

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
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Filed: November 4, 1998
Hearing Opened: December 9, 1998
Staff: Jo Ginsberg
Staff Report: December 18, 1998
Hearing Date: January 14, 1998
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-98-94

APPLICANTS: TED AND MARJORIE BERLINCOURT

PROJECT LOCATION: 7000 South Highway One, Elk, Mendocino County;
APN 127-260-01, APN 127-260-01.

PROJECT DESCRIPTION: Construction of an 18-foot-high, 3,125-square-foot residence, a 640-square-foot guest cottage, a 925-square-foot attached garage, patios and decks, driveway and parking areas; installation of a septic system; connection to a public water system; drilling of a water well for irrigation purposes; installation of a storage tank, and extensive landscaping for vegetative screening.

APPELLANTS: Mendocino CoastWatch;
Sierra Club Mendocino/Lake Group

AGENTS FOR APPELLANTS: Hillary Adams, Roanne Withers, Ron Guenther

AGENTS FOR APPLICANTS: Stephen Hale; Leventhal & Schlosser, Architects;
Sara Geddes; Jeffery Speich

SUBSTANTIVE FILE DOCUMENTS: Mendocino County CDP #19-98; Mendocino County Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

1. SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE

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

Mendocino County approved a coastal development permit for construction of an 18-foot-high, 3,125-square-foot residence, a 640-square-foot guest cottage, a 924-square-foot attached garage, patios and decks, driveway and parking areas; installation of a septic system; connection to a public water system; drilling of a water well for irrigation purposes; installation of a storage tank; and extensive landscaping for vegetative screening. The appellants contend that the project is not consistent with the County's LCP, and have two main areas of concern, (1) visual impacts, and (2) geologic hazards.

Commission staff believes the appeal of the development, as approved by the County, raises a substantial issue of whether the residence, located in a designated Highly Scenic Area, would be sited and designed to protect coastal views in the manner required by the policies of the certified LCP. The site is visible from a number of public areas, and, as approved by the County, the project will have significant adverse impacts on visual resources. Commission staff thus believes the project, as approved by the County, raises a substantial issue with regard to conformance with the visual and scenic resource policies of the County's LCP. However, staff believes that the appellants' contentions regarding geologic hazards do not raise a substantial issue with regard to conformance with the certified LCP or the public access policies of the Coastal Act, as the project, as approved by the County, is consistent with the geologic hazards policies of the LCP and will not result in creation of a geologic hazard.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 5.

2. SUMMARY OF STAFF RECOMMENDATION DE NOVO: APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, it is consistent with the County's certified LCP and with the public access and public recreation policies of the Coastal Act.

Staff believes the current project, as approved by the County, is inconsistent with the visual and scenic resource policies of the LCP. However, staff believes that if certain special conditions are attached to the permit, the project will be consistent with the County's LCP. These conditions include additional design restrictions and requiring additional landscaping that will result in better screening of views of the development from the Town of Elk, the State Park, and Highway One. Thus, the adverse impacts of the project can be mitigated consistent with the provisions of the certified LCP through special conditions. In addition to recommending specific conditions addressing visual impacts, staff is recommending that the Commission attach several other conditions that are similar to conditions the County had attached to its permit to ensure the project's consistency with the certified LCP.

The Motion to adopt the Staff Recommendation of Approval with Conditions is found on Page 16.

STAFF NOTES:

1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

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

The subject development is appealable to the Commission because the proposed development is located between the sea and the first public road paralleling the sea, is also within 300 feet of the mean high tide line and the top of the seaward face of a coastal bluff, and is located within a designated Highly Scenic Area, which constitutes a "sensitive coastal resource area."

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

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

2. Filing of Appeal.

The appellants filed an appeal to the Commission in a timely manner on November 4, 1998, within ten working days of the County's issuance of the Notice of Final Action, which was received in the Commission's offices on November 2, 1998.

3. Continuation of Hearing.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on November 4, 1998. The 49th day falls on December 23, 1998. The only meeting within the 49-day period was December 8-10, 1998. In accordance with the California Code of Regulations, on November 9, 1998, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The County permit file information had not been received as of the day of the mailing of staff reports to the Commission and interested

parties on items on the Commission's December meeting agenda. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 12112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, the Commission opened and continued the hearing on December 9, 1998.

PART ONE – SUBSTANTIAL ISSUE

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-98-94 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a NO vote. To pass the motion, a majority vote of Commissioners present is required. Approval of the motion means that the County permit is final.

II. Findings and Declarations.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS.

The Commission received from the appellants (Mendocino CoastWatch and Sierra Club Mendocino/Lake Group) an appeal of the County of Mendocino's decision to approve the project. The project as approved by the County consists of the construction of an 18-foot-high, 3,125-square-foot residence, a 640-square-foot guest cottage, a 925-square-foot attached garage, patios and decks, driveway and parking areas; installation of a septic system; connection to a public water system; drilling of a water well for irrigation purposes; installation of a storage tank, and extensive landscaping for vegetative

screening. The appellants' contentions are summarized below, and the full text of the contentions are included as Exhibit No. 7.

The appellants' contentions involve inconsistency with the County's LCP policies regarding visual resources, and with geologic hazards, as described below.

1. Visual Resources.

The appellants assert that there are sites on the 11-acre parcel other than the one approved by the County which offer better protection of the public's visual resources, per Mendocino County LUP Policies 3.5-1, 3.5-3, and 3.5-4. The appellants are concerned that the house may be actually higher than 18 feet, due to "digging in," [staff believes this refers to grading and excavating] and assert that the location of the house near the bluff edge contributes to the loss of the public's visual resource. The appellants further assert that the landscaping required by the County will take ten years to fully screen the building from the public view, and that additional landscaping should be required to immediately screen the building.

2. Geologic Hazards.

The appellants contend that the project approved by the County does not have an adequate bluff setback per LUP Policies 3.5-4, 3.4-7, 3.4-8, and 3.4-9. They assert that the project, which includes a deck and leach system, is too close to the bluff, even with a drilled pier foundation system.

B. LOCAL GOVERNMENT ACTION.

On October 26, 1998, the Mendocino County Board of Supervisors approved the project with conditions (CDP 19-98). The County then issued a Notice of Final Action on the permit, which was received by Commission staff on November 2, 1998 (see Exhibit No. 8).

The County attached to its coastal permit a number of special conditions (see Exhibit No. 8), including, among others, requirements that (1) the dwelling contain only one kitchen, and that the northerly bedroom suite component (guest cottage) shall have no separate kitchen and shall not be separately rented, let or leased; (2) all recommendations by the geologist shall be carried out; (3) approved landscaping shall be installed prior to final clearance of the building permit for the dwelling and shall be maintained as described in the Planting Plan; (4) existing vegetation outside the development envelope shall be

protected for the life of the project; (5) all exterior and interior lighting shall be shielded so that only reflective light is visible beyond the property boundaries; (6) design restrictions be imposed, including requirements that all exterior siding of the structure shall be of natural or natural appearing materials of earthtone colors only; the roofs shall be of earthtone color; the water storage tank shall be buried as much as possible, screened by vegetation, and painted an earthtone color; and all exterior materials shall be non-reflective and reflective glass shall not be used on any windows.

C. PROJECT SETTING, DESCRIPTION, AND HISTORY.

1. Project and Site Description.

The proposed development consists of construction of an 18-foot-high, 3,125-square-foot residence with a loft area above the living room, a 640-square-foot guest cottage, and a 925-square-foot attached two-car garage. In addition, the proposed development includes construction of patios and decks, including a deck extending from the loft area, driveway and parking areas; installation of a septic system; connection to a public water system (the Elk County Water District) for domestic water; drilling of a water well for irrigation purposes and installation of a 2,500-gallon water storage tank for landscaping and fire suppression, and extensive landscaping for vegetative screening, consisting of 66 trees and shrubs to augment existing landscaping (see Exhibits 3-6).

The subject site is an approximately 11-acre parcel located immediately south of Greenwood State Beach, about a half-mile south of the Town of Elk. The property is on a slightly sloping ancient uplifted marine terrace lying west of Highway One and west of the old highway, along which is a row of power poles. From this point the property slopes downward from east to west to a relatively flat terrace situated approximately 150 feet above the ocean. A small knob on the westernmost point of the terrace rises up from the flat terrace, then drops sharply to the ocean. The eastern portion of the lot is primarily densely brush-covered.

The subject site is located in a designated Highly Scenic Area. Portions of the parcel, including the building site, are visible from the State Park and from the town of Elk, as well as from various points along Highway One, including a popular highway turnout at the north end of Cuffey's Cove to the north (near the cemetery).

2. Project History.

In 1995, the applicants, the Berlincourts, submitted to the County an application for a project similar to the current project. The project was slightly larger and in a different location farther to the north on the parcel. The County Coastal Permit Administrator

denied the project, and the Board of Supervisors also denied the appeal, based on a finding of incompatibility with the "highly scenic" policies of the LCP. At the time, County staff offered an alternative preferred site on the property which was located to the east of the currently proposed site on a sloping hillside (see Exhibit No. 10). This site was believed by County staff to be less visible from sensitive view areas. The applicants found this alternative site to be unacceptable. The applicants filed a lawsuit against the County, which was settled via a conditional settlement agreement. Pursuant to the settlement agreement, the Berlincourts submitted a new coastal permit application to the County, which included two alternative proposed plans, both of which differed somewhat from the proposal denied by the County initially. Also pursuant to the settlement agreement, the new proposal was heard not by a coastal permit administrator, but by the Board of Supervisors. The Board approved the alternative plan for the development known as Alternative No. 4 on October 26, 1998 (see Exhibits 8 and 9).

D. SUBSTANTIAL ISSUE ANALYSIS.

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

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

1. Appellants' Contentions That Raise a Substantial Issue.

Both of the contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. In one case, the Commission finds that a substantial issue is raised.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

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

The term substantial issue is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code

Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

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

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents a substantial issue with regard to one of the appellants' contentions: visual resources.

a. Visual Resources.

The appellants contend that the proposed project is inconsistent with Mendocino County LUP Policies 3.5-1, 3.5-3, and 3.5-4 regarding protection of visual resources. The appellants assert that there are sites on the 11-acre parcel other than the one approved by the County which offer better protection of the public's visual resources. They state that the site approved by the County is only slightly less intrusive than the site initially denied by the County. The appellants are concerned that the house may be actually higher than 18 feet, due to "digging in," [staff believes this refers to grading and excavating] and assert that the location of the house near the bluff edge contributes to the loss of the public's visual resource. The appellants further assert that the landscaping required by the County will take ten years to fully screen the building from the public view, and that additional landscaping should be required to immediately screen the building.

b. LCP Policies.

LUP Policy 3.5-1 states in applicable part that:

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

LUP Policy 3.5-3 identifies areas within the coastal zone that are designated as Highly Scenic, and states in applicable part that:

Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one story above natural grade unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures...New development should be subordinate to natural setting and minimize reflective surfaces.

LUP Policy 3.5-4 states in applicable part that:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of the slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists...Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if [an] alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area.

Policy 3.5-5 states in part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged.

Zoning Code Section 20.504.010 states that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Zoning Code Section 20.504.015(C) states in 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 1 as identified on the Coastal Element land use plan maps, 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...*
- (4) Buildings and building groups that must be sited in highly scenic areas shall be sited:
 - (a) Near the toe of a slope;*
 - (b) Below rather than on a ridge; and*
 - (c) In or near a wooded area...**
- (7) Minimize visual impacts of development on terraces by the following criteria:
 - (a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
 - (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
 - (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
 - (d) Design development to be in scale with rural character of the area...**
- (10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.*

c. Discussion.

The subject property is a sloping coastal terrace west of Highway One. The site is in a designated "Highly Scenic Area" south of Elk that is very sparsely developed, and devoted largely to agricultural use. Steep forested ridges rising to an elevation of about 1,600 feet provide a dramatic backdrop to the narrow terrace. The area in the vicinity of the subject property comprises an extremely scenic and spectacular series of headlands. The property is visible from a number of public areas, including portions of Greenwood State Beach, the Town of Elk, and various sites along Highway One, both to the south and to the north. Of particular importance is the view from a highway turnout at the northern end of Cuffey's Cove, several miles to the north of the subject property, near the cemetery. The site proposed for development is in the southwestern section of the property, within a relatively flat swale. A number of different locations for the house were considered by the County, and the site that was eventually approved appears to be one where visual impacts are minimized due to the lower elevation.

The County attached to its coastal permit several special conditions requiring design restrictions and landscape screening to reduce visual impacts on coastal views from public areas (see Exhibit No. 8). However, even as conditioned, the development will have visual impacts that raise a substantial issue of conformance to LCP policies. The residence will be visible for perhaps as long as ten years until the new landscaping reaches adequate heights to screen it. In addition, the County did not condition the permit to prohibit night lighting on the north side of the house. Because very little other development exists near the site, any night lighting on that side of the house will stand out against an otherwise largely dark background of open space and will be extremely visible and disruptive when viewed from the State Park, from Elk, and from the various places along Highway One. Until the landscaping has grown sufficiently high enough to screen the development (perhaps as long as ten years), and anytime night lighting in the north end of the house is on, the proposed development will be visually disruptive, raising a substantial issue of conformance with LUP Policies 3.5-1 and 3.5-3, which state that new development in highly scenic areas shall be subordinate to the character of its setting, and that new development west of Highway One in designated highly scenic areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. The proposed project also raises a substantial issue of conformance with Zoning Code Section 20.504.010, which requires the protection of public views, and with Zoning Code 20.504.015(C), which requires that new development in highly scenic areas be subordinate to the natural setting and minimize reflective surfaces.

The site is visible from portions of Greenwood State Beach, especially from the popular "burner ring" within the park, and also from one of the most popular scenic turnouts in Mendocino, the highway turnout at the north end of Cuffey's Cove. Because of the spectacular nature of the project setting, the Commission finds that the visual resources affected by the project are very significant. In addition, Mendocino contains many coastal parks and beaches, both state and local, in areas where residential development pressure is growing. The outcome of the review of this coastal development permit application will have precedential significance for the County's review of other future residential development proposed to be sited near public parks and beaches. Thus, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding visual and scenic resources.

2. Appellants' Contentions That Do No Raise a Substantial Issue.

Another contention raised by the appellants, although a valid grounds for appeal, does not raise a substantial issue, that of geologic hazards.

a. Geologic Hazards.

The appellants assert that the proposed building site does not have an adequate bluff setback per LUP Policies 3.5-4, 3.4-7, 3.4-8, and 3.4-9. They are concerned that the project, which includes a deck and septic system, is too close to the bluff, even with a drilled pier foundation system.

b. LCP Policies.

LUP Policy 3.4-7 states that:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

Setback (meters) = Structure life (years) x Retreat rate (meters/year)
The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.

These requirements are reiterated in Zoning Code Section 20.500.020(B).

LUP Section 3.4-8 states that:

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

LUP 3.4-9 states that:

Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

Zoning Code Section 20.500.010 states that development shall:

- (1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) Assure structural integrity and stability; and*
- (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Zoning Code Section 20.500.020(B) (3) states that "Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff."

c. Discussion.

The appellants allege there is not an adequate bluff setback for the proposed project, per the County's LCP, although they do not present any factual information from which to draw this conclusion. The geotechnical report prepared for the site by Earth Science Consultants, dated November 12, 1993 (see Exhibits 13 and 14), indicates that there is no evidence of large-scale landsliding or other evidence of gross site instability in the building area, that the adjacent steep and high bluff consists of hard erosion-resistant meta-sandstone bedrock materials that are highly resistant to erosion, but that the upper approximate 20 feet of the bluff area that consists of young marine terrace alluvium will,

with time, likely experience some "slight gradual receding in the form of erosion and local sloughing."

Based on the results of their geotechnical investigation, Earth Science Consultants concluded that the proposed development is feasible from the geotechnical engineering standpoint if performed and maintained in accordance with their recommendations. A blufftop setback of 15 feet was recommended, based on a maximum rate of top-of-bluff erosion of 0.2 feet per year. The report states that if the proposed new house foundations are set back at least 45 feet from the current top of bluff, stiffened spread footing foundations may be used; however, if the house will be placed closer than 45 feet to the top of the bluff, deeper and strong drilled pier and grade beam foundations will be required extending well into the underlying hard sandstone bedrock materials. In that case, a 20-foot minimum bluff setback is required. A number of specific recommendations are included in the report.

The County required as Special Condition No. 2 that all conditions and recommendations contained in the geotechnical report and addendum letter prepared by Earth Science Consultants be carried out. The proposed house is set back 34 feet from the bluff edge, a distance more than double that recommended in the geotechnical report. The applicants have indicated that they will use drilled pier and grade beam foundations, pursuant to the recommendation in the geotechnical report. The blufftop setback recommendation in the geotechnical report was based on information generated from a site-specific geotechnical investigation and established using the formula specified in LUP Policy 3.4-7 and Zoning Code Section 20.500.020(B). The proposed development, as approved and conditioned by the County, will be set back a sufficient distance from the bluff edge to ensure the safety of the structures from bluff erosion and cliff retreat during the economic lifespan of the project, and the project will not create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The site-specific geotechnical report provides a relatively high degree of factual support for these conclusions.

The Commission therefore finds that the appeal of the project as approved by the County does not raise a substantial issue with regard to conformance of the approved project with the geologic hazard policies of the LCP.

Conclusion.

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with the visual and scenic resource policies of the LCP.

PART TWO – DE NOVO ACTION ON APPEAL

Notes

1. Procedure.

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application.

2. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings above.

I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:

1. Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-98-94 subject to conditions.

2. Staff Recommendation of Approval:

Staff recommends a YES vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. Resolution to Approve Permit:

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 the nearest public road to the sea 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. Future Development:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall execute and record a deed restriction, subject to the review and approval of the Executive Director, 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 APN 127-260-01 as defined in Mendocino County Zoning Code Section 20.308.035(D), including the construction of fences, gates, additions, or outbuildings that might otherwise be exempt under Zoning Code Section 20.532.020(C), will require an amendment to this permit or will require an additional coastal development permit from Mendocino County.

This document shall run with land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required because the change is not substantive in nature.

2. Second Structure:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit for the review and approval of the Executive Director and shall subsequently record, a deed restriction stating that the northerly bedroom suite (guest cottage) shall be without kitchen or cooking facilities and shall not be separately rented, let, or leased, whether compensation be direct or indirect.

This deed restriction shall be recorded with the deed to parcel APN 127-260-01 as a covenant running with the land, binding all successors and assignees of the permittee, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required because the change is not substantive in nature.

3. Final Foundation and Drainage Plans:

PRIOR TO ISSUANCE of the Coastal Development Permit, the permittee shall submit for the Executive Director's review and approval, final foundation and site drainage plans that incorporate all the recommendations included in the geotechnical report dated November 12, 1993 prepared by Earth Science Consultants and addendum letter dated December 15, 1994, included with the County application, regarding site grading, foundations, and site drainage. Any deviation from the approved plans will require an amendment to this coastal permit unless the Executive Director determines that no amendment is required because the change is not substantive in nature.

4. Landscaping Plan:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit, for the Executive Director's review and approval, a revised landscaping plan prepared by a qualified professional with expertise in the field of landscaping, such as a landscape architect. The plan shall provide for the following:

- (a) An evergreen screen of drought-tolerant native or naturalized trees, such as cypress trees, and shrubs shall be planted both to the north and to the southeast of the proposed structures to screen the project from public views from Cuffey's Cove and other vantage points along Highway One, both north and south of the subject property, from Greenwood State Beach, and from the Town of Elk.
- (b) No fewer than 200 trees and shrubs shall be planted on the property initially, of which at least one-third shall be at least eight (8) feet tall at planting, with the expectation that many of the trees may die and others may need to be thinned as they grow so that a minimum of one-third of all planted trees remain at maturity. Half of the eight-foot-tall trees shall be planted so as to screen the view of the house from the north and half to screen the view of the house from the south. At maturity, there must be at least 66 planted trees and shrubs on the property, including at least 20 planted trees on the north side of the house, and at least 20 planted trees on the southeast side of the house, with heights of at least 18 feet, separated no more than approximately 10 feet apart, to screen the house from public views. The plan shall specify the type and mature heights of the trees and shrubs to be planted.
- (c) The plan shall include a tree maintenance program (e.g., pruning, fertilizing, watering, etc.) for newly planted trees and shrubs and a

replacement program for the mature trees and shrubs on a one-to-one or greater ratio for the life of the project. The new trees and shrubs shall be planted, and all necessary irrigation equipment shall be installed, within 60 days of completion of the project, and in any case prior to occupancy of the site.

- (d) The plan shall also indicate the location of all existing trees/shrubs on the property that will serve as landscape screening for the proposed structures and that shall remain undisturbed. Except as provided for in the approved Landscaping Plan, and any vegetation that must be removed for fire safety as required by the California Department of Forestry and Fire Protection, no existing vegetation on the site outside the building envelope shall be removed. Any existing trees or vegetation providing screening that do not survive must be replaced on a one-to-one or higher ratio for the life of the project. Any future removal of trees shall require a new coastal permit or an amendment to Coastal Permit No. 1-1-MEN-98-94, unless the Executive Director determines that no amendment is required.
- (e) The site shall be monitored for the first five years following planting, and a monitoring report shall be submitted by September 1 of each year for the review and approval of the Executive Director of the Coastal Commission. The monitoring report will document the health of the planted and existing trees and recommend any needed corrective actions to achieve compliance with the requirements of this condition.

The permittee shall undertake development in accordance with the approved final landscaping plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

The applicant shall notify the Executive Director in writing when the trees and shrubs have been planted, and Commission staff shall verify the planting via a site visit or by examining photographs submitted by the applicant.

5. Design Restrictions:

- (a) All exterior siding of the proposed structures shall be composed of natural or natural appearing materials, and all siding and roofing of the proposed structures shall be composed of materials of dark earthtone colors only. In

addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare.

- (b) Further, all exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward. There shall be no night lighting whatsoever on the north-facing sides of the structures.
- (c) Finally, the proposed water storage tank shall be buried as much as possible, shall also be screened by vegetation, and shall be painted a dark earhtone color.

6. Caltrans Encroachment Permit:

PRIOR TO OCCUPANCY of the residence, the permittee shall submit for the review and approval of the Executive Director, an encroachment permit from Caltrans for a single-family road approach off Highway One.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

1. Project and Site Description:

As noted in the Substantial Issue portion of this report, the proposed development consists of construction of an 18-foot-high, 3,125-square-foot residence with a loft area above the living room, a 640-square-foot guest cottage, and a 925-square-foot attached two-car garage. In addition, the proposed development includes construction of patios and decks, including a deck extending from the loft area, driveway and parking areas; installation of a septic system; connection to the Elk County Water District for domestic water; drilling of a water well for irrigation purposes and installation of a 2,500-gallon water storage tank for landscaping and fire suppression, and extensive landscaping for vegetative screening, consisting of 66 trees and shrubs to augment existing landscaping (see Exhibits 3-6).

The subject site is a an approximately 11-acre parcel located immediately south of Greenwood State Beach, about a half-mile south of the Town of Elk. The property is on a slightly sloping ancient uplifted marine terrace lying west of Highway One and west of the old highway, along which is a row of power poles. From this point the property

slopes downward from east to west to a relatively flat terrace situated approximately 150 feet above the ocean. A small knob on the westernmost point of the terrace rises up from the flat terrace, then drops sharply to the ocean. The eastern portion of the lot is primarily densely brush-covered.

The subject site is located in a designated Highly Scenic Area. Portions of the parcel, including the building site, are visible from the State Park and from the town of Elk, as well as from various points along Highway One, including a popular highway turnout at the north end of Cuffey's Cove to the north (near the cemetery).

Specimens of the rare and endangered *Castilleja mendocinensis* (Mendocino coast paintbrush) have been identified in the north bluff area.

2. Visual Resources

LUP Policy 3.5-1 and Zoning Code Section 20.504.010 state that the scenic and visual qualities of Mendocino County 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 minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

LUP Policy 3.5-3 and Zoning Code Section 20.504.015(C)(2) state that new development west of Highway One in designated Highly Scenic Areas is limited to one story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C) state that buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Visual impacts on terraces should be minimized by (1) avoiding development in large open areas if an alternative site exists; (2) minimizing the number of structures and clustering them near existing vegetation, natural landforms or artificial berms; (3) providing bluff setbacks for development adjacent to or near public areas along the shoreline; and (4) designing development to be in scale with the rural character of the area.

LUP Policy 3.5-5 states that providing that trees will not block coastal views from public areas such as roads, parks, and trails, tree planting to screen buildings shall be encouraged.

Zoning Code Section 20.504.015(C)(1) states that any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

Zoning Code Section 20/504.015(C)(3) states that new development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

Zoning Code Section 20.504.035(A)(2) states that where possible, all lights shall be shielded or positioned in a manner that will not shine light or allow glare to exceed the boundaries of the parcel on which it is placed.

Zoning Code Section 20.368.040 requires a height of 18 feet above natural grade for Rangeland parcels in designated Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

The subject parcel is located on a headland west of Highway One in a designated "Highly Scenic Area" south of the town of Elk. The visual impact of any development in this area is of primary concern because of the extraordinary beauty of the setting. The proposed development has been sited in a swale in the southwestern portion of the site in an attempt to minimize adverse impacts on visual resources. However, the site is visible from a number of public areas, including portions of Greenwood State Beach, the town of Elk, and various points along Highway One, both to the south and to the north. Of particular importance is a highway turnout a few miles to the north at the northern end of Cuffey's Cove, which provides a very popular and scenic view of the coast, and from which the subject site is distantly visible. The Commission notes that the topography of the site is such that a residence located anywhere on the 11-acre parcel will be initially somewhat visible from public viewing areas, and that there is no place on the parcel where a residence would be invisible.

The Commission notes that there have been two residences recently approved by the County in the area to the south of the subject parcel. Both residences (Crahan and Spires) are larger and taller than the proposed subject residence, and both will be more visible from Highway One than the subject house. The "alternative site" initially proposed by County staff (see Exhibit No. 10), a site closer to Highway One, would be marginally less visible from certain public viewpoints to the north, such as the State Park and the town of Elk. However, the parcel slopes downward to the west (13% grade downward from east to west), and any structure placed farther to the east would be at a higher elevation than

the currently located structure in a swale on the western portion of the site, and thus more visible from certain locations. If the house were sited to the east, it would be much more visible from Highway One than it currently is, especially from vantage points adjacent or close to the parcel and the development would block views of the ocean as well. In addition, large amounts of existing dense vegetation would need to be removed to place the house closer to the highway.

The Commission further notes that the California Department of Parks and Recreation is satisfied with the currently proposed location of the house. State Parks had an earlier objection to other initially proposed locations on the property, where visual impacts would have been greater. Superintendent Greg Picard wrote in a letter to the County that "Version 4' of the proposal offers a very reasonable compromise in addressing our concerns for the visual impacts to the State Park...these modifications and changes from what was originally proposed will be something that the State Parks can support." The Commission further notes that while in its initial location to the north, the house was visible from the beach portion of the State Park, in its current location farther to the south, no portion of the proposed project will be visible from the beach portion of the State Park.

Thus, the Commission finds that the proposed location of the proposed house, in the swale in the southwestern portion of the site is the site that best protects views to and along the scenic coastal area consistent with LUP Policy 3.5-1 and Zoning Code Section 20.504.010.

The proposed structures are limited to one story and 18 feet in height. Therefore, the Commission finds that the proposed development is consistent with the height limitations of LUP Policy 3.5-3 and Zoning Code Sections 20.504.015(C)(2) and 20.368.040.

The proposed project includes extensive landscaping. However, it will take a number of years, possibly as many as ten, for the proposed landscaping to reach a height that will adequately screen the development from public views. To adequately screen the structures, the Commission attaches Special Condition No. 4, which requires extensive landscaping including the planting of at least 200 trees and shrubs, with the expectation that approximately two-thirds of the trees may fail to reach maturity or be thinned later once they become established. By requiring the planting of a number of more dense and more mature trees initially as well as smaller, younger specimens, the Commission will ensure that the landscaping will not only screen the development when the landscaping reaches maturity, but have an immediate effect on screening the development.

Special Condition No. 4 also requires that all existing trees and other vegetation be maintained on the property, and that the required number of trees and shrubs reaching

maturity be maintained and replaced at a one-to-one or greater ratio for the life of the project. The required landscape screening will significantly soften the view of the development from public areas and screen the proposed structures as much as possible.

