge, on an open grassy hilltop areas and on a ridgeline in public view. The area is upland foraging area for great blue Heron. Potential agricultural use on prime agricultural land as designated by the Coastal Act would also be lost.

Perhaps the most disturbing result if this project were approved, would be the precedent setting for Marin and other coastal counties. If second unit projects are considered insubstantial, counties could simply disregard LCP policies and requirements as Marin has done. This would lead to the loss of substantial coastal resources. As is the case here, it is possible to get second units built in compliance with the Coastal Act to protect coastal resources but the local governments need to understand that the LCP requirements must be followed. California's second unit code specifically does not allow the Coastal Act to be disregarded as per Government Code Section 65852.2 quoted below for convenience:

*(j.) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.*

#### 5. BASIS OF APPEAL

Below, we group the major failures of the County's final decision to meet LCP requirements. We provide summary language from the Planning Commission and Board of Supervisors Resolutions (with emphasis added) as well as the merits of our case for each of these policies.

##### A) FAILURE TO ADHERE TO CLUSTERING REQUIREMENT

PLANNING COMMISSION: "The project would not be consistent with the purposes of the C-ARP zoning standards of the Interim Zoning Code as it involves the construction of a relatively large accessory residential building that is not adequately clustered with the existing single-family residence, as required by Section 22.57.024.1a(I)."

BOARD OF SUPERVISORS: "The project would be consistent with the purposes of the C-ARP zoning standards of the Interim Zoning Code because it involves the construction of an accessory residential building for use as a second unit that is adequately clustered with the existing developments and oak tree, as required by Section 22.57.024.1.a(I)." (Resolution No 2011-15)

The Board of Supervisors' mention of the second unit implies special consideration that the Planning Commission did not include and that is not supported in the Code.

C-ARP clustering design standard is meant to concentrate residential and accessory uses to protect existing or future potential agricultural use and wildlife habitat and visual resources. To understand the intent of clustering, it is helpful to look at the purpose of the C-ARP zoning.

*22.57.0211 Purpose. This zone provides flexibility in lot size and building locations and thereby promotes the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the property and surrounding areas.*

Flexibility is provided, but only to make groupings of buildings practical. The LCP allows flexibility in placing development to loosen specific setbacks from property lines to promote and enable clustering to maximize protection of coastal resources. The County incorrectly interpreted flexibility to mean even de-clustering is permitted even with loss of coastal resources, agriculture land, wildlife habitat and visual values so long as the selected building site is reasonably acceptable by some other standards not provided. This is an incorrect and dangerous interpretation.

Clustering is the first design standard within the zoning and that implies that it is the most important standard. It also reflects the more general directives from LCP policies and the Coastal Act. The specific clustering code section referenced in the Resolutions is the first design standard within the **C-ARP zoning** restated here for convenience:

*22.57.024.1.a(1) Clustering. Buildings shall be clustered or sited in the most accessible, least visually prominent and most geologically stable portion or portions of the site. Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. In these areas, the prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography. In areas with wooded hillsides, a greater scattering of buildings may be preferable to save trees and minimize visual impacts. In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.*

(emphasis added)

The project's existing second unit is appropriately attached to and clustered with the primary residence, but the new de-clustered second unit is located a significant 264' away from the primary



residence – a greater distance than between any of the primary residences in our rural subdivision or even adjacent smaller residential use parcels. The proposed location is also an open grassy hillside specifically protected by above zoning code. There are other opportunities to detach and expand the second unit but place it clustered adjacent to the existing primary residence.

The County resolved that the project was "adequately clustered with the existing developments and oak tree". This statement is problematic for a number of reasons. First, the existing developments cited by the County include the driveway and storage shed – both of which are questionable. The County section 22.57.024.1.a(1) and the LCP requirements specifically require clustering of buildings on site, not clustering with trees, driveways or sheds that are going to be relocated elsewhere. The driveway is not a building so it does not apply. The reference to the storage shed is misleading as it is illegally placed and must be relocated. (County's Code Enforcement found the 300' storage shed to be illegally sited within the 40' driveway easement.) It is unreasonable to allow someone to place a building illegally and then claim that it is a suitable basis for clustering. Moreover, the proposed project plans to relocate the shed away from the proposed second unit site so no clustering with the shed is in fact accomplished. Existing vegetation is only for use as a screen to minimize visual prominence.

