

# RECORD PACKET COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

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49th Day:	August 15, 1997
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Staff:	Robert Merrill
Staff Report:	August 1, 1997
Hearing Date:	August 14, 1997
Commission Action:	

### STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **A-1-MEN-93-71-A**

APPLICANT: **BRANDYWINE CONSERVANCY, a Delaware Corporation**

AGENT: **Phillip C. Barney, Jr.**

PROJECT LOCATION: **14260 Headlands Drive, Caspar Headlands Estates, Mendocino County; APN 118-420-06**

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

DESCRIPTION OF AMENDMENT: **Modify the special conditions of the permit to: (1) substitute new public access enhancements for those previously required by Coastal Development Permit No. A-1-MEN-93-71; and (2) revise setback requirements.**

SUBSTANTIVE FILE DOCUMENTS: **(1) Stipulated Judgment, Brandywine Conservancy v. California Coastal Commission, Mendocino County Superior Court, Case No. CV69529, filed June 30, 1997, which incorporates by reference the terms of the Agreement for Settlement of Litigation and Exchange of Lands entered into in June 1997 between the Coastal Commission and Brandywine Conservancy (hereafter the June 1997 Settlement Agreement); and (2) Mendocino County LCP.**

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SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission approve the proposed amendment, which would substitute new conditions for those attached to the original permit. The amendment is one of the measures necessary to implement fully the June 1997 settlement entered into between the Commission and Brandywine Conservancy. Staff believes that the public access package to be provided will adequately protect the public's right of access to the shoreline. The proposed new setback conditions will adequately protect visual and environmentally sensitive habitat on the site and will ensure that the proposed house and garage will be developed in a manner that will not contribute to a geologic hazard. With the minor technical exception of making the applicant's proposed standard regarding expiration of the permit a special condition rather than a standard condition for reasons of clarity, the staff recommendation would approve the amendment request as submitted.

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### STAFF NOTES:

1. PROCEDURE AND BACKGROUND: Section 13166 of Title 14 of the California Code of Regulations states that the Executive Director shall reject an amendment request if it lessens or avoids the intent of the approved permit unless the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted.

Coastal Development Permit No. A-1-MEN-93-71 was approved de novo by the Commission on February 15, 1994, after Mendocino County's approval of the single family home had been appealed to the Commission. The Commission found that the appeal raised a substantial issue with regard to conformance of the project as approved by the County with the coastal access policies of the LCP and Coastal Act.

The amendment seeks to formalize the resolution of long-standing litigation over various conditions imposed in the permit. Since this amendment request would resolve these matters in accordance with a stipulated judgment filed in accord with an agreed-upon settlement of Brandywine Conservancy v. California Coastal Commission, this amendment request would not result in a lessening or avoidance of the intent of the approved permit. Therefore, the Executive Director has accepted the amendment request for processing.

2. STANDARD OF REVIEW: Because the existing permit, A-1-MEN-93-71 arose as an appeal to the Coastal Commission of a coastal development permit approved by Mendocino County, this subsequent amendment to the permit is subject to the Commission's review. The standard of review is consistency with the certified Mendocino County Local Coastal Program and with the public access and recreation policies of Chapter 3 of the California Coastal Act.

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### STAFF RECOMMENDATION:

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The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions:**

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that, as conditioned, the development with the proposed amendment is consistent with the provisions of the Mendocino County Local Coastal Program, 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:**

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. 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.
3. Interpretation. Any questions of intent and interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
5. 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.
6. 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.

**NOTE:** The Commission's standard condition regarding "Expiration," ordinarily Standard Condition No. 2, has been replaced in this amendment with Special Condition No. 6, below.

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### **III. Special Conditions:**

For reference, the special conditions contained in original Coastal Development Permit No. A-1-MEN-93-71 are included in the staff report for the original permit attached as Exhibit No. 11. The proposed amended special conditions submitted by the applicant are attached as Exhibit No. 7. The following conditions entirely replace the special conditions of the original permit and also Standard Condition No. 2 (regarding expiration) of the original permit:

#### **1. Revised Site Plans:**

PRIOR TO ISSUANCE of the Coastal Development Permit, the subject property (APN 118-420-06) shall be surveyed and mapped to determine the exact location of the bluff edge. The applicant shall then submit for the Executive Director's review and approval revised site plans that show the house and garage redesigned or re-sited such that their nearest exterior wall is no closer than 15 feet from the bluff edge on APN 118-420-06 and neither the house nor the garage encroach toward Headlands Drive beyond the crest of the earthen berm on APN 118-420-06 or beyond 30 feet, whichever is greater. 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 an easement for public access, as described below:

a 10-foot-wide pedestrian easement extending the length of APN 118-420-06 adjacent to Headlands Drive, as shown in Exhibit No. 8.

The recorded document shall include metes and bounds legal descriptions of both the applicant's parcel and the easement area. 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. 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

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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.

### 4. 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 Mendocino County application regarding site grading, foundations, retaining walls, and site drainage. Any deviation from the approved plans will require an amendment to this coastal development permit.

### 5. 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 earth tone colors only, and the roof shall also be of dark earth tone 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.

### 6. Expiration:

If development has not commenced, the permit will expire five years from the date on which the Commission voted on the application for Coastal Development Permit Amendment No. A-1-MEN-93-71-A. 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.

## IV. Findings and Declarations.

The Commission hereby finds and declares:

### 1. Background

The amendment request would modify the conditions of a permit granted for the

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development of a 4,080-square-foot single family residence in the Caspar Headlands Estate subdivision. The approximately ten acre subdivision extends over a spectacular point of land that juts out into the sea west of the Town of Caspar, about five miles north of the Town of Mendocino.

The controversy over development of the Caspar Headlands Estates and how to protect public access to the bluff edge of the headlands and its stunning views has a long and complex history. The Caspar Headlands Estate Subdivision was approved 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 judgment which created eight residential parcels and four non-contiguous parcels (Parcels A, B, C, and D on Exhibit No. 2) on the perimeter of the headland, which were deeded to the Department of Parks and Recreation for public use. In addition, four ten-foot-wide pedestrian easements were recorded providing access to the State Parks parcels along Headlands Drive. These four parcels and access easements constitute the Caspar Headlands State Reserve (see Exhibit No. 2). The stipulated judgment provides that the State Parks parcels and easements shall be classified as a scenic or scientific reserve pursuant to Public Resources Code section 5001.5(b); shall be used in a manner consistent with the preservation of natural resources; and shall be open during daylight hours for use by the general public upon requesting and obtaining a pass from the local State Parks office.

In 1981, the Commission approved a permit application for residential construction on the eight remaining parcels (1-81-32, Lang/Lee). A number of conditions were required to protect possible rights of public access and visual resources, including a requirement that only five of the eight parcels be developed (lots 1, 2, 3, 7 and 8 on Exhibit No. 2), and that the most scenic parcels--the three westernmost parcels (lots 4, 5, and 6 on Exhibit No. 2)--be preserved as open space. Subsequently, the applicants deeded lots 4, 5, and 6 (APNs 118-420-04, 05, and 06) to the Brandywine Conservancy, a private non-profit organization in Pennsylvania; allowed the permit to lapse; and sold their five remaining residential lots to a third party.

The Commission has since approved coastal permits for development of single-family homes with garages on each of the five lots, 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.