The proposed project, as currently designed, includes some shielded walkway lighting from the parking lot to the house. These lights or other night lighting installed elsewhere around the residence may be visible from the north, creating a visual disturbance against a backdrop of mostly dark open space in this otherwise largely undeveloped, rural landscape. To avoid such a disturbance, the Commission attaches Special Condition No. 5(b), which requires that there be no night lighting whatsoever on the north-facing side of the development.

To further ensure that the proposed development blends in with the surrounding development and is subordinate to the landscape, the Commission attaches Special Condition No. 5(b), which establishes design restrictions for the project, including requirements that all exterior siding of the proposed structures shall be composed of natural or natural appearing materials; all siding and roofing of the proposed structures shall be composed of materials of dark earthtone colors only; and that all exterior materials, including roof and windows, shall be non-reflective to minimize glare. Furthermore, Special Condition No. 5(c) requires that the 2,500-gallon water storage tank be buried as much as possible, screened with landscaping, and painted a dark earthtone color as well.

Finally, the Commission attaches Special Condition No. 1, which requires recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow future development to be reviewed to ensure that the project will not be sited where it might have significant adverse impacts on visual and scenic resources.

The Commission therefore finds that, as conditioned, the proposed development is consistent with the visual and scenic resource policies of the LCP as the project has been sited and designed to minimize visual impacts, will be subordinate to the character of its setting, will be visually compatible with the character of surrounding areas, and will provide for the protection of coastal views.

3. Geologic Hazards

LUP Policy 3.4-7 states that:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

Setback (meters) = Structure life (years) x Retreat rate (meters/year)
The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.

This is reiterated in Zoning Code Section 20.500.020(B).

LUP Section 3.4-8 states that:

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

LUP 3.4-9 states that:

Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

Zoning Code Section 20.500.010 states that development shall:

- (4) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (5) (2) Assure structural integrity and stability; and*
- (6) (3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Zoning Code Section 20.500.020(B) (3) states that "Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff."

The geotechnical report prepared for the site by Earth Science Consultants, dated November 12, 1993 (see Exhibits 13 and 14), indicates that there was no evidence of large-scale landsliding or other evidence of gross site instability in the building area, that the adjacent steep and high bluff consists of hard erosion-resistant meta-sandstone bedrock materials that are highly resistant to erosion, but that the upper approximate 20 feet of the bluff area that consists of young marine terrace alluvium will, with time, likely experience some "slight gradual receding in the form of erosion and local sloughing."

Based on the results of their geotechnical investigation, Earth Science Consultants concluded that the proposed development is feasible from the geotechnical engineering standpoint if performed and maintained in accordance with their recommendations. A blufftop setback of 15 feet was recommended, based on a maximum rate of top-of-bluff erosion of 0.2 feet per year. The report states that if the proposed new house foundations are set back at least 45 feet from the current top of bluff, stiffened spread footing foundations may be used; however, if the house will be placed closer than 45 feet to the top of the bluff, deeper and strong drilled pier and grade beam foundations will be required extending well into the underlying hard sandstone bedrock materials. In that case, a 20-foot minimum bluff setback is required. A number of specific recommendations are included in the report.

The proposed development is sited no closer than 34 feet from the bluff edge, more than double the minimum distance recommended by the geotechnical report, and a drilled pier and grade beam foundation is proposed.

The Commission attaches Special Condition No. 3, which requires submittal of final foundation and site drainage plans that incorporate all recommendations made in the geotechnical report and addendum letter intended to avoid creating a geologic hazard. This condition reiterates a similar County condition. In addition, the Commission attaches Special Condition No. 1, which requires recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow future development to be reviewed to ensure that the project will not be sited where it might result in a geologic hazard.

As conditioned, therefore, the proposed development is consistent with the policies of the certified LCP regarding geologic hazards, as the proposed development will not have adverse impacts on the stability of the coastal bluff or on erosion, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard.

4. Public Access:

Projects located within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided 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 states that 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 that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement. LUP Policy 3.6-27 states that:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. 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.

This language is reiterated in Zoning Code Section 20.528.030.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, 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.

The subject site is located west of the first public road and sits atop a steep coastal bluff. The County's land use maps do not designate the subject parcel for public access, and there does not appear to be any safe vertical access to the rocky shore down the steep bluffs. According to the County, there is no evidence of public prescriptive use of the subject site, and so the County did not instigate a prescriptive rights survey. Since the proposed development will not increase significantly the demand for public access to the shoreline and will have no other impacts on existing or potential public access, the Commission finds that the proposed project, which does not include provision of public access, is consistent with the public access policies of the Coastal Act and the County's LCP.

5. Environmentally Sensitive Habitat Areas

LUP Policy 3.1-7 and Zoning Code Section 20.496.020(A) state that a buffer area shall be established adjacent to all environmentally sensitive habitat areas to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet...measured from the outside edge of the environmentally sensitive habitat areas.

A botanical survey of the property was conducted by Dr. McBride, who discovered the presence of the rare and endangered *Castilleja mendocinenses* (Mendocino coast paintbrush). There were specimens growing on the north slope of the property. The proposed house is set back more than 300 feet from the bluff area in which the sensitive habitat is located, consistent with LUP Policy 3.1-7 and Zoning Code Section 20.496.020(A), which require a 100-foot setback. Furthermore, the Commission attaches Special Condition No. 1, which requires recordation of a deed restriction stating that the subject permit is only for the development described in the permit and that any future additions or other development the subject parcel, including the construction of fences, gates, additions, or outbuildings that might otherwise be exempt, will require an additional coastal development permit or amendment to Coastal Permit No. A-1-MEN-98-94. Thus, if such development is proposed in the area of the north bluff area near the sensitive habitat, the Commission can require an additional botanical survey to determine at that time if *Castilleja mendocinensis* is present, and, if so, can condition the permit accordingly to protect sensitive habitat.

As conditioned, therefore, the Commission finds that the proposed development is consistent with LUP Policy 3.1-7 and Zoning Code Section 20.496.020, as the project has been sited on a portion of the property where it will not have adverse impacts on sensitive habitat.

6. Planning and Locating New Development

Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other

areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

The Mendocino County LUP designates the subject site as Rangeland-160 (RL), which allows as a principal permitted use a single-family dwelling. Zoning Code Section 20.368.025 allows one unit per 160 acres. Section 20.458.010 of the Zoning Code specifically prohibits the creation and/or construction of a second residential unit except in some very specific instances (e.g., farm employee housing, farm labor housing, family care units), because of a concern with the adequacy of water and sewer services and the impact of second units on traffic flow.

The proposed development includes a single-family residence, plus a 640-square-foot guest cottage, which is the northerly bedroom suite component of the project, with an attached garage on an 11-acre parcel.

To ensure that the proposed guest cottage will not be used at any time as a second residential unit, Special Condition No. 2 is attached to this permit, requiring recordation of a deed restriction stating that the guest cottage shall be without kitchen or cooking facilities, and shall not be separately rented, let, or leased.

Water for domestic use will be supplied to the subject site by the Elk County Water District, and a well will be drilled for irrigation purposes. In addition, a 2,500-gallon water storage tank will be installed (partially underground), per the requirements of the Water District. An on-site sewage disposal system proposed for the site has been approved by the Mendocino County Department of Environmental Health.

Special Condition No. 6 requires submittal of evidence of a Caltrans encroachment permit prior to occupancy of the site.

The Commission finds, therefore, that the proposed development, as conditioned, is consistent with LUP Policy 3.9-1 and with Zoning Code Sections 20.368.025 and 20.458.010, because Special Condition No. 2 of this permit will ensure that there will be only one residential unit on the parcel, and because there will be adequate services on the site to serve the proposed development.

7. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as

conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned to be found consistent with the policies of the Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, which will minimize all adverse environmental impacts, include the following requirements:

- (1) that a deed restriction shall be recorded 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 that might otherwise be exempt under Zoning Code Section 20.532.020(C), will require an amendment to this permit or will require an additional coastal development permit from Mendocino County;
- (2) that a deed restriction shall be recorded stating that the northerly bedroom suite (guest cottage) shall be without kitchen or cooking facilities and shall not be separately rented, let, or leased, whether compensation be direct or indirect;
- (3) that final foundation and site drainage plans shall be submitted that incorporate all the recommendations included in the geotechnical report and addendum letter;
- (4) that a landscaping plan shall be submitted, including a maintenance and monitoring program, to provide permanent landscape screening for the project;
- (5) that design restrictions be imposed regarding color and materials of structures, and lighting; and
- (6) that a Caltrans encroachment permit be submitted for a single-family road approach off Highway One.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

ATTACHMENT A

Standard Conditions

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



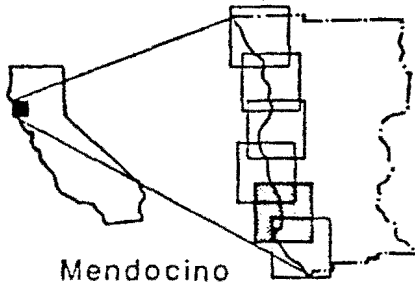


EXHIBIT NO. 1

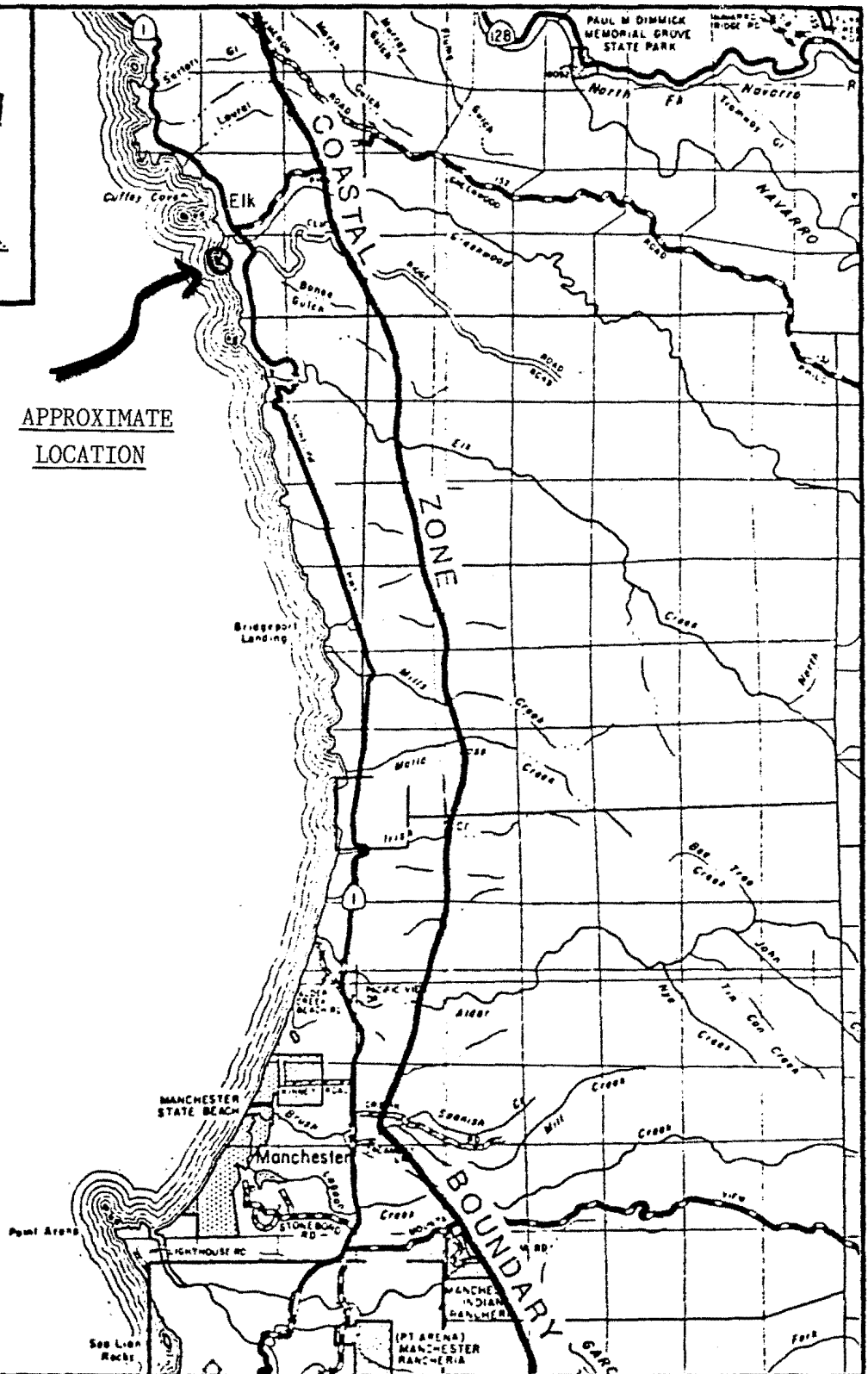
APPLICATION NO.
A-1-MEN-98-94

BERLINCOURT



LOCATION MAP
California Coastal Commission

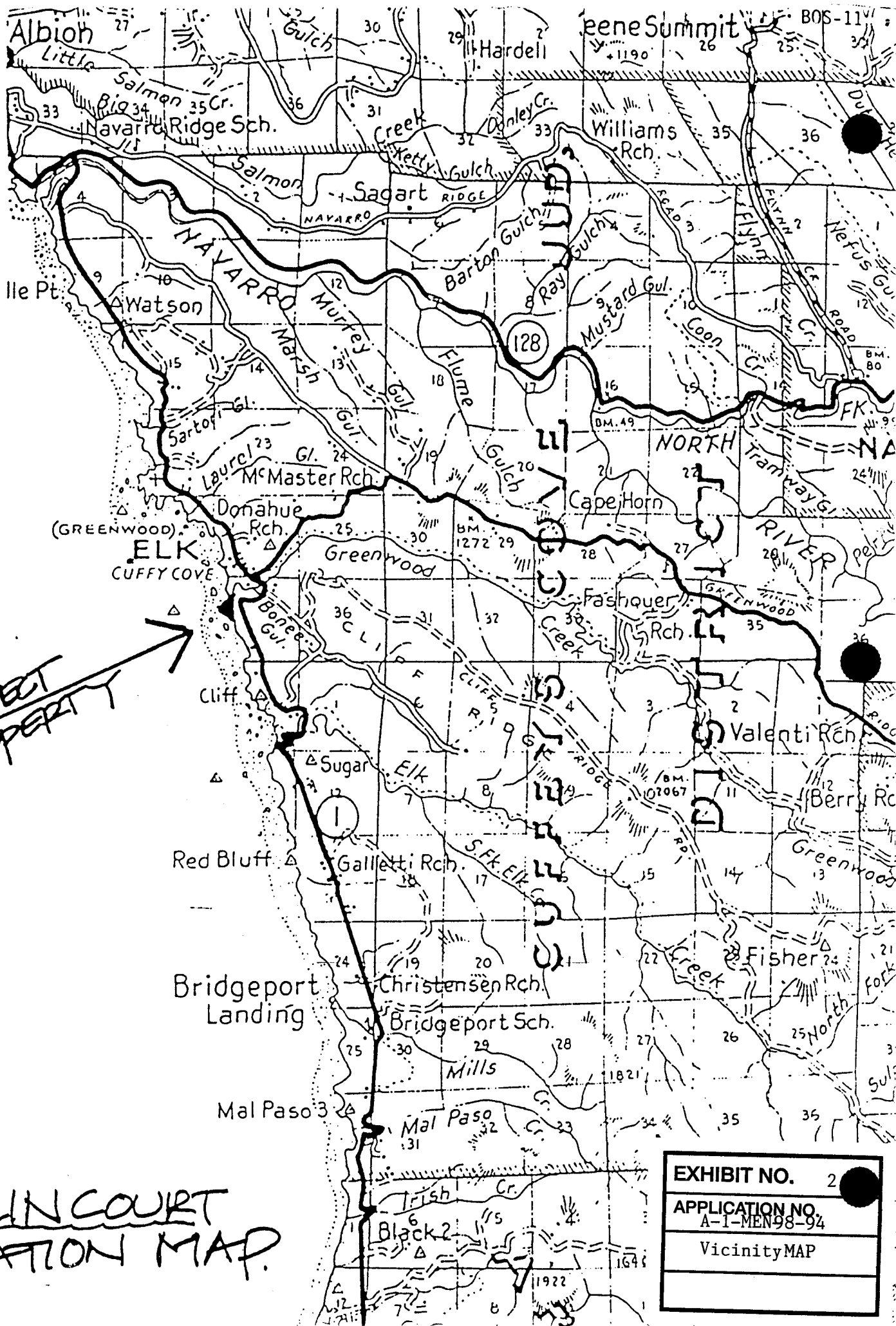
APPROXIMATE
LOCATION



California Coastal Commission

LOCATION MAP





SUBJECT
PROPERTY

BERLIN COURT
LOCATION MAP

EXHIBIT NO.	2
APPLICATION NO.	A-1-MEN 98-94
Vicinity MAP	

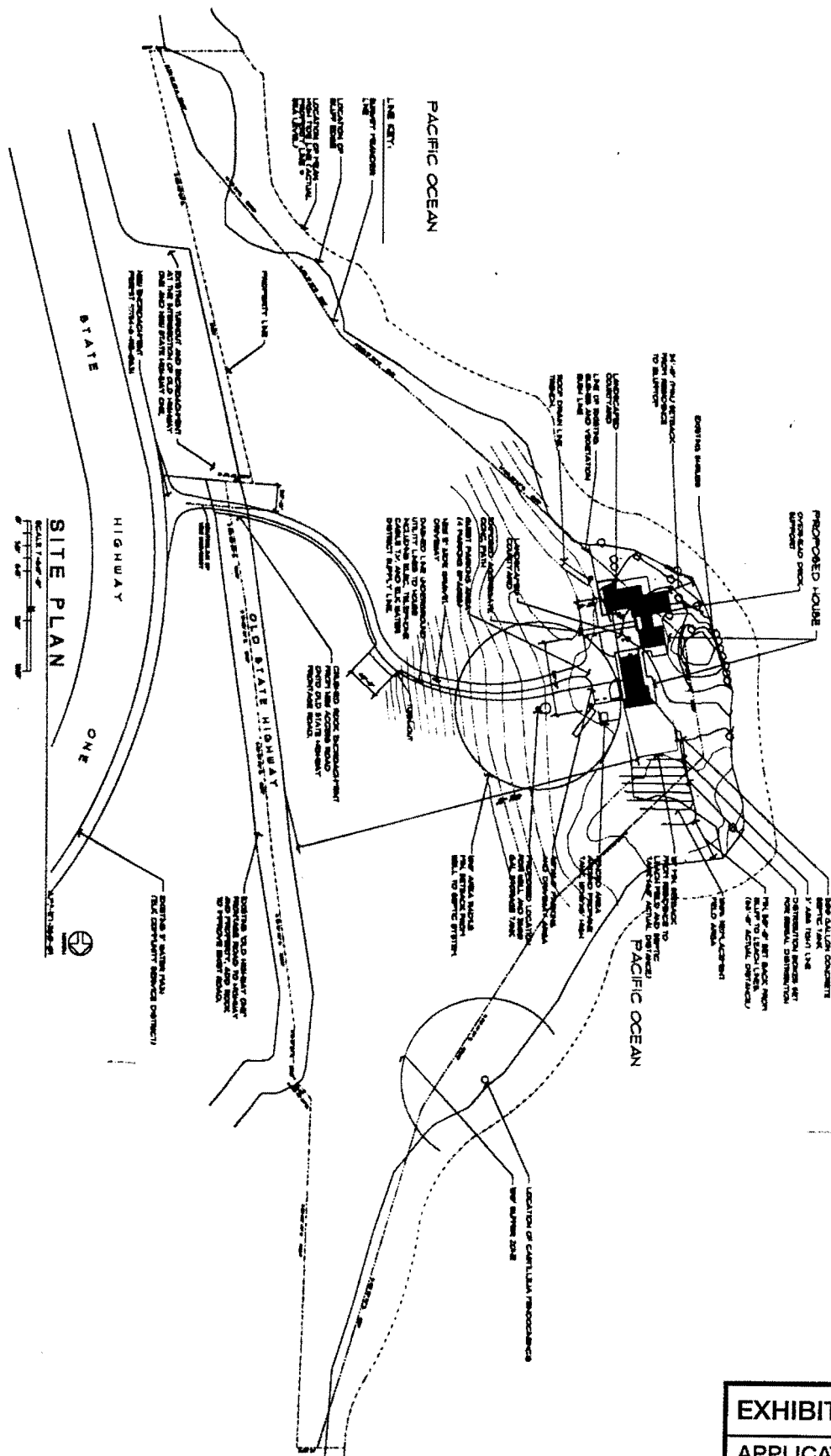


EXHIBIT NO. 3
APPLICATION NO. A-1-MEN98-94

Site Plan

NEW SINGLE FAMILY RESIDENCE for
TED & MARJORIE BERLINCOURT
7000 SOUTH HIGHWAY ONE
ELK, CA 95432

SITE PLAN
VERSION 4

ARCHITECTS
Robert Bohner
Michael L. Bohner
455 North Lake Blvd
Folsom, CA 95630
916/937-0001

A1

FLOOR PLAN

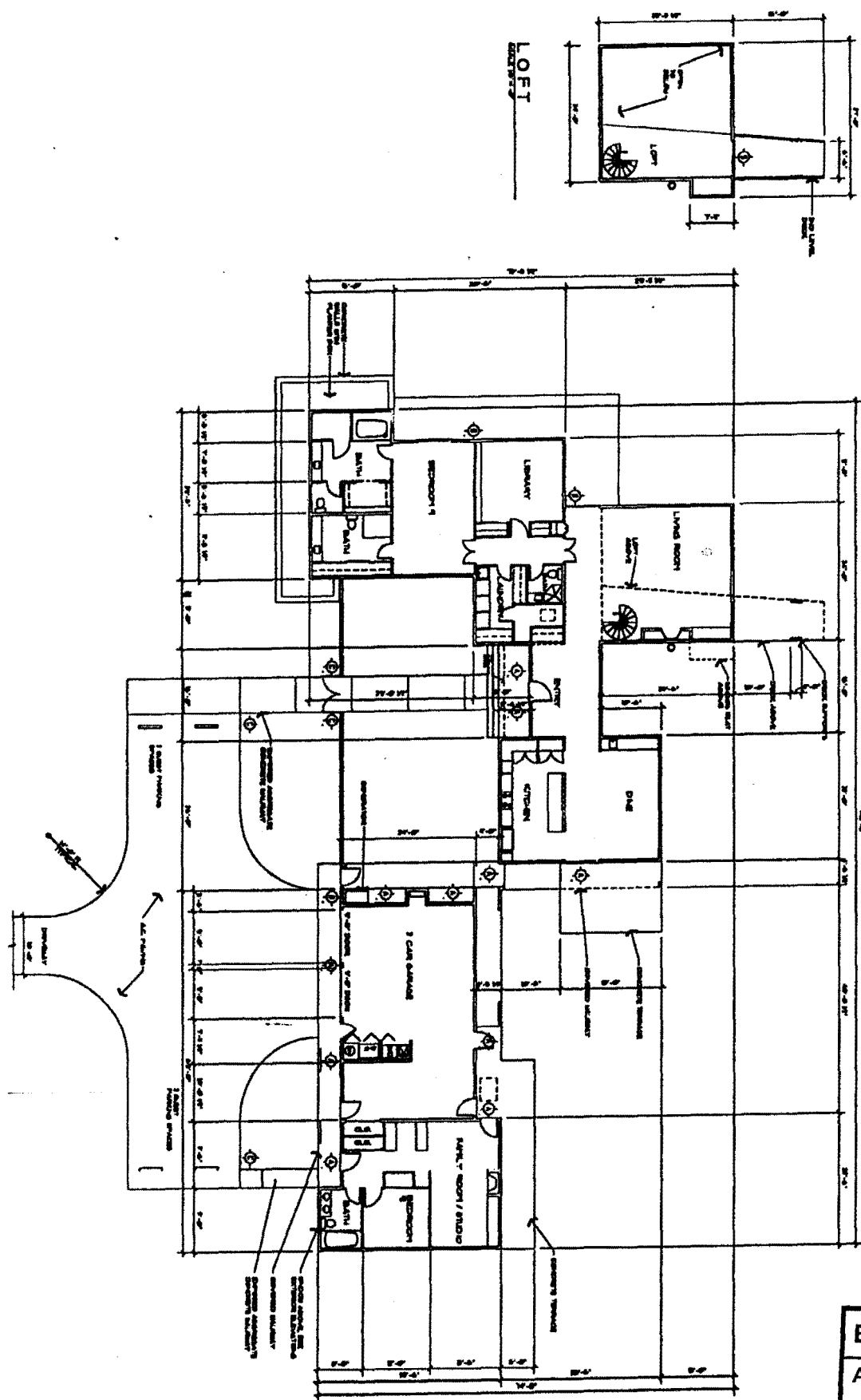
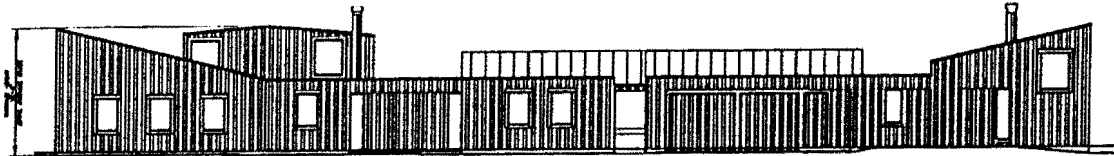


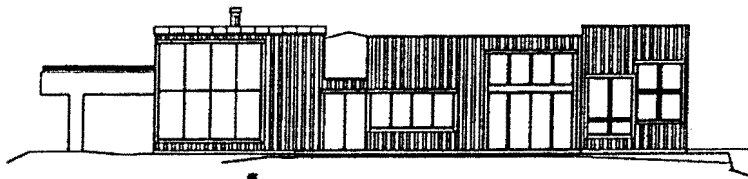
EXHIBIT NO. 4
APPLICATION NO. A-1-MEN-98-94
Floor Plan

A2	NEW SINGLE FAMILY RESIDENCE for TED & MARJORIE BERLINCOURT 7000 SOUTH HIGHWAY ONE ELK, CA 95432
	FLOOR PLAN VERSION 4

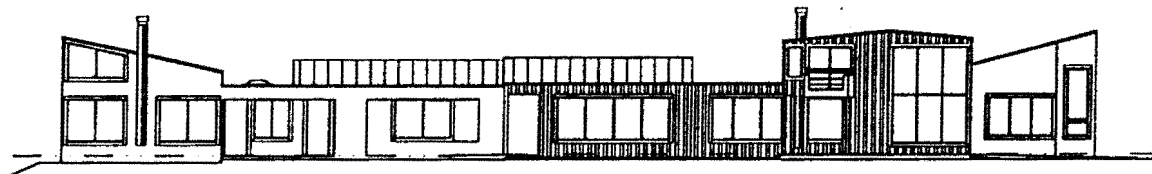
ARCHITECT
Robert E. Schmitt
1000 North 1st Street
Fremont, CA 94536
707 881-0811



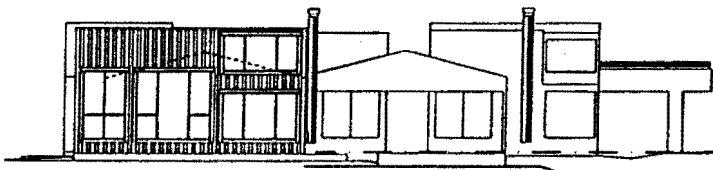
EAST ELEVATION



SOUTH ELEVATION



WEST ELEVATION



NORTH ELEVATION

EXTERIOR MATERIALS

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EXHIBIT NO.

