

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

F 8a



April 19, 1996

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Steve Scholl, District Director
Jo Ginsberg, Coastal Planner

RE: Time Extension Request **A-1-MEN-93-71-E,**
Mike and Megan Merrin/Brandywine Conservancy
(For Commission consideration at the meeting of May 10, 1996)

Background:

The applicant has requested a one-year time extension of Coastal Development Permit No. A-1-MEN-93-71. On October 28, 1993, the Mendocino County Board of Supervisors approved with conditions the Merrin application, identified as CDP #28-92, for development of an approximately 4,080-square-foot, 22-foot-high single-family residence with an attached garage and driveway. The local decision was appealed to the Coastal Commission, which found that a Substantial Issue existed regarding conformity of the project with the public access and visual resource policies of the LCP and with the public access policies of the Coastal Act. The Commission then approved with conditions the project de novo on February 15, 1994. The subject property is located at 14260 Headlands Drive, Caspar Headlands Estates, in Mendocino County, APNs 118-420-05 and 06.

Procedural Note:

Section 13169(a) provides that if the Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act or if objection is made to the Executive Director's determination of consistency, the application shall be reported to the Commission after notice to any person the Executive Director has reason to know would be interested in the matter. If three Commissioners object to an extension on the grounds that the proposed development may not be consistent with the California Coastal Act, the application shall be set for a full hearing as though it were a new application.

A-1-MEN-93-71-E

MIKE AND MEGAN MERRIN/BRANDYWINE CONSERVANCY

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I. Proposal:

The applicants have requested a one-year time extension of Coastal Development Permit A-1-MEN-93-71.

II. Staff Recommendation:

A. Approval.

The Commission hereby approves the request for a time extension to Coastal Development Permit A-1-MEN-93-71 on the grounds that there are no changed circumstances, pursuant to Title 14 of California Code of Regulations Section 13169, that affect the consistency of the project with the Mendocino County LCP and the public access policies of the California Coastal Act of 1976.

II. Recommended Findings:

A. Project Description

The project consists of development of a 4,080-square-foot, 22-foot-high single-family residence and garage with a driveway on a blufftop parcel (APN 118-420-06) located west of Highway One in the Caspar Headlands Estates Subdivision. The applicants have indicated that the conditions of escrow for the purchase of APNs 118-420-06 and 05 from the Brandywine Conservancy require that APN 118-420-05 be maintained under the provisions of an open space easement which shall be recorded on the deed.

The site consists of an almost level grass-covered marine terrace area, with an eight-to-ten-foot-high earthen berm located along the front side of the property adjacent to Headlands Drive that serves as a wind barrier and privacy buffer. A botanical survey found one specimen of the rare and endangered plant Castilleja latifolia mendocinensis (Mendocino coast paintbrush) growing on the berm adjacent to Headlands Drive on Parcel -06. There is no other sensitive habitat on the subject parcel.

The subject property is designated Rural Residential-5 [Rural Residential-1] in the County's LCP, meaning that there may be one parcel for every five acres, or one parcel for every one acre with proof of water, and that the property is designated for residential use. The subject lot proposed for development (-06), which is approximately a half-acre in size, is a legal non-conforming parcel.

The Commission attached a number of special conditions to its approval of the project. The Commission required that: the house and garage be redesigned or resited such that they do not extend into the blufftop vertical and lateral access easement areas to be offered as a condition of approval or beyond the

A-1-MEN-93-71-E

MIKE AND MEGAN MERRIN/BRANDYWINE CONSERVANCY

Page Three

crest of the earthen berm; that the applicant record an offer to dedicate lateral and vertical public access easements on the subject property; that the applicant record an open space deed restriction over the entirety of Parcel -05; that the applicant erect wooden posts along the bluff on Parcel -06 to delineate a passageway along the bluff trail that is separated from the proposed residential development; that the applicant agree that by acceptance of this coastal permit the applicant agrees that the issuance of the permit and the completion of the development does not prejudice any subsequent assertion of any public rights of access to or along the shoreline; that the applicant record a document stating that the subject permit is only for development described within the permit and that any future additions or other development that might otherwise be exempt from permit requirements will require an amendment or new coastal permit; that the applicant submit final foundation and site drainage plans; and that the applicant adhere to a number of design restrictions for the structures (see Exhibit No. 9, pages 15-18 of the staff report for the complete conditions).

B. Standard of Review

Section 13169 of the Commission's administrative regulations sets forth the procedures and standards under which the Commission may extend coastal development permits. The principal grounds for granting or denying a request for a time extension of a coastal development permit is a change of circumstances that may affect the consistency of the project with the California Coastal Act. In this case, since the subject permit was approved by the Commission after an appeal of a local coastal permit, the Commission must determine if there are changed circumstances affecting the conformity of the subject development with the Mendocino County LCP and the public access policies of the California Coastal Act.

C. Objections to Extension

As noted above, Section 13169(a) of the Commission's administrative regulations states that the executive director shall determine whether or not there are changed circumstances that may affect the consistency with the California Coastal Act of 1976. Section 13169(a)(2) states that if objection is made to the executive director's determination of consistency, the application shall be reported to the commission. In this case, two neighbors objected to the coastal permit extension request, so the application is being reported to the commission.

Two sets of neighbors submitted objections to the coastal permit extension request (see Exhibits No. 7 and 8). Charles and Lori Saul raise the following objections:

1. The size of the approved residence is inappropriate for the neighborhood, and the scale is disproportionate with the building site. In addition, the parcel is not a half-acre, as represented by the applicant.
2. There is significant erosion along the cliffs of the property, and so the site is getting smaller.
3. Since there is a "For Sale" sign posted on the property, it is obvious that the owners are looking only for financial gain by selling the property with the largest possible approved building plans.

Russel and Flo Ann Norvell raise the following objections:

1. The coastal development permit (CDP 1-89-214-A) granted by the Coastal Commission to the Norvells for residential development on Parcel 7 reads that they could build on their parcel only if parcels 4, 5, and 6 are not developed. Since they have built on their parcel, and they believe their permit constitutes a legal and binding contract, the Merrins may not build on parcels 5 and 6.
2. The subject permit includes both parcels 5 and 6 as proposed for development, and since there is a 10-foot-wide easement separating the parcels owned by the State, and the State will allow no sale or development on this easement, the house cannot be built on parcels 5 and 6.

D. Changed Circumstances

The Commission finds the following regarding the objections raised by the neighbors:

The basis by which this extension request may be denied is whether there are changed circumstances affecting the conformity of the subject development with the Mendocino County LCP and the public access policies of the California Coastal Act. The Commission finds that the Sauls' objections are primarily based on their dissatisfaction with the project itself, which is not a basis for denying the extension request. The one possible "changed circumstance" they raise is that the parcel is getting smaller due to significant erosion along the cliffs of the property. Staff visited the site and through a comparison of photographs taken prior to Commission approval of the project in 1994 with existing conditions on the ground, has concluded that there does not appear to be an appreciable difference between the size of the property now and the size of the property two years ago, when the project was originally

A-1-MEN-93-71-E

MIKE AND MEGAN MERRIN/BRANDYWINE CONSERVANCY

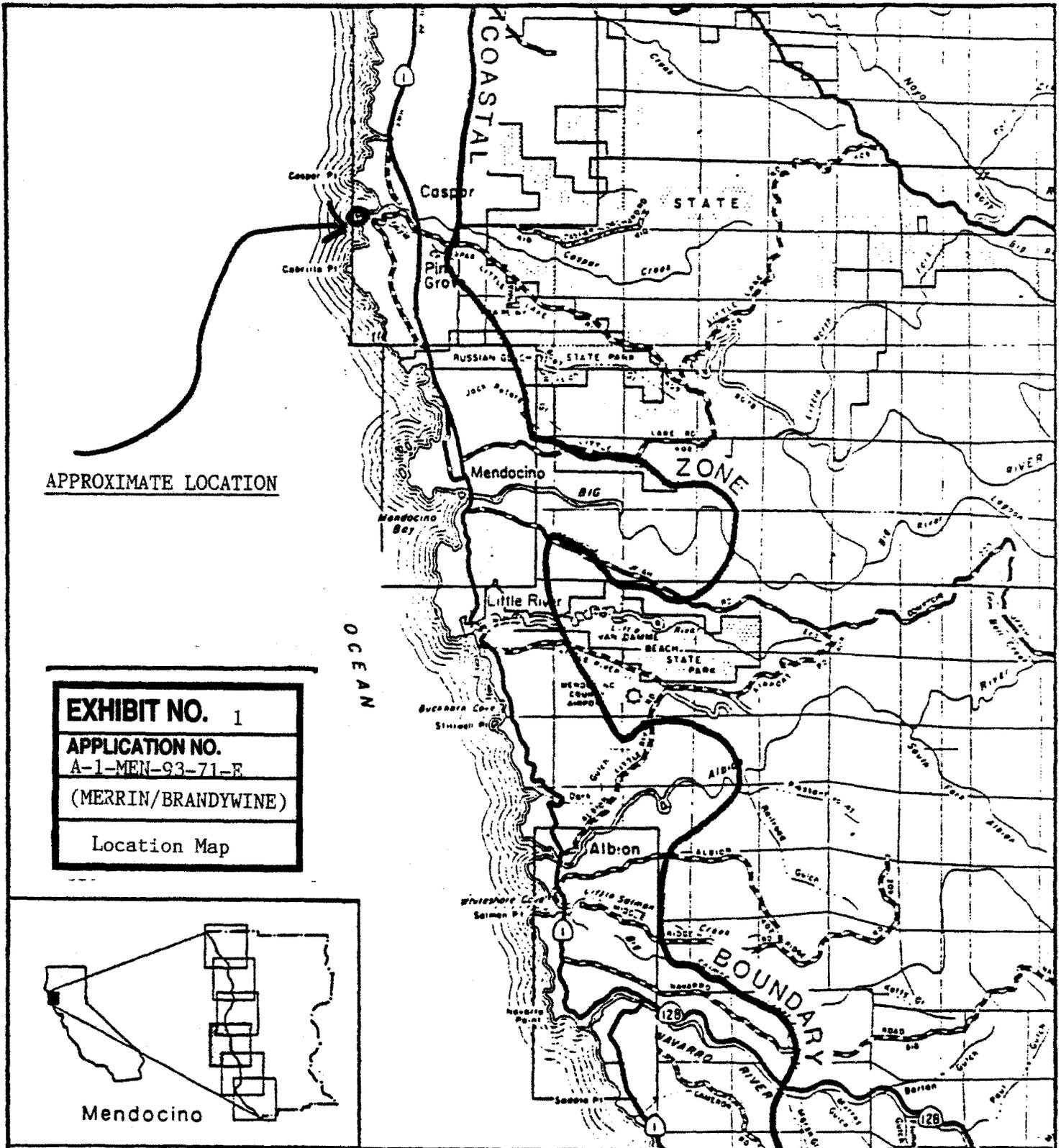
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approved. There is no evidence before the Commission that the parcel is actually smaller than it was when the Commission approved Coastal Permit A-1-MEN-93-71.