After close of public comments, Staff explained how they applied clustering in C-ARP zones in saying that C-ARP is not as restrictive as C-APZ (Agricultural Production Zone), so C-ARP standards could be loosely interpreted. Staff went on to suggest a "balancing act" to resolve conflicting code requirements, but failed to mention any such conflicts and failed to compare any alternate sites to balance. In any event, the LCP provides the appropriate method to resolve such conflicts. The following Coastal Act section is informative:

*Section 30007.5 Legislative findings and declarations: resolution of policy conflicts.*

*The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.*

Despite the C-ARP zoning, and proven agricultural and wildlife habitat, the County wrongly decided that the area simply was not important to protect and that the selected location, while admittedly not the only acceptable location, was nonetheless acceptable.

After close of public comments, BOS further asked Staff for clarification on clustering. Staff said,

*"If you look at this particular property about half of the site is really undeveloped, it's the hillside with the trees. So the fact that it's already been developed along a certain pattern, having this additional unit down below is clustering in our opinion because there is existing vegetation there and there is an old storage shed, it's not like it is a part of the property that has not been disturbed. So in our view it does meet the requirements of clustering. Finally, if you step back and look at the placement of buildings next to other buildings, if you disregard the lot lines for the time being, that southeast corner is somewhat clustered with the adjoining structures on neighboring lots. Yes it's further from the main house but if you step back and look at it as if don't know where the lots lines are, then yeah it does appear that its clustered with development that's practically right next door".*

In essence, the County justified the project by saying that the existing vegetation and shed in the proposed project area allowed the project to meet the clustering requirement and then pointed to the neighbors' homes to say that the project is clustered to those buildings. The County Code and LCP require clustering of buildings on the project site, not clustering with trees or vegetation or with a small shed to be removed, or with the neighbors' homes that are not on site. The County's interpretation and justification of the project approval is clearly at odds with the Code and LCP requirements.

## B) FAILURE TO PROTECT VISUAL RESOURCES

PLANNING COMMISSION: "The second unit would not be located on the least visually prominent portion of the property."

*BOARD OF SUPERVISORS: "The second unit would be located on the least visually prominent portion of the property as viewed from the adjacent upslope property where the primary view is easterly towards Bolinas Lagoon." (Resolution No 2011-15)*

The 22.57.024.1.a(1) design standard requires siting to be on the least visually prominent location on the site, but the proposed second unit site is not the least visually prominent. First, when the property was originally approved and developed in 2004 and the main residence and existing second unit constructed, they were approved as clustered in their current location in compliance with the LCP requirements. At the time of that approval, the least visually prominent requirement was in effect and the County determined that the approved site where the existing residence and second unit are now located is the "least visually prominent" site on the subject property. The County is ignoring this prior determination and has now approved a secondary site furthest away from the main residence and in the most visually prominent location on the property.

The certified LCP and zoning use the word "least" visually prominent, which is a superlative and does not mean less than or reasonably low as the County interpreted it. In addition, 22.57.024.1.a(1) says that "Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides." This site is clearly an open grassy hillside deserving this special consideration, which the County did not apply.

The County failed to provide any reasonable facts showing that the selected site is least visually prominent and in the Resolution only considered the visual prominence from the single vantage of the adjacent upslope neighbor. The story poles for the proposed project are clearly in the primary view of the upslope neighbor Nancy McCarthy and she has opposed this project from the beginning on the basis of the visual prominence issue alone. This fact was not considered. Least visual prominence is also not reasonably established by considering a single vantage. The proposed site is visible from the public from state Highway 1 and Mesa Road and from vantage points all along the Bolinas Ridge in Mt. Tamalpais State Park, Audubon Canyon Ranch and the Golden Gate National Recreation Area. It is also visible from the semi-private country lane that runs on the southern side of the property and in plain view of two additional neighbors and even the developer's primary residence. The proposed site is more visually prominent than the developer's primary residence which has adequate space surrounding it to site an expanded and detached second unit.