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In evaluating the first three of these five permits under the public access and resource policies of the Coastal Act (Sections 30210-30212, 30250(a)), the Commission found that there was substantial evidence (in the form of trails) indicating that, since 1970, the public had made use of portions of the headland to get from South Caspar Drive, the County-owned road, to the shoreline; that the development proposed for the lots in question would not block the most well-worn of these paths (a trail along the bluff edge) but would interfere with the use of other areas where public prescriptive rights might potentially have accrued; and that the cumulative effect of the construction of the proposed residence, along with others that might be proposed on the remaining privately owned parcels on the headland, would be to impede public access to the shoreline. The Commission further found that, as a practical matter, it would be difficult for the Commission ever to obtain public access from South Caspar Drive to the shoreline via Headlands Drive and the Parks-owned easements and parcels, as this would require offers of dedication from the 100+ property owners having an interest in this private road. The Commission therefore attached a special condition to each of these permits, requiring an offer of dedication of a pedestrian access easement across that portion of each of the lots adjacent to and more or less paralleling Headlands Drive. No other such offers were required. For substantially the same reasons, similar offers of dedication (and no others) were required pursuant to the permits for the two lots remaining in this first group of five to be developed.

The Commission also evaluated each of these proposed developments for impacts on visual resources (Section 30251) and environmentally sensitive habitat areas (Section 30240) but found it unnecessary, except in the case of Kiemele, to condition the permits to obtain consistency with these Coastal Act policies because: (1) the only sensitive plants found on the parcels (Castilleja latifolia mendocinensis or Mendocino coast paintbrush) were located near the edge of the bluff and the proposed residences were set back well away from this area; (2) the houses would be only 22 feet high, were screened from view from South Caspar Drive by 8 to 11-foot-high berms, and the house on the only lot partially visible from Caspar State beach (lot -01) would be set back sufficiently far to be only minimally visible from the beach. (Landscape screening was required for the Kiemele project on Parcel -03.)

Each of the permits indicates that in evaluating impact on visual resources, the Commission assumed that the three lots owned by Brandywine had been deeded as open space and so would not be developed, thus preserving the entirety of the most scenic portion of the headland. The deeds by which Brandywine took title to these lots, however, contain no such restriction and, after failing in its attempt to find a public agency willing to buy these lots (Parks and the Coastal Conservancy each declined), Brandywine began searching for a private buyer.

In or about 1993, Brandywine entered into a purchase agreement with Megan and Mike Merrin for the sale of two of its three lots, specifically lots 5 and 6.

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The Merrins and Brandywine thereafter jointly applied for the coastal development permit from Mendocino County that eventually became Coastal Development Permit No. A-1-MEN-93-71. They proposed to build a home on lot 6 set back 30 feet from Headlands Drive and 10 feet from the bluff top, and to keep lot 5 undeveloped. The County approved the permit with conditions, including conditions requiring (a) recordation of an open space deed restriction over lot 5, and (b) dedication only of a 10-foot-wide sidewalk easement adjacent to Headlands Drive, extending the length of lots 5 and 6.

The County permit was appealed to the Commission by the Sierra Club, Russel and Flo Ann Norvell, and Samuel and Geraldine Morse in November of 1993. At its hearing on February 15, 1994, the Commission found that the appeal raised a substantial issue of conformance to the certified LCP and the access policies of the Coastal Act, and approved the permit de novo with the special conditions requiring additional public access beyond what the County had required and with other conditions concerning visual resources, geologic hazards, and environmentally sensitive habitat.

On April 18, 1994, Brandywine filed suit against the Commission challenging the public access conditions imposed by the Commission. After lengthy negotiations, Brandywine and the Commission entered into a settlement agreement in June 1997 to resolve the litigation. A stipulated judgment incorporating the agreement's terms was entered by the court on June 30, 1997.

The comprehensive settlement agreement addresses the future of not just lots 6 (the lot proposed for the house) and lot 5 (the lot proposed to be restricted for open space) which were the subject of Coastal Development Permit No. A-1-MEN-93-71, but also lot 4, the last of the three Brandywine lots (see Exhibit No. 2 for location). The settlement includes an agreed-upon package of public access enhancements to replace those required in the original permit. That package includes: (1) the conveyance by Brandywine to the Department of Parks and Recreation of lot 5 for use by the public; and (2) dedication of two, 10-foot-wide lateral access easements adjacent to Headlands Drive, extending the length of each of lots 4 and 6 (See Exhibit No. 8). The settlement also provides Brandywine with the right to develop each of lots 4 and 6 with a single family home and garage, subject, among other things, to certain agreed-upon setbacks for the front and side yards and the bluff top, if, and only if, permits authorizing such development are approved by the necessary permitting agency or agencies. The parties agreed that the existing permit would be modified in accordance with the development standards set forth in the agreement, and anticipate that the Commission will issue a Notice of Intent to Issue Amended Coastal Development Permit for lot 6 substantially in the form set forth in a particular exhibit of the agreement. The proposed Notice of Intent attached to the agreement, which was submitted by the applicant as part of its amendment application (see Exhibit No. 7), incorporates the parties agreed-upon modifications to the permit, including the new public access package and setback requirements.

On June 27, 1997, the applicant submitted Coastal Development Permit Amendment



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Request No. A-1-MEN-93-71-A in order to implement the settlement agreement. The amendment request seeks the modifications called for in the agreement, and Includes a copy of the specified Notice of Intent to Issue Amended Coastal Development Permit contained in the agreement as part of the applicant's amendment request description (See Exhibit No. 7).

### 2. Originally Permitted Project:

The original permit authorizes development of a 4,080-square-foot, 22-foot-high single-family residence and garage with a driveway on a bluff top parcel (APN 118-420-06) located west of Highway One in the Caspar Headlands Estates Subdivision. The house is to be served by a community water and sewer system. The approved house is depicted in Exhibit Nos. 3-5.

The Commission attached a number of special conditions to its original approval of the project. (See Exhibit No. 11) The conditions address a number of potential impacts of the proposed development on coastal resources including impacts on coastal access, visual resources, a rare and endangered plant species, and the need to ensure the project does not contribute to geologic hazards associated with developing on a bluff top parcel. The conditions challenged in the litigation concerned requirements relating to setback requirements and public access.

### 3. Proposed Amendment.

The proposed amendment would modify the special conditions of the permit. No changes are proposed to the design of the house approved by the original permit, although the proposed changes to Special Condition No. 1 may change the precise final location of the house on the lot. Under the proposed amendment, for example, the house could be located as much as 10 feet closer to the bluff while maintaining a minimum setback of 15 feet from the bluff edge.

The purpose of the amendment is to incorporate certain changes to the permit conditions set forth in the June 1997 settlement agreement between the applicant and the Coastal Commission. The proposed modifications to the permit conditions must be considered together with the provisions of the settlement agreement. As noted previously, the agreement addresses the future development and provision of public access on all three of the Brandywine parcels considered as a package, not just lot 6 (where the original permit authorizes construction of the house) and lot 5 (which the original permit required to be restricted for open space). The agreement alters certain requirements of the original permit for public access on lots 6 and 5, and substitutes certain new requirements for public access affecting lots 5 and 4 that were not contained in the original permit conditions. The proposed modifications to the permit conditions are just a part of the settlement agreement and the Commission's processing of the permit amendment request is being conducted in conjunction with implementation of the rest of the

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provisions of the settlement agreement. Thus in evaluating the consistency of the proposed amendment with the policies of the certified LCP and coastal access policies of the Coastal Act, the Commission must consider the amendment in light of the overall package of public access improvements and other requirements set forth in that agreement.