The Norvells likewise object to the project itself, and raise no issue of changed circumstance. Regarding the Norvells' contention that parcels 4, 5, and 6 must remain undeveloped as a condition of CDP 1-89-214-A, such contention is inaccurate and does not constitute evidence of a changed circumstance. Although the Commission had previously required that parcels 4, 5, and 6 be preserved as open space in a 1981 permit (1-81-32) which included the subject site, the 1981 permit lapsed because conditions of approval necessary to fulfill the requirements of the coastal permit were not fulfilled. The 1989 permit referenced by the Norvells (unlike the lapsed 1981 permit) does not contain the requirement that parcels 4, 5 and 6 remain undeveloped. In any event, both the 1981 and 1989 permit actions were part of the Commission's record at the time they acted on the subject permit and do not constitute changed circumstances.

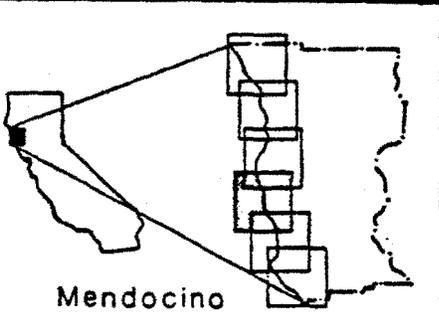
Further, the Commission notes that the project approved by the Commission under Coastal Permit A-1-MEN-93-71 is for construction of a residence and garage to be located on Parcel -06 only. Conditions of the coastal permit that affect Parcel -05, including a condition requiring recordation of an offer to dedicate easements for public access on Parcel -05 and a condition requiring recordation of an open space deed restriction over the entirety of Parcel -05, prohibit alteration of landforms, removal of vegetation, and the erection of structures except for public access improvements or fences that would not adversely affect public access. In other words, development is expressly prohibited on Parcel -05.

In conclusion, the Commission finds no changed circumstance exists that affects the conformity of the subject development with the Mendocino County LCP and the public access policies of the California Coastal Act, and the Commission therefore grants the applicants a coastal permit extension valid for one year, subject to the same conditions approved by the Commission.