5

APPLICATION NO.
A-I-MEN-98-94

Elevations

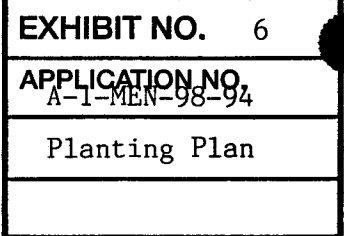
BLY RESIDENCE for
 RJORIE BERLIN COURT
 HIGHWAY ONE

STANDARD 11

**ELEVATIONS
VERSION 4**

ANALYSTS:
Robert Schissner
Michael Lawrence
405 North Main Street
Port Angeles, California
707 967-0791





CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

MONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

MENDOCINO COASTWATCH: Hillary Adams-1391 Cameron Rd, Elk, CA 95432 (707) 877-3527Rianne Luthers-P.O. 198, Fort Bragg, CA 95437 (707) 961-1953Sierra Club Mendocino/Lake Group: Ron Guenther (29900) Hwy 20, Fort Bragg, CA 95437

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: COUNTY OF MENDOCINO2. Brief description of development being
appealed: CDP 19-98 (Berlin Court) 3125+sq. ft single family home,
640 sq. ft guest quarters, attached garage, etc.3. Development's location (street address, assessor's parcel
no., cross street, etc.): 7000 South Hwy 1, Elk, CALIF
3/4 mile south of Elk, west side of Hwy 1, immediately south of the
Greenwood/Elk State Park.

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

EXHIBIT NO. 7

APPLICATION NO.
A-1-MEN-98-94

Appeal

Page 1 of 5

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: Oct. 29

7. Local government's file number (if any): CDP 19-98 + CDU 53-94

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Applicant: Ted & MAJORIE Berlincourt
7844 LANGLEY RIDGE RD, MCLEAN, VIRGINIA 22102
Agents: LEVENTHAL / SPLOSSER ARCHITECTS
435 N. MAIN ST., FORT BRAGG, CA 95437

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

- (1) _____

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance

this section, which continues on the next page.

EXHIBIT NO. 7

APPLICATION NO.
A-I-MEN-98-94

Appeal

Page 2 of 5

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

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED 2 pages

FILED BY FAX - HARD COPY TO FOLLOW

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

SECTION V. Certification

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

Hillary de M. Adams
Signature of Appellant(s)

Hillary de M. Adams

Reanne Litchner

[Signature]

Signature of Appellant(s) or
Authorized Agent

Date November 4, 1998

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

Section VI. Agent Authorization

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

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-98-94
Appeal
Page 3 of 5

Signature of Appellant(s)

Date _____

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-98-94
Appeal
Page 4 of 5

Attachment to REASONS FOR THIS APPEAL

Site

Our primary reason for this appeal for project review by the Coastal Commission is our concern that there are sites on the 11+ acre parcel other than CDP 19-98 "Version #4", (as approved by the Mendocino County Board of Supervisors), which offer better protection of the public's visual resources per Mendocino County Local Coastal Plan Policies 3.5-1, 3.5-3 and 3.5-4.

In the 1994 project proposal (CDP 53-94), the Coastal Development Permit Administrator (as well as the Mendocino County Board of Supervisors on appeal by the applicant) denied the site which is the same as the current proposed site called "Version #3" in this CDP 19-98 application. This denial was based on the visual protection policies of the LCP. We believe that the current site recommended by staff and approved by the Mendocino County Board of Supervisors — Version #4— is only slightly less intrusive than this past and present "Version #3" denied at every level of review.

Based on a Settlement Agreement (in litigation brought by the Berlincourt's against the County of Mendocino) the current Mendocino County planner was chilled from reviewing and offering what may be the least intrusive site as recommended in the first project's (CDP 53-94) staff report. Due to this "Settlement Agreement", the Mendocino County Board of Supervisors (and the public) were then precluded from receiving the benefit of planning staff analysis and comparison of the alternative (and what is likely to be the least intrusive) site (for this specific home design) offered in CDP 53-94.

Height

The County staff report for CDP 19-98 describes the "maximum project height of 18 feet (average height of 13+-feet". However, at the hearing before the Board of Supervisors it was discussed by the applicant's agents that "digging in" would allow a higher building (up to 20 feet) and the second story loft feature of the building, since the building would set "below grade" and the 18 feet was in fact an "average grade height". We are confused by this, and request clarification and review of the building for conformance with the LCP height and story policies.

Bluffs

We have a concern that "Version 4" approved by the Mendocino County Board of Supervisors, and the reoccurring "Version 3" (desired by the applicants) do not have an adequate bluff setback per LCP Policies 3.5-4, 3.4-7, 3.4-8 and 3.4-9. We are concerned that even with a drilled pier foundation system (per recommendation in the project's geotechnical study) that this, in combination with a deck and leach system which further expands the "footprint" and structure, place the entire project too close to the bluff. We believe that this push to be closer to the bluff contributes to the loss of the public's visual resource.

Landscaping

It was stated by the applicants and their landscape designer that it would be 10 years before the planting (as delineated in CDP 19-98 Conditions of Approval landscaping plan) would grow as to such a height as to screen the building from the public view. We believe there are further landscaping remedies available to immediately screen the building and blend it in with the existing vegetation on the site.

Conclusion

The parcel is located at the southern end of one of the most picturesque views (from Cuffey's Cove and nearby Cemetery) and State Park (located in Elk) in the coastal zone of California. The parcel is designated "highly scenic" in the Mendocino County Local Coast Plan. We have a concern that State Parks has withdrawn its concerns about impact on the visual resources of the Park based on a verbal offer (mentioned at the Supervisors hearing) from the applicants to "dedicate a portion of their property to the Park System".

Based on all the above Mendocino CoastWatch and the Sierra Club Mendocino/Lake Group respectfully request that the Coastal Commission hear our appeal on this project's lack of conformance with the certified Local Coastal Plan of Mendocino County.

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-98-94
Appeal	
Page 5 of 5	

RAYMOND HALL
DIRECTOR



1-MEN-98-132

TELEPHONE
707-463-4281

FAX #
707-463-5709

**COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

501 LOW GAP ROAD, ROOM 1440
UKIAH, CALIFORNIA 95482

October 29, 1998

RECEIVED
NOV 02 1998

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDP 19-98

DATE FILED: 4/8/98

OWNER: TED & MARJORIE BERLINCOURT

AGENT: LEVANTHAL SCHLOSSER ARCHITECTS

REQUEST: Coastal Development Permit to authorize the development of a 3125+- square foot single family dwelling, a 640 square foot guest quarters, attached garage, maximum project height of 18 feet (average height of 13+- feet), patios and decks, septic system, connection to a public water system, water well (for irrigation purposes) and storage tank, driveway and parking areas, and added landscaping (consisting of 66 trees and shrubs to augment existing landscaping which exists to heights of up to 13 feet) for vegetative screening.

LOCATION: In the Coastal Zone, 3/4+- mile south of the community of Elk, lying on the west side of Highway One, immediately south of the Greenwood/Elk State Park.

PROJECT COORDINATOR: Frank Lynch

ACTION TAKEN:

The Board of Supervisors, on October 26, 1998, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: Ted & Marjorie Berlincourt
Leventhal Schlosser Architects
Coastal Commission
Assessor

EXHIBIT NO. 8
APPLICATION NO. A-1-MEN-98-94
County Notice of Final Action and Conditions Page 1 of 6

EXHIBIT NO. 8

APPLICATION NO.
A-1-MEN-98-94

Page 2 of 6

**FINAL FINDINGS & CONDITIONS OF APPROVAL
#CDP 19-98, BERLINCOURT**

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.

EXHIBIT NO. 8

APPLICATION NO.
A-1-MEN-98-94

Page 3 of 6

This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:

- a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. This entitlement shall permit only one kitchen within the dwelling. The northerly bedroom suite component (guest cottage) shall be maintained in compliance with the applicable provisions of the County Code (e.g. subordinate and incidental to the primary dwelling, shall not be permitted a separate kitchen and shall not be separately rented, let or leased whether compensation be direct or indirect). An amendment to this coastal permit shall be required for any addition to the permitted residence, guest cottage, and garage. Should the owner wish to establish a family care unit on the property, a separate permit shall be acquired pursuant to County Code.
2. All conditions and recommendations contained in the geotechnical report prepared by Earth Science Consultants dated November 12, 1994 and as may be amended by their letter December 15, 1994 shall be adopted as part of this entitlement.
3. Development authorized by this entitlement shall be limited to that depicted on the plans entitled "Site Plan Version 4," dated November 11, 1997, "Floor Plan Version 4," dated July 22, 1997, "Elevations Version 4," dated February 27, 1998, and "Planting Plan Version 4," dated June 10, 1997 on file with the Department of Planning and Building Services.
4. Approved landscaping shall be installed prior to final clearance of the building permit for the dwelling.
5. Approved and installed landscaping shall be maintained, and replaced as described on the "Planting Plan Version 4," dated June 10, 1997.

6. Existing vegetation, in particular within those shaded areas depicted on the plan entitled "Planting Plan Version 4," dated June 10, 1997, shall also be protected for the life of the project. Any individual tree or shrub that may exist at the time of this entitlement, which does not survive, shall be replaced by the same general type of native planting, on a one for one ratio. Any removal of vegetation beyond that in the development envelope depicted on the approved plans shall be subject to a modification of this permit.
7. All exterior and interior lighting shall be shielded so that only reflective light is visible beyond the property boundaries.
8. All exterior siding of the structure shall be of natural or natural appearing materials of earthtone colors only. The roofs shall also be of earthtone color. The water storage tank shall be buried as much as possible, shall also be screened by vegetation, and shall be painted an earthtone color. All exterior materials shall be non-reflective and reflective glass shall not be used on any windows.
9. The areas along the bluff edge and the 100 foot buffer, as indicated on the Site Plan and the botanical reports as the location of *Castilleja mendocinensis* (Mendocino paintbrush) shall be protected from development.
10. The applicant shall comply with the requirements of the Elk County Water District as outlined in their letter dated May 8, 1998 on file with the Department of Planning and Building Services. Prior to final occupancy authorization a letter shall be submitted from the Elk County Water District indicating that the approved connections have been made to the satisfaction of the District and LAFCO.
11. A single family road approach (in conformance with Chapter 200, Index 205.2 of the Caltrans Highway Design Manual) shall be developed and maintained per an encroachment permit issued by Caltrans. Prior to final occupancy clearance of the building permit a letter indicating that required improvements have been installed to the satisfaction of Caltrans shall be submitted to the Department of Planning and Building Services

EXHIBIT NO. 8

APPLICATION NO.
A-1-MEN-98-94

Page 4 of 6

EXHIBIT NO. 8
APPLICATION NO. A-1-MEN-98-94
Page 5 of 6

**BOARD OF SUPERVISORS
MINUTES
OCTOBER 26, 1998**

**9. #CDP 19-98 TED AND MARJORIE BERLINCOURT (OWNERS) -
LEVENTHAL/SCHLOSSER ARCHITECTS (AGENT)**

LOCATION: In the Coastal Zone, 3/4 +- mi S of the community of Elk, lying on the W side of Hwy 1, immediately S of the Greenwood/Elk State Park. **REQUEST:** Coastal Development Permit to authorize the development of a 3125 +- sq ft single family dwelling, a 640 sq ft guest quarters, attached garage, maximum project height of 18 ft (average height of 13+- ft), patios and decks, septic system, connection to a public water system, water well (for irrigation purposes) and storage tank, driveway and parking areas, and added landscaping (consisting of 66 trees and shrubs to augment existing landscaping which exists to heights of up to 13 ft) for vegetative screening.

Planner Frank Lynch presented the staff report and briefly reviewed the action taken by the Coastal Permit Administrator in 1995. Correspondence was routed to the Board.

A letter received from Norman de Vall was read into the record.

Mr. Zotter responded to Mr de Vall's letter and stated that his office was directly involved in the preparation of the settlement agreement.

Hilary Adams spoke as to settlement agreement.

Marjorie Berlincourt gave a history of the project and made comments as to the location of the house.

Robert Schlosser, architect, showed view graphs of the property and answered questions relative to the siting of the house.

Sarah McGettis, landscape architect, spoke as to the natural landscaping of the property.

RECESS 4:56 P.M. TO 5:07 P.M.

Charlie Acker, Elk Water District, spoke as to the location of the project being outside of the current water district boundaries.

Supervisor Peterson made comments as to the Visions of Elk Group.

THE PUBLIC HEARING WAS OPENED and the following spoke: John Raffety, Hillary Adams, R.D. Beacon, Ellen Sacks, Judith Hale, Dean Wisdom, RoAnne Withers, Dave Skilton, Mary Pjerrou, Al McKnight, Trisha Spires, and Ruth Raffety. THE PUBLIC HEARING WAS CLOSED.

Mr. Schlosser and Ms. McGettis responded to comments made by members of the public.

Ted and Marjorie Berlincourt made closing remarks.

Upon motion by Supervisor Shoemaker, seconded by Supervisor Delbar, and carried (4-1, with Supervisor Peterson dissenting); IT IS ORDERED that the Board of Supervisors makes the project findings listed on Page BOS 8 finding the project Categorically Exempt from CEQA (Class 3), and approves the project subject to the conditions listed on pages BOS 8 through 10.

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-98-94
Page 6 of 6	

**BOARD OF SUPERVISORS
ACTION AGENDA SUMMARY - PLANNING MATTERS**

TO: BOARD OF SUPERVISORS
FROM: PLANNING & BUILDING SERVICES

DATE SUBMITTED: 10/16/98
REPLY NECESSARY: YES ☒ NO ☐
INFORMATION ONLY: YES ☐ NO ☒

AGENDA DATE: October 26, 1998

AGENDA #: _____

AGENDA TITLE: #CDP 19-98 - Berlincourt

BRIEF SUMMARY: The applicants are seeking a Coastal Development Permit to authorize the development of a single family dwelling, and supporting infrastructure, on an ocean front parcel located south of the community of Elk.

PREVIOUS ACTION: In 1995, the Coastal Permit Administrator and, subsequently, the Board of Supervisors, denied an application to develop this site. This application, which modifies the original proposal to attempt to address previous concerns raised (notably, potential visual impacts), is similar to the original proposal. However, the project has been modified somewhat, e.g. lowered and alternative siting options have been provided.

STAFF RECOMMENDATION: Staff would advocate that the alternative site, identified as "Version 4," is an acceptable alternative that meets the criteria established for development within such highly scenic areas.

RECOMMENDED MOTION: That the Board of Supervisors make the project findings listed on page BOS 8, finding the project Categorically Exempt from CEQA (Class3), and approve the project subject to the conditions listed on pages BOS 8 through 10.

ALTERNATIVE MOTION: That the Board of Supervisors find the project inconsistent with the applicable goals and policies of the Coastal Element, and directs staff to return on _____ with specific findings in support of the denial.

RESOURCE PERSON: Lynch ☒ TO BE PRESENT ☐ ON CALL PHONE EXT: 4281

BOARD ACTION

DATE OF ACTION _____

- 1) ☐ Approved ☐ Approved as Revised
- 2) ☐ Denied
- 3) ☐ Referred to _____ Committee; Calendared for Board Agenda _____
- 4) ☐ Referred to Dept. for additional info. CAO to clarify by memo _____
- 5) ☐ Other _____

EXHIBIT NO. 9

APPLICATION NO.
A-1-MEN-98-94

County Staff Report

STAFF REPORT FOR COASTAL DEVELOPMENT STANDARD PERMIT#CDP 19-98
October 26, 1998
BOS-2**OWNER:****EXHIBIT NO.** 9**APPLICATION NO.**
A-1-MEN-98-94

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AGENT:TED AND MARJORIE BERLINCOURT
7844 LANGLEY RIDGE ROAD
MCLEAN, VIRGINIA 22102LEVANTHAL/SCHLOSSER ARCHITECTS
435 NORTH MAIN STREET
FORT BRAGG CA 95437**REQUEST:**

Coastal Development Permit to authorize the development of a 3125+-square foot single family dwelling, a 640 square foot guest quarters, attached garage, maximum project height of 18 feet (average height of 13+- feet), patios and decks, septic system, connection to a public water system, water well (for irrigation purposes) and storage tank, driveway and parking areas, and added landscaping (consisting of 66 trees and shrubs to augment existing landscaping which exists to heights of up to 13 feet) for vegetative screening.

LOCATION:

In the Coastal Zone, 3/4+- mile south of the community of Elk, lying on the west side of Highway One, immediately south of the Greenwood/Elk State Park.

APPEALABLE AREA:

Yes

PERMIT TYPE:

Standard

TOTAL ACREAGE:

11.3

ZONING:

Rangeland

ADJACENT ZONING:North: OS DPR
East: RL
South: RL
West: Pacific Ocean**GENERAL PLAN:**

Rangeland

EXISTING USES:

Vacant

SURROUNDING LAND USES:North: State Park
East: Rangeland/Residential
South: Vacant/Residential
West: Pacific Ocean**SUPERVISORIAL DISTRICT:**

5

ENVIRONMENTAL DETERMINATION:

Categorically Exempt, Class 3

OTHER RELATED APPLICATIONS: CDP 53-94: Coastal Development Permit for a single family dwelling, on the subject property and submitted by the same applicant, was denied by the Coastal Permit Administrator (CPA) and, subsequently, by the Board of Supervisors in 1995 on a 3-2 vote. That project was generally similar to the subject project however, the current proposal is reduced in height and an alternative site for evaluation has been presented. The basis for the

previous denial, as evidenced by the adopted findings, was a perceived incompatibility with the "highly scenic" policies of the Coastal Element. The Board, at the time, did not have any specific concern with the size or the height of the home, however they seemed to have concerns with the project's potential impact to the areas viewscape, in that the project is within view of the community of Elk and the Elk/Greenwood State Park. Therefore, the project was determined to not be subordinate to the setting. At the time, staff offered an alternative preferred site on the property which was located more easterly on the site, on a sloping hillside. This site was believed to be less visible from sensitive view areas and more in keeping with the provisions of the Coastal Element. The applicants found this alternative site unacceptable for various reasons, and hence this re-submittal reflects modifications to the project offered by the applicants to address concerns of the County. Certificate of Compliance #CC 22-89 (Beacon) has been issued on the neighboring 5+- acres to the immediate east of the subject property (between the property and the highway) describing this five acres as a separate parcel. This property is now within the applicant's ownership.

To the south of the project site, CDP 55-97 (Crahan) was approved on March 26, 1998 by the CPA for an approximately 4,000 square foot single family dwelling. This project is also located on a very "visible" bluff top, however the site differs from the subject property as the "buildable area" is more limited, and the site is not visible from the State Park nor from the community of Elk. Further south, CDP 4-98 (Spires) was approved on May 28, 1998 by the CPA for an approximately 1,900 square foot single family dwelling. This project is also located on a much smaller piece of property (0.37+-acre) than the subject property. This project was permitted to develop to a height of 23.5 feet due to its location near a group of adjacent dwellings further south that range in height from 26 to 28 feet, therefore the additional height was concluded to be consistent with the character of the "cluster" of homes in the vicinity.

PROJECT DESCRIPTION: The applicants are proposing to construct, on a vacant property located immediately south of the Elk/Greenwood Creek State Park, a 3,125+- square foot single family dwelling, a 640 square foot guest cottage and attached two car garage, both of which are connected to the main residence by common design features and structural components. The structure proposed under this application is lower in height than that originally submitted under CDP 53-94, however the design does retain a loft area above the living room. Also proposed are patios and decks, including a deck extending from the loft area. The applicant proposes to connect to the Elk County Water District for domestic water, and proposes to develop a well and water storage tank for landscaping and fire suppression uses. Utilities are proposed to be extended to the structure via an underground trench running along the edge of the proposed driveway. Finally, driveway and parking areas are to be developed, as well as landscaping concentrating plantings on the north side of the proposed residence with the intent to screen public views that may be impacted.

The property is on a terrace which lies west of Highway One, and west of a previous alignment of Highway One. Along this abandoned highway alignment is a row of power poles. From this point the property slopes downward from east to west to a relatively flat terrace which lies approximately 150 feet above the ocean. A small knob, on the most westerly point of the terrace, rises up from this flat terrace, which then drops sharply (in some area almost vertical) to the ocean. Much of the property is clearly visible, as a distant view, from the Elk/Greenwood State Park and the community of Elk.

The applicants have submitted two different versions of the project for consideration. Both versions are located on the more westerly, lower, flat terrace area. "Version 3" is essentially the same project previously rejected by the County, however it has been redesigned to lower the structure approximately two feet. It is located, for simplicity of description, more northerly than the alternative, being setback from the northern edge of the terrace approximately 154 feet. "Version 4" is the same house design, located in an area slightly lower in elevation than "Version 3", and being setback approximately 202 feet from the northern edge of the terrace. Within the area between the house and the northerly edge of the terrace the applicant proposes to plant both trees and shrubs to assist in screening the house from more sensitive receptors (Elk/Greenwood State Park and the Town of Elk).

Quoting from the original staff report for CDU 53-94, which also described the project:

"The applicant is proposing approximately 1,500 square feet of decking extending adjacent to the guest quarters (guest cottage) dining and living room areas. A courtyard and walkways fill in the interior easterly alcove of the structure adjacent to the driveway area. Four guest parking spaces and adjacent maneuvering areas are proposed adjacent to the (two) car garage. Drainage plans have been addressed under the hazards section of this report.

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An approximately 370 foot long driveway including a turnout will extend from the existing Highway One frontage road to the dwelling. This driveway will provide access to a (two) car garage and four parking spaces.

The applicant proposes to use redwood siding stained "ducks back", a clear finish, redwood window trim and facias, black anodized window frames, clear all heart doors, copper roofing and heart redwood decking materials. The applicant is also proposing a fenced courtyard, decking on the westerly and southerly side of the dwelling and landscaping adjacent to the dwelling. The roofing will have some variable pitch components and will have copper roofing materials weathered and aged naturally."

In support of their request, the applicants have submitted an extensive application packet which includes the various reports and assessments that have been prepared for the project, e.g. botanical survey, geotechnical reports, and previous referral comments, as well as a visual analysis prepared by the applicants and their agents.

LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION: As discussed, the primary issue associated with the previous denial of the project was the issue of potential conflicts with the Local Coastal Plan policies dealing with protection of "highly scenic areas" of the County. This is a very subjective area of review for both staff and the decision makers. As submitted, however, staff would conclude that the proposed project may be considered consistent with the applicable goals and policies of the Local Coastal Program as described below.

Land Use. The property is zoned Rangeland which allows as a "principle permitted use" a single family dwelling. Similar zoning is assigned to the properties to the south and east. The "guest cottage" is dissimilar from the typical guest cottage in that it is attached by structural components to the main dwelling. The Coastal Zoning Code requires that guest cottages are not to be developed with separate cooking facilities, nor are they to serve paying guests. Special Condition 1 is offered to insure continued compliance with applicable code requirements.

Public Access. The site is not identified as currently containing, or is it proposed to have developed, any coastal access points. A site view of the project site did not reveal any obvious potential prescriptive access points. Public access is available to the beach through the State Park north of the site. No on-site access issues are therefore raised by this project.

Hazards. The site does raise issues with potential hazards stemming from development near an ocean bluff. Coastal Element policies addressing development on blufftop parcels are as follows:

Policy 3.4-7 states, in part: The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years)...

Policy 3.4-8 states, in part: Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

Policy 3.4-9 states, in part: Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

A geotechnical report was prepared for the project by Earth Science Consultants which concludes that the top-of-bluff erosion rate is 0.2 feet per year, or a 15 foot setback minimum for a proposed 75 year structural life expectancy. The consultants state that the relatively slow retreat rate is based on the composition of the bluff, a hard meta-sandstone bedrock that is "highly erosion-resistant" and that the bluff is protected by the large seamount just west of the site.

The applicants are requesting within Version 3 a setback of 40 feet from the bluff to the main body of the structure (measured at the closest point). The deck from the loft area will extend 16 feet into this setback, being setback 26 feet (by scale) from the bluff edge (difference due to curve of bluff). In Version 4 the main structure will be setback 34 feet from the bluff, with the deck maintaining the approximate 26 foot setback (again due to the curve of the bluff). The proposed leachfield for the septic system will in both Versions 3 and 4 be setback a minimum of 50 feet from the bluff edge.

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The geotechnical report states:

"If the proposed new house foundations are set back at least 45 feet from the current top-of-bluff area, then we believe stiffened spread footing foundations may be used. If it is desired to place the house closer than 45-feet to the top-of-bluff area, then deeper and strong drilled pier and grade beam foundations will be required extending well into the underlying hard sandstone bedrock materials. If deep and strong drilled pier foundations are used, then we believe a 20-foot minimum bluff setback could be provided for the house. However, our exploration test pits revealed that the overlying marine terrace deposits primarily consist of silty sand that will likely locally experience caving, and therefore installation of the drilled piers could be relatively costly, including the required use of casing in areas where the marine terrace alluvium experiences caving."

The applicants have confirmed that it is their intent to develop the structure with the drilled pier foundation system.

The report expresses concern regarding drainage controls that would be necessary to avoid creating future problems. The report states:

"It is important the site drainage from the new impervious surfaces be discharged well away from the bluff area, and be well dispersed. Under no circumstances would drainage be discharged in a concentrated manner near the bluff, as the sandy marine terrace alluvium would be susceptible to accelerated erosion. We also recommend that the site be well vegetated, and no barren areas be present."

The submitted plans indicate that all drainage from the various surfaces will be routed to two drainage trenches that would be developed to the east of the structures. These trenches are designed similar to a septic field in that they are designed to dispose of water subsurface in rock lined trench.

The report further states:

"... in general the proposed development be built to conform with the existing natural site grade as much as practical, and cutting and filling generally be minimized as much as practical so as not to upset the existing gross site equilibrium."

The design submitted, in both Versions 3 and 4, is located in the lower terrace which is fairly level, such that the one story design would not require significant grading (aside from the digging for piers, septic and drainage field work).

The report concludes:

"It is our opinion that the proposed development is feasible from the geotechnical engineering standpoint if performed and maintained in accordance with our recommendations."

Special Condition Number 2 is offered to insure that the structure is built and maintained in accordance with the submitted report.

Visual Resources. Assessing visual impacts can be a very subjective exercise. To guide this review, the following Coastal Element Policies are provided to assist in the analysis:

Policy 3.5-1 states, in part:

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

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Policy 3.5-3 states, in part:

"...new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures."

Coastal Element Policy 3.5-4 states, in part:

"Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area."

Coastal Element Policy 3.5-5 states, in part:

"Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged."

The applicant's agent has provided staff with a 69 page addendum to describe the assessment of potential impacts from the applicant's perspective. Discussions within the addendum describe the vantage points the building site is visible from neighboring public areas, the siting criteria and design considerations used in establishing the specific sites, an assessment of the alternative site previously recommended by staff, a series of photomontages which illustrate the applicant's project from several vantage points, and a series of photos depicting other projects along the coast. The addendum concludes, in general that the project's visual impacts have been minimized by locating the project in these areas of the property.

As previously described, the house design is contemporary in style, with redwood exterior siding, black anodized windows, and a copper roof. The materials used will assist in limiting the visual impact, especially after some exposure, or aging, of the materials. Exterior lighting is to be downcast and of low voltage, however the plans illustrate a total of 20 exterior lights, as well as eight sets of windows facing north towards Elk which will no doubt be of greater visual impact when illuminated from the interior. The applicant proposes "added landscaping (consisting of 66 trees and shrubs to augment existing landscaping which exists to heights of up to 13 feet) for vegetative screening." This includes 44 5-gallon shrubs (e.g. silk tassel, blue blossom, and coyote brush, all typical of the coastal environment), 13 5-gallon shore pine, and 9 5-gallon Monterey cypress. This will be in addition to the stated goal of maintaining existing vegetation.

In reviewing the previous file for CDP 53-94, it appears that much discussion focused on the project's visual impact from Elk, Greenwood State Beach, and other vantage points up to the northern end of Cuffey's Cove (near the cemetery). An assessment of the submitted photomontage taken from the "burner ring," a popular picnic area in the upper area of the park, illustrates that the project will be slightly visible and would likely be more visible at night due to lighting. Depending on the accuracy of the depiction (which staff has no ability to verify but has no reason to doubt), or the individual viewer's sense of aesthetics, this may be an impact. There are other locations on the property, such as the previous staff alternative, which would make the project less prominent when viewed from the Town or State Park (in that it would be set farther back from the point from this perspective, and therefore may be more subordinate), however those locations would make the project more visible from other areas, e.g. Highway One. Further, at most other locations around the park and beach area, several other homes are clearly visible. Prominent among those within sight include several of the smaller, long established homes of the community, but also include the recently expanded Elk Cove Inn and, in the distance, the larger home of Mr. R. D. Beacon on the ridge to the southeast.