The amendment proposes to substitute the conditions listed in Exhibit No. 7 of this report for the conditions of the original permit. Exhibit No. 7 is the proposed Notice of Intent to Issue Amended Permit incorporated into the settlement agreement. The specific changes proposed to the conditions of the original permit are as follows:

Special Condition No. 2. The condition requires the applicant to record offers to dedicate lateral and vertical public access easements over various parts of lots 6 and 5, including: (a) a 25-foot-wide lateral access easement along the entire bluff top of lots 5 and 6, (b) a 10-foot-wide vertical access easement extending from the bluff edge down the bluff to a cove near the southeast end of lot 6, (c) a 10-foot-wide lateral easement extending the length of lots 6 and 5 adjacent to Headlands Drive, and (d) a 10-foot-wide vertical easement across lot 5 from Headlands Drive to the bluff edge. The proposed amendment would modify the condition so that it requires the applicant to record an offer to dedicate a 10-foot-wide lateral easement the length of lot 6 adjacent to Headlands Drive, just as was required of the other, already developed lots. Pursuant to the settlement agreement, this easement would be dedicated in conjunction with another 10-foot-wide easement across lot 4, and a fee conveyance of lot 5 to the Department of Parks and Recreation for use by the public. By getting fee title to lot 5, that conveyance incorporates the easements across lot 5 previously required in the original permit. These latter two measures will be carried out as part of the settlement agreement.

Special Condition No. 1. The condition requires that the bluff edge be surveyed and that revised site plans be submitted for the review and approval of the Executive Director that re-site the house and garage such that they do not extend closer than 25 feet to the bluff top and thus into the lateral access easement originally required by Special Condition No. 2 or beyond the crest of the earthen berm separating the lot from the Headlands Drive where a rare plant is present. The proposed amendment would modify the setback requirements for the house to allow the agreed-upon setback requirements of the stipulated judgment, which allow the nearest exterior wall of the house and garage to extend to no closer than 15 feet of the bluff top and to prohibit the structures from encroaching toward Headlands Drive beyond the crest of the earthen berm or beyond 30 feet, whichever is greater. The house will remain at 22 feet.

Special Condition No. 3. The condition requires the applicant to record an open space deed restriction over lot 5 that prohibits development except for public access improvements or fences. The proposed amendment would delete this condition. The public access package proposed as a substitute here will

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substitute a fee conveyance of lot 5 to the Department of Parks and Recreation for use by the public for the previously-required open space easement.

Special Condition No. 4. The condition requires the erection of wooden posts along the dirt trail within the lateral bluff top access easement required by Special Condition No. 1 of the original permit to delineate the area usable by the public. The proposed amendment would delete this condition. This particular easement will be replaced by the agreed-upon package of public access enhancements described above.

Special Condition No. 5. The condition states that by acceptance of the original permit, the applicant agrees that the issuance of the permit and the completion of the development would not prejudice any subsequent assertion of any public rights of access to or along the shoreline. The proposed amendment would delete this condition.

Special Condition No. 6. The condition requires the applicant to record a document stating that the subject permit is only for the 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. The proposed amendment would not change this condition.

Special Condition No. 7. The condition requires the applicant to submit final foundation and drainage plans that incorporate all of the recommendation of the geotechnical report. The proposed amendment would not change this condition.

Special Condition No. 8. The condition requires that the applicant adhere to a number of design restrictions regarding the lighting, materials, and exteriors colors of the structures. The proposed amendment would not change this condition.

4. Site Description:

The project 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 growing on the berm adjacent to Headlands Drive on Parcel -06. There is no other sensitive habitat on the subject property.

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 is approximately a half-acre in size and is a legal non-conforming parcel.

5. Public Access:

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 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,

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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...

One way to avoid the adverse effect that development may have is to require dedication of public access that could serve to protect any existing public access rights which would be eliminated by the proposed development. Section 30214 of the Coastal Act directs the Commission to implement the public access policies of the Act in a manner which balance various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use.

The proposed amendment would provide lateral access easements along portions of Headlands Drive as part of an agreed-upon package of access dedications and improvements to be provided in conjunction with the settlement agreement. The public access package for lots 4, 5, and 6 includes the following elements:

1. The applicant will dedicate a 10-foot-wide lateral easement for public pedestrian access on each of lots 4 and 6 that extends the length of the lot adjacent to Headlands Drive (see Exhibit No. 8). This dedication would be required by the modifications proposed to Special Condition No. 2;
2. The applicant will convey lot 5 to the Department of Parks and Recreation (State Parks) or such other public agency or private association approved by the Executive Director for use by the public. The conveyance is required through the terms of the settlement agreement;
3. Two vertical easements held by State Parks that link Headlands Drive to State Parks parcels C and D, which cover points of land adjacent to lot 5, would be quitclaimed to the applicant. The parcels covering the point would remain in State Parks ownership and access to these parcels would be provided through adjacent lot 5, using an existing opening in the berm located along the front side of the lot adjacent to Headlands Drive. The quitclaim of the links and establishment of the berm opening through lot 5 as the access to the existing State Parks parcels is required through the terms of the settlement agreement, and is agreed upon the recommendation of the District Supervisor for State Parks. The existing vertical easement providing public access from Headlands Drive to parcel D 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

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driveway cut to Parcel -05, which is a flat, cleared area with a worn pathway that provides easy, direct access to the bluffs.

4. The amendment would retain the provisions of Special Condition No. 6 of the original permit requiring the recordation of 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. Due to the elimination of some of the other original conditions of the permit, the condition requiring the future development deed restriction appears as Special Condition No. 3 of this amendment.

The Commission must evaluate the proposed public access enhancements and determine whether they are equivalent in time, place, and manner to the public use that has been made of the site in the past. The Commission could find that with the proposed public access, the project would not interfere with the public's right of access and would be consistent with Section 30211.

The Commission has found previously that the public has historically made use of the Caspar Headlands for public access purposes. The public use in the past has generally been by people who have walked into the site and used the bluff edge for viewing, walking, sitting, picnicking, whale watching, bird watching, photography, and other traditional passive coastal access pursuits. Although virtually the entire bluff edge around the headlands may have been used for such purposes to some degree, use appears to have been concentrated most heavily at the most seaward end of the headlands and at the secondary points that extend out from the headlands between the mainland and seaward end of the headlands. These secondary points are the parcels managed by State Parks since about 1970 for public access purposes (Parcels A-D shown on Exhibit No. 2).

The proposed public access package for lots 4, 5, and 6 that is part of the stipulated judgment would provide equivalent access in time place and manner to this historic public access use. First, dedication of the 10-foot wide lateral access easements adjacent to Headlands Drive would, in combination with similar 10-foot-wide lateral access easements that have been required in permits granted for the development of other lots in the subdivision, complete a link between the public street outside of the Caspar Estates Subdivision with all sections of the shoreline previously reserved and proposed to be

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BRANDYWINE CONSERVANCY, a Delaware Corporation

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reserved for public access use (see Exhibit No. 10). 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 currently 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.

Second, conveyance of fee title to lot 5 to State Parks for public access purposes, considered in combination with the existing access parcels on the headlands managed by State Parks (Parcels A-D shown on Exhibit 2), including the two parcels located adjacent to and on either side of lot 5 Parcels C and D), would ensure public access to the coveted seaward end of the headlands and the other sections of the bluff edge most heavily used for public access purposes in the past. Exhibit No. 10 depicts all of the access on Caspar Headlands that would be available to the public after implementation of the settlement agreement.