APPROXIMATE LOCATION

EXHIBIT NO. 1
APPLICATION NO. A-1-MEN-93-71-E
(MERRIN/BRANDYWINE)
Location Map



Parcels A, B, C, D = Dept of Parks and Recreation

Parcels 4, 5, 6 = Grandwyne Conservancy

..... = Parks easements

SHEET 2 OF 2

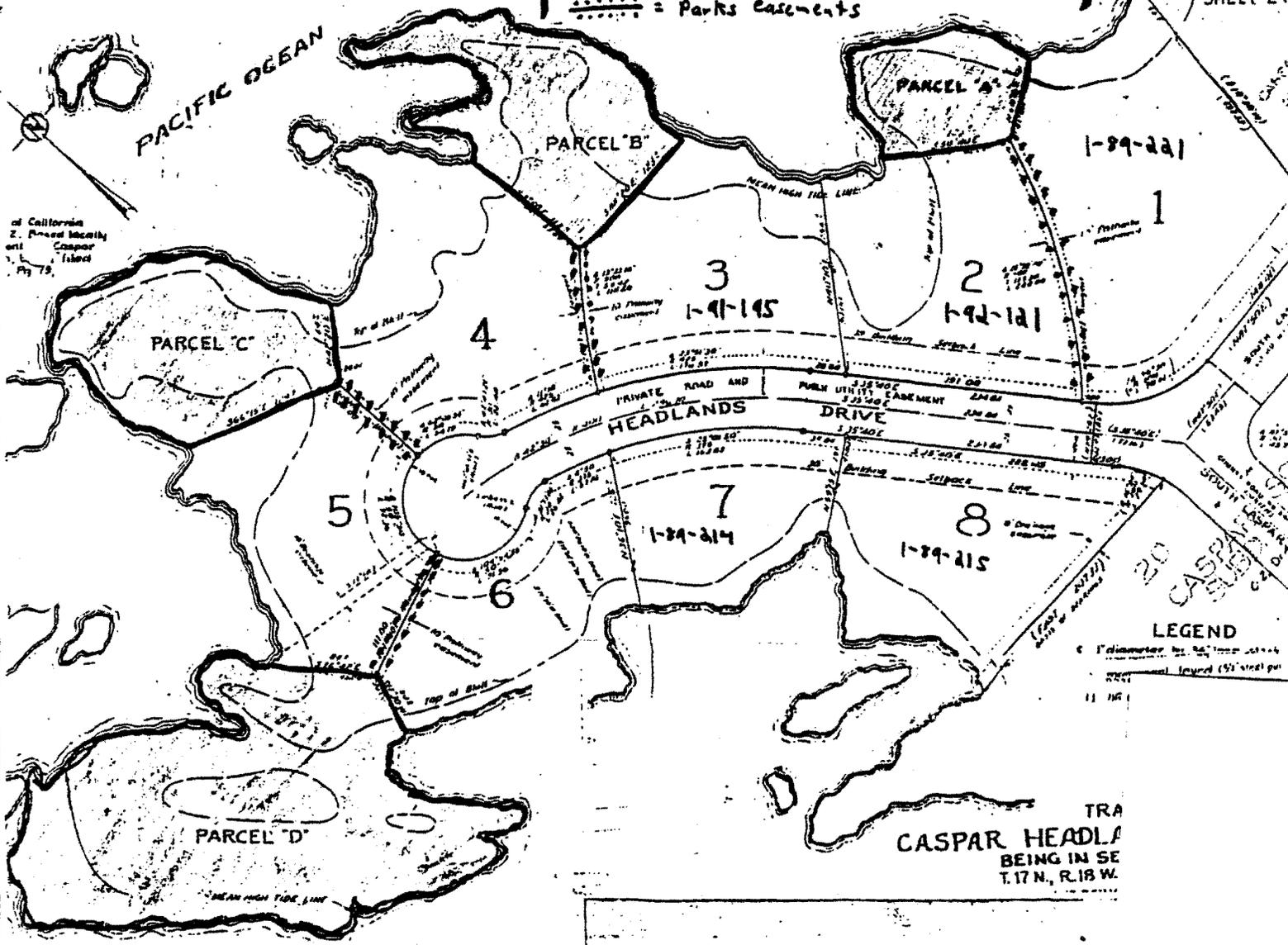


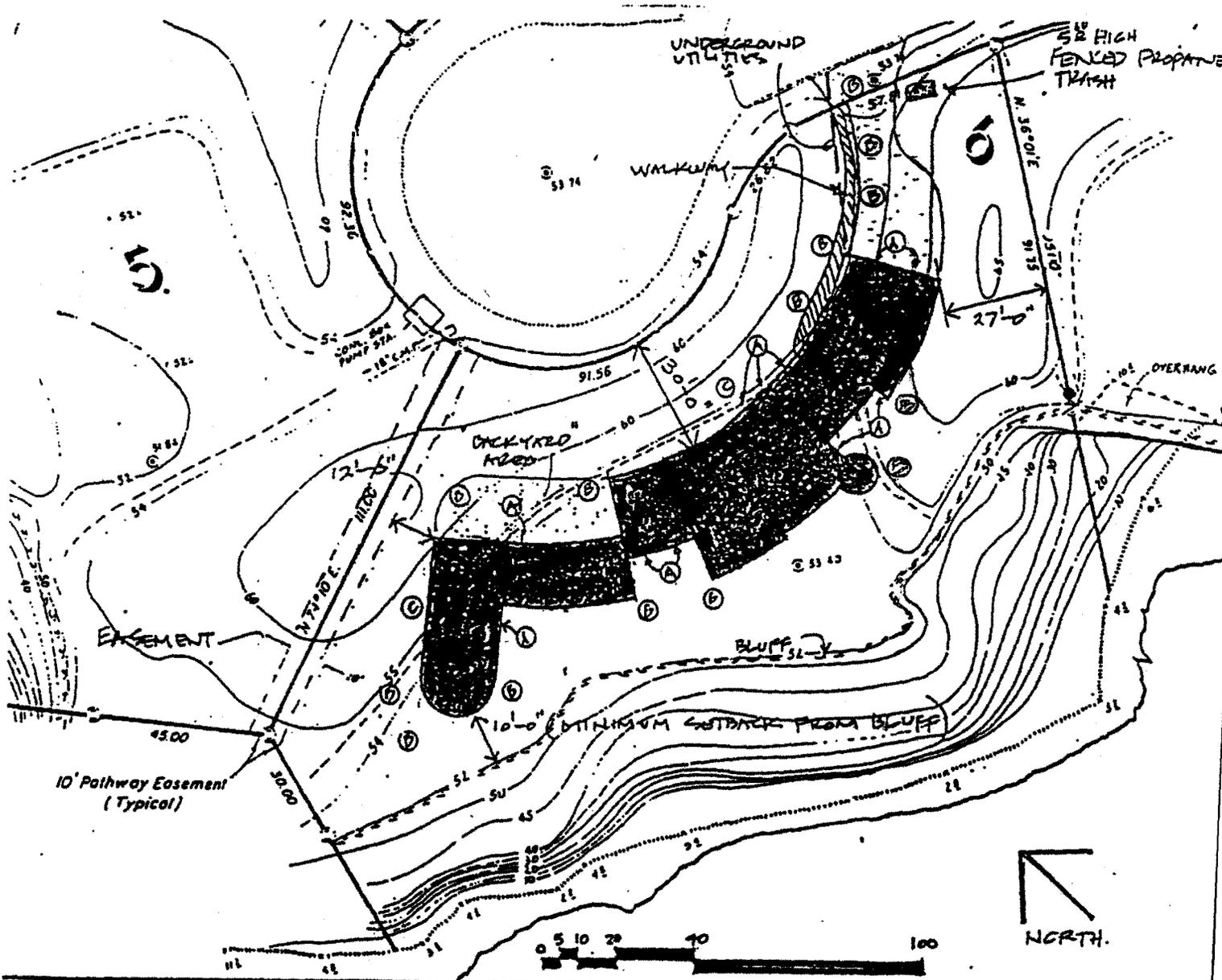
EXHIBIT NO. 2

APPLICATION NO.

A-1-MEN-93-71-E

Caspar Headlands
Estates Subdivision

SITE 1'-30'-0"		
EXTERIOR LIGHTING SCHEDULE		
SYMBOL	MANUFACTURER & MODEL # :	COMMENTS :
Ⓐ	HALO #70 RECESSED CAN	SOFFIT MTD. DOWNLIGHT (BEST EXIT LIGHT)
Ⓑ	NIGHT SCAPING # 6 20 909 20W LIGHT	MUSH ROOM CAP 18' MAX SPREAD
Ⓒ	" " # 6U 1107 21 WTRK	
Ⓓ		
Ⓔ		



SITE

SCALE IN FEET

EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-93-71-E
Site Plan/Lighting	

PLOT PLAN

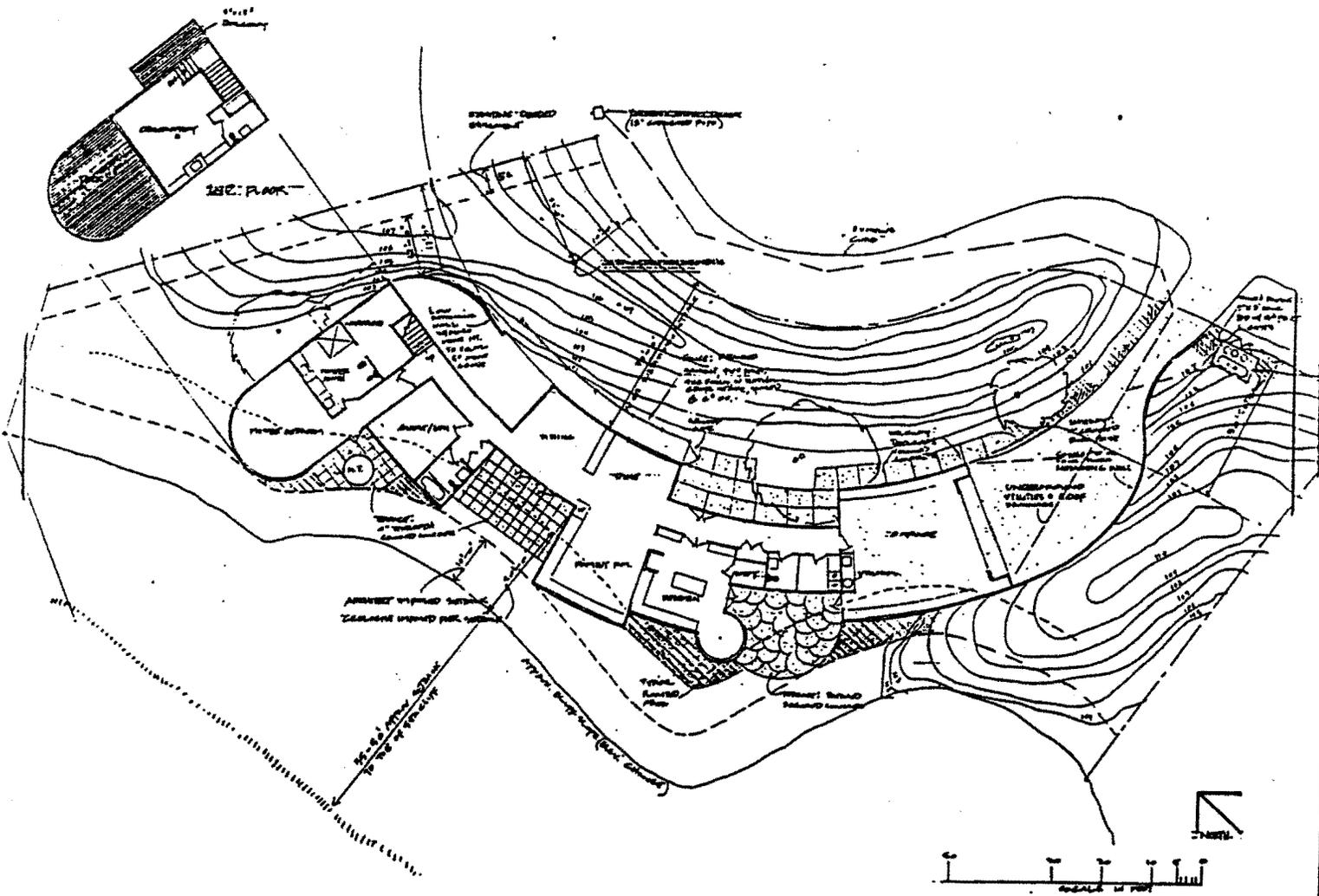
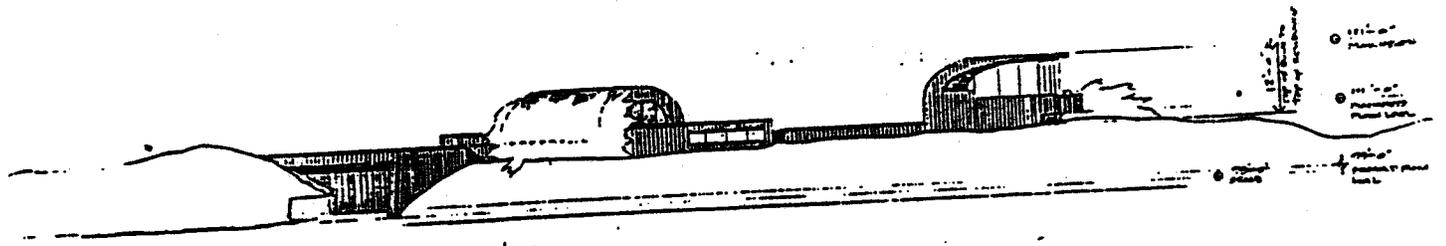
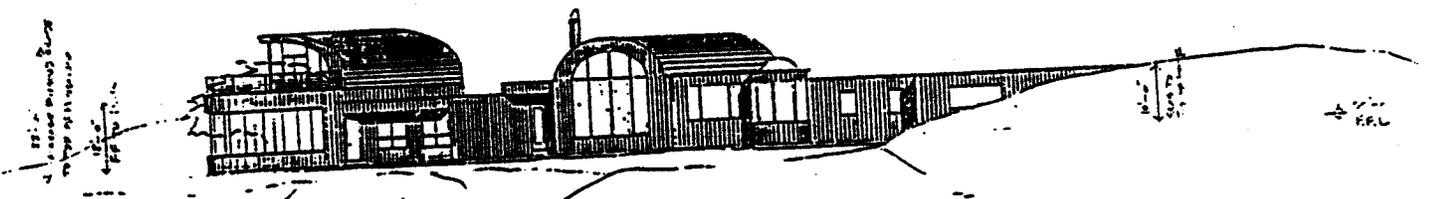


EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-93-71-E
Floor Plans	

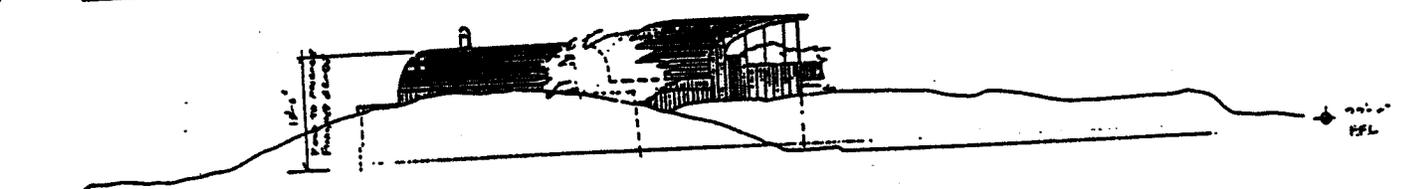
FLOOR PLANS



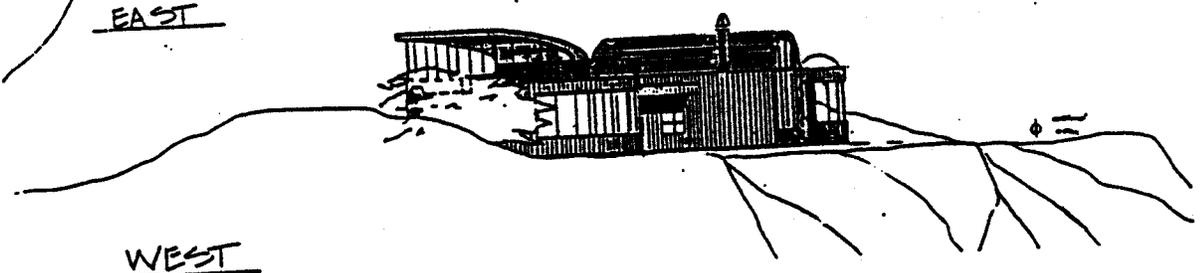
NORTH - FROM CUL de SAC



SOUTH - OCEAN



EAST

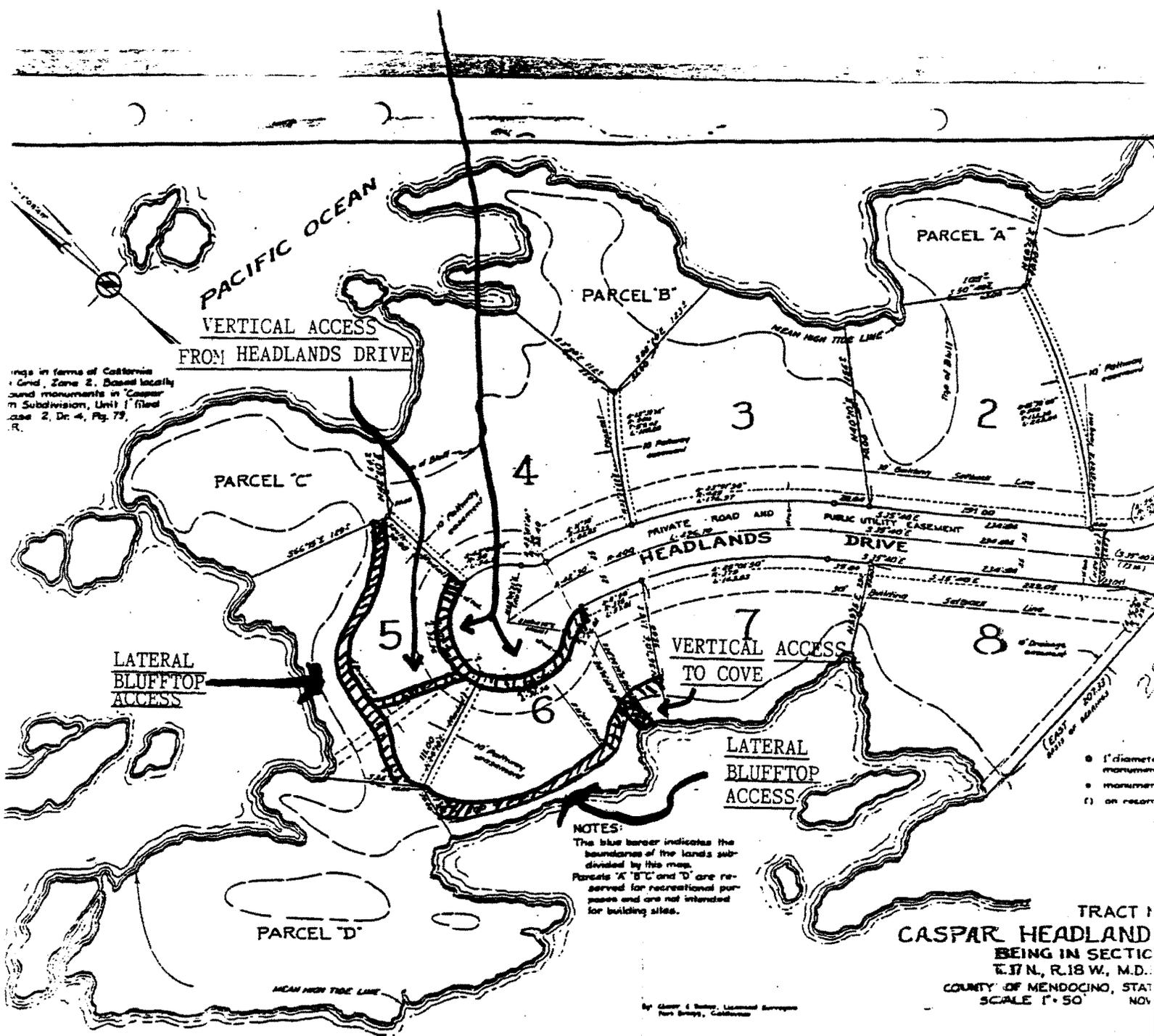


WEST

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-93-71-E
Elevation Plans	

ELEVATIONS

LATERAL ACCESS
ADJACENT TO
HEADLANDS DRIVE



NOTES:
The blue hatched area indicates the boundaries of the lands subdivided by this map.
Parcels 'A', 'B', 'C' and 'D' are reserved for recreational purposes and are not intended for building sites.

TRACT 1
CASPAR HEADLAND
BEING IN SECTION
E. 1/4 N., R. 18 W., M. D.
COUNTY OF MENDOCINO, STATE OF CALIFORNIA
SCALE 1" = 50'

EXHIBIT NO. 6
APPLICATION NO.
A-1-MEN-93-71-E
Approximate Location
of Required Offers
to Dedicate Access
Easements

 = Easements
Parcel 5 = APN 118-420-05
Parcel 6 = APN 118-420-06

NOTE:
This exhibit is for illustrative purposes only. Exact locations and dimensions of required accessways have not been surveyed. This exhibit shows approximate locations of required offers to dedicate access easements.

RUSSEL NORVELL
44033 SURFWOOD DRIVE
POST OFFICE BOX 930
MENDOCINO, CALIFORNIA
95460

RECEIVED
MAR 28 1996
CALIFORNIA
COASTAL COMMISSION

March 22, 1996

TO: Robert Merrill, Coastal Planner
California Coastal Commission, North Coast Area

RE: Request for extension of permit A-1-MEN-93-71, APNs 118-420-05
and 06 (notice dated March 11).

Dear Mr. Merrill:

We are property owners of parcel # 7 on the Caspar Headlands and
there are two reasons why the above permit should not be extended.

1. We have built a house on parcel #7 and in the development permit
granted to us, by the Coastal Commission, it reads that we can only build if
parcels 4, 5, and 6 are not developed. As the Coastal Commission and the
Mendocino County Building Department both signed this permit, we believe this
constitutes a legal and binding contract. We built, therefore parcels #4, #5, and
#6 cannot be developed. (Permit 1-89-214-A, APN 118-420-07 Norvell and
applications 1-88-214, APN 118-420-07, Bartalini, and 1-89-221, APN
118-420-01, Saul).

2. The Merrin permit requests both parcels #5 and #6 for building a
single family residence. However, the ten foot wide swath, separating parcels
#5 and #6 is not merely an easment to the State Marine Reserve. It has been
deeded to the State. The State has said they will allow no sale or development
of this property. Therefore the house cannot be built on parcels #5 and #6.

Thanking you for your attention to this matter, we remain

Yours Sincerely,


Russel Norvell

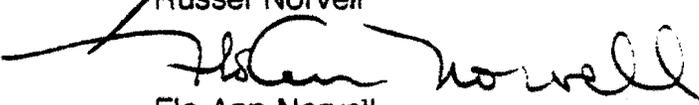

Flo Ann Norvell

EXHIBIT NO. 7

APPLICATION NO.

A-1-MEN-93-71-E

Letter of Objection

March 17, 1996

California Coastal Commission
North Coast Area
45 Fremont, Suite 2000
San Francisco, Ca. 94105-2219
Ref A-1-MEN-93-71

Peter M. Douglas- Executive Director,

We are homeowners of lot 1, 14201 Headlands Dr. Mendocino, and wish to stongly object the extension request for coastal development permit no. A-1-MEN-93-71, our neighboring property.