The State Department of Parks and Recreation comments:

"We have reviewed the above referenced project proposal for the Berlincourt residence adjacent to Greenwood Creek State Park. After a site review with Architect Bob Schlosser, we have concluded that "Version 3," while

offering many improvements over previous plans, is not as effective as "Version 4." "Version 4" of this proposal offers a very reasonable compromise in addressing our concerns for the visual impacts to the State Park.

The site location shift and elevation change of Version 4 from Version 3 offer a positive change that we strongly encourage. It would appear that shifting the leach field to the south as well would increase the area available for proposed landscape screening. The additional numbers of plants available for screening, and the plant maintenance specifications shown, represents the best solution for achieving an effective revegetation effort. Building materials of copper (roof) and rough redwood (siding) will blend with the native color scheme to the greatest extent possible.

In totality, these modifications and changes from what was originally proposed will be something that the State Parks can support. We appreciate the effort demonstrated on behalf of the Berlincourt's agent, Leventhal and Schlosser, to deal with the issues that previously were the source of our past objections."

The applicant has recently submitted a letter further advocating their project in light of the recent approvals of neighboring projects to the south. The applicants would prefer to locate the project in an area closer to the northern bluff edge to take advantage of the views available, but have settled on the two alternatives provided in order to respond to concerns raised within the previous submittal. The letter echoes some of their previous arguments which are essentially based on the perceived precedent that is set by approvals of other projects which may also have a visual impact. While staff can understand why the applicant would question other nearby approvals in an effort to promote their request, and the County should strive for consistent decision making, many variables enter into the assessment of individual projects. Staff agrees with State Parks that Version 4 is an improvement over Version 3 in that it is on a lower area of the property and farther setback from the northern bluff area. However, this site will be visible from the south, especially for northbound Highway One traffic. The two other projects south of this site that have been approved for development are on much smaller parcels, hence they have fewer options for siting improvements, and further, are not as visually "sensitive" due to the subject property's location adjacent to a State Park and the community of Elk. Also the more southerly of the adjacent projects is closer to some established development which redefines the character of that area.

Staff can certainly understand the applicants desire to locate close to the northern bluff edge, as the view is spectacular. However this staff member believes that Version 4, which is lower in elevation and sufficiently setback from the northern portion of the property thereby greatly limiting its view from the sensitive receptors of the Town and Park, and given the proposed landscaping which will mature to provide an additional visual buffer, is more consistent with adopted coastal policies. Further staff would point out, the views from this location are also "spectacular." Therefore, it is staff's belief that Version 4 is superior to Version 3 as it will reasonably meet the required standard of being subordinate to the character of the setting, and not have a significant impact on protected coastal views. Special Conditions 3 through 8 are offered to soften the visual impacts of the project.

Natural Resources. A botanical survey was completed on the property by Gordon McBride. Mr. McBride commented that due to the location and habitat present that it was anticipated that a number of unique plants may be on-site. However, Mr. McBride's survey only discovered one rare or endangered plant species, the Mendocino Paintbrush, on the north slope of the property. Coastal Element Policy 3.1-2 requires the establishment of a 100 foot minimum buffer around this Environmentally Sensitive Habitat Area (ESHA), which has been provided on the submitted site plan. Staff proposes Special Condition 9 to insure that this ESHA is protected according to the adopted standard.

Archaeological/Cultural Resources. This proposal was originally reviewed by the Archeological Commission on September 14, 1994. At the time it was concluded that there was little likelihood that artifacts would be found on this site. The standard discovery clause is included within Condition Number 8 should any artifacts be discovered during the development of the site.

Groundwater Resources. The site is located within an area mapped as being within a "critical water resource area." The applicant proposes to connect to the Elk County Water District for domestic use and will develop a well for irrigation purposes. The District states it will provide water to the property, which outside the District's boundary, provided:

- A water storage tank is installed of a minimum size of 1500 gallons. (The submitted plans depict a 2500 gallon tank).

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- Approved backflow device is installed.
- The all District supplied water used is withdrawn from the tank and no other connection to district's line or meter is made.
- That a means to pressurize water is installed between the tank and the house.
- That on going maintenance of the water quality and piping beyond the District's meter is the owners responsibility.

LAFCO comments that the District cannot serve the project unless an annexation occurs, or an out of service area agreement is approved by LAFCO. (This agency also comments that the District has not had approved to date a Master Service Plan). Special Condition Number 10 is provided to address these concerns.

Transportation/Circulation. Access will be provided by a private drive connecting to Highway One. Caltrans has required that the encroachment be brought up to current single family road approach standards. (See Special Condition Number 11).

Zoning Requirements. The project complies with the zoning requirements for the Rangeland (RL) Zoning District set forth in Section 20.368 et. seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

PROJECT FINDINGS AND CONDITIONS: Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator approve the proposed project, as described as Version 4 on the submitted plans, and adopt the following findings and conditions.

FINDINGS:

1. The proposed development is in conformity with the certified Local Coastal Program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

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To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

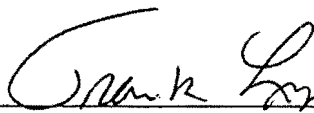
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

SPECIAL CONDITIONS:

1. This entitlement shall permit only one kitchen within the dwelling. The northerly bedroom suite component (guest cottage) shall be maintained in compliance with the applicable provisions of the County Code (e.g. subordinate and incidental to the primary dwelling, shall not be permitted a separate kitchen and shall not be separately rented, let or leased whether compensation be direct or indirect). An amendment to this coastal permit shall be required for any addition to the permitted residence, guest cottage, and garage. Should the owner wish to establish a family care unit on the property, a separate permit shall be acquired pursuant to County Code.
2. All conditions and recommendations contained in the geotechnical report prepared by Earth Science Consultants dated November 12, 1994 and as may be amended by their letter December 15, 1994 shall be adopted as part of this entitlement.

3. Development authorized by this entitlement shall be limited to that depicted on the plans entitled "Site Plan Version 4," dated November 11, 1997, "Floor Plan Version 4," dated July 22, 1997, "Elevations Version 4," dated February 27, 1998, and "Planting Plan Version 4," dated June 10, 1997 on file with the Department of Planning and Building Services.
4. Approved landscaping shall be installed prior to final clearance of the building permit for the dwelling.
5. Approved and installed landscaping shall be maintained, and replaced as described on the "Planting Plan Version 4," dated June 10, 1997.
6. Existing vegetation, in particular within those shaded areas depicted on the plan entitled "Planting Plan Version 4," dated June 10, 1997, shall also be protected for the life of the project. Any individual tree or shrub that may exist at the time of this entitlement, which does not survive, shall be replaced by the same general type of native planting, on a one for one ratio. Any removal of vegetation beyond that in the development envelope depicted on the approved plans shall be subject to a modification of this permit.
7. All exterior and interior lighting shall be shielded so that only reflective light is visible beyond the property boundaries.
8. All exterior siding of the structure shall be of natural or natural appearing materials of earthtone colors only. The roofs shall also be of earthtone color. The water storage tank shall be buried as much as possible, shall also be screened by vegetation, and shall be painted an earthtone color. All exterior materials shall be non-reflective and reflective glass shall not be used on any windows.
9. The areas along the bluff edge and the 100 foot buffer, as indicated on the Site Plan and the botanical reports as the location of *Castilleja mendocinensis* (Mendocino paintbrush) shall be protected from development.
10. The applicant shall comply with the requirements of the Elk County Water District as outlined in their letter date stamped May 8, 1998 on file with the Department of Planning and Building Services. Prior to final occupancy authorization a letter shall be submitted from the Elk County Water District indicating that the approved connections have been made to the satisfaction of the District and LAFCO.
11. A single family road approach (in conformance with Chapter 200, Index 205.2 of the Caltrans Highway Design Manual) shall be developed and maintained per an encroachment permit issued by Caltrans. Prior to final occupancy clearance of the building permit a letter indicating that required improvements have been installed to the satisfaction of Caltrans shall be submitted to the Department of Planning and Building Services.

10/13/98
DATE


FRANK LYNCH
SUPERVISING PLANNER

Staff Report Prepared By: Frank Lynch, Supervising Planner

Attachments: Location Map
Version 3 Site, Elevation, Floor, and Landscaping Plans
Version 4 Site, Elevation, Floor, and Landscaping Plans

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EXHIBIT NO. 10

APPLICATION NO.
A-1-MEN-98-94County Staff
Alternative Siting

Area

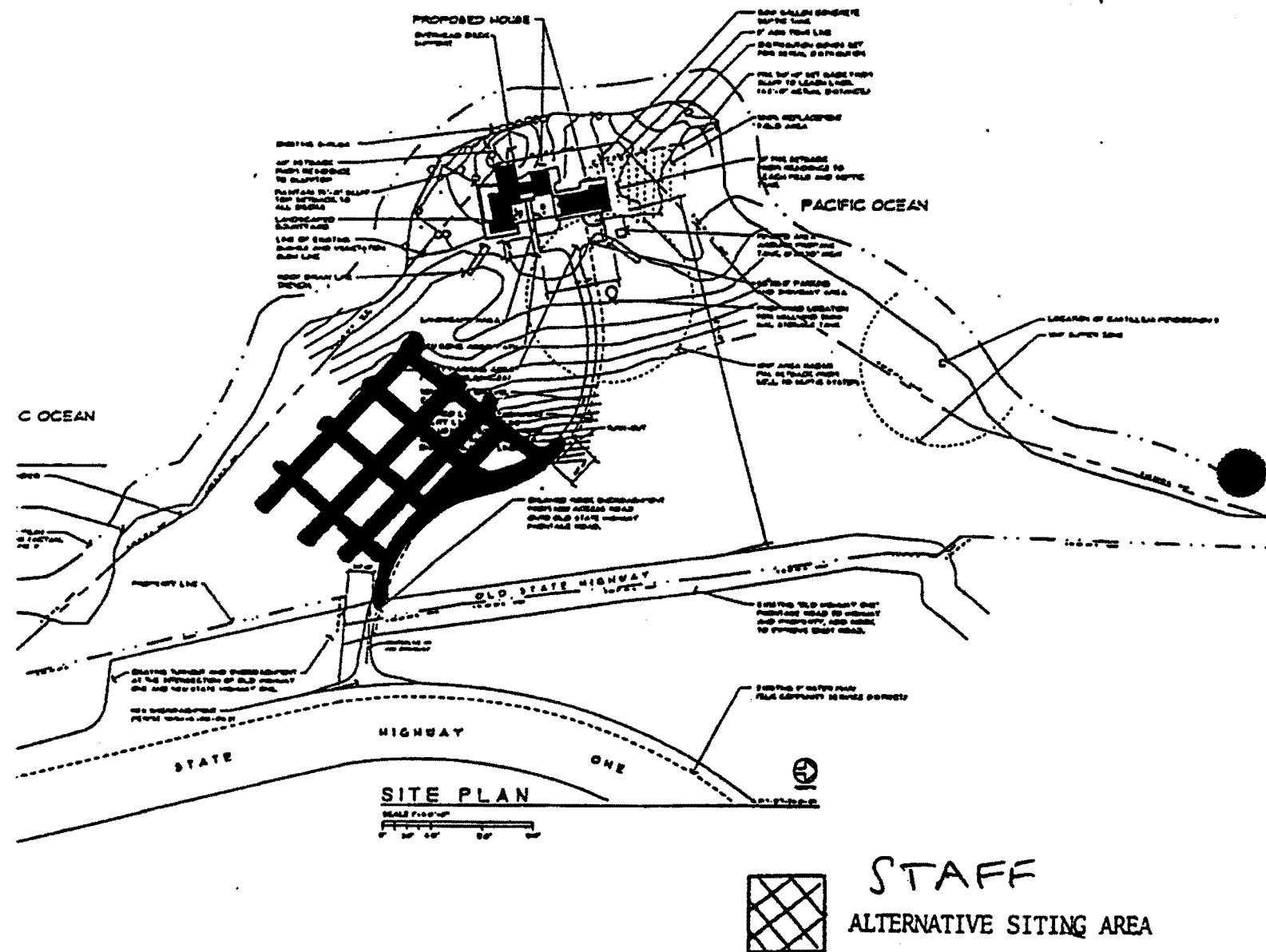
CDP #53-94
September 28, 1995
CPA-7

EXHIBIT A

ALTERNATIVE SITING AREA



SATRE ASSOCIATES, P.C.
Planners & Landscape Architects

132 East Broadway, Suite 536, Eugene, Oregon 97401
(541) 465-4721 • Fax (541) 465-4722 • 1 (800) 662-7094

September 4, 1997

Mr. Raymond Hall, Director
Mendocino County Department of Planning and Building Services
Court House
Ukiah, California, 95482

Re: Berlincourt Coastal Development Permit Application

Dear Mr. Hall:

In July, 1995, Ted and Marjorie Berlincourt engaged Satre Associates, Planners and Landscape Architects, to prepare a landscape plan designed to screen their proposed Elk residence from adjacent public view points. I am Senior Landscape Architect with Satre Associates and hold current landscape architectural registration in both California and Oregon. Copies of our firm profile and my own personal resume are submitted with this letter.

Our plan, submitted with the Coastal Development Permit application, utilizes native, fast-growing, and drought tolerant vegetation, strategically placed along the outside edge of the northern and southern building envelope. The plan also specifies relevant planting and maintenance provisions, and a minimum 20' setback from the proposed septic field. In terms of type, numbers, and placement of materials, the plan exceeds recommendations of county staff. It goes further by locating plantings in natural configurations that respond to the proposed structure as well as the environmental characteristics of the site.

Satre Associates has just completed a bluff-top management report for The Sea Ranch, located approximately 30 miles south of Elk. This report addresses ten miles of ocean bluff where Monterey Cypress trees, planted thirty years ago, have developed into large windswept masses along the exposed ocean edge. These trees have successfully grown on brutally exposed sites that were once open grassland. Nine years of my personal professional practice have been spent in coastal Sonoma and Mendocino Counties working on projects very similar to the Berlincourts. As Executive director of The Sea Ranch Design Committee, I had direct involvement in the design and location of structures as well as management and creation of landscapes aiming for a graceful relationship between buildings and nature.

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Landscape Architect	

On July 28, 1995 I met with Michael Leventhal, project architect, and Gary Shannon, staff representative of the Department of Parks and Recreation, on site to discuss the house location and plantings for effective screening. It was evident that the proposed house location was not just open grassland as photographs of the site portrayed. Rather, it was an area where shrubs in the immediate location of the proposed residence had been cleared and were growing back in spite of the exposed bluff-top conditions. According to Michael Leventhal, the clearing took place in late 1993 because the brush was too dense to permit access for survey purposes. The site has been classified as a coastal bluff scrub community by Gordon McBride, Ph.D., Botanical Surveys, and is capable of supporting a variety of wind and salt tolerant woody shrubs and trees.

Our preliminary landscape plan was discussed at the site. Mr. Shannon recommended the use of Shore Pine in addition to Monterey Cypress, and we incorporated his suggestion into our final plan. While Shore Pine does not grow as rapidly as Monterey Cypress, it is truly indigenous to the area becoming a modest sized tree at maturity. Monterey Cypress is a naturalized species and can be seen growing along the bluffs at the State Park to the north and at the south end of the property. Both species are excellent choices for establishing screening and wind breaks at the Berlincourt parcel.

While on the site, I also noted a robust stand of mature shrubbery (Ceanothus and Coyote Brush) to the north of the proposed house location. The residence will be well placed to take advantage of both the wind break and visual screening that these shrubs provide. The shrubs will serve as an immediate visual buffer for the house as viewed from the State Park and the town of Elk. Additionally, they will give protection to proposed new plantings to the south of the prevailing northwest winds.

I can state without reservation that the prospects for establishing trees and shrubs on the Berlincourt property are excellent. I have familiarity and personal experience with sites along the coastline of Sonoma and Mendocino Counties where Monterey Cypress, Shore Pine, Coyote Brush, Ceanothus, and Silk Tassel Bush have been successfully grown in similarly exposed coastal locations. In addition to providing visual screening and wind buffering, these plantings offer a valuable visual connection between buildings and the natural landscape.

Sincerely,



Sara Geddes, ASLA
Senior Landscape Architect
Satre Associates

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CONDITIONAL SETTLEMENT AGREEMENT

The parties to this **CONDITIONAL SETTLEMENT AGREEMENT** (agreement) are Ted G. Berlincourt and Marjorie A. Berlincourt (collectively, the Berlincourts), on the one hand, and the County of Mendocino (county) and Board of Supervisors of the county (board), on the other hand, who enter this agreement with respect to the following facts:

RECITALS

A. The Berlincourts are the record owners of approximately 11 acres of real property in the County of Mendocino, commonly known as 7000 South Highway One (the Berlincourt property) and more fully described in the document a copy of which is attached as Exhibit 1 hereto and incorporated herein by this reference.

B. In July of 1994, the Berlincourts applied to the county for approval of a coastal development permit (the Berlincourt application) for the development and construction of a single family residence on the Berlincourt property.

C. From the filing of their application until August 24, 1995, the Berlincourts and their representatives engaged in considerable dialogue with the county and its representatives relative to the Berlincourt application. As a result of this dialogue, the Berlincourt application was modified in several material respects.

D. On August 24, 1995, the coastal permit administrator for the county conducted a public hearing on the Berlincourt application as modified and denied the application. The coastal permit administrator issued his written findings in support of his denial of the Berlincourt application on September 28, 1995.

E. Following the denial of the Berlincourt application, the Berlincourts filed a timely appeal to the board seeking reversal of the coastal permit administrator's decision denying the Berlincourt application.

F. On November 13, 1995, the board heard the appeal of the coastal permit administrator's denial of the application. At that hearing, on a 3-2 vote, the board rejected the Berlincourts' appeal of the coastal permit administrator's denial of the Berlincourt application.

G. On March 13, 1996, the Berlincourts filed in the Superior Court for the County of Mendocino their Verified Petition for Writ of Mandate (CCP § 1094.5), Damages (CCP § 1095), and Complaint for Declaratory Relief, Monetary Compensation and Violation of Civil Rights, Action No. 74134 (the Berlincourt lawsuit), relative to the Berlincourt application. The county and the board were named as defendants and respondents in the Berlincourt lawsuit.

H. The Berlincourts continue in their desire to develop and construct the single family residence on the Berlincourt property and, to that end, intend to reapply for a coastal development permit. The reapplication includes two alternative proposed plans, Version 3 and Version 4, both of which differ from that set forth in the Berlincourt application. A copy of the reapplication is attached as Exhibit 2 hereto and incorporated herein by this reference.

1. It is the desire and intention of the parties to this agreement to settle and resolve the claims and causes of action alleged in the Berlincourt lawsuit. The settlement of the controversies existing between the Berlincourts, the county and the board is, however, expressly conditioned upon (1) issuance of a coastal development permit with conditions subjectively acceptable to the Berlincourts and (2) the right of the Berlincourts to withdraw the reapplication for any reason at any time prior to such issuance of an acceptable permit and to then prosecute the Berlincourt lawsuit. It is the further desire and intention of the parties that the reapplication shall not prejudice or affect in any way the Berlincourts' prosecution of the Berlincourt lawsuit in the event that action is subsequently prosecuted for any reason. It is the further desire and intention of the parties that this settlement shall not prejudice or affect in any way any rights, remedies, or causes of action the Berlincourts may have in the future with respect to the reapplication.

AGREEMENT OF THE PARTIES

It is agreed by the parties hereto as follows:

1. The parties acknowledge that the recitals set forth in Paragraphs A-I, inclusive, are true and correct.

2. Within 90 days of the date that this agreement is executed, the Berlincourts will file the reapplication with county's Department of Planning and Building Services (PBS). Concurrent with the filing of the reapplication, the Berlincourts will pay PBS the normal filing fee for a coastal development permit application.

3. Upon filing the reapplication with PBS, the reapplication shall be deemed complete.

4. PBS shall assign the reapplication to Frank Lynch as the project coordinator (the project coordinator).

5. The reapplication shall be evaluated initially by the project coordinator independently of the Berlincourts' prior application. Only after the reapplication is initially evaluated by the project coordinator may the project coordinator:

a. have access to information existing in PBS' file or files related to such prior application except insofar as such information is included in the reapplication or is subsequently introduced by the Berlincourts, or

b. discuss the reapplication with Gary Berrigan, Mary Stinson or employees in PBS' Fort Bragg office including, but not limited to, Linda Ruffing.

6. The project coordinator shall memorialize in writing and include in the reapplication file any discussion he may have in person or on the telephone with any person relevant or related to the reapplication. The project coordinator shall include in the reapplication file all evidence of communications bearing on the case, whether in person or by telephone, letter, facsimile, electronic mail, etc.

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7. Prior to filing the reapplication, the Berlincourts and PBS will agree how the project defined in the reapplication will be described in any referral or public notice related to the project. Thereafter, PBS, county and board shall consistently describe the project as agreed.

8. Any referral or information relevant to the reapplication that is directed or communicated by the project coordinator to any member of the board shall be directed or communicated to every member of the board.

9. The project coordinator shall make all information in the reapplication file readily available to the Berlincourts or their designated representative. On request, the project coordinator shall transmit to the Berlincourts via priority mail copies of all documents placed in the reapplication file.

10. Upon determination that he is ready to prepare a staff report relative to the reapplication, the project coordinator shall:

a. give the Berlincourts and their representatives fifteen (15) days' notice in writing of his intention to prepare a staff report, and

b. direct to the Berlincourts and their representatives in writing any comments or concerns that the project coordinator may have relative to the reapplication so that the Berlincourts and/or their representatives may respond in writing to such comments or concerns.

Thereafter, the Berlincourts may submit to the project coordinator additional information relevant to the reapplication. Upon written request made within the 15-day notice period, the Berlincourts or their representatives may request, and the project coordinator shall grant, up to an additional forty-five (45) days to submit any such additional information. In no event shall the project coordinator prepare the staff report before receiving and considering such additional information submitted by the Berlincourts and/or their representatives.

11. The reapplication shall not be heard by a coastal permit administrator. Instead, the reapplication shall be heard in the first instance by the board.

12. Except as expressly provided in the following paragraph, the parties shall not prosecute the Berlincourt lawsuit while the reapplication is pending and shall take any and all action appropriate and necessary, including an application to the court in the Berlincourt lawsuit, to stay or hold such litigation in abeyance without prejudice to any party.

13. Upon issuance of a coastal development permit with conditions subjectively acceptable to the Berlincourts, the Berlincourts shall dismiss the Berlincourt lawsuit with prejudice. At any time prior to the issuance of a coastal development permit with conditions subjectively acceptable to the Berlincourts, the Berlincourts may, for any reason, withdraw the reapplication and prosecute the Berlincourt lawsuit. Notwithstanding, the Berlincourts acknowledge that by entering into this agreement County has not agreed that it will issue a coastal development permit or that, if it issues such a permit, the permit will contain conditions subjectively acceptable to the Berlincourts.

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14. In the event that the Berlincourt lawsuit is subsequently prosecuted for any reason by any party thereto, such litigation shall in no way be affected or prejudiced by the reapplication including, but not limited to, any effect caused by any staff report prepared by the project coordinator or action taken by the board; in all respects, the Berlincourt lawsuit shall go forward as if no reapplication were made. Notwithstanding the foregoing, the Berlincourts will and do retain all rights, remedies and causes they may have in the future with respect to the reapplication independent of rights, remedies and causes of action they are asserting in the Berlincourt lawsuit and unaffected in any way by this agreement.

15. The purpose of this agreement is to settle claims which are denied and contested or are potential, and this agreement is the result of a compromise. Nothing contained herein shall be deemed as an admission by any party of any liability of any kind to any other party, all such liabilities being expressly denied.

16. The parties hereto agree to bear their own attorneys' fees and costs incurred in connection with the Berlincourt lawsuit or the resolution of the matters reflected in this agreement provided the Berlincourt lawsuit is not subsequently prosecuted.

17. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this agreement.

18. Except as stated herein, the covenants, agreements, representations, warranties, terms and conditions set forth in this agreement shall be binding upon, and inure to the benefit of, the successors and assigns of all parties hereto.

19. The parties hereto acknowledge and agree that each has been represented in negotiations for, and in the preparation of, this agreement by counsel of their own choosing. This agreement shall not be construed against the party preparing it, but shall be construed as if it were prepared jointly by counsel representing all of the parties hereto.

20. The terms of this agreement are intended by the parties as a final expression of their agreement and understanding with respect to such terms as are included in this agreement and may not be contradicted by any evidence of any prior or contemporaneous agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced to vary its terms in any proceeding involving this agreement.

21. Each party acknowledges that neither any party, nor any agent or attorney for any other party, has made a promise, representation or warranty whatsoever not contained herein concerning the subject matter hereof to induce such party to execute this agreement.

22. This agreement may be executed in several counterparts, and all such executed counterparts shall constitute one agreement, binding on all of the parties hereto, notwithstanding all of the parties hereto are not signatories to the original or to the same counterpart.

23. This agreement is effective when all parties have signed it.

24. This agreement may be modified, but only if the modification is in writing and

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signed by all of the parties to this agreement.

25. Each party hereto recognizes and acknowledges that this agreement is not intended to and shall not release any of the parties hereto from any liability or damages, if any, caused by, or arising out of, the failure or refusal to perform any or all of the acts required on their respective parts to be done, as per the terms and conditions of this agreement. In the event of any breach of this agreement, the party aggrieved shall be entitled to recover from the party who breaches, in addition to any other relief provided by law, such reasonable attorneys' fees and costs as may be incurred by the non-breaching party in enforcing this agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement, consisting of six (6) typewritten pages.

DATED: *Feb. 26, 1998*

Ted G. Berlincourt
TED G. BERLIN COURT

DATED: *Feb. 26, 1998*

Marjorie A. Berlincourt
MARJORIE A. BERLIN COURT

BOARD OF SUPERVISORS OF
THE COUNTY OF MENDOCINO

DATED: *2/24/98*

by *[Signature]*

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EARTH SCIENCE CONSULTANTS

SOIL • FOUNDATION AND GEOLOGICAL ENGINEERS

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Geotechnical Report
Addendum Letter

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P. O. BOX 3410/SAN RAFAEL/CALIFORNIA 94912-3410/ (415) 383-0935

December 15, 1994

Job No. 932739

Leventhal/Schlosser
Architects
435 North Main Street
Fort Bragg, CA 95437
Attention: Michael Leventhal, Architect

RE: Preliminary Site-House Plans
Proposed Berlincourt Residence
A.P. 127-260-01
7000 South Highway 1,
Elk, Mendocino County, California

This letter confirms that we have observed the preliminary site and house plans prepared by Leventhal/Schlosser, Architects, dated September 27 and November 16, 1994.

We previously have performed a geotechnical investigation at this site, including subsurface investigation, as summarized in our report dated November 12, 1993.

Based upon our observation of the site plan and house plans, it is our opinion that they have been prepared in accordance with the intent of our recommendations from the geotechnical engineering standpoint.

During the last 20 years, we have performed many bluff top studies along the California coast within the jurisdiction of the California Coastal Commission.



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The following items are in response to items 7a, 7b, and 7e, as requested by the County of Mendocino Department of Planning and Building Services, as indicated in their letter of October 19, 1994;

Item 7a - Based upon our previous geotechnical investigation, observation of the bluff area, and observation of an older aerial photo compared with the current bluff topography, it was our determination that the bedrock materials exposed in the bluff were much harder than average, and better protected than average, with a local maximum rate of top-of-bluff erosion of 0.2 feet per year, which would require at least a 15 foot setback for a proposed 75 year structural life expectancy. Therefore, it was our recommendation that if spread footings were used for the proposed house, a 45-foot minimum setback from the top-of-bluff would be required, or if deeper drilled piers extending well into harder bedrock were used, then a 20-foot minimum bluff setback could be used. Thus, it is our opinion that the Site Plan, Sheet A1, as prepared by Leventhal and Schlosser, Architects, conforms with, and is in accordance with our geotechnical engineering recommendations and setbacks.

Item 7b - It is our opinion that the 50-foot minimum top-of-bluff setback for the proposed leachfield area and replacement leachfield area appears adequate for the intended leachfield use, and is in accordance with our recommendations, and is greater than the 45-foot minimum setback for the proposed house.