In addition, this site is on a ridgeline as viewed from Highway 1 and points across the lagoon. The property line between the subject parcel and the eastward neighbor is along a line where the ground slope changes from steep to gentle at the top of Bolinas's "Big Mesa". The second design standard for C-ARP protects this location as follows:

*22.57.024.1.b(I) Ridgelines. There shall be no construction permitted on top of, within three hundred feet horizontally, or within one hundred feet vertically of visually prominent ridgelines, whichever is more restrictive, if other suitable locations are available on the site. If structures must be placed within this restricted area because of site size or similar constraints, they shall be on locations that are least visible from nearby highways and developed areas.*

This section requires an analysis of other suitable locations must be conducted before allowing development on a ridgeline location. The County did not require, review, or perform alternatives analysis despite our repeated requests to do so. The surprising response was simply that the project did not require an alternatives analysis under CEQA. CEQA is unrelated to the demand under 22.57.024.1.a(I) and 22.57.024.1.b(I) to establish the least "visually prominent location" and "other suitable locations" respectively.

### C) FAILURE TO ADHERE TO PLANNING POLICIES

PLANNING COMMISSION: "The project would not be consistent with the plan policies of the Marin Countywide Plan, the Bolinas Community Plan, and the Local Coastal Program, Unit I."

BOARD OF SUPERVIORS: "The project would be consistent with the plan policies of the Marin Countywide Plan (Policy AG-1.1 -- Limit Residential Use and Policy AG-1.6 -- Limit Non-Agricultural Development), the Bolinas Community Plan (Land Use Policy 2 -- Establish agricultural zoning), and the Local Coastal Program, Unit I (Policy 30 -- Small Agricultural Holdings). (Resolution No 2011-15)

The County again reduced the need to comply to only a subset of the planning documents yet the County did not even comply with the single LCP policy referenced as follows:

*LCP Policy II-30 In order to preserve the maximum amount of agricultural land, protect important upland grassland feeding areas and to promote the concentration of development in accordance with Section 30240 (a) and (b), 30241, 30242 and 30250 of the Coastal Act, the land now designated as A-5 and A-10 zoning districts shall be rezoned to APR-5 and APR-10 to encourage greater flexibility in the design of future land divisions within the area. New land divisions shall be designed to provide the maximum feasible clustering of new units and by easement or similar recorded instrument shall provide both the retention of the maximum amount of land in agricultural use and the protection of important upland feeding areas, which are identified on the resource maps on file in the Maria County Planning Department.*

The County made no attempt to show how the project is consistent with Policy 30 or the other stated planning documents. The general C district development requirements, standards and conditions for subdivisions applied when the Spanish Bit Subdivision was approved and the intent is further clarified:

*22.56.130I N. Land Division Standards. Land divisions of small agricultural holdings designated under ARP zoning shall conform to the following standards: New land divisions shall demonstrate to the planning director*

*that the design of the created parcels provides the maximum feasible concentration of clustering. Clustering shall be located both to provide for the retention of the maximum amount of land in agricultural use and to protect important upland feeding areas. Clustered development shall also be located in the area of least environmental sensitivity on the parcel. Open space easements or other restrictions shall be required to designate intended use and restrictions on the property being subdivided.*

The historical application of the LCP to the original subdivision must be maintained. When the property was originally developed, the residential structures were approved and constructed at a site concentrated and clustered in the least visually prominent location – the location where they are now. By allowing the expansion and de-clustering of the second unit to the opposite end of the property, the County is ignoring its prior determinations made in compliance with the LCP requirements and is allowing a project to go forward in direct violation of LCP requirements and that results in the permanent destruction of coastal resources. The County said that since it is not a new land division, the protections of coastal resources established in the original subdivision may now be disregarded since no new subdivision is being created. This is wrong. A person cannot just wait a few years and then come back and claim the requirements no longer apply. (Of note: Planning Commission said that this development would appear to be a new land division, though not legally a new division.)

#### D) FAILURE TO PROTECT AGRICULTURAL USE

PLANNING COMMISSION: “The project would not be clustered on the site with existing development and landscaping, and the findings for Design Review have not been made affirmatively in Section XI above. By not clustering the second unit with existing residence, the project would also reduce the amount of land available for potential agricultural uses on the property.”