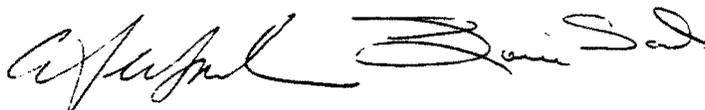
1). We are greatly concerned over the approval of a 4,080 sq. ft. home on such a small parcel. This size home is not only inappropriate for the neighborhood but it's scale to the available building site is entirely disproportionate. We respectfully disagree with the contention that this is a half-acre lot. This figure may include cliffside to high-water line, but does not represent even closely the true tiny nature of the building site.

2). This winter we have noticed on our daily walks on the public trail, significant erosion along the cliffs of this property. This should be taken into account as well,as in fact, the site is getting "smaller".

3). We also feel strongly opposed to the extension of this permit as there has been a "For Sale" sign posted on this property since the application process with you began. The owners obviously are looking only for financial gain by selling this property with the most blatant disregard for the neighboring properties and the homeowners who 'live' here. Their intention seems clear, not to live here but to sell with the largest possible approved building plans allowed by you.

We urge you to reconsider the future of this property not only for the neighboring homeowners, but for the integrity of the site and the impact to the surrounding public access trails enjoyed by all.

Sincerely,



Charles and Lori Saul

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-93-71-E
Letter of Objection	

CALIFORNIA COASTAL COMMISSION
 NORTH COAST AREA
 45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260

In 7a



Filed: November 17, 1993
 Hearing Opened: December 15, 1993
 Staff: Jo Ginsberg
 Staff Report: February 4, 1994
 Hearing Date: February 15, 1994
 Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Mendocino County

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-93-71

APPLICANT: MEGAN AND MIKE MERRIN

AGENT: Leventhal/Schlosser Architects

PROJECT LOCATION: 14260 Headlands Drive, Caspar Headlands Estates, Mendocino County; APNs 118-420-05 and 06.

PROJECT DESCRIPTION: Construction of an approximately 4,080-square-foot, 22-foot-high, single-family residence with a garage and driveway on a .5-acre blufftop parcel.

APPELLANTS: Ron Guenther/Sierra Club Mendocino-Lake Group; Russel and Flo Ann Norvell; Samuel and Geraldine Morse

SUBSTANTIVE FILE DOCUMENTS: Mendocino County Local Coastal Program; County Coastal Development Permit CDP # 28-92.

NOTE: PAGES 2-14 OF THIS REPORT, WHICH PERTAIN TO THE ISSUE OF SUBSTANTIAL ISSUE AND ARE NOT RELEVANT TO THE TIME EXTENSION ISSUE, HAVE BEEN OMITTED.

EXHIBIT NO.	9
APPLICATION NO.	A-1-MEN-93-71-E
Original Staff Report	

PART TWO - DE NOVO ACTION ON APPEAL

STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions:

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, is in conformance with the certified Mendocino County LCP, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached.

III. Special Conditions:

1. Revised Site Plans:

PRIOR TO ISSUANCE of the Coastal Development Permit, the subject property (both APNs 118-420-05 and and 118-420-06) shall be surveyed and mapped to determine the exact location of the bluff edge and the existing access trails. The applicant shall then submit for the Executive Director's review and approval revised site plans that show the house and garage redesigned or resited such that they (1) are no closer than 25 feet from the bluff edge on APN 118-420-06; (2) do not extend into any portion of the 25-foot-wide blufftop access easement required in Special Condition No. 2; and (3) do not encroach toward Headlands Drive beyond the crest of the earthen berm on APN 118-420-06. The house shall remain no higher than 22 feet.

2. Public Access:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall execute and submit for the review and approval of the Executive Director and subsequently record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director easements for public access. The easements shall be located on the subject property, as described below and as generally shown in Exhibit No. 7a:

EXHIBIT NO. 9
APPLICATION NO. A-1-MEN-93-71-E
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MEGAN AND MIKE MERRIN

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(a) a 25-foot-wide lateral access easement (as measured from the existing bluff edge) for pedestrian use extending along the entire blufftop of APN 118-420-06, generally in the location of the existing blufftop access trail as nearly as possible.

(b) a 25-foot-wide lateral access easement for pedestrian use extending entirely through APN 118-420-05, which encompasses the existing blufftop access trail.

(c) a 10-foot-wide vertical access easement for pedestrian use extending from the bluff edge down the bluff to the cove, in the location of the currently existing vertical trail on APN 118-420-06, near the southeast end of the parcel.

(d) a 10-foot-wide vertical access easement for pedestrian use extending from Headlands Drive across APN 118-420-05 to the 25-foot-wide lateral access easement required in (b) above, located in the area of the existing access trail.

(e) a 10-foot-wide pedestrian easement extending the length of both APN 118-420-05 and APN 118-420-06 adjacent to Headlands Drive, as shown in Exhibit No. 7a.

The recorded document shall include metes and bounds legal descriptions of both of the applicant's parcels and the easement areas. The document shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. Deed Restriction/Open Space Easement:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director and shall subsequently record, an open space deed restriction over the parcel designated APN 118-420-05.

This deed restriction shall prohibit (1) any alteration of landforms; (2) the removal of vegetation (except to maintain access trails or if the Executive Director determines that such vegetation threatens the stability of steep slopes or other native vegetation); and (3) the erection of structures of any type anywhere on the subject parcel, except for public access improvements or fences that have been approved through an amendment to this coastal permit and have been determined not to adversely affect public access.

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MEGAN AND MIKE MERRIN
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The open space deed restriction shall not interfere with any offers to dedicate public access trails, as required by this permit or any future amendments or coastal permits for the subject property, and shall not preclude a public agency or private association from accepting for managing any such offers on the subject property.

The deed restriction shall be recorded free of prior liens and encumbrances except tax liens, shall be irrevocable, running from the date of recordation, and shall run with the land binding the landowner, and his/her heirs, assigns, and successors in interest to the subject property.

4. Erection of Posts:

PRIOR TO OCCUPANCY of the residence, the applicant shall erect wooden posts at reasonable intervals (two to six feet apart) along the bluff on APN 118-420-06, located between the bluff trail and the proposed residence, in a manner similar to that used on the adjacent Norvell property (APN 118-420-07) to delineate a passageway along the bluff trail that is separated from the proposed residential development.

5. Public Rights:

By acceptance of Permit No. A-1-MEN-93-71, the applicant agrees: (a) that the issuance of the permit and the completion of the development does not prejudice any subsequent assertion of any public rights of access to or along the shoreline, e.g., prescriptive rights or public trust; and (b) that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with any rights of public access to or along the shoreline acquired through use which may exist on the property.

6. Future Development:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, and subsequently execute and record a document stating that the subject permit is only for the development herein described in the coastal development permit and that any future additions or other development on the subject property as defined in Public Resources Code Section 30106, including the construction of fences, gates, other such barriers, signs, or outbuildings, that might otherwise be exempt under Public Resources Code Section 30610(a), will require an amendment to this permit from the California Coastal Commission or will require an additional coastal development permit from Mendocino County. The document shall be recorded as a covenant running with the land binding all successors and assignees in interest to the subject property.

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7. Final Foundation and Site Drainage Plans:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit for the Executive Director's review and approval final foundation and site drainage plans that incorporate all recommendations included in the geotechnical report and addendum included with the County application regarding site grading, foundations, retaining walls, and site drainage. Any deviation from the approved plans will require an amendment to this coastal permit.

8. Design Restrictions:

PRIOR TO ISSUANCE of the Coastal Development Permit, a revised lighting plan shall be submitted for the Executive Director's review and approval, eliminating the "hi liter" wide angle lamps currently proposed by the applicant, and reducing the number of proposed exterior lights to an absolute minimum necessary for safety purposes. All exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward.

Further, all exterior siding of the house and garage shall be of natural or natural-appearing materials of dark earthtone colors only, and the roof shall also be of dark earthtone color and shall be of a natural-appearing material. In addition, all exterior materials, including the roof and the windows, shall be non-reflective to minimize glare.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

1. Background:

As noted in the substantial issue portion of this report, the Caspar Headlands Estates Subdivision has a long and complex history. The subject parcels were created by this eight-lot subdivision, which was recorded by the County in 1969. In 1970, the Sierra Club and the State filed a lawsuit against the property owner and Mendocino County, alleging that prescriptive rights of public access existed on the headlands (Sierra Club v. Viola Richardson). The lawsuit resulted in a stipulated judgement that created four non-contiguous parcels on the perimeter of the headland, which were deeded to State Parks to provide public access. (The lawsuit did not result in any determination about the existence of prescriptive rights.) In addition, four ten-foot-wide pedestrian easements leading from Headlands Drive to each of these parcels were recorded. These four parcels and access easements constitute Caspar Headlands State Reserve (see Exhibit No. 3); the stipulated judgement provides

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EXHIBIT NO. 9
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Original Staff Report

that the Parks parcels are to be used for scientific purposes only, but this restriction is not enforced by State Parks.

In 1981 the Commission approved a permit application for residential construction in the eight-lot Caspar Headlands Estates Subdivision (1-81-32, Lang/Lee). A number of conditions were required to protect public access and visual resources, including a requirement that only five of the eight parcels be developed, and that the most scenic parcels--the three westernmost parcels (APNs 118-420-04, 05, and 06)--be preserved as open space. Several different conditions suggested ways in which this could be accomplished. In an attempt to satisfy these conditions, the applicants deeded APNs 118-420-04, 05, and 06 to the Brandywine Conservancy, a private non-profit organization based in Pennsylvania. However, all of the conditions necessary to fulfill the requirements of the coastal permit were not fulfilled and the permit lapsed.