Item 7e - The proposed house Plan Sheets, A2 and A3, are general in nature, and appear to have been prepared with our recommendations from the geotechnical engineering standpoint. However, we must consult with the architect and the structural engineer during preparation of the foundation details and house drainage with respect to spread footings, drilled piers, strengthened foundation elements in the transition zone between

7000 South Highway 1

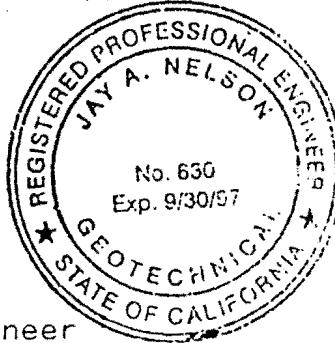
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spread footings and drilled piers, and special recommendations for concrete floors where height limits require that the house floor system be excavated into the site grade.

We trust this correspondence supplies the information you require.

Yours very truly,
EARTH SCIENCE CONSULTANTS


Jay A. Nelson



Principal Geotechnical Engineer
Civil Engineer - 19738, expires 9/30/97
Geotechnical Engineer 630

2 copies submitted

cc: Ted and Marjorie Berlincourt
7844 Langley Ridge Road
McLean, Virginia 22102

1cc: FAX 707-961-0912

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EARTH SCIENCE CONSULTANTS

SOIL • FOUNDATION AND GEOLOGICAL ENGINEERS

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P. O. BOX 3410/SAN RAFAEL/CAI

November 12, 1993

Job No. 932739

Ted and Marjorie Berlincourt
7844 Langley Ridge Road
McLean, Virginia 22102

Report
Geotechnical Investigation
Proposed Berlincourt Residence
A.P. 127-260-01
7000 South Highway 1
Elk, Mendocino County, California

INTRODUCTION

This report presents the results of the geotechnical investigation we recently performed at the above site.

We understand that it is desired to construct a one to two-story, wood frame, single family residence, as shown on the preliminary Site Plan prepared by Leventhal/Schlosser, Architects.

The purpose of our work was to perform a visual site observation and reconnaissance of exposed surface features, review existing soil and geologic data of the area, log representative exploration test borings, pits, or probes and provide our opinion in the form of conclusions and recommendations as they relate to our specialty field of practice, geotechnical engineering.

Our scope of work was oriented towards meeting the requirements of the California Coastal Commission and the County of Mendocino. During the last 20 years, we have performed numerous studies along the California coast in the area of the San Andreas Fault and

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ocean bluff areas under the jurisdiction of the California Coastal Commission, including studies at Big Sur, Muir Beach, Stinson Beach, Inverness, Pt. Reyes, Marshall, Tomales Bay, Dillon Beach, Bodega Bay, Jenner, Gualala, Anchor Bay, Pt. Arena, Irish Beach, Albion, Mendocino, Caspar and Fort Bragg.

Our scope of work included only subsurface conditions within the actual proposed structure and did not include accessory areas such as sidewalks, porches, decks, landscaping, garden and yard areas.

This report has been prepared with the understanding and assumption that the client will fully read and become familiar with the entire report, including all plates and appendices, and will carry out our recommendations to the fullest possible extent.

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SITE CONDITIONS

The site is located adjacent to a high and steep ocean bluff area about 1/2 mile south of Elk, as shown on the Site Location Map, Neighborhood Map, and Site Plan, Plates 1, 2 and 3.

The property in general consists of a slightly sloping ancient uplifted marine terrace that is primarily densely brush-covered, except for the greater proposed house area that has recently been cleared of brush.

Observation of the adjacent bluff area reveals a steep bluff about 150 feet in height, with the majority of the bluff consisting of hard massive meta-sandstone covered with what appears to be about 20 feet, and perhaps locally greater amounts, of marine terrace alluvium. A typical bluff detail is shown on Plate 7. The hard bedrock steep portion of the bluff generally has an average inclination of about 63 degrees to 70 degrees and, in one area, is less steep, with an inclination of about 50 degrees, and in the southern bluff area, the lower portion of the bluff is near vertical; and in one local area, most of the bluff is near vertical. The upper approximately 20 feet of the bluff consists of marine terrace alluvium that is frequently grass and light-brush covered, with an inclination of about 40 degrees to 45 degrees.

Located adjacent to and west of the site is a fairly large seamount, about 150 feet in height that exposes hard meta-sandstone materials, that provides considerable storm-wave protection to the bluff area near the house site. The presence of numerous large seamounts or large rocky islands between this site and Elk is an indication of the hard erosion-resistant nature of the meta-sandstone bedrock materials in this area.

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Observation of the Geologic Map of the Mallo Pass Creek Quadrangle, prepared by the California Division of Mines and Geology in 1984 by M. Manson, indicates that the site and adjacent areas are plotted as being covered with undifferentiated marine terrace deposits (Qmts), underlain by Franciscan coastal belt bedrock materials of Tertiary-Cretaceous geologic age (TKfs).

The subsurface conditions at the site were explored by exploration test pits at the locations shown on the Site Plan, Plate 3. Each test pit was logged by our field geotechnical engineer who recorded the various materials encountered. Logs of the test pits are presented on Plates 4 through 5. The Unified Soil Classification Chart which was used to describe the various materials encountered is presented on Plate 6. Backhoe exploration test pits were selected as the exploration method so as to permit continuous observation of the various soil and weathered rock materials encountered.

Exploration Test Pit 1, that was excavated in the west central portion of the house area, encountered about 2.5 feet of sandy soil materials underlain by sandstone bedrock materials. However, Test Pits 2, 3 and 4, that were excavated in other portions of the greater house area to depths of about 14 feet, only encountered sandy marine terrace alluvial deposits that were locally relatively clean and free of fines and, in one of the test pits, experienced caving in the lower several feet. Observation of the adjacent bluff revealed that the marine terrace alluvium overlying the hard sandstone bedrock appears to be up to about 20 feet in thickness, although, locally, it may be of greater thickness.

At the time of our investigation, we observed no evidence of large-scale landsliding or other evidence of gross site instability in the planned house building area. The adjacent steep and high bluff consists of hard erosion-resistant meta-sandstone bedrock materials that are highly resistant to erosion.

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However, the upper approximate 20 feet of the bluff area that consist of young marine terrace alluvium, with time, will likely experience some slight gradual receding in the form of erosion and local sloughing.

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CONCLUSIONS

Based on the results of our geotechnical investigation, our principal conclusions in the form of geotechnical engineering opinions are as follows:

1. It is our opinion that the proposed development is feasible from the geotechnical engineering standpoint if performed and maintained in accordance with our recommendations.
2. We recommend that in general the proposed development be built to conform with the existing natural site grade as much as practical, and cutting and filling generally be minimized as much as practical so as not to upset the existing gross site equilibrium. No grading should be performed near or adjacent to the bluff area, and especially no filling.
3. Based upon review of a 1967 aerial photograph and our recent observation of the current site geometry, we have calculated that the local maximum rate of top-of-bluff erosion to be 0.2 feet per year, which would require at least a 15-foot bluff setback for a proposed 75-year structure life expectancy. It should be noted that most of the bluff consists of hard meta-sandstone bedrock materials that are highly erosion-resistant, and the bluff is also protected by a large seamount just west of the site, and we would anticipate no noticeable regression of the hard bluff during the anticipated structure life. However, some local receding of the overlying marine terrace alluvium may occur at an average rate of up to about 0.2 feet per year.
4. If the proposed new house foundations are set back at least 45 feet from the current top-of-bluff area, then we believe stiffened spread footing foundations may be used. If it is desired to place the house closer than 45-feet to the top-of-bluff area, then deeper and strong drilled pier and grade beam foundations will be required extending well into the underlying hard sandstone bedrock

materials. If deep and strong drilled pier foundations are used, then we believe a 20-foot minimum bluff setback could be provided for the house. However, our exploration test pits revealed that the overlying marine terrace deposits primarily consist of silty sand that will likely locally experience caving, and therefore installation of the drilled piers could be relatively costly, including the required use of casing in areas where the marine terrace alluvium experiences caving.

5. The site soil materials are relatively loose and weak in the upper portions, as is typical of most natural sites, and this should be considered during the site development.

6. Good surface and subsurface drainage should be provided in order to protect the proposed structure.

Specific recommendations are presented in the remainder of this report.

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RECOMMENDATIONS

Bluff Setback - Based upon our observation of a 1967 aerial photograph of the area obtained from Pacific Aerial Surveys of Oakland, AV-784-10-10, 2/21/67, 1:36000, and comparison with the existing observed site geometry and conditions, we observed no significant observable change in either the top-of-bluff or base-of-bluff location, with the exception of some apparent localized minor erosion and sloughing of the upper marine terrace alluvium zone, appearing to vary from about 2 feet to 5 feet.

We have found that aerial photos obtained from Pacific Aerial Surveys are closer to the ground and much more available with respect to time as compared to U.S. Geological Survey Photos that are taken from higher altitudes and thus show less detail, and have to be ordered from the U.S. Geological Survey Data Center in South Dakota that generally requires about 1 month's time before the aerial photos can be obtained by the consultant.

Based upon our current observations of the site topography and geometry and comparison with the 1967 aerial photo we have reviewed, it is our opinion that, in general, no noticeable recession of either the base or the top of the bluff has occurred, except for some localized areas where some erosion and sloughing on the order of 2 feet to 5 feet has occurred. It is our opinion that the maximum local rate of the top-of-bluff erosion would be 15 feet in 75 years, or 0.2 feet per year. The actual average rate of the top-of-bluff erosion would probably be less. In comparison, we have found the rate of bluff erosion south of Pt. Arena in the softer Monterey Formation to be 6 inches per year or greater and as much as 1 to 2 feet per year at Bolinas. In summary, it is our opinion that the hard massive meta-sandstone bluff at this site is much more erosion resistant than average.

Development Scheme - We recommend that in general the proposed development be built to conform with the existing natural site grades as much as practical, and cutting and filling generally be minimized as much as practical so as not to upset the existing gross site equilibrium.

Grading also disturbs the natural site ground cover and vegetation which results in accelerated erosion and sloughing and also usually changes natural drainage patterns.

Therefore, we feel that it is important to keep the site grading at this project to an absolute minimum. Of course, we realize that some grading will be required in order to provide the driveway and parking area. However, the driveway and parking area should be so located that the amount of cutting and filling generally can be kept to a minimum. No grading should be performed near or adjacent to the bluff area, and especially no filling. Under no circumstances, should any waste fill materials be pushed upon or over the bluff area.

At the time of our investigation, the formerly densely brush-covered greater house building area had been recently cleared. We recommend that the recently-cleared barren area be seeded with a variety of natural native erosion-resistant fast-growing grasses so as to help mitigate the erosion risk resulting from the recent clearing.

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Foundations - If the proposed house is set back at least 45 feet from the top of the bluff, then we believe deepened and stiffened continuous spread footing foundations may be used. However, if it is desired to be in closer proximity to the top-of-bluff area, then deeper and stronger drilled pier and grade beam foundations extending well into the underlying bedrock should be used. In the following two sections of this report, we have provided foundation recommendations for deepened and stiffened spread footing foundations as Foundation Alternate I, and deeper drilled piers as Foundation Alternate II.

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Foundation Alternate I, Stiffened Spread Footings - If the house foundations are set back at least 45 feet from the current top-of-bluff area, then we believe stiffened and deepened continuous spread footing foundations may be used.

Wood joist floors should be used.

The spread footing foundations should be a minimum of 24 inches in depth, and a minimum of 18 inches in width. All foundation elements should be continuous, and no isolated footings should be used. The footings should be relatively well-reinforced so as to help spread out and distribute possible slight differential settlement effects. Typical minimum recommended foundation details are shown on Plate 8. A bearing capacity of 1,000 pounds per square foot may be used for dead load plus live load. For resistance to transitory lateral loads such as wind or seismic, a passive pressure of 100 pounds per cubic foot, equivalent fluid weight, may be used and a coefficient of sliding friction of 0.35.

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Foundation Alternate II, Deeper Drilled Piers - If, for some reason it is desired to place the house closer than 45 feet from the top of the bluff, then we would recommend that deeper and stronger drilled pier foundations be used, extending well into the underlying bedrock. However, if Foundation Alternate II, consisting of deeper drilled piers, is used, we would still recommend a minimum top-of-bluff setback of at least 20 feet.

Wood joist floors should be used.

Minimum recommended foundation details are shown on Plates 9 and 10. However, the actual house foundation details will have to be determined by your structural civil engineer with our consultation.

Between 20 feet from the top-of-bluff and 35 feet from the top-of-bluff, we would recommend that the drilled piers be at least 18 inches in diameter, and be drilled at least 10 feet into the underlying harder bedrock materials. We would refer to this zone as Foundation Zone IIA, with the details as shown on Plate 9. The top 10 feet of the row of piers closest to the bluff area should also be designed as a freestanding unsupported column.

Drilled piers that are 35 or more feet from the top-of-bluff should be at least 16 inches in diameter, and drilled at least 6 feet into the underlying bedrock. Minimum recommended details for this zone are shown on Plate 10 as Alternate IIB.

All drilled piers should be tied back in both mutually perpendicular directions.

For vertical loading, only the portion of the drilled pier within the underlying bedrock materials should be counted in design calculations. The portion of the drilled pier within the bedrock may be designed for total design loads of 800 pounds per square foot, skin friction.

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Where the house is 35 or more feet from the top of the bluff, the drilled piers should be at least 16 inches in diameter and drilled at least 6 feet into harder and competent well-confined bedrock materials, as shown on Plate 10 for Foundation Alternate IIB.

If a portion of the house extends closer than 45 feet to the current top of the bluff area and drilled piers are required for that area, then would recommend that the entire house be provided with drilled pier foundations, as we believe differential performance could occur if a portion of the house is supported upon foundations bottoming in the underlying bedrock and other portions are resting upon the thicker sandy marine terrace deposits that could experience some densification and possible differential settlement under seismic shaking conditions.

The main disadvantage of the drilled pier and grade beam foundation system is the potential significantly high cost. Three of the exploration test pits encountered deep marine terrace sandy soil materials, locally with little binder, and in one area, the sandy soils caved during excavation. Three of the exploration test pits were excavated to depths of 14 feet and did not encounter the underlying sandstone bedrock; whereas, Test Pit 1 encountered the underlying bedrock at a shallow depth.

Observation of the bluff area appears to indicate that the surface of the underlying bedrock may be up to about 20 feet below the level of the house area. However, we have found that the surface of the underlying bedrock underlying marine terrace alluvium can be somewhat variable, and greater depths may be present.

Therefore, the combination of potentially deep drilled piers along with caving sandy conditions requiring casing of pier holes combined with a house of fairly large lateral extent could result in quite costly foundations. Therefore, from the practical economic standpoint, keeping the house at least 45 feet away from the top of the current bluff area and utilizing the deepened and stiffened spread footing foundations would be the most reasonable approach.

Drainage and Vegetation - It is important the site drainage from the new impervious surfaces be discharged well away from the bluff area, and be well dispersed. Under no circumstances should drainage be discharged in a concentrated manner near the bluff, as the sandy marine terrace alluvium would be susceptible to accelerated erosion. We also recommend that the site be well-vegetated, and no barren areas be present. At the time of our investigation, much of the greater house area had been recently cleared of dense brush. Therefore, as a temporary mitigating measure, we recommend that all current barren areas be seeded with a mixture of native fast-growing erosion-resistant grasses.

In Appendix 1, we have provided our general site drainage recommendations for new houses in a suburban setting.

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Seismicity and Earthquake Hazards - Observation of the Alquist-Priolo Special Fault Study Zone Map for the Mallo Pass Creek Quadrangle, prepared by the California Division of Mines and Geology in 1974, indicates that the site is plotted as being about 2.6 miles east of the active San Andreas Fault.

Review of the publication entitled, "Maximum Creditable Rock Acceleration from Earthquakes in California," prepared by R. Greensfelder of the California Division of Mines and Geology, indicates that the site and general area could experience bedrock accelerations of 0.5g.

Therefore, it is our opinion that the site could be subjected to strong earthquake vibrations at least once during its useful life. We recommend that all structural, architectural and mechanical details be designed to resist earthquake ground shaking. The design engineer should emphasize the principles of continuity, ductility and high energy absorption.

We trust this report provides the information you require. Please call if you have further questions.

The following are attached and complete this report:

Plate 1 - Site Location Map
Plate 2 - Neighborhood Map
Plate 3 - Site Plan
Plates 4 & 5 - Logs of Exploration
Plate 6 - Soil Classification Chart
Plate 7 - Typical Bluff Details
Plates 8 thru 10 - Foundation Details
Appendix 1 - Site Drainage
Appendix 2 - Subdrain Details
Appendix 3 - Wall Surcharge Details
Appendix 3.1 - House Appendages
Appendix 4.1 - Hillside Fill Details

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Appendix 4.2 - Fill and Cut Slope Maintenance

Appendix 6 - Construction Safety

Appendix 7.1 - Wind Loading

Appendix 8 - Land Maintenance

Appendix 9 - Limitations

Appendix 10 - Construction Observation

Appendix A - General Recommendations, Risks, Material Notes,
Responsibility, Limitations and Related Items

Appendix G - General Foundation Notes

Appendix S - Sidewalks, Curbs, Patios, Etc.

Appendix U - Utility Trench Erosion Control

Appendix V - Vegetation and Erosion Control

Yours very truly,

EARTH SCIENCE CONSULTANTS



Jay A. Nelson

Principal Geotechnical Engineer

Civil Engineer - 19738, expires 9/30/97

Geotechnical Engineer 630



1 copy submitted

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CC: Carl Rittiman
Certified Soil Scientist
P.O. Box 944
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cc: Joe Burton
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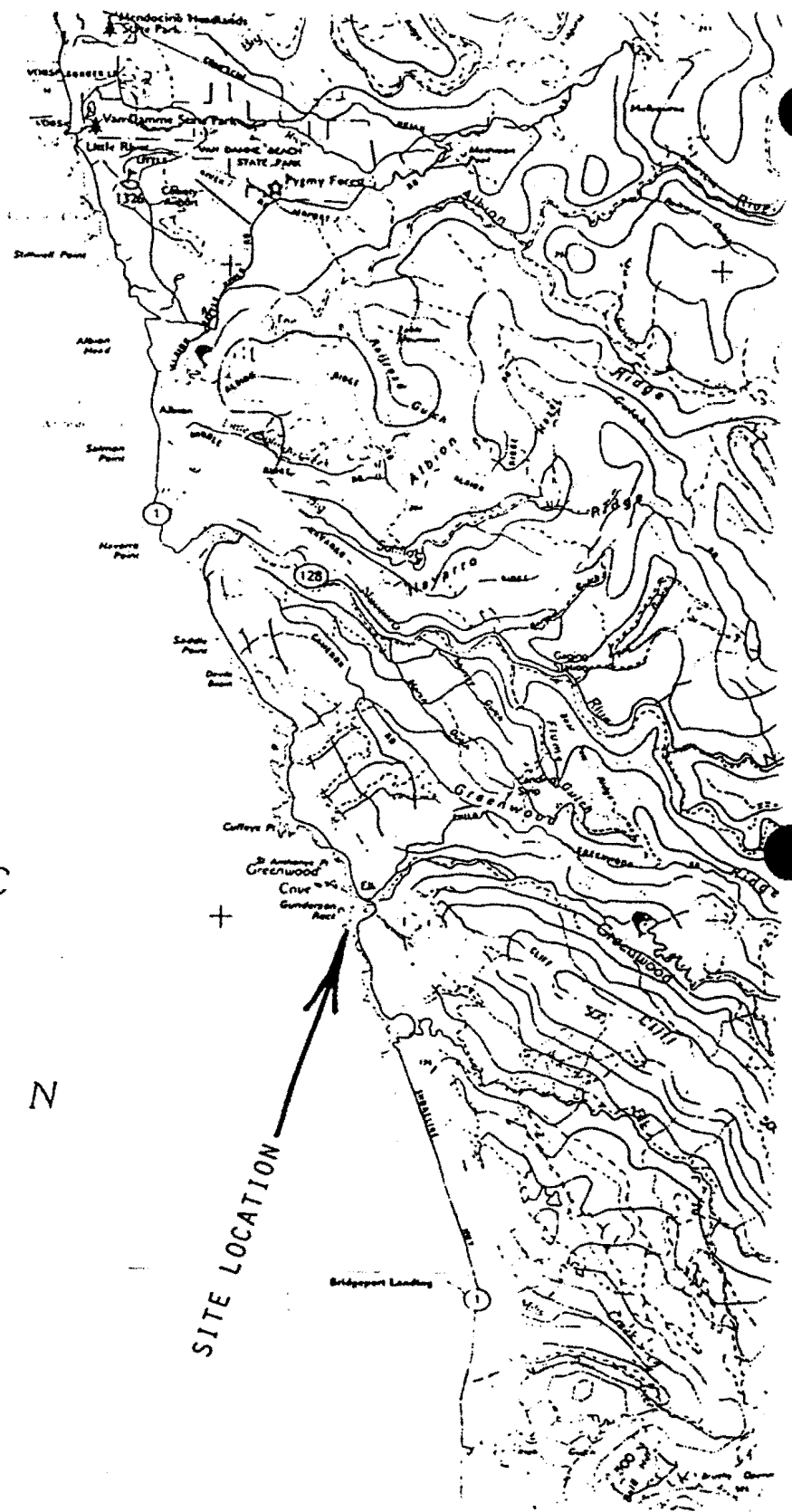
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PACIFIC
+
OCEAN



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Job No. 932739

Appr. *ay* Date 11-12-93

Site Location Map

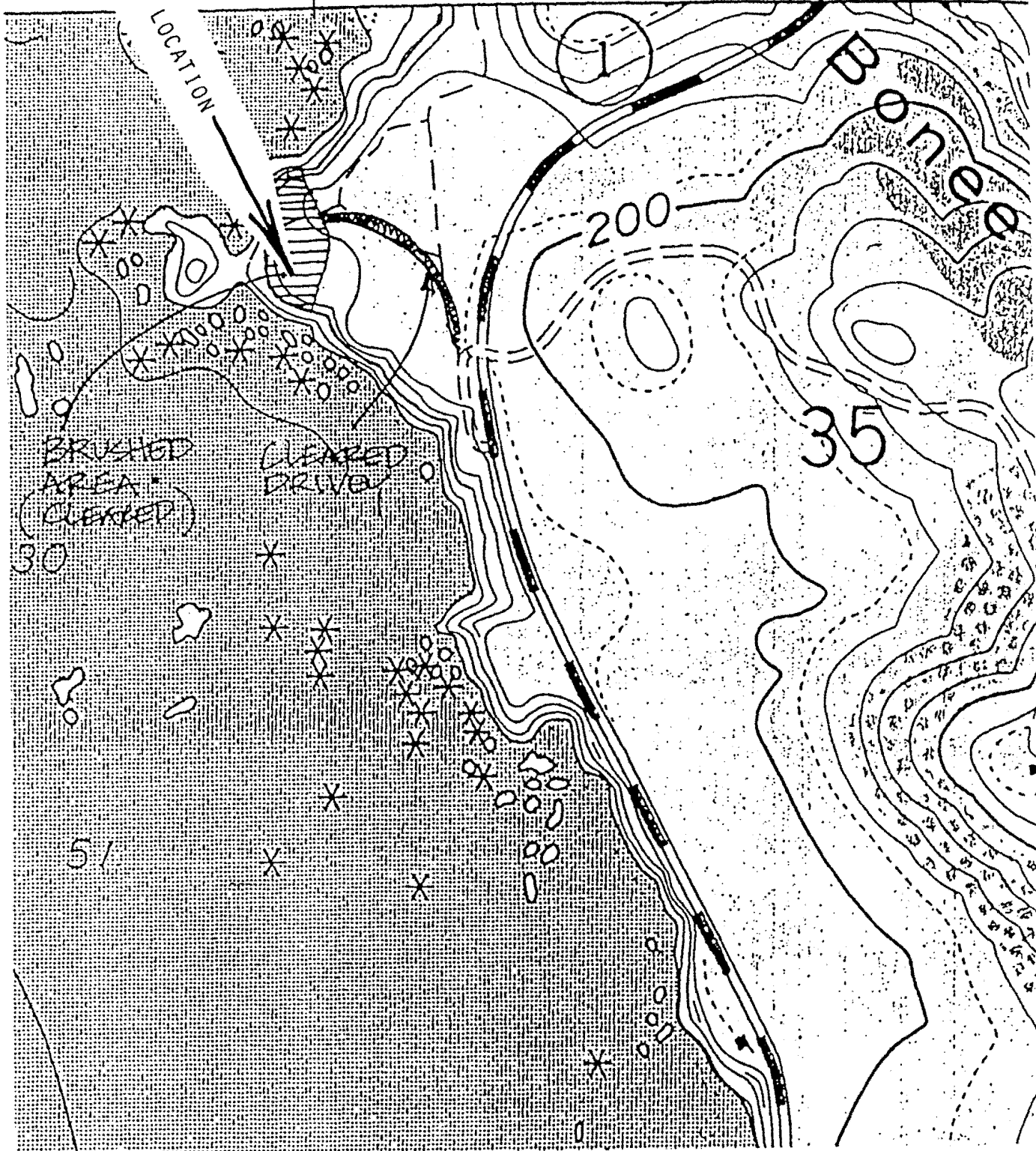
7000 South Highway 1
Eureka, CA

PLATE

1

6.5 MI. TO CALIF. 128
ELK 0.5 MI.

42'



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Neighborhood M.
7000 South High
Elk, CA

Job No. 93 2239

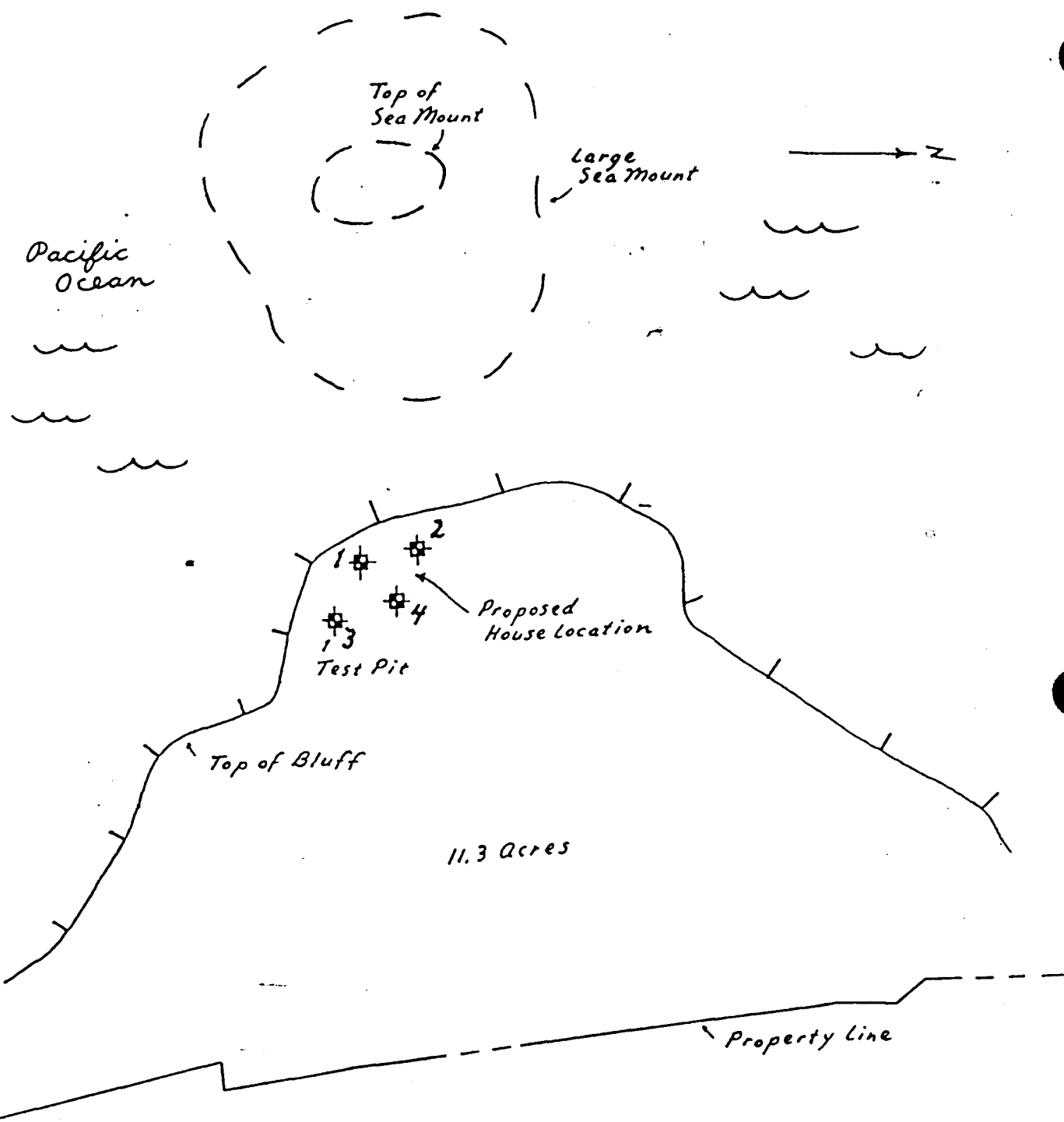
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Site Plan

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LOG OF TEST PIT 1

Shear Strength (lbs/sq ft)

Moisture
Content (%)

Dry
Density (pcf)

Depth (ft)

Sample

Equipment Backhoe

Elevation Exist. Gr. Date 11-10-93

Blows/Ft. *

The log of subsurface conditions shown herein applies only at the specific boring or test pit or probe location on the date indicated. It may not be representative of subsurface conditions at other locations and/or other times.