BOARD OF SUPERVISORS: “The project would be clustered on the site adjacent to the existing driveway, a 300 square foot storage shed, and landscaping that includes a 28-foot tall oak tree. The findings for Design Review including compatibility with the neighborhood character have been made affirmatively in Section XVI above. By clustering the second unit with the existing developments and oak tree, the project would not substantially reduce the amount of land available for potential agricultural uses on the property.” (Resolution No 2011-15)

First, the purpose and requirements of the LCP say that residential structures are to be sited to “minimize disruption of existing or possible future agricultural uses” and to “maintain the maximum amount of land available for agricultural use.” However, the County applied a standard that asks whether the proposed project “substantially reduce[s] the amount of land available for potential agricultural uses.” That is the wrong standard. The LCP requires that the project be sited to minimize disruption and maximize preservation of agricultural lands. The proposed project admittedly permanently converts existing agricultural lands to residential development. It is not sited to minimize disruption or maximize preservation of agricultural lands.

Second, the purpose of clustering is to protect existing and future potential agricultural use by grouping of *buildings* to maximize agricultural use. The Planning Commission recognized that the project is “not clustered with existing residence” and would “reduce the amount of land available for potential agricultural uses”. The LCP II-30 language also defines the intent to preserve

agricultural land and upland feeding areas by concentration of development. The BOS failed to show how the proposed development protects agricultural land or upland feeding areas and does not follow the required method of clustering buildings to achieve that result.

The County's final decision did not reasonably address the end goal of protecting agriculture. It only provides that the loss of agriculture would not be substantial. The standard is meant to protect any and all agricultural use and no measure of substantial is provided. Even an agricultural report provided by the developer showed that the site has significant agricultural potential. The County did not provide any data to support a finding that the loss was insubstantial or that such a loss was allowable under the LCP given the obvious alternate locations that would not result in any loss.

The proposed location is on "prime agricultural land" as per California Government Code Section 51201(2), (3), and (4) referenced by the Coastal Act. This land is called the "breadbasket" area of Bolinas as per the Bolinas Community Plan. Similarly situated land has recently been leased by Gospel Flats Farm to use for dry farming in the rainy seasons when the Pine Gulch Creek Delta is flooded in the winter months. This area is also excellent for livestock and fruit trees and year round vegetable gardens. Allowing the development of the proposed site would continue the loss of what is a very special buffer between the larger ranch and farmlands to the north and the village of Bolinas. This is what the C-ARP zoning is meant to protect. This is especially important where small agricultural holdings predominant as called for in the Bolinas Community Plan.

#### E) FAILURE TO PROTECT NATURAL HABITAT

LCP policy and zoning protect natural habitat, but the County did not comply. The Natural Resources Map for the LCP shows that the subject property is located in an environmentally sensitive habitat area (ESHA). The County wrongfully said that since no evidence was presented showing the presence of a small specific set of named species, that there was thus no impact on habitat. This project would disturb over 6000 square feet of previously undisturbed natural resource and wildlife habitat area. The proposed site is the last remaining undisturbed natural open area on the parcel due to the private driveway that was allowed to go up the middle of the parcel and due to the large septic field area. This grassy hillside area has an average 7-degree slope and it is on a ridgeline approximately 650 feet upslope from and overlooking the Bolinas Lagoon and is used as habitat for several animal species including a covey of quail, herons, bobcats, black tail deer, and coyotes. A mountain lion was spotted early this year within 200 feet of the building site. The site is also upland grassy area used as forage for great blue herons that is a specially designated sensitive area. It would produce a significant loss of wildlife. The project site is a previously undisturbed natural habitat area with native vegetation.

From the LCP, "**The Bolinas area contains several important habitats** which have been identified in the Bolinas Community Plan and the document "Natural Resources of the North Central Coast Region". This area has two of these important habitats: herons and quail. It is an "Upland Grassland" area above the lagoon frequented by Herons who forage in the grass during high tide and winter storms. LCP policies specifically address this concern:

*LCP policy II-26. Upland grassland feeding areas shall be protected against any significant disruption of habitat values.*

LCP policy II-26 establishes this upland grassy feeding area as an ESHA in addition to the County's existing designation. The LCP cites the coastal act as follows:

Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values, that proposed development in areas adjacent to sensitive areas be sited and designed to prevent impacts which would significantly degrade such habitat, and that the development be compatible with the continuance of the habitat areas.

The area is also within the Bolinas Quail Refuge established in the 1920's (LCP page 31). A California quail covey have often been seen at the proposed building location. The LCP states, "The Coastal Scrub vegetation on the mesa provides habitat for large populations of many different species of wildlife". The County has not responded to any of these presented wildlife habitat facts nor explain the rationale for omitting discussion. Instead the County acknowledged the loss of only agriculture as not substantial and made no effort to address the wildlife habitat loss.