Thus, the Commission finds that the proposed public access enhancements to be provided through the permit amendment pursuant to the settlement agreement is equivalent in time, place, and manner, to the access use that appears to have been made of the project area in the past. Therefore, 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.

**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, as modified by the proposed amendment, requires that revised site plans be submitted showing the house and garage to be re-sited or redesigned such that they do not encroach toward Headlands Drive beyond the crest of the berm on Parcel -06 or beyond 30 feet, whichever is greater. By preventing the development from encroaching into the area where the rare plant is found, the condition will ensure that the environmentally sensitive habitat is protected. Furthermore, Special Condition No. 3 of the proposed amendment, which is identical to Special Condition 6 of the original permit, requires recordation of a deed restriction stating that all future development that might otherwise be exempt from coastal permit requirements under the

**A-1-MEN-93-71-A**

BRANDYWINE CONSERVANCY, a Delaware Corporation

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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 amendment 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 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



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BRANDYWINE CONSERVANCY, a Delaware Corporation

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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; and from various locations within the adjacent Caspar South Subdivision. The proposed residence would not be visible from Highway One.

Based on a site reconnaissance conducted by its staff, the County concluded the proposed building height of 22 feet would not significantly affect public views to the ocean or be out of character with surrounding development (Four residences have been approved on neighboring parcels with 22 foot height limits).

However, the scale of the house (4,080 square feet) 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.

To reduce the adverse impacts on visual resources, and ensure that the residence will be subordinate to the natural setting and be in character with surrounding structures, Special Condition No. 1, as modified by the proposed amendment, requires submission of revised site plans showing the residential development re-sited or redesigned such that it does not encroach towards Headlands Drive beyond the crest of the earthen berm on APN 118-420-06 or beyond 30 feet, whichever is greater, to ensure that the shielding effect of the berm will not be eliminated.

Special Condition No. 5, of the proposed amendment, which is identical to Special Condition No. 8 of the original permit, requires 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. 3.) 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 earth tone colors only, and the roof shall also be of dark earth tone 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

## A-1-MEN-93-71-A

BRANDYWINE CONSERVANCY, a Delaware Corporation

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minimize glare.

Finally, Special Condition No. 3, of the proposed amendment, which is identical to Special Condition No. 6 of the original permit, requires the 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.

By (1) ensuring the existing berm will be retained to screen the proposed house, (2) limiting lighting and restricting the exterior materials and colors, and (c) enabling the Commission or the County to review future development on the site, the requirements of Special Condition Nos. 1, 5, and 3 will adequately mitigate the visual impact of the proposed house to ensure that the structure will be subordinate to the visual character of the area. As conditioned, therefore, the proposed amendment 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 bluff top 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 submitted with the application for the original permit 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 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. The report indicates that the bluff in this area is very stable and subject to minimal retreat.

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. The report

**A-1-MEN-93-71-A**

BRANDYWINE CONSERVANCY, a Delaware Corporation

Page -19-

recommends that the proposed house be set back a minimum of 10 feet from the top-of-bluff area, and that the house be constructed on drilled piers set back a minimum of 20 feet from the top-of-bluff area. Thus, as the house is proposed to be located as close as 15 feet from the edge of the bluff, as much as five feet of the house will have to cantilever from the drilled piers. Special Condition No. 4 of the proposed amendment, which is identical to Special Condition No. 7 of the original permit, 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, Special Condition No. 3 of the proposed amendment, which is identical to Special Condition No. 6 of the original permit, requires the 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.

By requiring the proposed development to be built in conformance with the recommendations of the geotechnical evaluations of the site, and by enabling the Commission or the County to review future development on the site, the conditions will ensure that the development will not contribute to a geologic hazard during its expected lifetime. As conditioned, therefore, the proposed development is consistent with LUP Policy 3.4-7 and Section 20.500.020(B) of the Zoning Code.

6. CEQA:

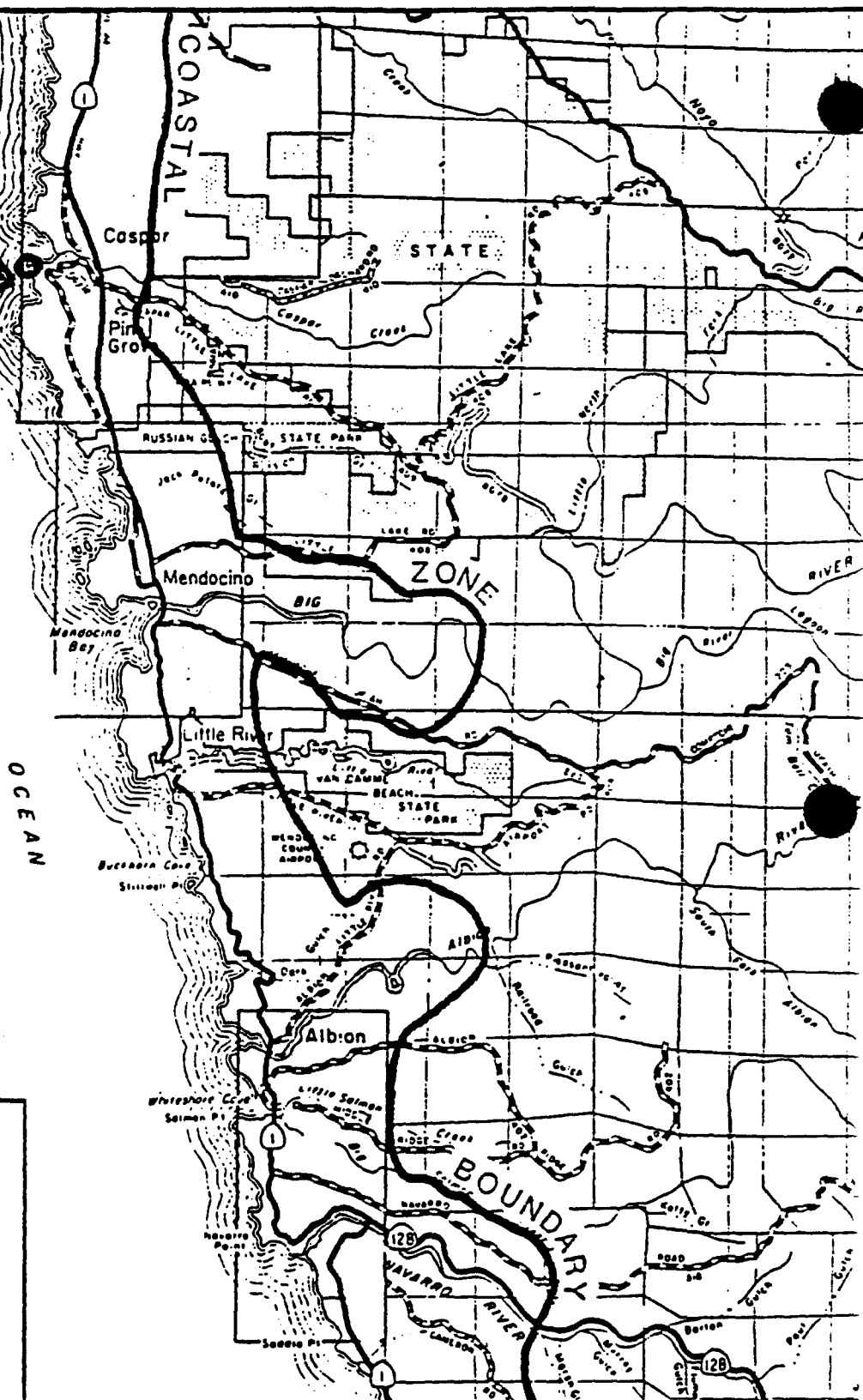
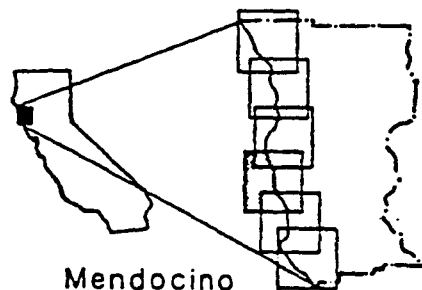
Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. As discussed above, the proposed development with the proposed amendment will not have a significant adverse effect on the environment, within the meaning of CEQA. The Commission finds that there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment.