- 0' DARK BROWN SILTY FINE SAND (SM), loose, dry, with humus
 - 1.3' DARK GRAY BROWN SILTY FINE SAND (SM), loose, dry, with rock fragments Med. dense @ 1.3'
 - 5.5' LIGHT BROWN & RUST BROWN FINE GRAINED SANDSTONE, moderately fractured, slightly weathered, med. hard (TKfs) Harder @ 5.5'
- NO FREE WATER WAS OBSERVED IN TEST PIT OR BORING AT TIME OF INVESTIGATION. HOWEVER, THE GROUND WATER TABLE MAY RISE OR SEEPAGE MAY BE PRESENT DURING THE WINTER.

LOG OF TEST PIT 2

* Standard Penetration Test

Equipment Backhoe

Elevation Exist. Gr. Date 11-10-93

Blows/Ft. *

The log of subsurface conditions shown herein applies only at the specific boring or test pit or probe location on the date indicated. It may not be representative of subsurface conditions at other locations and/or other times.

- 0' DARK BROWN SILTY FINE SAND (SM), loose, dry, with humus
 - 2' DARK GRAY BROWN SILTY FINE SAND (SM), loose, dry, with occ. rock fragments Med. dense @ 2'
 - 5' DARK BROWN SILTY FINE SAND (SM), med. dense, damp
 - 5' BROWN SILTY FINE SAND (SM), med. dense, damp (Qmts)
 - 10' GRAY BROWN FOUNDED COBBLEY & GRAVELLY COARSE SAND (SP), med. dense, damp (Qmts)
 - 15' GRAY BROWN & ORANGE BROWN SILTY SAND (SM), med. dense, damp, with occ. very coarse zones (Qmts)
- NO FREE WATER WAS OBSERVED IN TEST PIT OR BORING AT TIME OF INVESTIGATION. HOWEVER, THE GROUND WATER TABLE MAY RISE OR SEEPAGE MAY BE PRESENT DU

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LOG OF TEST PIT 2
7000 South Highway 1
Elk, CA

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Job No 932739

Appr. [Signature] Date 11-12-93

Shear Strength (lbs/sq ft)

5000
4000
3000
2000
1000
0

Moisture
Content (%)

Dry

Density (pcf)

Depth (ft)

Sample

LOG OF TEST PIT 3

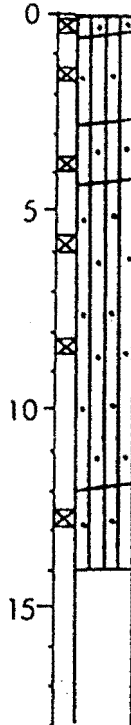
Equipment Backhoe

Elevation Exist. Gr. Date 11-10-93

Blows/Ft. *

The log of subsurface conditions shown herein applies only at the specific boring or test pit or probe location on the date indicated. It may not be representative of subsurface conditions at other locations and/or other times.

NO FREE WATER WAS OBSERVED IN TEST PIT OR BORING AT TIME OF INVESTIGATION. HOWEVER, THE GROUND WATER TABLE MAY RISE OR SEEPAGE MAY BE PRESENT DURING THE WINTER.



DARK BROWN SILTY FINE SAND (SM), loose, dry, with humus
DARK GRAY BROWN SILTY FINE SAND (SM), loose, dry, with occ. rock fragments
DARK BROWN SILTY FINE SAND (SM), med. dense, damp
LIGHT ORANGE BROWN SILTY FINE SAND (SM) med. dense, damp (Qmts)
Coarser sand @ 8', with occ. rounded gravels

GRAY BROWN VERY COARSE SAND (SM), loose, damp (Qmts)
Caving 12' to 14'

LOG OF TEST PIT 4

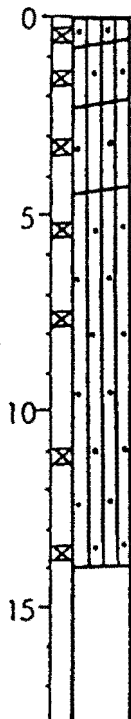
Equipment Backhoe

Elevation Exist. Gr. Date 11-10-93

* Standard Penetration Test

Blows/Ft. *

The log of subsurface conditions shown herein applies only at the specific boring or test pit or probe location on the date indicated. It may not be representative of subsurface conditions at other locations and/or other times.



DARK BROWN SILTY FINE SAND (SM), loose, dry, with humus
DARK GRAY BROWN SILTY FINE SAND (SM), loose, dry, with occ. rock fragments
DARK BROWN SILTY FINE SAND (SM), med. dense, damp
LIGHT ORANGE BROWN SILTY FINE SAND (SM) med. dense, damp (Qmts)
Slightly coarse sand @ 7.5', with rounded gravels

With occ. very coarse sand zones

NO FREE WATER WAS OBSERVED IN TEST PIT OR BORING AT TIME OF INVESTIGATION. HOWEVER, THE GROUND WATER TABLE MAY RISE OR SEEPAGE MAY BE PRESENT DURING THE WINTER.

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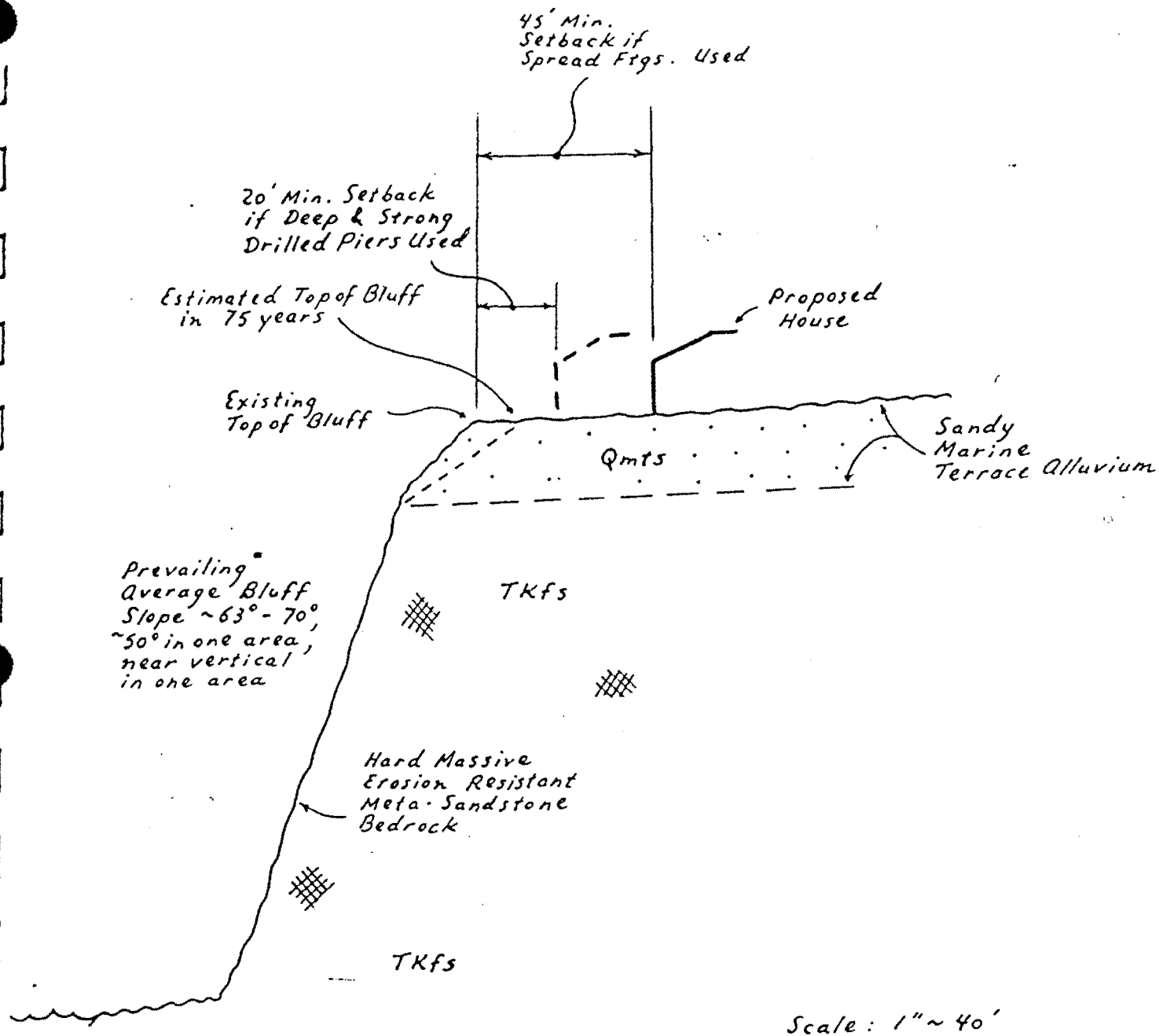
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Elk, CA

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PLATE
5



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Typical Bluff Prof.

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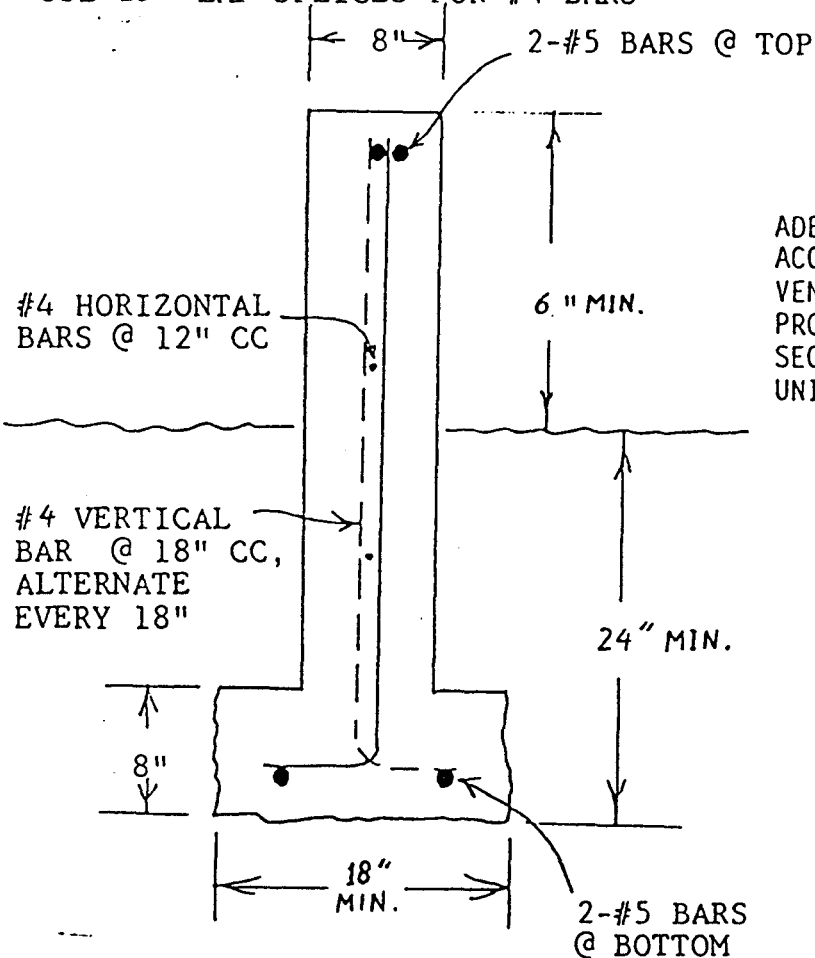
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ALL EXTERIOR AND INTERIOR FOUNDATIONS SHOULD BE
CONTINUOUS AND NO ISOLATED FOOTINGS SHOULD BE USED
SO AS TO HELP CONTROL DIFFERENTIAL SETTLEMENT EFFECTS.

USE 12" MIN. BENDS @ ALL CORNERS
AND INTERSECTIONS

USE 24" LAP SPLICES FOR #5 BARS

USE 20" LAP SPLICES FOR #4 BARS



PLACE ABOVE FOUNDATIONS
IN BOTH DIRECTIONS
NO MORE THAN 24' APART

EARTH SCIENCE CONSULTANTS

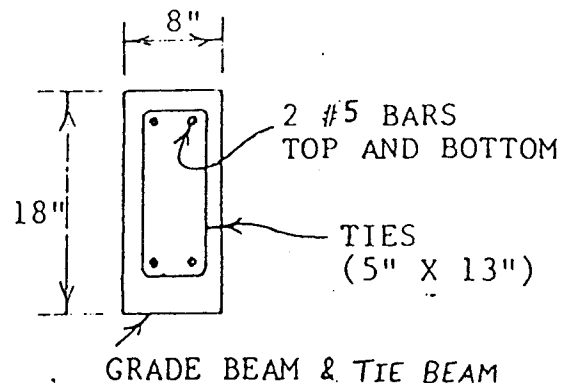
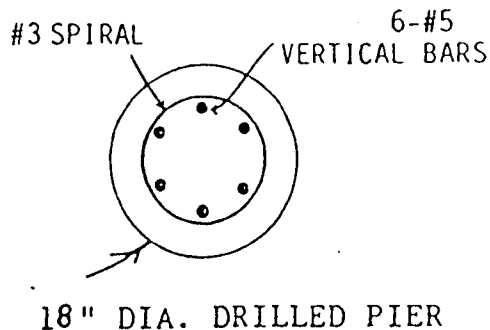
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FOUNDATION DETAILS - A1t. I

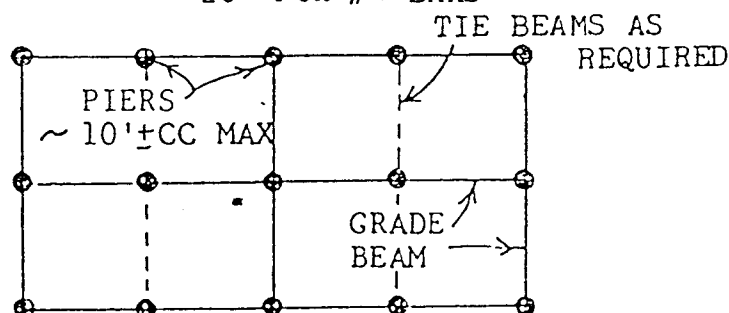
7000 South Highway 1
Cik, CA

Job No. 932739 Appr. *[Signature]* Date 11/12/93

PL E
8



LAP SPLICE
24" FOR #5 BARS
20" FOR #4 BARS



12" BENDS AT ALL
CORNERS & INTERSECTIONS

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TYPICAL FOUNDATION LAYOUT

1. RECOMMENDED MINIMUM FOUNDATION DETAILS FROM THE CONCEPTUAL GEOTECHNICAL ENGINEERING STANDPOINT. HOWEVER, THE ACTUAL FOUNDATION DETAILS WILL HAVE TO BE DETERMINED BY THE STRUCTURAL CIVIL ENGINEER.*
2. THE FOUNDATION SHOULD ALSO BE DESIGNED TO RESIST THE MINIMUM LOADS AS REQUIRED BY THE UNIFORM BUILDING CODE.
3. REINF. STEEL SHOULD BE #40 GRADE, ASTM A615-40 OR BETTER.
4. WOOD JOIST FLOORS SHOULD BE USED.
5. SOIL ENGINEER SHOULD PERIODICALLY OBSERVE DRILLING OF PIER HOLES.
6. FOUNDATION STRUCTURAL ENGINEER SHOULD OBSERVE STEEL & FORMS PRIOR TO CONCRETE POURS.

* Unless approved by geotechnical engineer with supplemental consultation

** For use 20' to 35' from top of bluff.

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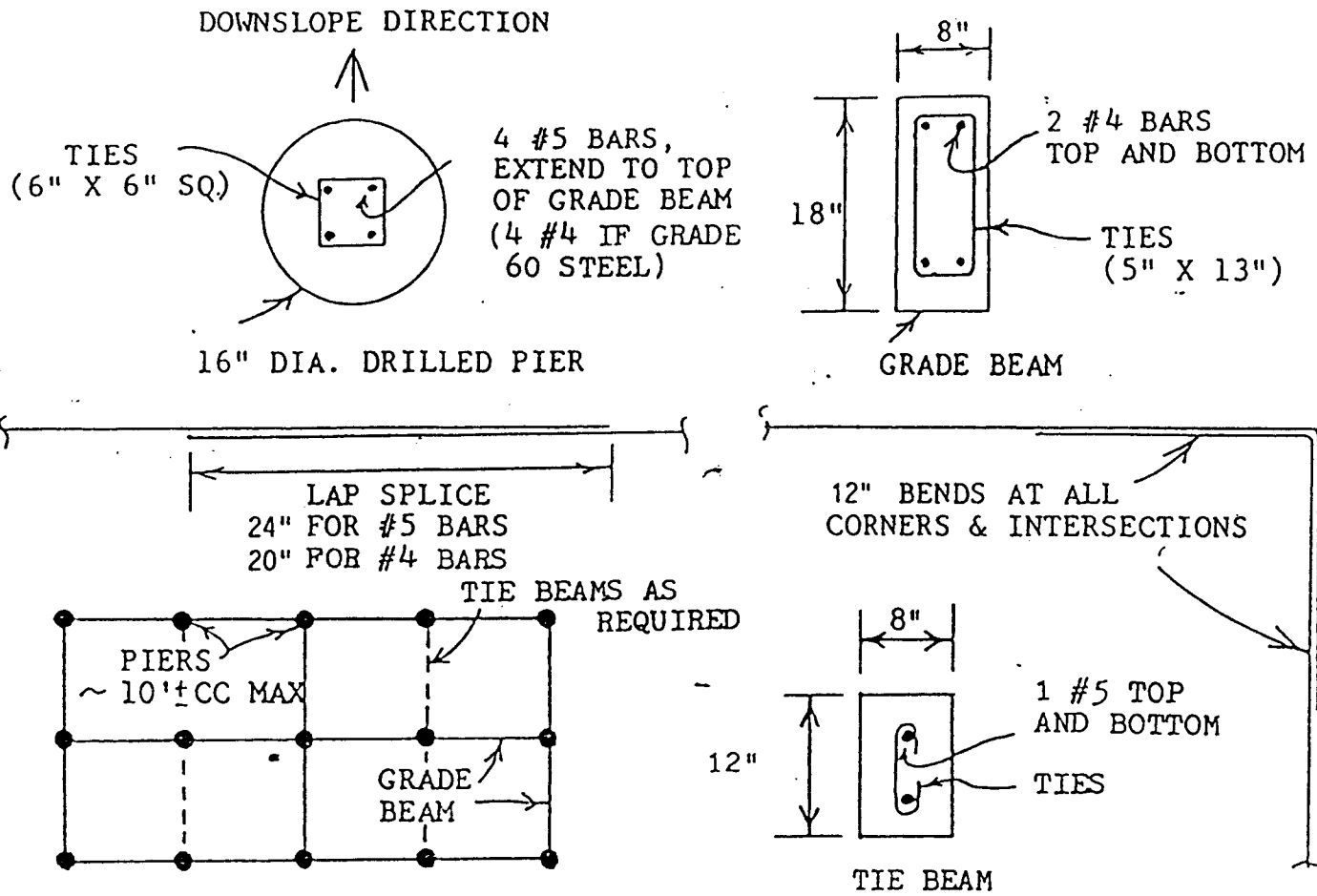
FOUNDATION DETAILS - A/r. IIA**

7000 South Highway 1
Elk, CA

PLATE

9

Job No. 932739 Appr. *[Signature]* Date 11-12-93



TYPICAL FOUNDATION LAYOUT

1. RECOMMENDED MINIMUM FOUNDATION DETAILS FROM THE CONCEPTUAL GEOTECHNICAL ENGINEERING STANDPOINT. HOWEVER, THE ACTUAL FOUNDATION DETAILS WILL HAVE TO BE DETERMINED BY THE STRUCTURAL CIVIL ENGINEER.*
2. THE FOUNDATION SHOULD ALSO BE DESIGNED TO RESIST THE MINIMUM LOADS AS REQUIRED BY THE UNIFORM BUILDING CODE.
3. REINF. STEEL SHOULD BE #40 GRADE, ASTM A615-40 OR BETTER.
4. WOOD JOIST FLOORS SHOULD BE USED.
5. SOIL ENGINEER SHOULD PERIODICALLY OBSERVE DRILLING OF PIER HOLES.
6. FOUNDATION STRUCTURAL ENGINEER SHOULD OBSERVE STEEL & FORMS PRIOR TO CONCRETE POURS.

* Unless approved by geotechnical engineer with supplemental consultation.

** For use 35' or greater away from top of bluff.

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FOUNDATION DATA:

7000 South Highway
Elk, CA

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A P P E N D I X 1

SITE DRAINAGE

Of great importance is providing adequate surface and subsurface drainage as most hillside structures are generally prone to drainage problems. Also, all site drainage waters should be handled and discharged in a legal, prudent, reasonable and proper manner so as not to create a nuisance, risk or hazard to this property or adjoining properties.

We generally recommend that structures be equipped with roof gutters and downspouts. All runoff waters including all downspouts, patio, parking, and driveway drainage, and all other drainage should be collected in closed pipes with periodic cleanouts and/or concrete-lined V-ditches and/or catch basins and discharged into the legal approved area storm drain system.

If the above is not totally practical or feasible, then all site drainage waters should be discharged well away from all building and foundation areas. Site drainage waters should be discharged and well dispersed in such a manner so as not to result in localized erosion or sloughing. Care should be used so that drainage waters are not concentrated and discharged on downslope or adjacent properties. Site drainage waters should be well dispersed in as natural a manner as possible and should not be discharged in a concentrated manner if a legally-approved storm drain system is not present.

Fill areas should be graded so that storm water does not flow over fill slopes.

Cut slopes should be provided with concrete-lined V-ditches about 5 feet above the top of the cut slope so as to prevent excessive storm waters from flowing over cut slopes.

SITE DRAINAGE

APPENDIX 1

It should be noted that moisture is usually present under most hillside structures as surface and subsurface waters flow from the area above the structure. Therefore, to reduce the amount of moisture under a structure located on a hillside or at the base of a hillside or higher area, it is usually required to construct deeper subdrains and concrete-lined V-ditches immediately above the structure, as shown on the Subdrain Details part of this report.

During the next several years we believe it would be appropriate to periodically monitor the site drainage to observe drainage trends, and additional drainage measures may be required depending upon the actual site drainage and land performance.

We also recommend that the attorney for the developer and owner be consulted to determine the legal manner of discharging drainage at this site. It should be noted that improperly discharged concentrated drainage may be a source of liability and litigation between adjacent property owners.

In those areas where legal area storm drain systems may not be present, then site drainage waters should be handled in a reasonable and prudent manner in the spirit of "Keys vs. Romley" (64 Cal 2nd 396, 1966) and the associated "rule of reasonable use" pertaining to surface waters as provided in the next three paragraphs.

"It is incumbent on every person to take reasonable care in using his property to avoid injury to adjacent property through the flow of surface waters, and any person so threatened with injury has the equal duty to take reasonable precautions to avoid or reduce actual or potential injury. Though failure to exercise reasonable care may result in liability by an upper to a lower landowner, where the actions of both are reasonable, necessary, and generally in accord with reasonable care, the injury must necessarily be borne by the upper landowner who changes a natural system of drainage."

...an action to recover damages for the discharge of surface waters from adjoining land, the question of reasonableness of conduct is not related solely to the actor's interest, however legitimate; it must be weighed against the effect of the act on others. The issue of reasonableness is a question of fact to be determined by considering all relevant circumstances, including the amount of harm caused, the foreseeability of the harm that results, and the purpose or motive with which the possessor acted."

"In land development problems, it is proper to consider whether the utility of the possessor's use of his land outweighs the gravity of the harm that results from his alteration of the flow of surface waters. Where the weight is on the side of the one who alters a natural watercourse, he has acted reasonably and without liability; where the harm to the lower landowner is unreasonably severe, then the economic costs incident to the expulsion of surface waters must be borne by the upper owner. But if both parties conducted themselves reasonably, then the courts are bound by the old civil law rule."

The old civil law rule...is that "a person who interferes with the natural flow of surface waters so as to cause an invasion of another's interests in the use and enjoyment of his land is subject to liability to the other."

Also, site drainage should be provided as necessary and maintained and repaired as necessary so as to be in accordance with California common and statute law and the more recent interpretations of the "rule of reasonable use" pertaining to surface waters, including: "Martinson vs. Hughey" (199 Cal App 3rd 318, 1988), "Weaver vs. Bishop" (206 Cal App 3rd 1351, 1988), "Aalso vs. Leslie Salt" (218 Cal App 3rd 417, 1990), and California Civil Code Sections 1714 and 3479. "The old civil law rule, under which a landowner was liable for any harm caused to neighboring owners by an alteration in the flow of surface waters

across his or her land has been qualified by the rule of reasonable use. Under this rule, an owner modifying the flow of surface waters can successfully defend a claim for damages showing that his conduct was reasonable and that of the plaintiff was unreasonable."

If good retaining wall performance is desired, such as in habitable portions of the structure, then such retaining walls should be very carefully waterproofed.

We recommend that provision be made for the relief of hydrostatic pressure that might build up beneath any concrete floor slabs. Adequate gravity outlets or weep holes should be provided so that all portions of the drain rock beneath the concrete floor slabs may drain. However, such weep holes or drain outlets should be carefully located in such a manner that water will not flow inward to beneath the floor slabs.

It should be realized that considerable normal runoff water from prolonged and intense rainfall flows along the surface of the ground. However, a significant amount of water may percolate through the upper portions of the porous topsoil materials, then flow along the surface of impervious soil layers or along the surface of the bedrock because the bedrock is much more dense and compact than the above soil materials. Furthermore, a small amount of water may infiltrate through the various joints and cracks within the underlying bedrock materials. Therefore, our usual recommendation on hillside and steeper slope construction is to build in conformity with the existing hillside grades and not to excavate or cut into the various soil layers and through the soil/rock interface into the underlying bedrock materials. Such excavating penetrates and therefore intercepts natural drainage paths, resulting in water and moisture falling from the cut. However, due to functional and aesthetic reasons or requirements, there are many times when such cutting into the natural earth-soil and rock materials is required. However, it should be realized that drainage waters will most likely be present in such areas and will have to be either accepted and/or dealt with as required.

The building designer and contractor should use special care with respect to drainage considerations if the site development results in cutting or excavating the soil or rock materials. Such cutting may cut through and intercept natural drainage and seepage paths and may result in considerable drainage waters flowing toward, into or beneath the structure. Also, excavating in areas of level or gentle slope may result in adjacent water seeping into the ground and flowing towards the excavation.

Generally, under no circumstances should crawl space areas be excavated below the adjacent site grades (such as to provide adequate clearance for wood joist floors) unless the building designer and contractor very carefully consider and provide for drainage waters that might flow into and be trapped in the foundation crawl space area and also consider potential higher humidity and very good cross-ventilation.

