

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Environmental Commons, Britt Bailey (Director): see attached appellants

Mailing Address: PO Box 1135

City: Gualala

Zip Code: CA

Phone: 95445

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County

2. Brief description of development being appealed:

Construct a 285' retaining wall to connect to a proposed 105' retaining wall on adjacent lot to the south (APN 145-261-05 - Coastal Commission jurisdiction). Project includes associated drainage, septic upgrades, stormwater treatment sepor. The proposed project is part of a much larger redevelopment involving two parcels and at least four permit applications.

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

In the Coastal Zone, in the town of Gualala on the west side of Highway One. 39200 South Highway One (APN 145-261-13)

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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	_____
DATE FILED:	_____
DISTRICT:	_____

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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: FEBRUARY 26, 2008

7. Local government's file number (if any): CDP 55-2006

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Bower Limited Trust
PO Box 1000
Gualala CA 95445

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

(1) California Native Plant Society- Dorothy King Young Chapter, PO Box 577, Gualala, CA 95445: Friends of the Gualala River , PO Box 1543, Gualala, CA 95445: Moat Creek Managing Agency, PO Box 404, Point Arena 95468: Coastwalk 825 Gravenstein Highway, N. Ste. 8, Sebastopol, CA 95472: Sierra Club, Mendocino Trails Committee, 27401 Albion Ridge Road, Albion, CA 95410

(2) Rau & Associates , 100 N. Pine St. , Ukiah, CA 95482

(3) Mendocino County Board of Supervisors, 501 Low Gap Rd. , Room 1090, Ukiah CA 95482: Mendocino County Planning and Building, 790 S. Franklin St., Ft. Bragg, CA 95437

(4) Redwood Coast Land Conservancy, PO Box 1511, Gualala, CA 95445

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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.

The proposed project is inconsistent with the Mendocino County Local Coastal Program policies and coastal zoning codes as follows:

1. LCP 3.4-10 : "No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects."

Comment:

CDP55-2006 does not further public welfare. Contrary to furthering public welfare, the proposed 285' retaining wall would diminish the riparian corridor, destroy a mature bluff face, and the public trail would be closed for an undetermined amount of time. In addition, available and feasible less damaging alternatives were not completely explored. The two alternatives explored involved "no project" and reducing the slope to a 2:1 ratio, both of which were dismissed due to them not meeting the applicant's needs. Other possible alternatives, which were not considered, involve removing the non-engineered fill and re-compacting the area consistent with engineering standards or re-grading and installing adequate drainage that would prevent surface run-off from reaching the bluff face. These alternatives would not require dismantling and closing the Gualala Bluff Trail or damaging the current stable bluff face.

2. LCP 3.4-12: "Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means. "

Comment:

We contend that the proposed retaining wall is not necessary as feasible, less-damaging alternatives

exist. Additionally, we contend that the dirt parking, which was not in the parcel's original permits, should not be considered existing development. The septic tanks are proposed to be moved away from the bluff edge and so they would not require protection. The only other development on the parcel is the public trail easement and this is a moving easement in no need of protection. Considering unimproved dirt fill "existing development" and allowing armoring is contrary to the public's interest, the intent of the LCP, and constitutes a dangerous precedent.

3. Mendocino County Coastal Zoning Code 20.500.020 (E)(1)

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

Comment:

See Above #2

Not only has the least environmentally damaging alternative not been considered, but also the alternatives proposed are unnecessarily broad. The GeoWeb material has been proposed to span the entire length of the property even though there were only two small slides on the north of the property. Although details of the Geoweb product were sketchy, there appears to be flexibility in where it could be added and applied.

4. LCP 3.4-7 "The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. G3.8-5 The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

Comment:

This project includes relocation of septic systems that were placed too close to the bluff and the estuary where the possibility of leaks or spills could lead to environmental damage. The staff report does not indicate that there was a site analysis to determine where the best place for the new Interceptor Tanks should be located. The Redwood Coast Land Conservancy raised this question, but it was ignored in both hearings. We contend this is new development and that this is an opportunity to move the tanks farther away from the bluff and off the public trail easement where they detract from the use and enjoyment of the trail.

5. Mendocino County Coastal Zoning Code 20.500.020 (E)(4)(c)

" (4) Within the Gualala Town Plan planning area, a special condition shall be attached to all coastal permits for blufftop residential or commercial development, requiring recordation of a deed restriction that states the following:

(c) The landowner shall not construct any bluff or shoreline protective devices to protect the subject permitted residence, guest cottage, garage, septic system, or other improvements in the event that these structures are subject to damage, or other natural hazards in the future; "

Comment:

The proposed CDP is part of a much larger redevelopment project that spans two parcels and has been subject to a multitude of permit applications. On the subject parcel alone, the whole project has been segmented into three different permit applications. The County is treating each permit as stand-alone projects even though the applicant has shown the finished "Surf Center" redevelopment project at various public meetings and has even disclosed the full project to the County in a pre-application conference of April 2007. By segmenting the permits, in effect requesting the retaining wall prior to applying for the 7000 square feet of office/retail space and paved parking, the applicant has been able to circumvent 20.500.020(E)(4)(c) which would require a deed restriction prohibiting a retaining structure in the face of a hazard.

However, we also believe that within this permit application, "development" exists which should limit the building of a retaining structure. CDP 55-2006 proposes installation of drainage infrastructure including 414 linear feet of drainpipe, a storm drain manhole, and a six-foot stormwater treatment structure, as well as upgraded septic systems. The drainage should constitute "new development" thus calling into question the requirement for a deed restriction to disallow shoreline protective devices.

Section 20.308 of the Coastal Zoning Code defines "development" as:

"...on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

Given that the applicant has requested and received permits for the demolition of the existing structures on the site, the only reason that a stormwater treatment system and relocated/upgraded septic system would be required would be for a new parking lot and habitable structure, respectively. The stormwater treatment and relocated/improved septic systems have no independent utility and would not be required for a dirt parking lot or retaining wall. Thus, they are, by necessity, the infrastructure phase of development for the overall site.

Again, much of the parcel improvement is not solely associated with the development of a retaining wall. Therefore, the drainage improvements, stormwater treatment structure, and relocated/improved septic system should constitute "new development" which should

trigger a deed restriction limiting the construction of a retaining wall.

6. Gualala Town Plan, G3.8-5 & LCP 3.1-10

G3.8-5, "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."

LCP 3.1-10, "Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor."

Comment:

This application proposes the removal of plants that should be protected. Mitigation measures are inadequate to protect the rare and irreplaceable old-growth bluff vegetation including the mature stands of *Garrya elliptica* (Silk Tassel). In addition we are not confident that the area in question was adequately searched to detect *Calystegia purpurata* ssp. *saxicola* which is rare and in need of protection. Although we acknowledge that there are a lot of weedy plants growing in the added fill, questions remain as to whether in the long run the GeoWeb solution would be an improvement. There is a greater chance that there will be more weeds than before since they will have a greater chance of growing in the fill and long term maintenance to establish new plantings on a steep slope has not been adequately addressed in the application.

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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: 3/4/08

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

Section VI. Agent Authorization

I/We hereby
authorize

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

Signature of Appellant(s)

Date: _____