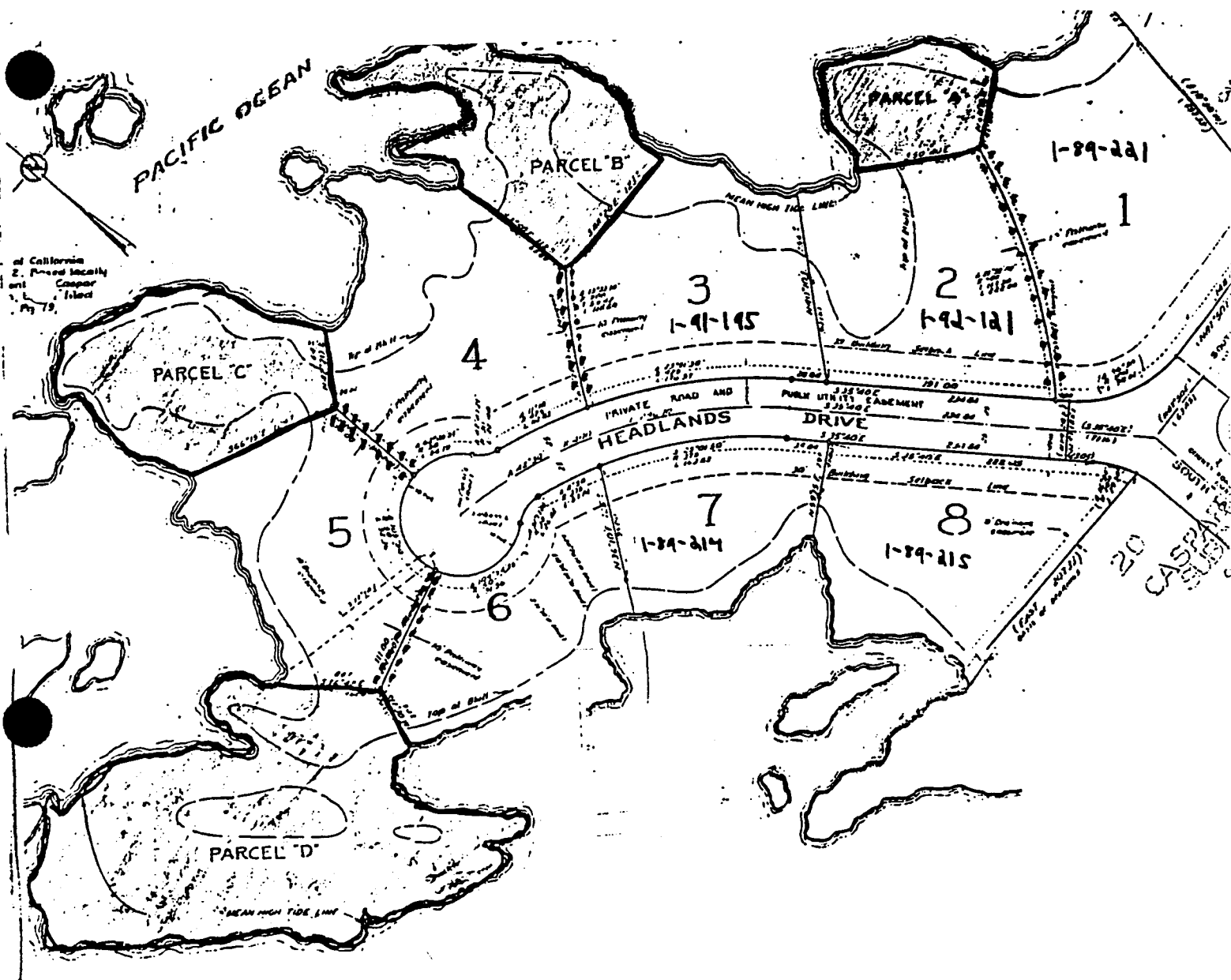
APPROXIMATE LOCATION

EXHIBIT NO. 1

APPLICATION NO.  
A-1-MEN-93-71-A  
BRANDYWINE

Location Map





Parcels A, B, C, & D - Department of Parks and Recreation

Parcels 4, 5, 6 - Brandywine Conservancy

- Parks Easements

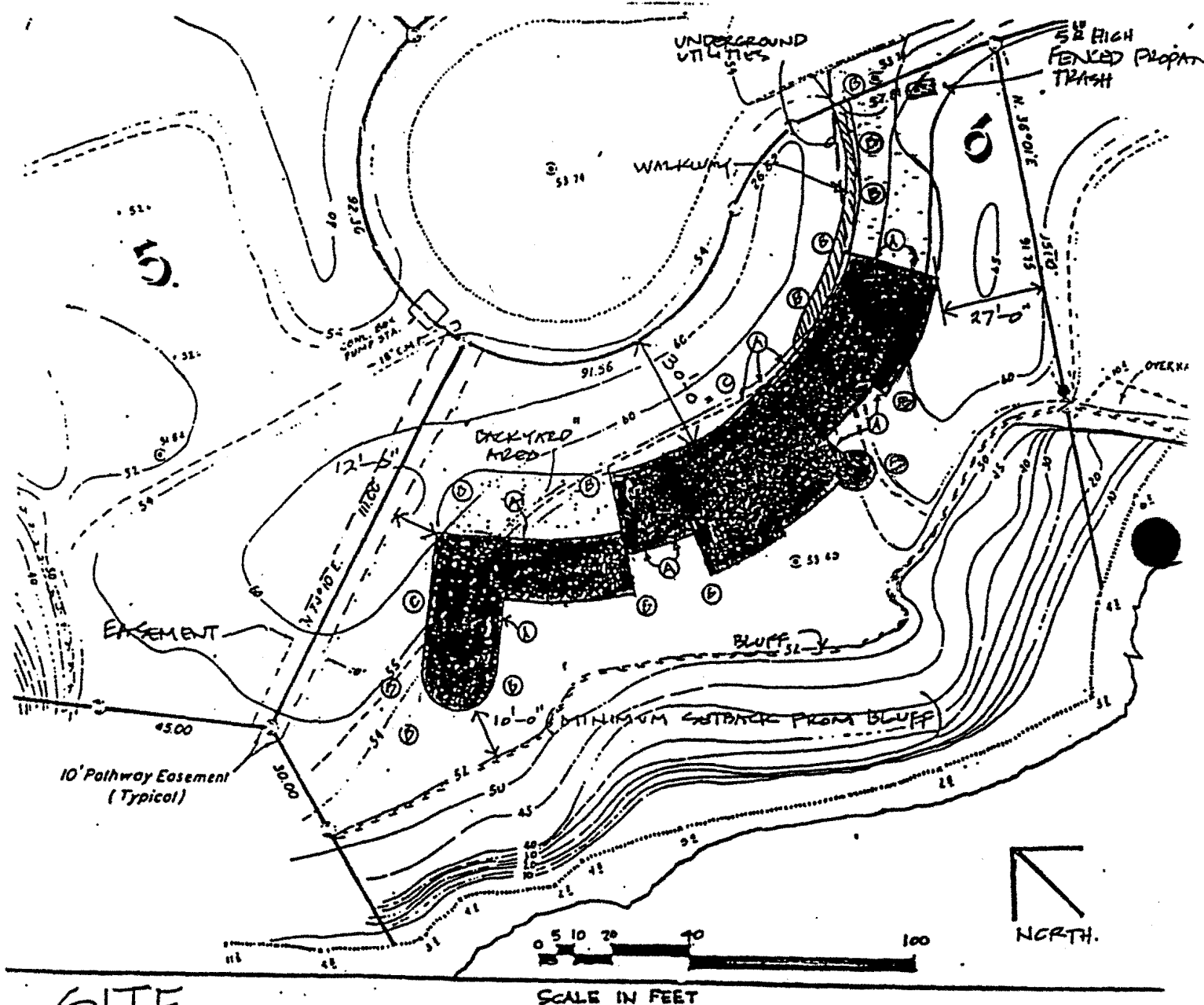
EXHIBIT NO. 2

APPLICATION NO.  
A-1-MEN-93-71-A

BRANDYWINE

Caspar Headlands  
Estates Subdivision

SITE 1'-30'-0"		