Subsequently, the five remaining residential lots owned by Lang and Lee were sold. The Commission has approved coastal permits for development of single-family homes on each of the five lots, described as follows: (1) Coastal Permit No. 1-89-214 (Bartalini/Norvell) approved a 22-foot-high, 2,331-square-foot house set back 30 feet from the bluff edge on Parcel -07; (2) Coastal Permit No. 1-89-215 (Coughlan) approved a 22-foot-high, 2,766-square-foot house set back 40 feet from the bluff edge on Parcel -08; (3) Coastal Permit No. 1-89-221 (Saul) approved a 22-foot-high, 3,100-square-foot house set back 45 feet from the bluff edge on Parcel -01; (4) Coastal Permit No. 1-91-195 (Kiemele) approved an 18-foot-high, 2,936-square-foot house set back 30 feet from the bluff edge on Parcel -03; and (5) Coastal Permit No. 1-92-121 (Tillotson) approved a 22-foot-high, 2,379-square-foot house set back 50 feet from the bluff on Parcel -02.

The three Brandywine parcels remain undeveloped, but are used by the public for walking and viewing; to access a small rocky cove below Parcel -06; and to reach three of the four Parks parcels, which are located adjacent to and seaward of the Brandywine parcels. The proposed project is for construction of a residence on one of the Brandywine parcels, APN 118-420-06, with an open space easement proposed for a second Brandywine parcel, APN 118-420-05, in the same ownership.

The staff reports prepared for the above approved permits indicate that the approvals were based on the assumption that the three westerly parcels (Brandywine parcels) would remain in open space. The Commission's expectation that the Brandywine parcels would remain undeveloped rested on the fact that they were owned by a land trust which apparently maintains in open space various lands in Pennsylvania as their stated mission.

When it approved development on Parcels -01, -02, -03, -07, and -08, the Commission found that although Coastal Permit No. 1-81-32 (Lang/Lee) was never

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exercised, it was appropriate for development to take place on five of the eight lots as long as the most scenic lots were not developed. The Commission also found that it was clearly the intent of the Commission when it approved Coastal Permit No. 1-81-32 that the Brandywine lots never be developed. The Commission further found that impacts to public access and visual resources resulting from development on the five easterly parcels would be mitigated in part by the fact that the three westernmost parcels would remain undeveloped.

2. Project and Site Description:

The project consists of development of a 4,080-square-foot, 22-foot-high single-family residence and garage with a driveway on a .5-acre blufftop parcel (APN 118-420-06) located west of Highway One in the Caspar Headlands Estates Subdivision (see Exhibits No. 4, 5, and 6). In addition, the applicants have indicated in their project description that the conditions of escrow for the purchase of APNs 118-420-06 and 05 from the Brandywine Conservancy require that APN 118-420-05 be maintained under the provisions of an open space easement which shall be recorded on the deed.

The site consists of an almost level grass-covered marine terrace area, with an eight-to-ten-foot-high earthen berm located along the front side of the property adjacent to Headlands Drive that serves as a wind barrier and privacy buffer. The house was originally proposed to be set back from the bluff edge 10 feet, but the County required a 20-foot setback. A botanical survey found one specimen of the rare and endangered plant Castilleja latifolia mendocinensis growing on the berm adjacent to Headlands Drive on Parcel -06. There is no other sensitive habitat on the subject property.

As shown in Exhibit No. 3, a ten-foot-wide pedestrian easement owned by State Parks is located between the two subject parcels, ostensibly providing public access from Headlands Drive to Parcel "D," which is also owned by State Parks. However, this easement traverses a steep earthen berm, and is not well used by the public for coastal access, as evidenced by the lack of a worn pathway through the easement. Instead, the public uses what was meant to be the driveway cut to Parcel -05, which is a flat, cleared area with a worn pathway that provides easy, direct access to the bluffs. In addition, there are both vertical and lateral blufftop trails on the subject parcels (see Exhibit No. 7).

The subject property is designated Rural Residential-5 [Rural Residential-1] in the County's LCP, meaning that there may be one parcel for every five acres, or one parcel for every one acre with proof of water. The subject lot proposed for development (-06), which is approximately a half-acre in size, is a legal non-conforming parcel.

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3. New Development:

Policy 3.9-1 of the County's LUP states that new development shall be located in or in close proximity to existing areas able to accommodate it, and shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

The proposed development consists of construction of a single-family residence. Since the property is located within an existing subdivision that is served by both a community water and sewer system, the project is consistent with Policy 3.9-1 to the extent that it is located within an area able to accommodate it.

4. Environmentally Sensitive Habitat Areas:

Section 3.1-7 of the County's LUP and Section 20.496.020 of the County's Zoning Code require the protection of environmentally sensitive habitat areas, and specify that a buffer area be established to protect the environmentally sensitive habitat from significant degradation resulting from future developments.

The botanical survey done for the subject property found only one specimen of the rare and endangered plant species, Castilleja latifolia mendocinensis (Mendocino coast paintbrush), growing northeast of the crest of the earthen berm located between Parcel -06 and Headlands Drive. Special Condition No. 1 requires that revised site plans be submitted showing the house and garage to be resited or redesigned such that they do not encroach toward Headlands Drive beyond the crest of the berm on Parcel -06. Furthermore, Special Condition No. 5 requires recordation of a deed restriction stating that all future development that might otherwise be exempt from coastal permit requirements under the California Code of Regulations requires an amendment or coastal development permit. This condition will allow the County or the Commission to review any future proposals for new development such as fences, public access improvements, additions to the residence, etc. to ensure that they will not be sited where they might affect sensitive habitat.

As conditioned, therefore, the Commission finds the proposed project to be consistent with Policy 3.1-7 of the LUP, and with Section 20.496.020 of the Zoning Code, as all environmentally sensitive habitat will be protected.

5. Visual Resources:

Policy 3.5-1 of the County's LUP states that the scenic and visual qualities of Mendocino coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed

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to protect views to and along the ocean and scenic coastal areas, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas shall be subordinate to the character of its setting.

Section 20.504.015 (C) of the certified Zoning Code for Mendocino County states in relevant part:

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

(2) In highly scenic areas west of Highway One, new development shall be limited to 18 feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

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

Section 20.504.015(C) also requires that visual impacts of development on terraces should be minimized by, among other things, providing bluff setbacks for development adjacent to or near public areas along the shoreline, and designing development to be in scale with the rural character of the area. LUP Policies 3.5-3 and 3.5-4 reiterate these Zoning Code policies.

As described above, the subject property is located in the Caspar Headlands Estates Subdivision on a prominent headland west of Highway One. The subject property is in an area designated "Highly Scenic" in the County LUP, and thereby subject to special protection of visual resources. In fact, the subject parcels are two of the three most scenic parcels in the eight-lot subdivision. The 22-foot-high residence approved by the County would be highly visible from the largest of the four State Parks parcels, Parcel "D" (see Exhibits No. 2 and 3), which is located immediately west of Parcel -06; from the State Parks trail easement leading from Headlands Drive to Parcel "D"; from South Caspar Drive, a County-owned road; from the pedestrian access trails within the Caspar Headlands Estates Subdivision that are currently used by the public; and from various locations within the adjacent Caspar South Subdivision.

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The scale of the house (4,080 square feet), in combination with the 20-foot blufftop setback required by the County, would not be visually compatible with the character of the surrounding area or subordinate to its natural setting, inconsistent with LUP Policies 3.5-1, 3.5-3, and 3.5-4, and with Zoning Code Section 20.504.015(C). The house is significantly larger than the other houses approved on the Headlands and in the Caspar South Subdivision. The five houses approved by the Commission on the easterly portion of the headland range in size from approximately 2,330 square feet to 3,100 square feet (including garages) (see chart on Page 6). The average house size is about 2,700 square feet. The subject residence would be about 50% larger than the "average" house approved on the Headlands, and about 30% larger than the largest house approved on the Headlands.

Further, siting the residence only 20 feet from the coastal bluff edge is not consistent with the siting of other residences on the Headlands and would increase the visual impact of the structure as viewed from other locations on the Headlands (especially from State Parks Parcel "D" and the access easement to the west of the house) and in the Caspar South Subdivision. The other residences approved on the Headlands incorporate 30- to 50-foot blufftop setbacks.

To reduce the adverse impacts on visual resources, such that the residence is subordinate to the natural setting and is in character with surrounding structures, the Commission attaches Special Condition No. 1, requiring submission of revised site plans showing the residential development resited or redesigned such that it is located no closer than 25 feet from the bluff edge. Special Condition No. 1 also requires that the residential development not encroach towards Headlands Drive beyond the crest of the earthen berm on APN 118-420-06, to ensure that the shielding effect of the berm will not be eliminated.

In addition, the Commission attaches Special Condition No. 3, requiring that the applicant record an open space deed restriction over the entire Parcel -05, as included by the applicant in their project description. The deed restriction shall prohibit (1) any alteration of landforms; (2) the removal of vegetation (except to maintain access trails or if the Executive Director determines that such vegetation threatens the stability of steep slopes or other native vegetation); and (3) the erection of structures of any type anywhere on the subject parcel, except for public access improvements or fences that have been approved through an amendment to this coastal permit and have been determined not to adversely affect public access. As such, this highly scenic parcel will remain undeveloped and will provide unimpeded, dramatic views of the coast to mitigate for the visual impacts resulting from the residential development on Parcel -06.