The designer of the proposed structure and the contractor should make sure that sufficient weeps or drainage holes are present within the foundation elements inside the structure so that if drainage waters should flow or infiltrate into the foundation area, then they can easily flow out and away from the structure and not pond or slowly seep into habitable areas.

The above site drainage recommendations are general in nature and should be carried out by the house designer, contractor, owner, and future owners to the fullest possible extent. However, from many years of soil engineering experience within Northern California, we have found that water and moisture below most structures is relatively common. Therefore, we suggest that if the owner desires assurance with respect to site drainage, an expert in the field of hydrology and drainage should be retained to prepare specific recommendations.

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MERRILEE A. FELLOWS
DEBORAH L. MARTIN
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OF COUNSEL
JEFFERY H. SPEICH

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December 14, 1998

VIA CALIFORNIA OVERNIGHT

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

RECEIVED
DEC 15 1998
CALIFORNIA
COASTAL COMMISSION

RE: A-1-MEN-98-94 [Berlincourt]
SUBJ: Application for Coastal Development Permit

Dear Commissioners and Executive Director Peter M. Douglas:

Applicants Ted and Marjorie Berlincourt respectfully submit the following information in support of their application for a coastal development permit, which was approved by the County of Mendocino.

Introduction.

The above-referenced item is an appeal of the coastal development permit approved by the Board of Supervisors of the County of Mendocino on October 26, 1998. Appellants contend herein that the project proposed by the Berlincourts for the development of their home does not comply with the visual element of the Local Coastal Plan of the County of Mendocino ("LCP"). The Berlincourts contend initially that no substantial issue exists with respect to whether their application complies with the LCP. Their project has been thoroughly reviewed by County staff which recommended approval of the project after a careful analysis of its visual impact and the relevant provisions of the LCP. Furthermore, the Board of Supervisors for the County of Mendocino approved the project on a 4-1 vote after considerable testimony both in favor of and against the project. Alternatively, the Berlincourts contend that their application complies with the visual element of the LCP so that their application for a coastal development plan should be granted.

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A-1-MEN-98-94

Letter from
Applicant

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Statement of the facts.

The Berlincourts have owned the property which is this subject of this application since 1981. The property consists of approximately 11 acres and is located approximately one-half mile south of the village of Elk in the County of Mendocino. The property is bounded on the North by the Greenwood State Beach and the Pacific Ocean. The property is bounded on the East in part by the Highway One. The property is bounded on the West and the South by the Pacific Ocean.

In July of 1994, the Berlincourts filed their initial application to build a single family residence on their property. Given the proximity of the property to the Pacific Ocean, the village of Elk and the Greenwood State Beach, the Berlincourt application was the subject of local controversy. While there was strong support for the project in the community, there was also opposition. For example, in 1994 the County Supervisor for the district involved, Norman de Vall -- who is himself a resident of Elk -- advised the project coordinator for the county staff not to approve the project unless it was "invisible" from Elk, Highway One and the beach. (See the handwritten note attached as Exhibit "1" hereto.) Additionally, the California Department of Parks and Recreation, which oversees the Greenwood State Beach, opposed the Berlincourt project citing visual considerations as the reason.

On June 22, 1995, the project coordinator of the Planning and Building Services Department of Mendocino County issued her report finding that the project originally proposed would violate the visual element of the LCP but recommended approval of the project if it were reduced in height and size and moved slightly farther to the east on the property. On August 24, 1995, the Mendocino County Coastal Permit Administrator ("CPA") denied the project but held that the Berlincourts could reapply within less than one year if they moved their project even farther to the east than the staff had recommended. Importantly, neither the project coordinator who wrote the staff report, nor the CPA, analyzed other possible building sites on the Berlincourt property for compliance with the visual element of the LCP. In fact, the CPA never went on the property prior to making his decision.

The Berlincourts chose to appeal the denial of their original project to the Mendocino County Board of Supervisors because they did not believe the visual element of the LCP would be better served if the project were moved further to the East.

On November 13, 1995, the Board of Supervisors upheld the decision of the CPA on a 3-2 vote and denied the project indicating, however, that it had no problem with the height or size of the proposed residence. The Berlincourts then filed suit to preserve their rights while they considered possible reapplication.

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Subsequent to the current reapplication, the Berlincourts and their architect retained the services of a surveyor/engineer for purposes of determining the site on the Berlincourt property which would have the minimum visibility from all public viewpoints, including Greenwood State Beach¹, the small village of Elk and the Highway One scenic corridor. In the course of surveying, it was determined that the eastern site suggested by the CPA is high and sloping (13% grade downward from east to west). Such hillside sites are discouraged by the LCP. Moreover, a house constructed in this area significantly to the east of the originally proposed building site would not only be more visible from the North (Elk, Greenwood State Beach² and Cuffey's Cove), but would also be much closer to, and hence much more visible from, the Highway One scenic corridor, and it would block public views to the ocean from the highway.

Based on the additional surveys of the parcel, the Berlincourts chose for their reapplication a site approximately 50 feet to the South and East of the site proposed in their original application. At the new location (designated as "Version 4" in the reapplication) the residence is nestled in a swale or depression at the lowest buildable location on the property. There it will enjoy maximum screening by the existing 7-to-13-foot-high tree and brush barrier; it will have minimum visibility from all public view points (Elk, Greenwood State Beach, and Highway One); and it will not be visible from the beach level of the state park. Therefore, Version 4, as approved by the Board of Supervisors, represents the optimum siting for the project.^{3 4} In their reapplication, the Berlincourts also reduced the size and height of the

¹No portion of the Berlincourt residence will be seen from the beach level of the Greenwood State Beach.

²In response to the Berlincourts' original application, Bill Berry, the Mendocino Coast Superintendent of the Department of Parks and Recreation, stated that it "was clear to [him] that no matter where on the bluff you place the house it will have the same general impact on the view [from the Greenwood State Beach], . . ." and Park Planner Gary Shannon commented that "[w]e agree with the Berlincourts that their house will be a visible feature no matter where it's located on their parcel."

³Attached collectively as Exhibit "2" hereto are copies pages 5-11 of the addendum to the Berlincourts' application, which sets forth the viewshed considerations of the siting of Version 4 in relation to the more easterly siting suggested initially by Mendocino County staff. Attached as Exhibit "3" hereto, is a copy of the photograph appearing at page 16 of the addendum, which is a photomontage of the Berlincourt property and the Version 4 house as seen from the "burner ring" of the Greenwood State Beach.

⁴In the settlement agreement between Mendocino County and the Berlincourts, the county retained its police power and did not commit to approval of any reapplication by the Berlincourts. That agreement provides:

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proposed structure, even though those factors were not troublesome to the Board of Supervisors with respect to the original application.

In May of 1998, the California Department of Parks and Recreation, which had opposed the original Berlincourt application, sent the County's project coordinator, Frank Lynch, a letter communicating the department's support of Version 4. In his May 8, 1998, letter, Park Superintendent Greg Picard stated:

"Version 4' of this proposal offers a very reasonable compromise in addressing our concerns for the visual impacts to the State Park.

* * *

"In totality, these modifications and changes from what was originally proposed will be something that the State Parks can support. We appreciate the effort demonstrated on behalf of the Berlincourt's agent . . . to deal with the issues that previously were the source of our past objections."

On October 18, 1998, County Supervising Planner Frank Lynch, the project coordinator with respect to the Berlincourts' reapplication, issued the staff report recommending approval of Version 4. In the section of that report setting forth the LCP consistency recommendation regarding the visual resources, Mr. Lynch sets out the relevant portions of the visual element of the LCP and then makes the following statements:

"In reviewing the previous file for CDP 53-94, it appears that much discussion focused on the project's visual impact from Elk, Greenwood State Beach and other vantage points up to the Northern end of Cuffey's Cove (near the cemetery). An assessment of the photomontage taken from the "burner ring" . . . illustrates that the project will be slightly visible and would be more visible at night due to lighting. Depending on the accuracy of the depiction (which staff has no ability to verify but has no reason to doubt), or the individual viewer's sense of aesthetics, this may be an impact. There are other locations on the property, such as the previous staff alternative, which would make the project less prominent when viewed from the Town or State Park (in that it would be set farther back from the point from this perspective, and therefore may be more subordinate), however, those locations would make the project more visible from other areas,

"[B]y entering into this agreement County has not agreed that it will issue a coastal development permit or that, if it issues such a permit, the permit will contain conditions subjectively acceptable to the Berlincourts."

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e.g. Highway One. Further, at most other locations around the park and beach area, several other homes are clearly visible."

* * *

"Therefore, it is staff's belief that Version 4 is superior to Version 3 as it will reasonably meet the required standard of being subordinate to the character of the setting, and not have a significant impact on protected coastal views. Special Conditions 3 through 8 are offered to soften the visual impacts of the project."

Mr. Lynch then recommended approval of the reapplication (Version 4).

An integral part of the Berlincourt reapplication is the plan to augment the existing 7-to-13-foot-high vegetative screening. That plan was prepared by landscape architect Sara Geddes of Satre Associates, who has considerable experience with landscaping on the Northern California Coast, particularly at Sea Ranch. The landscaping called for in Ms. Geddes' plan will completely screen the Berlincourt house from all public view points within ten years.⁵

On October 26, 1998, the Board of Supervisors conducted a lengthy hearing with respect to the Berlincourt application. At the conclusion of that hearing, the Board of Supervisors approved the Version 4 plan on a 4-1 vote.

Conclusion.

The topography of the Berlincourt property is such that a house located anywhere on the parcel will be visible from public viewpoints initially, but in the proposed location it will soon be obscured by landscaping that the applicants are pledged to install. It is clear that in determining the project's compliance with the visual element of the LCP, the staff and the Board of Supervisors were directed to the appropriate ordinances of the LCP and weighed the competing and relevant visual considerations, not only with respect to the requested location of the project, but also with respect to the location previously suggested by staff. Such a thorough analysis by the staff of the relevant ordinances and factors related to the visual resources of the project reflects that the County of Mendocino appropriately considered and applied its LCP. Consequently, no substantial issue exists with respect to whether the Berlincourt application complies with the LCP. However, even if it is determined that a substantial issue does exist with

⁵Ms. Geddes has testified that the screening can be completed even faster through the use of more dense and more mature trees and shrubs, and the Berlincourts have expressed a willingness to follow that course.

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Page 6

respect to the visual element of the LCP, the Berlincourts respectfully submit that their project complies with the LCP.

Sincerely,



Jeffery H. Speich
For HATCH AND PARENT
Attorneys for Ted and Marjorie Berlincourt

JHS:jtg

Enclosures

cc: Ms. Jo Ginsberg, Coastal Planner (via California Overnight)
Ted and Marjorie Berlincourt

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To Linda Rutting

Fr: N. de Vall

Re: CDP #53-94

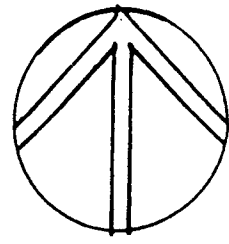
I did phone in my concerns
re this proposal AND HAVE
serious question re the design -
which to me is miniature
shopping mall. ~ If invisable
to Town, Highway AND
Beach - I CAN live w/ it -
otherwise - it's back to
the drawing board - pls -
Norman

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EXHIBIT 1

Public Viewshed Considerations (also, see chart on page 11)

1. Initially, no matter where placed within the buildable area of the parcel, a house would be partially visible from Elk and the terrace level of Greenwood State Beach.
2. If located on the northern 1/3 of the parcel (see Figs. 2A and 2B) a house would be partially visible from the beach level of Greenwood State Beach. Located more southerly, as proposed, it would not be visible at all from the beach level of the park.
3. The building site is not visible from Highway One directly east. If located on the southeastern 1/2 of the parcel the house would be visible from Highway One to the east. The more easterly the house is located, the more prominent it will appear viewed from Highway One to the east (see Figs. 2C and 2D). Also, in the more easterly location the house would be higher and more visible from Elk and the state park.
4. No matter where sited on the buildable area of the parcel, a house will be partially visible from Highway One to the south. The farther east that the house is located, the more prominent it would appear from Highway One to the south.
5. Wherever sited on the buildable area of the parcel, a house would be partially visible from Cuffey's Cove 2 miles north, but at that great distance the visual impact would be very modest, far less in fact than that of extensive development which lies much closer.
6. The above considerations, together with factors covered later under "Siting Strategy," single out the swale as the location where development would have the least visual impact (Fig. 2E). That swale is the lowest-buildable-elevation location on the parcel.
7. Partially screened initially by existing native trees and brush, the proposed house will be completely hidden in ten years or so by added landscaping that is proposed.



NORTH

PACIFIC
OCEAN

STATE PARK

STATE HIGHWAY ONE

APPROXIMATE
AREA WHERE STRUCTURE
WOULD BE VISIBLE FROM
BEACH

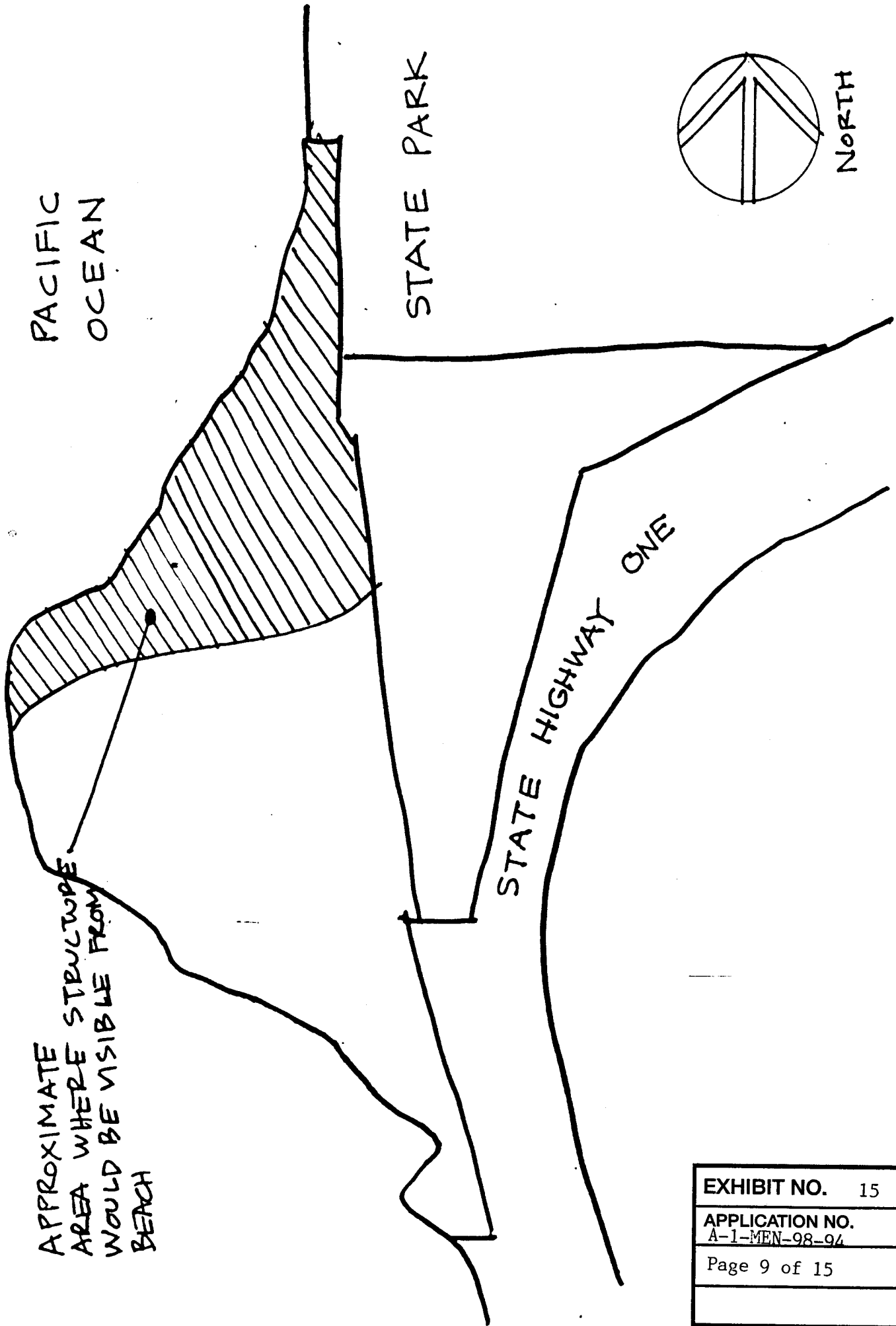
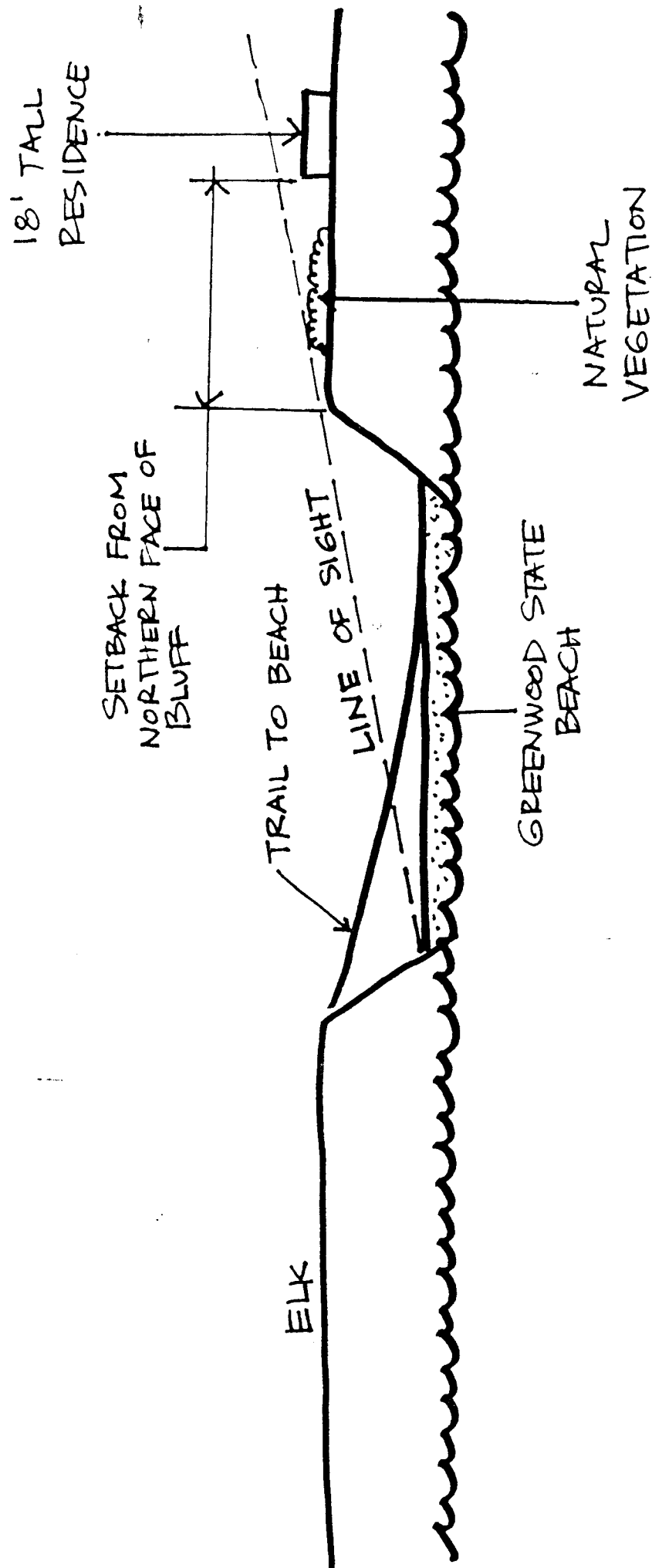


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EXHIBIT NO.	15
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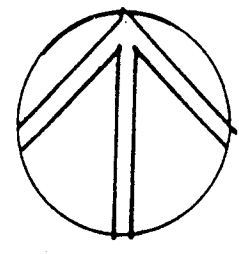


213

PACIFIC
OCEAN

STATE PARK

STATE HIGHWAY ONE



NORTH

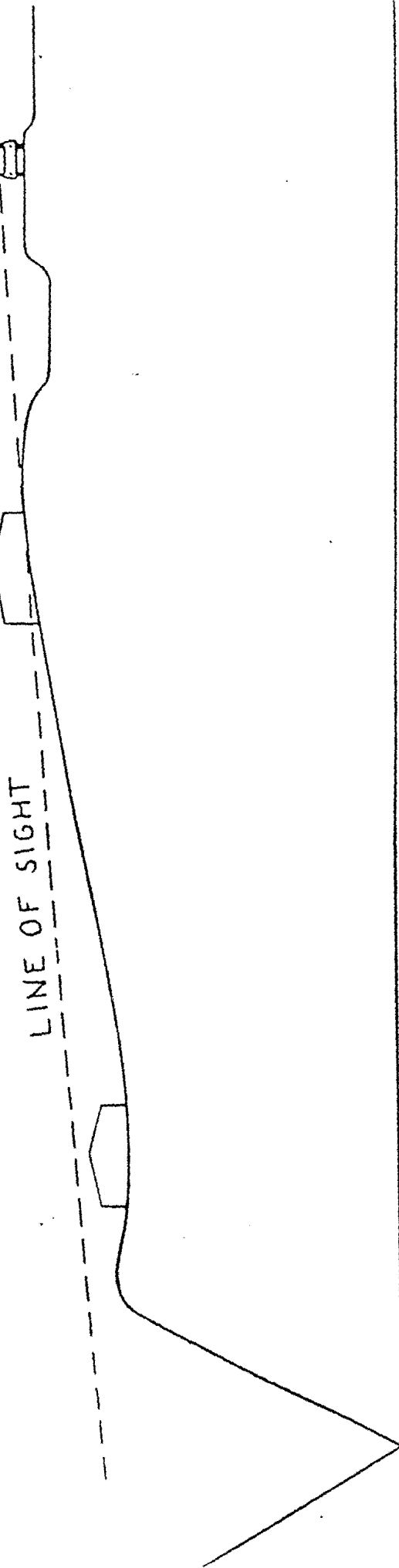
8

APPROXIMATE
AREA SHIELDED FROM
VIEW FROM HWY 1
TO THE EAST

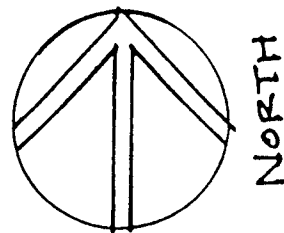
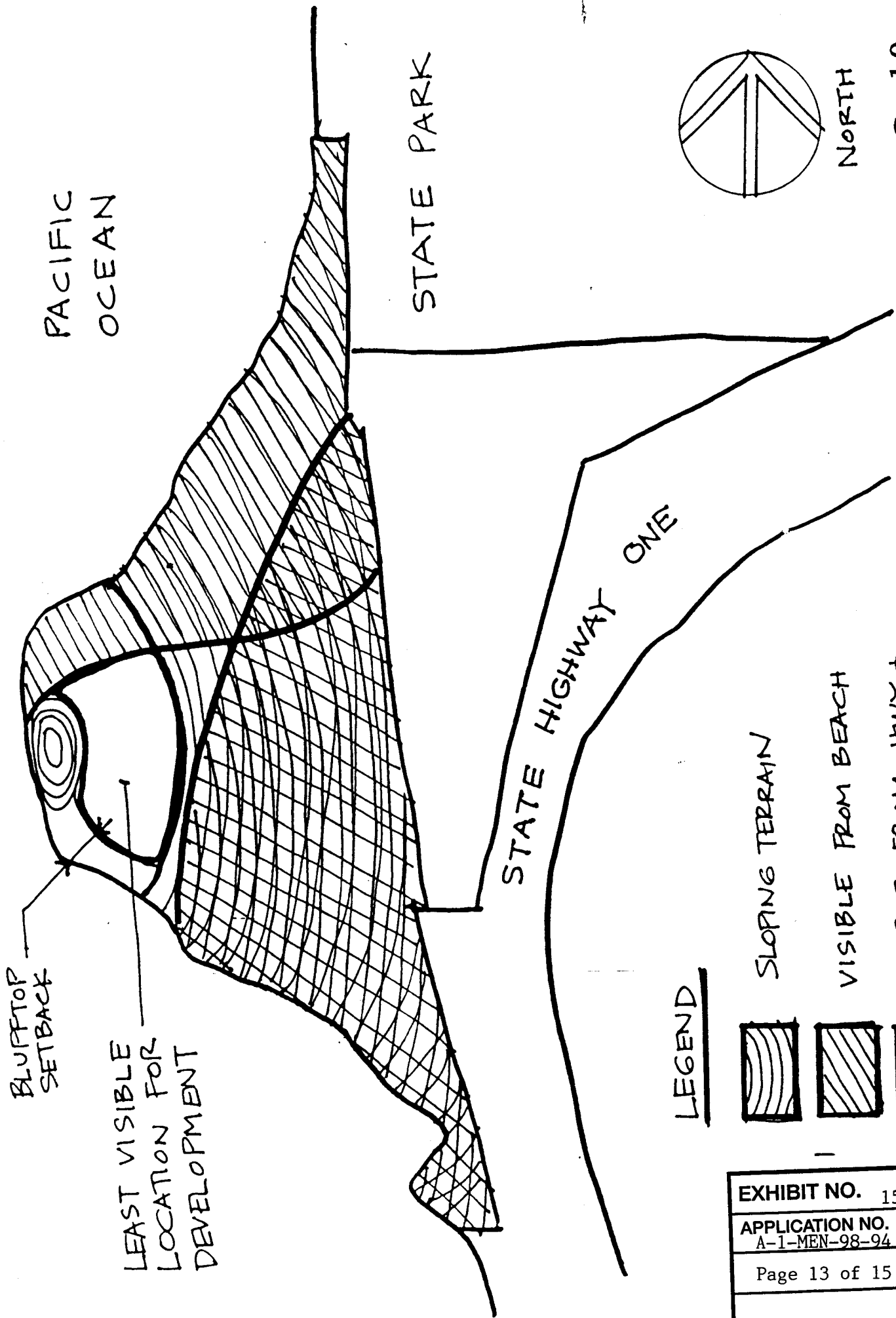
APPROXIMATE
AREA VISIBLE
FROM HWY 1
TO THE EAST

2C

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LEGEND

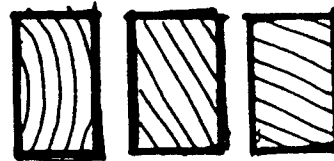


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PUBLIC VIEWSHED CONSIDERATIONS

Section 3.5 of the Local Coastal Plan states, "The primary views to be considered are those seen from public areas." It further states that, "Any development permitted in these [highly scenic] areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes."

<u>Public Areas from Which House Visibility Is Judged</u>	<u>Swale Site (proposed)</u>	<u>High, Sloping Eastern Site</u>
Highway One from East	Not Visible	Highly Visible
Highway One from South	Less Visible	More Visible
Public Areas within Elk	Less Visible	More Visible
Beach of the State Park	Not Visible	Not Visible
Terrace of the State Park	Less Visible	More Visible

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Photomontage prepared by Leventhal, Schlosser, Architects shows the Version 4 house as seen from the burner ring of Greenwood State Beach more than one-half mile away. The arrow marks the eastern boundary of the parcel. Sited as proposed, the Version 4 house is shown slightly left of center, where it is partially screened by existing trees and brush.

December 12, 1998

Karl Waidhofer
Marliss Waidhofer
9105 S Highway 1
Elk, CA 95432

All Members, California Coastal Commission
Attn: Jo Ginsberg, Coastal Planner
45 Fremont Street, suite 2000
San Francisco, CA 94105-2219

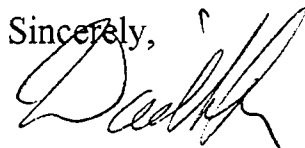
Re: Commission Appeal # A-1-MEM-98-094

Dear Members of the California Coastal Commission:

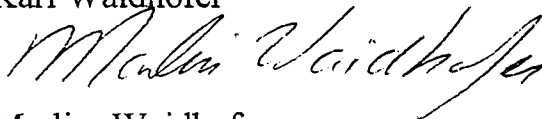
We request that the above appeal be denied.