EXTERIOR LIGHTING SCHEDULE		
SYMBOL	MANUFACTURER & MODEL #	COMMENTS
Ⓐ	HALO # 90 RECESSED CAN	SOFFIT MTD. DOWNLIGHT (BEST)
Ⓑ	NIGHTSCAPING # 6 30 909 27W LIGHT	MUSHROOM CAP 10' MAX SPREAD
Ⓒ	" " # 6V 1109 "H LITER"	
Ⓓ		
Ⓔ		

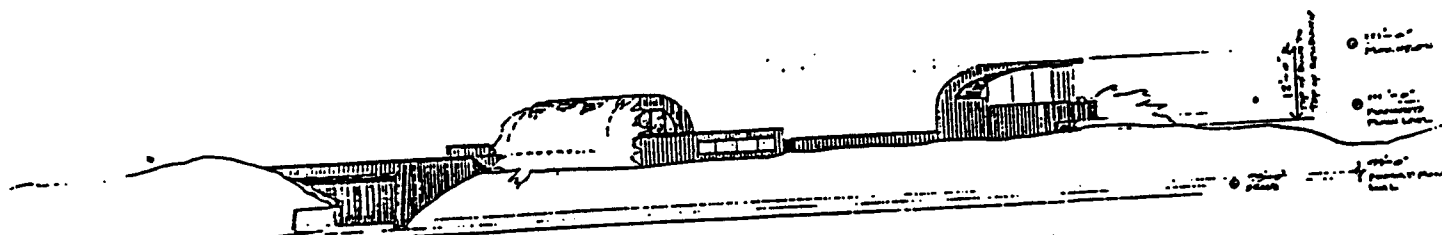


SITE

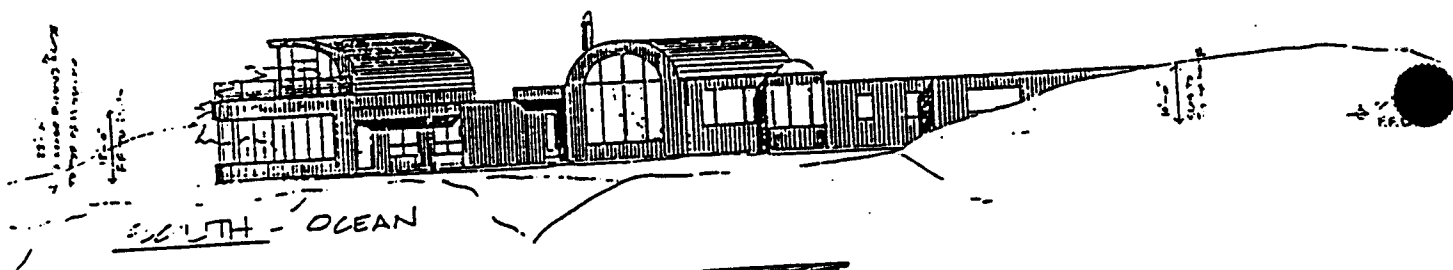
EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-93-71-A
BRANDYWINE	
Site Plan/Lighting	