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The Commission also attaches Special Condition No. 8, requiring submission of a revised lighting plan that eliminates the "hi liter" wide angle lamps currently proposed by the applicant for the residence, and reducing the number of proposed exterior lights to an absolute minimum necessary for safety purposes. (The currently proposed lighting plan is shown in Exhibit No. 4.) This condition also requires that all exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward. Further, all exterior siding of the house and garage shall be of natural or natural-appearing materials of dark earthtone colors only, and the roof shall also be of dark earthtone color and shall be of a natural-appearing materials. In addition, all exterior materials, including the roof and the windows, shall be non-reflective to minimize glare.

Finally, the Commission attaches Special Condition No. 6, requiring recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from permit requirements under the California Code of Regulations, such as fences or gates, requires a coastal permit or an amendment to this coastal permit. In this way, the Commission or the County will be able to review all future development to ensure that it will not have significant adverse impacts on visual resources.

As conditioned, therefore, the proposed project is consistent with County LUP Policies 3.5-1, 3.5-3, and 3.5-4, and with Zoning Code Section 20.504.015(C), as impacts to visual resources have been minimized and coastal views have been protected.

6. Geologic Hazards:

Policy 3.4-7 of the LUP requires 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). Section 20.500.020(B) of the Zoning Code reiterates this language, and states that construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.

As noted above, the subject property is located on a coastal terrace. A geologic report was prepared in 1978 for the Caspar Headlands Estates subdivision, and an update with recommendations was done in 1989. This addendum recommended blufftop setbacks ranging from 30 to 50 feet on the five easterly parcels in the subdivision. No setbacks were recommended for the Brandywine parcels.

A geologic report was present for the Merrin application in 1992. According to the report, the bluff area on the site is comprised of an upper bluff which varies in height from approximately 9 feet to 24 feet, with an inclination of

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about 32 to 40 degrees from horizontal. The lower bluff area varies from about 29 to 43 feet in height and varies in steepness from 70 degrees to vertical. In some areas, the base of the bluff area has been undercut up to about 4 feet.

The geotechnical report contains recommendations for site grading, foundations, retaining wall, and site drainage. The recommendations for drainage are updated in an addendum dated January 30, 1993. Special Condition No. 7 requires submission of final foundation and site drainage plans that incorporate all recommendations made in the geotechnical report intended to avoid creating a geologic hazard. In addition, the Commission attaches Special Condition No. 6, requiring recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from permit requirements under the California Code of Regulations, such as fences or outbuildings, requires a coastal permit or an amendment to this coastal permit. In this way, the Commission or the County will be able to review all future development to ensure that it will not be located where it might result in the creation of a geologic hazard.

As conditioned, therefore, the proposed development is consistent with LUP Policy 3.4-7 and Section 20.500.020(B) of the Zoning Code.

7. Public Access:

One of the grounds for an appeal of a project approved by a local jurisdiction having coastal permit authority is that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act. This section of the report will therefore discuss the project in light of the coastal access policies of both the Coastal Act and the LCP.

Policy 3.6-27 of the County's LUP states that:

Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is

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necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site. (Emphasis added)

Section 20.528.030(B) and (C) of the Zoning Code reiterates this.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway...

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In applying these policies, however, the Commission is limited by the need to show that any denial based on these policies or any decision to grant a permit subject to special conditions requiring public access is necessary to offset a project's adverse impact on existing or potential public access.

A. Public Use of the Subject Property.

The above policies of the Coastal Act place a high priority on protecting public access to the coast, especially where historic public use may have given rise to prescriptive rights to that access.

As noted above, there is clear evidence that the public has used the subject property, and, in fact, all of the Headlands, for coastal access since 1970 when the stipulated judgement in Sierra Club resulted in State Parks acquiring the four Parks parcels and accompanying easements that constitute Caspar State Headlands Reserve. The public achieves pedestrian access to the Parks-owned parcels by using the opening in the gate at the entrance to the cul-de-sac and then generally crossing the private, undeveloped lots on either side of Headlands Drive to reach the coast.

Two factors suggest that public use of the project site may be substantial and may have given rise to prescriptive rights. If prescriptive rights of public access have accrued, the proposed residential development may interfere with such access, physically blocking existing access trails and providing a psychological impediment to public use of historic trails.

The first factor suggesting that public use of the subject property has been substantial is the presence of a number of well-worn, clearly defined trails on the parcels, including blufftop lateral trails on both lots; vertical trails leading from Headlands Drive to the bluffs; and a vertical trail leading down the bluff to a rocky pocket cove on Parcel -06. These trails have been noted by Commission staff during site inspections. During each of several site inspections, staff noted members of the public using the trails. These trails are clearly visible in aerial photographs from 1978, 1986, and 1993.

The Commission found in 1989, 1991, and 1992 when it approved residential development on the five easterly parcels in the subdivision that there is clear, substantial evidence supporting the conclusion that a portion of each of the five easterly properties has been impliedly dedicated to the public for purposes of coastal access, and, in addition, found that there was public use of the entire Headlands area.

There is thus substantial evidence that since 1970 the public has crossed the properties on the Caspar Headlands, making no distinction between public and

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private property. The placement of "No Trespassing" signs at the entry to the cul-de-sac has not effectively halted public use of the subject property and adjoining parcels. The Headlands has never been posted to indicate which parcels belong to State Parks, which to the Brandywine Conservancy, and which to private owners. The resulting impression is that the public has the right to use any or all of the parcels within the subdivision.

Second, the Commission has reviewed approximately 34 letters sent to the Commission by members of the public (see Exhibit 8), as well as 22 letters sent to the County during their processing of the coastal permit, many of which discuss public use of the subject property.

Since there appears to be evidence of historic public use of the subject property, the potential exists for public prescriptive rights to have accrued over the site of this proposed development. The Commission has analyzed the extent and nature of this historic public use to determine whether prescriptive rights may exist, and to protect such rights if there is sufficient evidence that they may exist. The Commission cannot determine whether such rights do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Coastal Act Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, the Commission need only determine whether there is substantial evidence that such rights may exist.

1. Methodology.

Commission staff examined available information for evidence of whether prescriptive rights may have accrued, including the Commission's aerial photographs, previous Commission findings, site visits to observe the physical evidence, and other miscellaneous documents such as letters to the Commission and to the County from concerned citizens. Information on public use of the site was provided in the 22 correspondences submitted to the County, and in the 34 correspondences submitted to the Commission from interested persons (see Exhibit No. 8). (One of these 34 letters was signed by 11 public access users who state that they have enjoyed public access at the Headlands for recreation, fishing, and diving.) Most of the correspondents indicate that they have used the subject site for coastal access. Other correspondents do not describe such use, but instead direct their comments toward support of the project, protests against the project, and/or support for continuing public access and open space on the subject property.

Uses listed include walking/hiking, coastal viewing, beach access, fishing, picnicking, whale watching, diving, tidepool exploring, and photography. A number of correspondents state that they have never asked for or received

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permission to use the area, that no one has ever interfered with their use of the area, and that they have made use of the site as if it were public property.

In fact, as noted above, since there is a State Parks sign at the gate at the entrance to the subdivision, and State Parks signs within the subdivision, many visitors appear to assume the entire headlands is State Parks property.

3. Conclusions.

The criteria necessary for establishing prescriptive rights across a private parcel include the following:

- a. The public has used the land for a period of five years or more as if it were public land.
- b. Without asking for or receiving permission from the owner.
- c. With the actual or presumed knowledge of the owner.
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use, and
- e. The use has been substantial, rather than minimal.

The Commission recognizes that the letters staff received did not address all possible aspects of public use, and a full prescriptive rights survey was not undertaken. However, it still seems clear that a substantial amount of use of the applicants' property by the public has taken place such that prescriptive rights may have accrued.

It appears, from the descriptions of public use of the property contained in the letters and postcards regarding public use of the applicants' property, that public use of the property has been substantial, rather than minimal, and that the public has used the applicants' property for a number of different purposes and recreational activities.

There is also evidence that the use of the applicant's property as a coastal accessway has been for a period of five years or more as if it were public land, as an examination of aerial photographs from 1978, 1986, and 1993 reveals the presence of trails on the subject property.

Further, there is evidence that most of the use of the applicants' property as a coastal accessway has been without asking for or receiving permission from the owner, as a number of the correspondents who sent letters indicated that they had used the land without asking for or receiving permission from the owner.

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The Commission's role is not to determine the existence or non-existence of prescriptive rights, as would a court of law, but rather to determine if substantial evidence exists in the record to indicate that such rights may exist and whether such rights would be interfered with by the developments proposed by the applicants. The existence of sometimes conflicting evidence does not undermine the substantial nature of the evidence which does indicate public use of the site. The record before the Commission indicates that substantial evidence does indeed exist to the effect that considerable public use of the property in question has occurred over a period of many years, without permission, without interference, which, taken together, leads to the conclusion that prescriptive rights may indeed exist, and that such rights could be blocked or inhibited, if not for the imposition of the conditions discussed below.

The subject site is within 1000 yards of the sea; therefore, the required five-year period of substantial public use need not have occurred prior to March of 1972 in order to establish public rights (see Civil Code Section 1009(e) for more information).

Therefore, the Commission finds that there is substantial evidence of prescriptive rights across and along the subject property and that these potential rights to coastal access must be protected.