#### **F. FAILURE TO PROTECT NEIGHBORHOOD CHARACTER**

The claim by the Marin BOS that the proposed site is compatible with the existing neighborhood character is not true. The houses and accessory structures built on each of the four parcels of the Spanish Bit Subdivision are all set well back from Mesa Rd with each close to the edge of the canyon of oaks. The pattern for each parcel is that the front area is left open as grassy hillsides and then there is a development cluster at the rear with the remaining roughly half of each lot undisturbed in the canyon. This development pattern was established with the creation of the C-ARP subdivision under LCP Policy II-30 and it has been consistently followed until now. The proposed detached second unit would clearly violate this pattern by relocating the second unit to an open grassy hillside. The illegal utility shed (small and uninhabited) notwithstanding, putting a large detached 2<sup>nd</sup> unit there would create the visual appearance of a new higher density subdivision in a rural neighborhood. The affect on our neighborhood character is reflected in the objection to the project site by three subdivision neighbors as well as another adjacent neighbor.

#### **G. FENCE CONSTRUCTION ALLOWED TO COMMENCE PRIOR TO APPROVAL**

The developer constructed a six-foot tall wooden wall fence crossing the grassy hillside without approval. Construction on the fence began the day the Planning Commission voted in a public hearing to grant our appeal, which denied the developer's application. Despite the fact that the fence was part of the overall project that the Planning Commission denied, the County would not stop construction.

The fence was drastically lengthened from the plans submitted to the County (160 ft vs 300 ft), and the County did not perform any meaningful consideration of the full effect of the fence on natural habitat or visual resources. The solid fence runs parallel to the lagoon and perpendicular to bird flight to and from the lagoon 650' away. The fence is at the top of a visually prominent ridgeline in site of State Highway 1 and vantage points in parks across the lagoon. It is at the top edge of the Big

Mesa where the slope lessens rapidly. As a result, herons flying up to forage are blocked and their movement restricted and this is specifically disallowed in the LCP. It also dramatically changes the character and visual resources of the rural neighborhood as it bisects an open grassy hillside.

*LCP policy II-25. Fences, roads, and structures which significantly inhibit wildlife movement, particularly access to water, shall be avoided.*

The illegal fence construction was not mentioned in the staff report to the BOS or in the BOS resolution. Staff had previously included the fence in the design review and it is clearly shown on the approved site plan in a much-abbreviated length than as built. The basis of BOS post hoc argument was that if the fence had been proposed separately from the second unit project, which it was not, the design review *might* have been waived. Therefore, it could be waived now. This is not reasonable and shows special treatment for the applicant and was done without regard for impacts to coastal resources as required in the LCP.

#### H. WATER ADEQUACY NOT ESTABLISHED

The LCP policy IV-5 says:

*IV-5. Prior to the authorization of subdivision or construction of projects utilizing individual water wells, the applicant shall demonstrate that a sustained water yield of at least 1.5 gallons per minute per residential unit.*

County Environmental Health Services said no new permit was required since the project already had a first and second unit and that this was just a relocation of the existing second unit. While a new permit may not be required, this new second unit is four times larger than the existing unit and includes two showers and laundry facilities plus extensive landscaping. It is thus reasonable to assume water use would increase significantly. Wendy DiPaolo, the neighbor who has run the well for many years provided a letter prior to the BOS hearing objecting to the project due to concerns over water supply adequacy. However, the County did not require any determination or showing of actual adequate water supply or yields as required under the LCP and County Coastal Permit requirements. The existing well shared by three of the four lots in the subdivision may not meet requirements and the County did not comply with LCP policy.

#### I. GEOLOGIC STABILITY NOT ESTABLISHED

The clustering Code requires siting in the most geologically stable portion or portions of the site. The applicant provided a 2004 geotechnical report from the initial development of the primary residence and a new letter to show that the prior data was still accurate. However, that study was only for the primary house and did not include the proposed development site over 264 ft away. An earlier report with a test pit at the proposed site reported active faulting. The geotechnical reports and County data show that the parcel has three types of primary materials at different locations with the bedrock of Santa Cruz Mudstone in the western half of the parcel being the most stable. The geologic report provided by the developer inferred that the western part of the parcel is more stable because it is further from the San Andreas Fault. The County discussed this issue after close of public comments and explained that the Code allowed them to chose any reasonably stable location despite the LCP's use of "most geologically stable". The more stable western locations on the lot also meet all other Code requirements, but were not considered.