PLOT PLAN

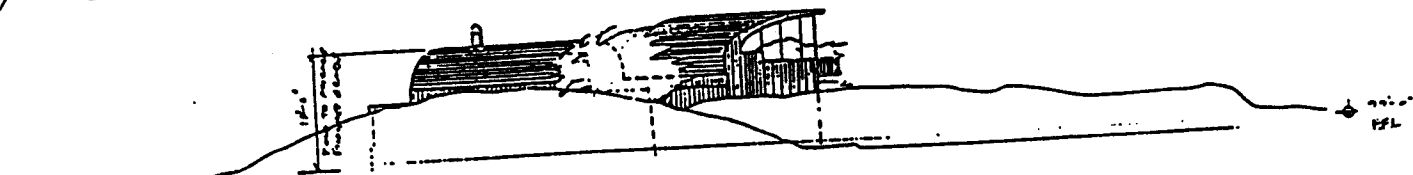




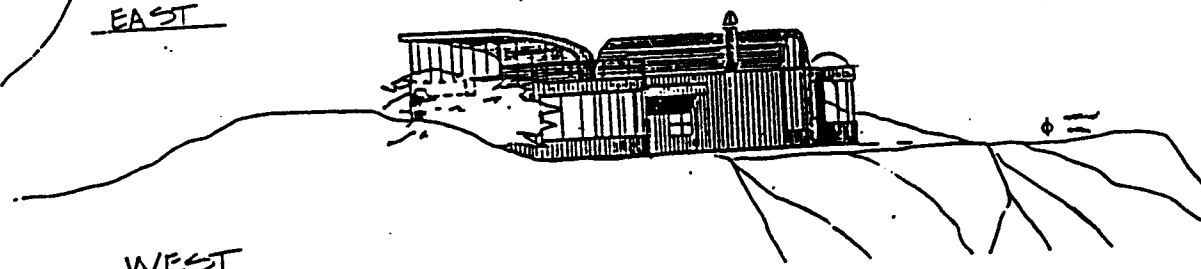
NORTH - FROM CUL de SAC



SOUTH - OCEAN



EAST



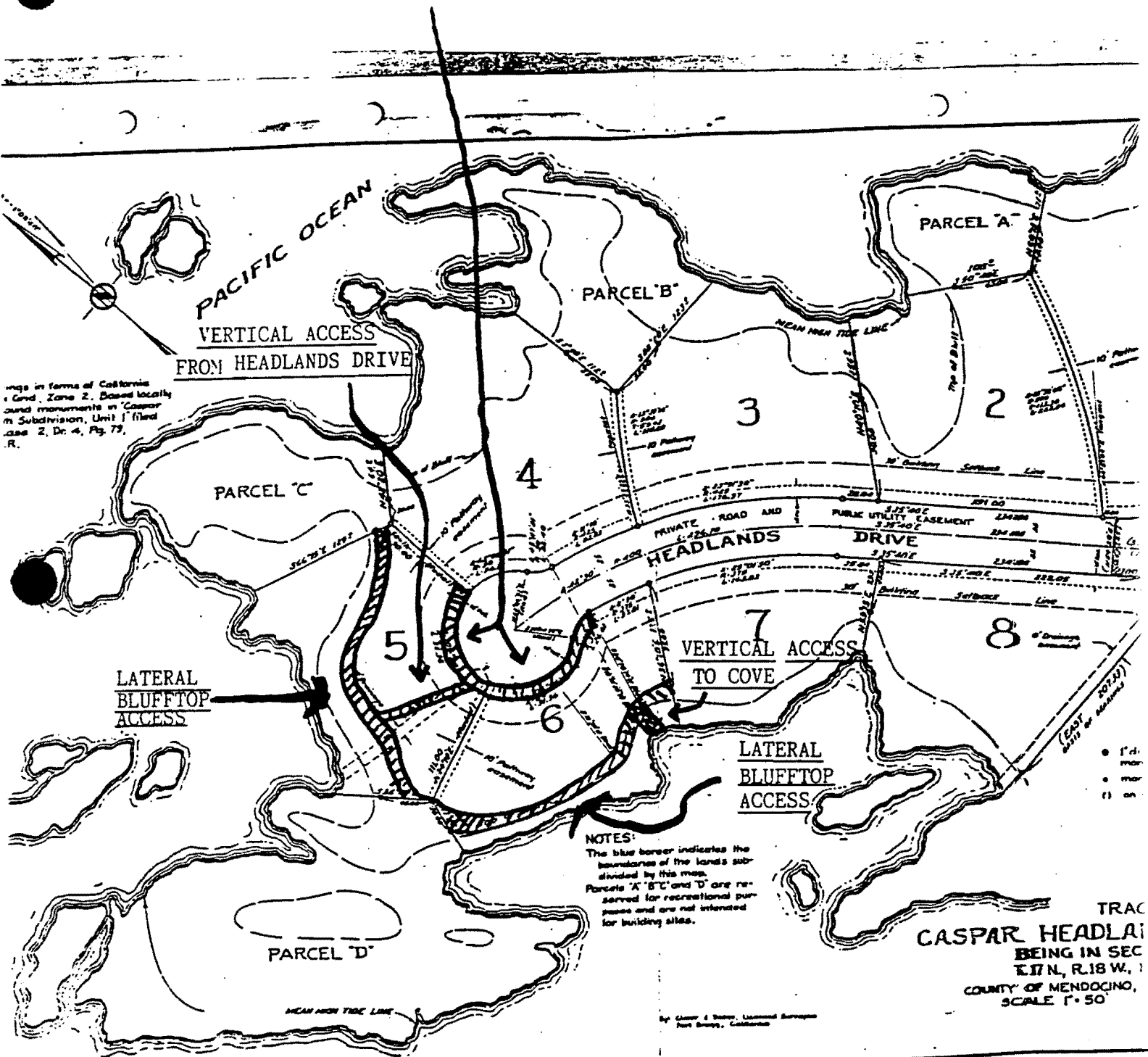
WEST

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-93-71-A
	BRANDYWINE
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.

TRAC  
CASPAR HEADLANDS  
BEING IN SEC  
E 17 N, R 18 W, T  
COUNTY OF MENDOCINO,  
SCALE 1" = 50'

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-93-71-A
BRANDYWINE	Public Access
Required by	Original Permit

-  = 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 required offers to dedicate access easements.

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-93-71-A
BRANDYWINE	
Proposed Notice of Intent (1 of 4)	

Page: 1 of 4

Date: Aug.    , 1997

Permit Application No. **A-1-MEN-93-71**

### NOTICE OF INTENT TO ISSUE AMENDED PERMIT

On August, 1997, by a vote of     to    , the California Coastal Commission granted to **BRANDYWINE CONSERVANCY, INC.** Amended Permit **A-1-MEN-93-71**, subject to the attached conditions, for development consisting of

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,

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Mendocino County at 14260 Headlands Drive, Caspar Headlands Estates, APN 118-420-06.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 to 5, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on August, 1997.

PETER DOUGLAS  
Executive Director

By:                       
Title: Coastal Planner

#### ACKNOWLEDGEMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Amended Permit No. **A-1-MEN-93-71**, and fully understands its contents, including all conditions imposed.

_____	_____
Date	Permittee

Please sign and return one copy of this form to the Commission office at the above address.

# EXHIBIT F

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-93-71-A
	BRANDYWINE
Proposed Notice of Intent (2 of 4)	

Page: 2 of 4  
 Permit Application No. A-1-MEN-93-71

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 five (5) 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 or 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Revised Site Plans:

PRIOR TO ISSUANCE of the Amended Coastal Development Permit, the subject property (APN 118-420-06) shall be surveyed and mapped to determine the exact location of the bluff edge. 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 their nearest exterior wall is no closer than 15 feet from the bluff edge on APN 118-420-06 and

neither the house nor the garage encroaches toward Headlands Drive beyond the crest of the earthen berm on APN 118-420-06, or beyond 30 feet, whichever is greater. The house shall remain no higher than 22 feet.

2. Public Access:

PRIOR TO ISSUANCE of the Amended 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 an easement for public access, as described below:

a 10-foot-wide pedestrian easement extending the length of APN 118-420-06 adjacent to Headlands Drive, as shown in Exhibit No. \_\_\_\_.

The recorded document shall include a metes and bounds legal description of both the applicant's parcel and the easement area. 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. Future Development:

PRIOR TO ISSUANCE of the Amended 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 amended 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.

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-93-71-A
	BRANDYWINE
Proposed Notice of Intent (3 of 4)	

4. Final Foundation and Site Drainage Plans:

PRIOR TO ISSUANCE of the Amended 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 in 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.