LUP Policy 3.6-27 states that where it is indicated that there is the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. This policy indicates the necessity of providing public access on the subject property. In addition, the proposed residential development could interfere with the continued ability of the public to use the existing trails. Even with a 25-foot blufftop setback, a portion of the proposed residence will block the existing lateral blufftop trail; a portion of the garage will block the existing vertical trail from Headlands Drive to the site; the proposed driveway will be located directly on top of the existing trail leading from Headlands Drive to the bluff, and, if allowed to be paved, will eradicate the existing trail; and the vertical trail to the beach will be partially cut off. To this point, Policy 3.6-27 of the LUP also states that when development must be sited on the area of historic public use, an equivalent easement providing access to the same area shall be provided on the site.

Therefore, to protect the public prescriptive rights that may exist on the subject property pursuant to Coastal Act Section 30211, and to provide an access easement pursuant to LUP Section 3.1-27, the Commission attaches Special Conditions No. 1, 2, 4, 5, and 6 to the permit.

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Special Condition No. 2 requires that the applicants record an offer to dedicate an access easement as per the following description: (a) a 25-foot-wide lateral easement for pedestrian use extending along the entire blufftop of Parcel -06, the site of the proposed house; (b) a 25-foot-wide lateral easement for pedestrian use extending through Parcel -05, the parcel the applicants have proposed as open space, along the existing lateral blufftop access trail; (c) a 10-foot-wide vertical access easement for pedestrian use extending from the bluff edge down the bluff to the cove, in the location of the currently existing vertical trail on Parcel -06; (d) a 10-foot-wide vertical access easement for pedestrian use extending from Headlands Drive across Parcel -05 to the lateral access trail on the parcel, located in the area of the existing access trail; and (e) a 10-foot-wide pedestrian easement extending the length of both Parcel -05 and Parcel -06 adjacent to Headlands Drive (as shown approximately in Exhibit No. 7a).

Special Condition No. 2 (a) and (b) are required to protect existing public use on the existing trails along the blufftop of both parcels. On Parcel -06, the required offer to dedicate a public access easement will not exactly correspond to the existing blufftop trail in a few spots because the existing trail extends inland farther than 25 feet from the bluff edge, and the Commission is requiring an offer of dedication of a 25-foot-wide access easement as measured from the edge of the bluff. Although this action will slightly reroute access from the existing trail, the Commission finds it appropriate to locate the required access easement 25 feet from the bluff edge to accommodate the proposed development on what is a very small parcel with limited developable area. As such, a portion of the required access easement will constitute an "equivalent" access easement such as is discussed in LUP Policy 3.6-27.

However, since the required access easement will not be physically located in exactly the same place as the existing trail is located, it may not be clear to access users where the access easement has been located. Special Condition No. 4 requires that the applicant erect wooden posts along the bluff on Parcel -06 to delineate a passageway along the access easement that is separated from the residential development, in the manner in which it was done on the adjacent Norvell parcel (APN 118-420-07). This will clarify the location of the access easement, and, in addition, it will reduce the potential conflict between residential development and a public accessway by creating a physical barrier between the two.

Special Condition No. 2(c) is required to protect existing public use on an existing access trail down the bluff to the cove on Parcel -06.

Special Condition No. 2(d) is required to protect existing public use on a public access trail from Headlands Drive to the bluffs on Parcel -05. While

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there is an existing 10-foot-wide public State Parks easement nearby, located between Parcels -05 and -06, the Parks easement is located such that it climbs over the top of the steep earthen berm and is rarely used by the public since it is difficult to traverse. Requiring public access on the existing access trail that is actually used by the public has the added benefit of allowing disabled or elderly people, who would be unable to traverse the berm, to reach the bluffs and enjoy coastal access.

This access easement doubles also as essentially an "equivalent" access to compensate for the loss of a vertical access trail leading from Headlands Drive to the bluff on Parcel -06. This existing trail will be obliterated by the garage and driveway proposed on the site. Since the garage and driveway will block the existing access trail from Headlands Drive to the bluff, the Commission could properly require that the applicants record an offer to dedicate a public access easement along the driveway, and that they resite the garage such that it does not interfere with this trail. However, given the limited developable area available on Parcel -06, the Commission finds that it is appropriate to require substitute access in the form of a vertical accessway on Parcel -05 in the location of the existing trail on that parcel that leads from Headlands Drive to the bluff, even though the result is still a net diminution in vertical accessways.

Further, since Parcel -05 is sited between the two most scenic of the Parks parcels, Parcels "C" and "D," it is heavily used to provide access to these two parcels. In particular, since the Parks easement that leads to Parcel "D" is located on the earthen berm separating Parcels -05 and -06, the public has for many years used instead what was intended to be the driveway cut on Parcel 5 as a trail to reach the bluffs and Parcel "D." Since there appears to be extensive public use of Parcel -05, the Commission finds it appropriate to require an offer to dedicate a public access easement along the blufftop on Parcel -05. The blufftop trail along Parcel -05 connects to other well-used vertical accessways from Headlands Drive and serves to compensate in part for the lost vertical accessway at the location of the proposed driveway on Parcel -06.

Special Condition No. 2(d) is required to provide a means by which the public can reach the public State Parks easements and parcels. Headlands Drive is private, and a locked gate is located at the entry to the subdivision that prevents vehicular traffic but permits pedestrians to pass. The public achieves pedestrian access to the Parks-owned parcels on the headland by using the gate and then either proceeding west along the privately owned Headlands Drive, or by crossing the private, undeveloped lots on either side of Headlands Drive.

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The Commission found when it approved residential development in 1989, 1991, and 1992 for the five easterly lots that to require each applicant for the easterly lots to make an offer of dedication of his or her interest in Headlands Drive would not be adequate. The applicants had only a partial interest in Headlands Drive, as it is owned and maintained by the Caspar South Service Company. Each individual lot owner in the Caspar South Subdivision owns one share in the company; there are more than 100 lots in the entire subdivision. Practically speaking, it would be virtually impossible for the Commission to ever obtain offers of dedication for all 100+ property owners (each and every such property owner would first have to submit a coastal permit application for some type of development on his or her property) and thus achieve public access along Headlands Drive.

Therefore, the Commission found that it was more appropriate to require each applicant to make an offer of dedication of a ten-foot-wide pedestrian easement along the landward edge of each property (that is, the portion adjacent to Headlands Drive). In this way, it is more likely that public access to the public State Parks parcels can be achieved, as there are only eight lots involved in obtaining this easement area.

The Commission finds now, as it did then, that it is appropriate to require an offer of dedication of a 10-foot-wide access easement along Headlands Drive on both subject parcels to ensure public access to the State Parks parcels.

In conclusion, Special Condition No. 2 provides for public access on the subject parcels, in general, in the locations where the public is currently walking. In the case of the existing pathway from Headlands Drive to the bluffs on Parcel -06 (along the driveway cut), the Commission is not requiring an offer of dedication in this location because such a requirement would make it very difficult to develop the parcel, but is requiring instead offers of dedication for lateral blufftop access as well as vertical access on Parcel -05.

What will be lost, then, is the current ability of the public to reach the bluff edge by walking along the vertical access trail (the driveway cut) to Parcel -06. Public access users will be limited to accessing the bluff edge by way of the existing 10-foot-wide public Parks easement between Parcels -05 and -06, or by way of the required vertical access easement along the driveway cut in Parcel -05 and then along the required blufftop lateral accessway on Parcels -05 and -06. Since access to the bluffs will still be achieved, and all of the public uses that have been made of the site in the past can continue if access is provided in the areas required by Special Condition No. 2, the Commission finds that the required access will constitute an "equivalent" access, per LUP Policy 3.6-27.

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Special Condition No. 1 requires that the subject property be surveyed and mapped to determine the exact location of the bluff edge and existing access trails. The applicant must then submit revised site plans that show the house and garage redesigned or resited such that they are no closer than 25 feet from the bluff edge, and that they do not extend into any portion of the 25-foot-wide blufftop access easement required in Special Condition No. 2.

Since public prescriptive rights have not at this time been adjudicated, the Commission also attaches Special Condition No. 4. Special Condition No. 4 states that by acceptance of the permit amendment, the applicant agrees: that the issuance of the permit amendment and the completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline (prescriptive rights), and that approval by the Commission of this permit amendment shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with any rights of public access to the shoreline acquired through use which may exist on the property.

Special Condition No. 6 requires the applicants to record a deed restriction regarding future development on the site. This deed restriction requires that a coastal development permit be obtained for all future development on the parcel, including development that might otherwise be exempt under Section 30610(a) of the Coastal Act and the California Code of Regulations, such as fences, gates, other barriers, signs, or outbuildings, which, depending on their location, have the potential to interfere with the public's continued use of the trails over the applicant's property. In this way, the County or the Commission will be able to review all future development to ensure that it will not interfere with public access or have any adverse impacts on public prescriptive rights that may exist on the parcel.

The Commission finds that the proposed development, as conditioned, is consistent with LUP Policy 3.6-27 and Zoning Code Section 20.528.030(B) and (C), as well as Coastal Act Policies 30210, 30211, and 30212, as the public's right of access to the shoreline will be protected.

8. CEQA:

The project, as conditioned, does not have a significant adverse effect on the environment, within the meaning of CEQA, as the project is located in an area able to accommodate it, and the project will not have any significant adverse effects on visual resources or on any environmentally sensitive habitat located on the parcel. Further, the project will not result in any geologic hazards and will provide for public access.

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ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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