## 6. CONCLUSION

This appeal raises substantial issues across many important factors as it fails to conform to the requirements of LCP. It sets a dangerous precedent for Marin County and other coastal counties to ignore LCP requirements. If allowed this would result in a substantial statewide issue suggesting that second units may be developed without observing LCP requirements. This would diminish the effect of the LCP and would lead to further loss of coastal resources.

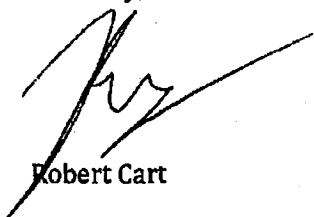
Marin County failed to reasonably follow the LCP's requirements to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the property and surrounding areas by concentrating residential and accessory uses. The second unit is excessive in scope with a disruption of over 6000 square feet of natural area, sensitive wildlife habitat area and prime agricultural land. The LCP attempts to maximize protection of coastal resources by clustering residential and accessory structures and permits flexibility in setbacks as needed to achieve these goals. Marin County argued that it may use this flexibility to avoid not only setbacks but also to allow a developer to choose any site that is acceptable using standards for buildings outside the coastal zone.

Marin County did not use reasonable facts or legal basis for its final decision. The County did not require or provide any reasonable analysis of alternate locations that could better satisfy the LCP and C-ARP zoning requirements. There are several suitable alternate locations for the developer's project that meet LCP requirements and do not result in loss of coastal resources.

The County failed to make the required LCP findings and ignored the policies and implementation details of the LCP. It did not require adequate water supply to be determined or prove that the site was the least visually prominent and most geologically stable. The zoning purpose and design standards were ignored, dismissed, or misinterpreted to the extent of making them meaningless.

The County showed special consideration to the applicant and did not object when the applicant initiated construction on part of the project prior to approval. The County erred in its application of the policies and implementation of the LCP and the Coastal Commission should recognize such and find that a substantial issue exists.

Sincerely,



Robert Cart



Courtney Cart



## **APPLICABLE LCP POLICIES**

### MARIN COUNTY LOCAL COASTAL PROGRAM, UNIT 1

#### LUP POLICIES ON HABITAT PROTECTION

22. Butterfly trees and other trees or vegetation identified on the natural resource maps on file with the Marin County Planning Department, which provide roosting and/or nesting habitat of wildlife, shall be considered major vegetation, and significant alteration or removal of such vegetation shall require a coastal project permit pursuant to Section 30106 of the Coastal Act. Such trees shall not be altered or removed except where they pose a threat to life or property.

23. Development adjacent to wildlife nesting and roosting areas shall be set back a sufficient distance to minimize impacts on the habitat area. Such development activities shall be timed so that disturbance to nesting and breeding wildlife is minimized and shall, to the extent practical, use native vegetation for landscaping.

24. Public access to these identified sensitive habitat areas, including the timing, intensity, and location of such access, shall be controlled to minimize disturbance to wildlife.

25. Fences, roads, and structures which significantly inhibit wildlife movement, particularly access to water, shall be avoided.

26. Upland grassland feeding areas shall be protected against any significant disruption of habitat values.

27. Use of Duxbury reef shall continue to be regulated in accordance with existing State laws. The area should continue to be patrolled by a representative of the County Parks and Recreation Department on a daily basis.

28. Invasive exotic plant species are proliferating in the Coastal Zone at the expense of native plants. In order to preserve indigenous native plant species within the Coastal Zone, development permits shall be conditioned, where applicable, to require the removal of any invasive, non-indigenous plant species such as Pampas Grass, Brooms, and Thistles.

#### LUP POLICY ON AGRICULTURE

##### Small Agricultural Holdings

30. In order to preserve the maximum amount of agricultural land, protect important upland grassland feeding areas and to promote the concentration of development in accordance with Section 30240 (a) and (b), 30241, 30242 and 30250 of the Coastal Act, the land now designated as A-5 and A-10 zoning districts shall be rezoned to APR-5 and APR-10 to encourage greater flexibility in the design of future land divisions within the area. New land divisions shall be designed to provide the maximum feasible clustering of new units and by easement or similar recorded instrument shall provide both the retention of the maximum amount of land in agricultural use and the protection of important upland feeding areas, which are identified on the resource maps on file in the Maria County Planning Department.