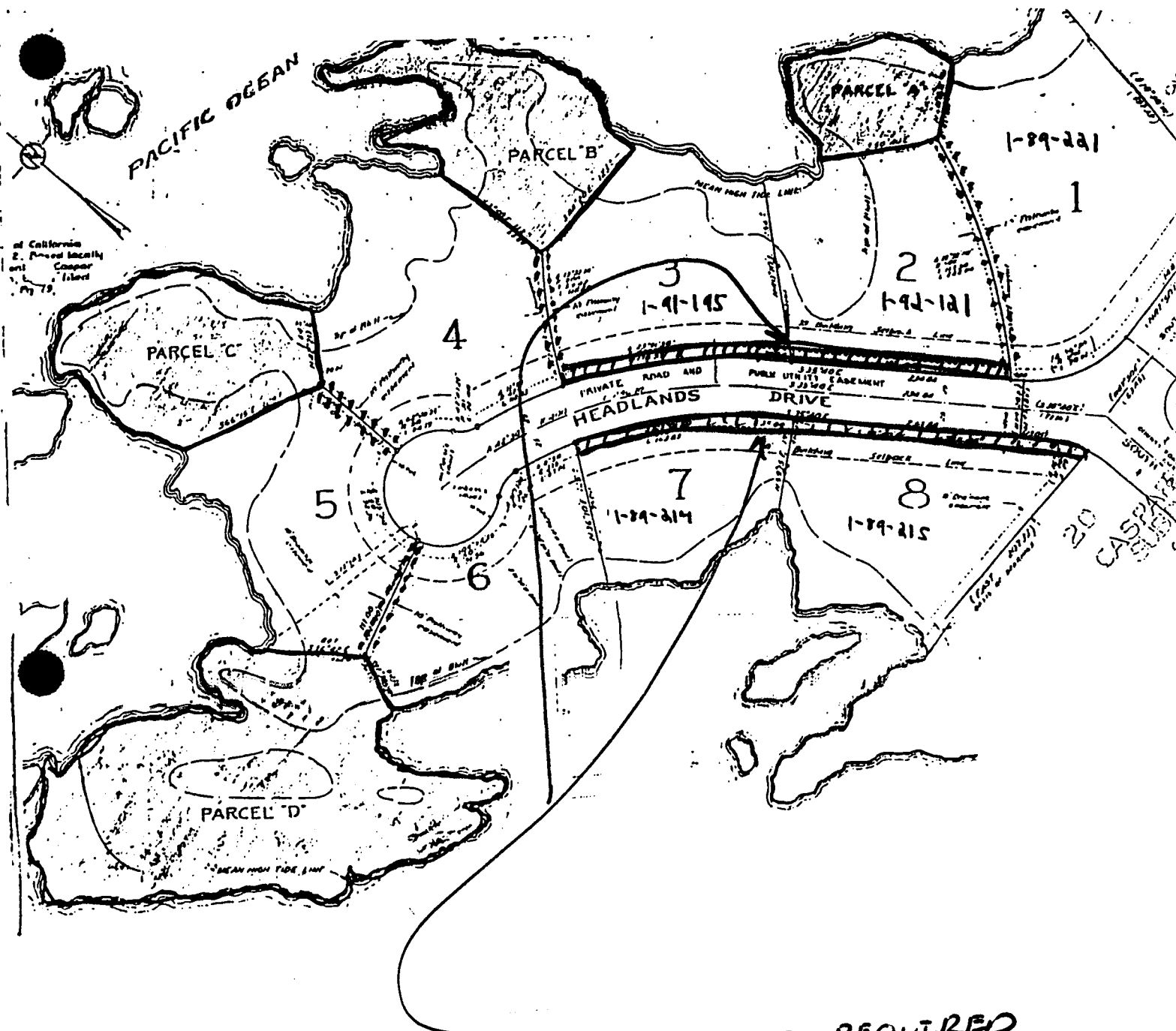
5. Design Restrictions:

PRIOR TO ISSUANCE of the Amended 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.

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-93-71-A
BRANDYWINE
Proposed Notice of Intent (4 of 4)





PUBLIC ACCESS REQUIRED  
BY PREVIOUS PERMITS

EXHIBIT NO. 9
APPLICATION NO. A-1-MEN-93-71-A
BRANDYWINE
ACCESS REQUIRED BY OTHER PERMITS

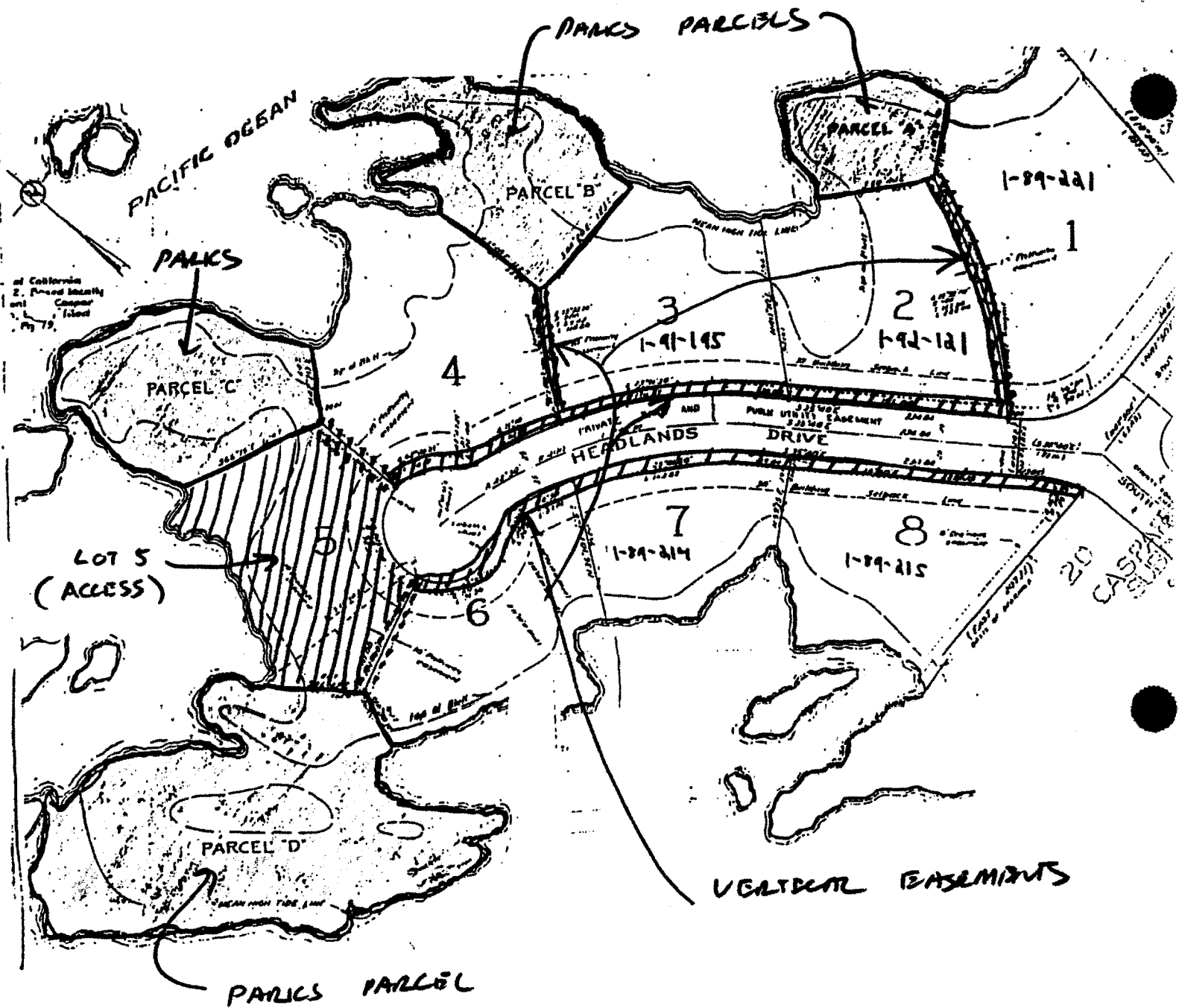


EXHIBIT NO. 10

APPLICATION NO.  
A-1-MEN-93-71-A

BRANDYWINE

ACCESS RESULTING  
FROM SETTLEMENT



## 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: APPEALSUBSTANTIAL 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 AMENDMENT, HAVE BEEN OMITTED.

EXHIBIT NO. 11

APPLICATION NO.

A-1-MEN-93-71-A

BRANDYWINE

Staff Report for

Original Permit  
(Page 1 of 21)

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 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:

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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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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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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.

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

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

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.



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.