## LUP POLICIES ON PUBLIC SERVICES

### Water Supply

...

4. New community and mutual water wells serving five or more parcels shall demonstrate by professional engineering studies, including, as necessary, longterm monitoring programs, that such groundwater withdrawal will not adversely affect coastal resources, including groundwater aquifers. Such engineering studies shall provide the basis of establishing safe sustained yields from these wells.

5. Prior to the authorization of subdivision or construction of projects utilizing individual water wells, the applicant shall demonstrate that a sustained water yield of at least 1.5 gallons per minute per residential unit. Additional requirements for fire protection, including increased yield rates, water storage facilities and fire hydrants shall be installed as recommended by the applicable fire protection agency.

...

### CERTIFIED ZONING CODE SECTIONS

#### 22.56.130 Development Requirements, Standards and Conditions.

A. Water Supply. Coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use.

1. Except as provided in this section, the use of individual water wells shall be allowed within the zone in conformance with Chapter 7.28 (Domestic Water Supply) of the Marin County Code:

a. New developments located within the service area of a community or mutual water system may not utilize individual domestic water wells unless the community or mutual water system is unable or unwilling to provide water or the physical distribution improvements are economically or physically infeasible to extend to the proposed site. Additionally, wells or water sources shall be at least one hundred feet from all property lines or a finding shall be made that no development constraints are placed on neighboring properties.

b. Within the Inverness planning area, individual wells for domestic use shall not be allowed on parcels of less than 2.8 acres in size. Exceptions to this requirement may be granted pursuant to the issuance of a coastal permit. In addition to the findings of Chapters 22.56I and 22.86I, the applicant must demonstrate to the satisfaction of the health officer that a well can be developed on the substandard size parcel in a completely safe and sanitary manner.

c. Within the Inverness public utility district (IPUD), individual wells for domestic use shall not be permitted in the same watershed, at an elevation higher than the IPUD surface water sources existing as of June 14, 1983.

d. The issuance of a coastal permit for any well shall be subject to a finding that the well will not have an adverse impact on coastal resources individually or cumulatively.

2. Prior to the authorization of subdivisions or construction of projects utilizing individual water wells, the applicant shall demonstrate a sustained water-well yield of at least one gallon per minute per residential unit. Additional requirements for fire protection, including increased yield rates, water storage facilities and fire hydrants shall be installed as recommended by the applicable fire protection agency.

...

#### I. Wildlife Habitat Protection.

1. Proposal to remove significant vegetation on sites identified on the adopted natural resource map(s) and generally described in Section 2 of the LCP shall require a coastal permit. Significant alteration or removal of such vegetation shall not be permitted except where it poses a threat to life or property.

2. Siting of New Development. Coastal project permit applications shall be accompanied by detailed site plans indicating existing and proposed construction, major vegetation, watercourses, natural features and other probable wildlife habitat areas. Development shall be sited to avoid such wildlife habitat areas and to provide buffers for such habitat areas. Construction activities shall be phased to reduce impacts during breeding and nesting periods. Development that significantly interferes with wildlife movement, particularly access to water, shall not be permitted.

...

#### O. Visual Resources and Community Character.

1. All new construction in Bolinas, Stinson Beach, and Muir Beach shall be restricted to a maximum height of twenty-five feet; except that the Stinson Beach Highlands will have a maximum height of seventeen feet, and the Seadrift Subdivision will have a maximum of fifteen feet above finished floor elevation.

2. To the maximum extent feasible, new development shall be designed and sited so as not to impair or obstruct existing coastal views from Highway 1 or Panoramic Highway.

3. The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.

4. Development shall be screened with appropriate landscaping; however, such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.

...

22.57.020 C-ARP--Coastal Agricultural, Residential, Planned Districts.

22.57.21 Purpose. This zone provides flexibility in lot size and building locations and thereby promotes the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use and to maintain the visual, natural resource and wildlife habitat values of the property and surrounding areas.

22.57.024 Design Standards. The following requirements for project design, site preparation and use shall be imposed through the master plan, development plan and/or design review process, as necessary, to implement the goals and policies of the LCP, the Marin Countywide Plan and any applicable community plan:

1. Project Design.

a. Clustering. Buildings shall be clustered or sited in the most accessible, least visually prominent and most geologically stable portion or portions of the site. Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. In these areas, the prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography. In areas with wooded hillsides, a greater scattering of buildings may be preferable to save trees and minimize visual impacts. In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.

b. Ridgelines. There shall be no construction permitted on top of, within three hundred feet horizontally, or within one hundred feet vertically of visually prominent ridgelines, whichever is more restrictive, if other suitable locations are available on the site. If structures must be placed within this restricted area because of site size or similar constraints, they shall be on locations that are least visible from nearby highways and developed areas.

c. Geologic Hazards. Development shall not be permitted on identified seismic or geologic hazard areas, such as slides, natural springs, identified fault zones, or bay mud, without approval from the department of public works, based on acceptable soils and geologic reports.

d. Roads, Driveways and Utilities. The development of roads, driveways and utilities shall conform to the applicable standards contained in Title 24 of this Code, including, but not limited to, Sections 24.04.020 through 24.04.320 (Roads and Driveways), and Sections 24.04.840 through 24.04.860 (Utilities). In areas with undeveloped agricultural land, efforts shall be made to keep road and driveway construction, grading and utility extensions to a minimum. This shall be accomplished through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land.

e. Fire Protection. In rural areas (areas without water systems), onsite water storage capacity may be required for each single-family residence, subject to the requirements of the Marin County Fire Department. In planned or cluster developments provisions should

be made, where feasible, for common water storage facilities and distribution systems. Maintenance of these water storage facilities and distribution systems should be performed according to a plan approved by the Marin County Fire Department.

f. Landscaping. Landscaping shall minimally disturb natural areas. Fire protection, solar access; the use of indigenous species and minimal water use shall be considered in landscaping plans.

g. Building Location/Design. In addition to the above requirements, buildings to be located on existing or proposed subdivision lots shall be sited and designed according to the following principles:

A. Energy Conservation. Solar access shall be considered in the location, design, height and setbacks of all buildings. Generally, buildings should be oriented in a north/south fashion with the majority of glazing on the south wall or walls of the buildings.

B. Building Height. No part of a residential building shall exceed twenty-five feet in height above natural grade, and no accessory structure, including water tanks, shall exceed fifteen feet in height above natural grade. In residential structures, the lowest floor level shall not exceed ten feet above natural grade at any point. Where a ridge lot is too flat to allow placement of the house down from the ridge as required in subsection 1.b., a height limit of one story or a maximum of eighteen feet, as measured from natural grade to the top of the roof, shall be imposed. These requirements may be waived by the planning director upon presentation of evidence that a deviation from these standards will not violate the intent of Section 22.47.101 and environmental quality policies of the countywide plan. Farm and agricultural buildings located down from ridgetops may exceed these height limits upon design review approval.

C. Access. Driveways shall be developed in accordance with the applicable standards contained in Title 24 of this Code, including, but not limited to Sections 24.04.240 through 24.04.320. Consistent with the clustering policies in subsection 1.a. above, efforts shall be made to keep driveway length to a minimum.

D. Materials and Colors. Fire protection, energy conservation and the use of traditional agricultural building materials and colors shall be considered in all construction.

h. Facilities. Where possible, facilities and design features required by the countywide plan shall be provided through the master plan/ development plan process. These include use of reclaimed wastewater; use of materials, siting, and construction techniques to minimize consumption of resources such as energy and water; use of water-conserving appliances; appropriate recreation facilities; bus shelters; design features to accommodate persons with disabilities; bicycle paths and equestrian trails linked to city-county system; and facilities for composting and recycling.

i. Agricultural and Open Space Uses. Agricultural uses shall be encouraged in ARP zones. As part of the development review process, usable agricultural land should be identified and efforts made to preserve and/or promote its use. Agricultural land, not

presently in use, may be preserved as undeveloped private open space to be made available, on a lease basis, in the future, for compatible agricultural uses. The primary intent shall be to preserve open lands for agricultural use, not to provide open space/recreational land uses which will interfere or be in conflict with agricultural operations. Lands to be preserved for agriculture and/or open space use may require the creation of a homeowner's association or other organization for their maintenance. The nature and intensity of large scale agricultural uses should be described in the form of an agricultural management plan.

...