As proposed the Berlincourts' project meets all requirements of the Local Coastal Plan. The project has been supported by the California Department of Parks and Recreation, the local Mendocino Planner and then approved by 4 to 1 majority of Mendocino County Board of Supervisors. The important fact here is that ... all of the local government agencies both elected and employed approved this project...! If the Coastal Commissioners stand by their previous statements they will go with the decision of the local government and allow this project to proceed.

Sincerely,



Karl Waidhofer



Marliss Waidhofer

EXHIBIT NO.	16
APPLICATION NO.	A-1-MEN-98-94
Correspondence in Support of Project	
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EXHIBIT NO. 16
APPLICATION NO. A-1-MEN-98-94
Page 2 of 14

Elizabeth S. Crahan
341 S. Westmoreland Ave
Los Angeles, CA 90020-1305

December 4, 1998

All Members, California Coastal Commission
Attn.: Ms Jo Ginsberg, Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Commission Appeal No. A-1-MEN-98-094

Dear Members of the California Coastal Commission:

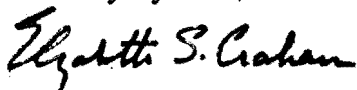
I should like to go on record recommending that the appeal of the Berlincourts house No A-1-MEN-98-094 be denied.

I believe that the Berlincourts' project meets all of the Local Coastal Plan's requirements. It has received the support and endorsement of the California Department of Parks and Recreation. Frank Lynch, Mendocino County Supervising Planner and Project Coordinator recommended the project's approval. Finally, it was approved by the Mendocino County Board of Supervisors.

The Berlincourts have made significant concessions and alterations to their plans to meet concerns of the community and the Coastal Plan. Their plans provide minimum visibility from public view points. In time the proposed plantings will further screen the house from public view.

In summary, I urge you to deny the Appeal of the Berlincourt project No A-1-Men-98-094. It would be unthinkable to prevent them from building.

Sincerely yours,



Elizabeth S. Crahan

P.S. I am the owner of the property immediately south of the Berlincourt's

EXHIBIT NO. 16
APPLICATION NO. A-1-MEN-98-94
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McDowell

RECEIVED
DEC 01 1998
CALIFORNIA
COASTAL COMMISSION

December 1, 1998

All Members, California Coastal Commission
Attn: Ms. Jo Ginsberg, Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Commission Appeal No. A 1 Men 98 094

Dear Coastal Commission Members:

We respectfully ask that the above appeal be denied. It's very simple. The Berlincourts have fulfilled all the legal requirements to build their home as approved on the site they have owned for nearly 15 years. It is clear they have spent tens of thousands of dollars and great personal effort to meet the county and state requirements and accommodate the objections of the community.

As a member of the Greenwood/Elk Advisory Group, I have reviewed all their plans, documentation, visited the sight, participated in the town meeting where their plans were presented and believe, without a doubt, that they have met all requirements.

As a native Mendocino County resident, an ocean front property owner, a "local", "an insider", I am angered by the petition because it has incorrect facts regarding the size and position of the house, and the landscaping. It seems clear to me that there are those in our community who either a) do not want any house on that site, or b) do not want the Berlincourt's home on that sight.

I am embarrassed by the petition because I believe it is mean-spirited. The petitioners have mounted the effort to stop the Berlincourts from building yet will not mount a drive to buy the property. Assuming the laws and fairness are applied equally, if the Berlincourts are stopped by this petition from building, then so should the Acker and Spire projects be denied since their proposed homes immediately follow the coastline south of the Berlincourts. It would seem apparent to me that the petitioners have not mounted a campaign to stop these projects because the people are "insiders" and well liked. I would add, that I support the Aker and Spire projects.

Once again, I ask that the above petition be denied, and the Berlincourt project be allowed to proceed without further delay. Enough is enough.

Karen Keehn



Karen and Rich Keehn
5860 Hwy 1
Elk CA 95432

December 1, 1998

All Members, California Coastal Commission
Att: Ms. Jo Ginsberg, Coastal Planner
45 Fremont street, Suite 2000
San Francisco, CA 94105-2219

Re: Commission Appeal No. A-1-MEN-98-094

Dear Coastal Commission Members:

It has come to our attention that an appeal has been filed with regard to the building plans recently recommended for approval by the Mendocino County Supervising Planner and Project Coordinator, Mr. Frank Lynch, and which was subsequently approved by a 4 to 1 majority of the Mendocino County Board of Supervisors.

This matter has been at least four years in reaching this point. The only objection to the Berlincourt's desire to build a retirement home on property which they have owned (and paid taxes on) for some 17 years is that it will be partially visible from two points. Those points would be from the town of Elk, looking south across Greenwood Cove, and from Cuffey's Cove which is at least a mile + north of Elk. It will be visible for a period of no longer, and probably less, than ten years, as the Berlincourts have sacrificed their own view by agreeing to a major planting plan to screen the view some few find objectionable.

I believe some portion of the home will be visible from Highway 1. That, however, seems not to cause any protest since there are several other homes nearby, and that view will not impinge on the view from the community of Elk or from Cuffey's Cove.

The Berlincourts have been more than patient in this matter, and have in every instance been sensitive to environmental concerns. It has also been a costly process for them, in time as well as money. I am at a loss to know what more could have been done to satisfy the few who still object to this minimal and temporary visibility. Nor can I fathom what motive has caused the appeal which has been filed before your Commission. Therefore, I am asking that this appeal be denied.

Respectfully,

Audrey Skilton
(Mrs.) Audrey Skilton
32851 Greenwood Road
Elk, CA 95432

EXHIBIT NO. 16

APPLICATION NO.
A-1-MEN-98-94

Page 4 of 14

Kathryn L. Anton
Jillian Anton
6161 South Highway One
P. O. Box 370
Elk, California 95432-0370

December 1, 1998

All Members, California Coastal Commission
Attention: Ms. Jo Ginsberg, Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

RE: Commission Appeal No. A-1-MEN-98-094 (Berlincourt Project)

Dear Members of the California Coastal Commission:

We respectfully request that the above-referenced appeal be denied.

As you know, the Berlincourt project was approved 4 to 1 by the Mendocino County Board of Supervisors after being recommended by Mr. Frank Lynch, Mendocino County Supervising Planner and Project Coordinator. The Berlincourt project also has received both the support and endorsement of the California Department of Parks and Recreation (which operates the adjacent State beach); the Department of Parks and Recreation even complimented the project architects on their efforts. The parcel is zoned for rural village development, as is every other parcel in town which has a house.

We strongly believe that the Berlincourt's project would not adversely affect the local "view shed". While our second-story wood deck probably has the most elevated and sweeping view of the Berlincourt property (compared to any of the existing homes in Elk), it is our opinion that development on the Berlincourt property would not have any significant impact on our family's well-being. (The Berlincourt property lies only 1100 feet southerly of our deck).

Please have compassion and allow Ted and Marjorie Berlincourt to build what's left of their retirement dream on a legally buildable parcel that they have owned for almost two decades.

Sincerely,

Kathryn L. Anton
Kathryn L. Anton

J. Anton for Jillian Anton
Jillian Anton

KA/JS:ka

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APPLICATION NO.	A-1-MEN-98-94
Page 5 of 15	

Kenneth Anton
6161 South Highway One
P. O. Box 370
Elk, California 95432-0370

November 30, 1998

All Members, California Coastal Commission
Attention: Ms. Jo Ginsberg, Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

RE: Commission Appeal No. A-1-MEN-98-094 (Berlincourt Project)

Dear Members of the California Coastal Commission:

I respectfully request that the above-referenced appeal be denied.

As you know:

- the Berlincourt project was approved 4 to 1 by the Mendocino County Board of Supervisors
- the Berlincourt project was recommended to the Board of Supervisors by Mr. Frank Lynch, Mendocino County Supervising Planner and Project Coordinator
- the Berlincourt project received both the support and endorsement of (and was even complimented by) the California Department of Parks and Recreation
- the Berlincourts have planned their retirement around their legally buildable rural village lot since purchasing it about 20 years ago

What you may not know:

- the strongest of supporters of this project live within a few thousand feet of the property
- most opponents live miles outside of the Village of Elk
- the Berlincourt's opponents did not object to the three-story house with a bright shiny metal roof which has been constructed about 1100 feet northerly of their property (6151 South Highway One - adjacent to my home), nor did they object to a very visible project (almost double in floor area) that was approved at a parcel or two southerly of the Berlincourt property
- in November 1998, the opponents trespassed and erected a false 20-foot high sighting pole on the highest point of the Berlincourt property in order to stir up controversy

After four years of watching this fiasco unfold while other visible development in town goes on without protest, it is my opinion that the opponents to this project are attacking the Berlincourts solely because of personal dislike and are abusing the County and Coastal Commission processes to obtain some sort of sick personal gratification. I have heard of some opponents expressing concern about having a Veteran live in town (there is a strong anti-military sentiment in Elk), but that might only be the beginning of social engineering prejudices here.

Please allow Ted and Marjorie Berlincourt to proceed with their retirement dreams as approved by the Planning Department and Board of Supervisors so that this divided community can move ahead and start a healing process.

Yours sincerely,

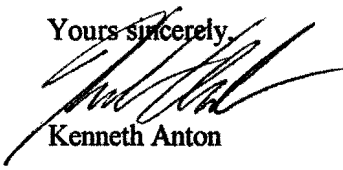

Kenneth Anton

EXHIBIT NO. 16

APPLICATION NO.
A-1-MEN-98-94

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EXHIBIT NO. 16

APPLICATION NO.

A-1-MEN-98-94

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RECEIVED

NOV 30 1998

CALIFORNIA
COASTAL COMMISSION

Alan & Rae Wisdom
1060 Navarro Street Rd.
Albion, Ca 95410

November 23, 1998

All Members, California Coastal Commission
Attn: Ms Jo Grisham, Coastal Planner
45 Fremont St. Suite 2000
San Francisco Ca 94105-2219

Re: Commission Appeal No. A-1-MEN-98-094

Dear Members of the California Coastal Commission:
We request the above referenced
appeal be denied.

The Berlin courts have complied
with all changes and requirements that
have been requested of them since their
first application, more than four years
ago.

The project meets all the require-
ments of the Local Coastal Plan. It
has the endorsement of the California
Department of Parks and Recreation, and
Mr. Frank Lynch, Mendocino County
Supervising Planner and Project

Coordinator. It was approved by the
Mendocino County Board of Supervisors
by a 4 to 1 majority.

The Berlin courts have worked diligently
by revising their plans to satisfy any
objections. Under the circumstances, we
feel, that you will agree that the
appeal should be denied.

Sincerely,

Dean and Lee Stinson

EXHIBIT NO. 16

APPLICATION NO.
A-1-MEN-98-94

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6185 Hwy One South
Elk, Calif., 95432-0338
November 28, 1998

All Members, California Coastal Commission
Attn: Ms. Jo Ginsberg, Coastal Planner
45 Fremont St., Suite 2000
San Francisco, CA, 94105-2219

RE: Commission Appeal No. A-1-MEN-98-094

Dear Members of the California Coastal Commission:

I respectfully request that the above-referenced appeal be denied.

I have owned a home in Elk since 1964. Many people have come and gone to the village over the ensuing 34 years. The designated Greenwood State Beach has been in existence less than half that time. Many of those who arrived here in the 60's were urban refugees and seem to have concluded, subsequent to their arrival, that no further development should be allowed. New houses, especially west of Highway One, are a detriment to the view-scape and result in loss of "our natural beauty." Little concern is shown for the rights of others who desire now to also establish themselves near the shore line with its innate, rugged beauty. I believe this "pull up the ladder" mentality is selfish and incorrect. I believe it is being applied with vigor to the Berlincourts in their desire to build their home on the ocean side of the highway just south of the village. They, the Berlincourts, have labored mightily over the past four years to gain approval through the various agencies to allow construction of their new home.

My house is so located that we have a direct over-view of the Berlincourt property. It is a prominent point of land just to the south of the State Beach and has a deep swale in its central area. I have watched closely as their various plans have been evaluated. The "sighting poles" with attached banners have been in place intermittently and have never seemed overly prominent or been a problem to me. The most recent of their plans, the one approved by a four to one vote of our Mendocino County Board of Supervisors, would place their proposed dwelling directly in that swale. Plantings of indigenous plants are planned to completely "hide" the building within a few months after construction completion. I conclude that the current plan would leave little or no portion of their proposed new home exposed to mar the view-scape either from my home or from the rest of the Village. I see no imminent problem.

I believe the four years plus of ongoing evaluation and hearings should be considered adequate and that the "no construction" appeal now under consideration should best be denied and construction commenced as soon as possible. The public interest has been well considered and, in my opinion, not found to be wanting.

Sincerely yours,

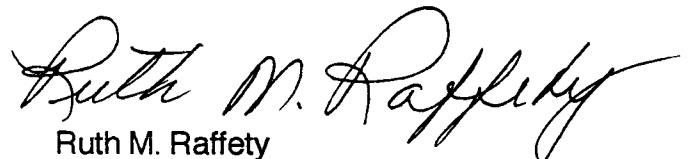

Ruth M. Raffety

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EXHIBIT NO. 16

APPLICATION NO.
A-1-MEN-98-94

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6185 South Highway One
Elk, CA, 95432-0338

27 November 1998

All Members, California Coastal Commission
c/o Ms. Jo Ginsberg, Commission Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, CA, 94105-2219

Re: Commission Appeal #A-1-MEN-98-094

Dear California Coastal Commission Members:

I am a resident of the Mendocino County coastal Rural Village of Elk (aka: Greenwood). My wife and I have owned property in south Elk since 1964. We like this wonderful place for the ethereal sense of being "on the edge of the world" that one experiences when looking out to sea from the bluff top, or from the Park, or just plain from our own front room windows. It is truly an "other worldly," inner, emotional feeling of omnipotence that one gains by just being here. We think we "have it made" and we sense a twinge of "holier than thou" over other people who have been so unfortunate as to never have held such an engulfing pleasure, just by being here. We have all the reason in the World to want to go to any length to protect this wonderful place for our, and only our, own pleasure.

However, we possess a strong sense of fairness toward our fellow citizens of our fair nation, the good old USA. This is, in this World, the primer nation of individual enterprise, and the benefits there-of. I believe I have a right to enjoy my strong patriotic feelings for "My Country," for I "paid my dues" with in-country military service in two of our nation's overseas wars (Kor & RVN) and with some 21 years of active duty in the Regular Army. It is this overwhelming concept of fairness, and the rights gained/earned by free enterprise, that brings me to write to you at this time on behalf of Ted and Marjorie Berlincourt.

They, too, have earned the American right to the benefits of their free enterprise, down to and including their future ongoing presence by the Rural Village of Elk, California. They, with the rewards from their efforts at free enterprise, purchased (several years ago) land along our western ocean edge hoping for the same "edge-of-the-World" feeling that I now enjoy. My residence fully overlooks (from the north-east) their property, and the adjacent park land. I have evaluated and reviewed closely their several proposed sites of home construction on their land parcel. I have seen the "sighting poles" placed by their architect on several occasions to evaluate

the most environmental protective house location on that land. I fully agree with the final plan and site selection approved by our Mendocino County Board of Supervisors (four "yea", to one "nay"). I believe the construction-blocking request of this appeal should be LOUDLY denied. The California Dept. of Parks & Recreation has also supported the Berlincourts' current plan. I believe that the majority of the people foisting this appeal either do not know what it is they are trying to stop (for they personally have little or no direct proximity to the site) or do not fully believe in the all-American benefits of individual free enterprise. They must not understand that the current site and construction plan will have the house "invisible" due to indigenous vegetation screening within several months after completion of construction. The approved site is in a swale at the lowest elevation of the parcel. What further could be desired? Objection and complaint are oft an end in themselves to many who live in and about this small Shangri-la by the sea, called Elk. They seem to think that if they personally do not have the assets to carry out a project similar to that proposed by the Berlincourts, then no-one, including the Berlincourts, should be allowed to enjoy that benefit. I think that attitude is totally wrong, and ultimately selfish. I again ask that you deny this construction blocking appeal and, thereby, allow the Berlincourts to proceed on with construction on their property. More than four years of hearings and appeals are sufficient. It is time, once more, to re-confirm the value of individual free enterprise. Appropriate protection of "the public interest" has been achieved.

Sincerely,



John E. Raffety

Should you need any additional information, please do not hesitate to contact me directly at (707) 877-3345.

EXHIBIT NO. 16
APPLICATION NO. A-1-MEN-98-94
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5951 So. Hwy.1
Elk, Ca. 95432
Nov. 27, 1998

All Members, California Coastal Commission
Attn: Ms. Jo Ginsberg, Coast Planner
45 Fremont Street, suite 2000
San Francisco, CA 94105-2219

RE: Commission Appeal No.A-1-MEN-98-094

Dear Members of the California Coastal Commission:

As a long time resident of Elk, I respectfully request that the above-referenced appeal be denied.

As it is now proposed, the Berlincourts' project meets all requirements of the Local Coast Plan, has gained the support and endorsement of the California Department of Parks and Recreation whose State Beach lies just north of said project, and has been approved 4to1 by the Mendocino Board of Supervisors.

Since they first applied some four years ago, the Berlingcourts have altered their project plans many times to comply not only with the Coastal Plan, but also to meet concerns of some of the community members. The proposed site at this time will provide minimum visibility from all public view points, especially with the existing bush barrier of 7-13 feet and the future extensive landscaping planned to substantially screen the project from sight.

Thank you for your consideration.

Sincerely,

Martha J. Wilcox

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EXHIBIT NO. 16

APPLICATION NO.

A-1-MEN-98-94

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P. O. Box 14
7450 So. Highway #1
Elk, CA 95432
November 24, 1998

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Berlincourt Project CDP #19-98 Appeal # A-1-MEN-98-094

Dear Sirs:

We are writing to express our support for the above application by Ted and Marjorie Berlincourt. We have examined the plans of the house to be built and support them for the following reasons.

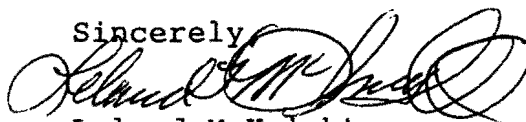
1. The plans satisfy all county codes for set back from the ocean bluff and house size according to the size of the parcel. We believe this house will have minimal visibility from the highway and none from the State Park beach.
2. The Berlincourts have made every effort to accommodate the community by making various changes to their original plan. By making these changes they have had to sacrifice some of their fantastic views which were one of their main reasons for buying the property many years ago.
3. The Berlincourts purchased this property approximately 15 years ago and have faithfully paid taxes thru those years. By building a home there they will be contributing greatly to the badly needed tax base of Mendocino County and also will help the economy of Elk.
4. We understand the Berlincourts have pledged to donate 1.75 acres at the southern end of the beach at Greenwood Cove to the state of California. It is not required but a generous gift for the use of the public.
5. We purchased our property in 1969 on the ocean bluff, approximately 1/4 mile south of the Berlincourt's parcel. During the 30 years of owning our property we have planted many trees and bushes. Most all have survived in spite of windy conditions. We feel sure the Berlincourts can plant whatever is needed for additional screening and they will live.

Our final reason is we are very concerned at the bitter, nasty opposition that has been waged against the Berlincourts. A small group of people have made relentless charges, many untrue, to stir up local residents. They have called the Berlincourts terrible names, harassed them, refused to discuss their project logically, and most of all have torn our small community apart.

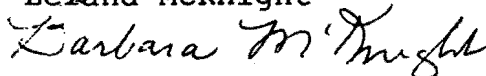
As one friend said "We are having community planning by vigilante committee". We also cannot understand how there can be such opposition to this particular project. They never rose up against the Crahan project or the Spires project both now in FULL view of Highway #1 while it will be almost impossible to see the Berlincourt house. What is there about the Berlincourts that have made them such terrible enemies? Is it because they are from out of the area? Or is it just because they are "richer" than they are? When does fairness come in to play? We have gotten to know the Berlincourts personally and hope they will become our neighbors. We feel they will contribute a lot to our community.

The Berlincourts have followed all the recommendations by the PLanning Department and were approved by the Board of Supervisors 4-1. We hope the Coastal Commission will give a speedy approval so they may begin building and our community can try to heal all the hurts that have occurred.

Sincerely,



Leland McKnight



Barbara McKnight

Phone: 707/877-3230

EXHIBIT NO. 16

APPLICATION NO.

A-1-MEN-98-94

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1701 Cameron Rd.
Elk, Calif. 95432
Nov. 23, 1998

All Members; California Coastal Commission
Attn. Ms. Jo Ginsberg
45 Fremont St. Suite 2000
San Francisco, Calif. 94105-2219

Regarding Commission appeal # A-1-MEN-98-094

Dear Commissioners;

We request that the appeal be denied.

We have attended one of the public sessions that the Berlingcourts have held and have seen the plans for the most recent project and have toured the building site. As proposed the Berlingcourt's project meets all the requirements of the local Coastal Plan. The Berlingcourts have made many efforts to conform to Coastal and county requirements. and we believe Their project should be allowed to proceed without further delay.

Since the original application was submitted more than 4 years ago the many appeals and reviews have disrupted the harmony of the village of Elk. Many of us feel that the project is sound and should be allowed.

Please give your approval of the project and deny the appeal.

Sincerely

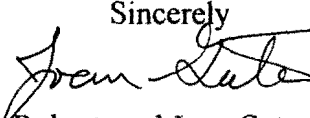

Robert and Joan Gates

EXHIBIT NO. 16

APPLICATION NO.
A-1-MEN-98-94

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27 November 1998
Elk, CA, 95432

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA, 94105-2219

Re: T. & M. Berlincourt home construction project, Elk, CA.

Mendocino County: Assessors parcel # 127-260-01, & CDP # 19-98
Coastal Commission Appeal # A-1-MEN-98-094

Dear Commission Members:

We, the below signed, respectfully request that the decision and action taken by the Mendocino County Department of Planning & Building, to allow and permit T. & M. Berlincourt to proceed with construction of their proposed new home near Elk, CA, be upheld without requirement for further review or appeal. The Berlincourts have complied with all requirements set forth by Mendocino County, and the California Coastal Commission. We strongly recommend that they now be approved to commence construction without any additional delay.

Name: (print) (sign) Address:

KATHRYN L. ANTON *Kathryn L. Anton* 6161 S. Hwy 1, Elk, CA 95432-0370

KENNETH R. ANTON *Kenneth R. Anton* 6161 S. Hwy 1, Elk, CA 95432-0370

J. Arjay Raffety *J. Arjay Raffety* 6175 S. Hwy 1, Elk, CA 95432

Kim Su Raffety *Kim Su Raffety* PO Box 1357 95617

Dan Clelland *Dan Clelland* 705 Bidwell St Folsom 95630

EXHIBIT NO. 17

APPLICATION NO.
A-1-MEN-98-94

Petition in Support
of Project

Nov. 21, 1998

RECEIVED
DEC 07 1998

California Coastal Commission
45 Fremont St. Suite 2000
San Francisco, Calif. 94105-2219

CALIFORNIA
COASTAL COMMISSION

Dear Sirs;

Regarding the Berlingcourt project: CDP # 19-98 Mendocino County
assessor's parcel # 127-260-01. Commission Appeal # A-1-MEN-98-094

We the undersigned request that the decision by the Mendocino County Dept of
Planning & Building to permit the project be upheld and that no further reviews or
appeals be required. The county decision is logical, and no further delays caused by
appeals or reviews are required. The Berlingcourts have conformed to all requirements of
Mendocino County and the State Coastal Commission. We feel that they should be
allowed to build and be welcomed into the community.

print name	signature	Address
Robert W. Gates	[Signature]	1701 Cameron Rd ELK
NORMAN G. RUDMAN	[Signature]	1651 Cameron Rd ELK
Joan M. Rudman	[Signature]	1651 Cameron Rd. ELK
Howard Sinclair	[Signature]	P.O. Box 211, ELK, CA 95432
LEROY A. OZENNE	[Signature]	1460 NAVARRO BLUFF Rd ELK 95432
GENE E. OZENNE	[Signature]	1460 NAVARRO BLUFF Rd ELK, CA 95432
MARGARET JOAN GATES	[Signature]	1701 CAMERON RD ELK CA 95432
Eva Katz	[Signature]	3300 Hwy 1 ELK CA 95432
Marilyn Long	[Signature]	1654 Cameron Road, ELK, CA 95432
LUCIEN WONG	[Signature]	1654 Cameron Road, ELK, CA 95432

Page 1 of 4 pages of this petition. Other pages were
not included to save space.

EXHIBIT NO. 18
APPLICATION NO. A-1-MEN-98-94
Petition in Support of Project

DEC 01 1998

CALIFORNIA
COASTAL COMMISSION

MS. JO GINSBERG
Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105

November 13, 1998

Reference: CDP #19-98

Ms. Ginsberg:

I am writing to support the appeal of the above referenced plan.

Please protect the public view of our coast as provided in the Coastal Element of the certified Local Coastal Plan. This headland is in a Highly Scenic Area. It is one of the most sensitive on the North Coast because it can be seen from a pull-out that overlooks historic Cuffey's Cove, the state park in Elk as well as from the town itself.



Cheri Langlois
Elk Resident

cc: Mendocino Board of Supervisors
file

EXHIBIT NO. 19

APPLICATION NO.
A-1-MEN-98-94

Correspondence in
Opposition to Project

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EXHIBIT NO. 19

APPLICATION NO.
A-I-MEN-98-94

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Hillary Adams
1391 Cameron Road
Elk, California 95432

November 16, 1998

Ms. Jo Ginsberg, Coastal Planner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RECEIVED
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CALIFORNIA
COASTAL COMMISSION

Dear Ms. Ginsberg:

I am writing in support of the appeal of CDP # 19-98 (Berlincourt). My concerns are as follows: public view and process, subordination of design to surroundings, site and description of the project, and landscape plans.

1) Public views:

The headlands on which the Berlincourts plan to build their large complex is one of the most visually sensitive on the entire North Coast. It is unique because it is highly visible from the town of Greenwood/Elk, from Greenwood Beach State Park (the parking lot, the picnic area, the ramp down to the beach and possibly from the beach itself) and from the pull-out overlooking historic Cuffey's Cove on Highway One. Tourists stop to photograph from this pull-out every day of the year. Artists paint this view. Most of our Bed and Breakfasts look out on this headland. It is important that the traditional view be protected according to the established policies of our coastal element and certified local coastal plan (Policies 3.5-1, 3, 4).

Many citizens were involved in helping to develop the Coastal Element of the Mendocino County General Plan. One of the most important aspects of the Coastal Element, the thing most of us who have chosen to live along the coast want to protect, is the magnificent natural viewshed from ridge top to sea. Those of us who purchase land here recognize that in doing so we accept the public's right to enjoy that viewshed. It is our duty to protect this right for all citizens, whether they live here locally or are visitors who support our local economy.

Indeed, the coastal viewshed is fundamental to the economy of this area. Most of the "bed-and-breakfasts" in Greenwood/Elk look out over the headland on which the Berlincourts wish to build. Their businesses depend upon having the least possible visual disturbance of this historic view.

The Berlincourts have frequently indicated in public that they have chosen this particular site to build their "dream house," to retire to the village of Greenwood/Elk. They have used this argument to support their contention

/16/98

CDP #19-98(Berlincourt)

2

that they should not be allowed a design and site a home that is in their own best interest, apparently without regard to the public.

However, the Berlincourts have apparently said the same thing about another piece of property they purchased, a headland lot in Drifters Reef, near Caspar. There, too, they have apparently told members of the public that they wished to build their "dream house" and retire permanently. They own yet another headland property in Albion. In fact, the Berlincourts own four buildable pieces of property along the North Coast, all in highly scenic areas with superb ocean views (see plot maps, enclosed). Two are on the Elk headlands. Some of these properties appear at intervals in real estate catalogues. In 1995 the property at Drifters Reef was for sale, and again in 1998. The Albion headland property was described in a recent real estate listing book. Both properties were apparently for sale at an asking price of \$450,000. In my opinion, this places the Berlincourts in the position of developers.

Any challenge to the integrity of the Coastal Element and certified local coastal plan would set a precedent which the Berlincourts and other developers would immediately use to their own personal advantage, at the expense of the public. This may explain why the Berlincourts have gone to the extreme of taking a court action against both the County of Mendocino and the California Department of Parks and Recreation.

Many of the allegations in their lawsuit (No. 74134, filed May 13, 1996 in Superior Court, County of Mendocino) appear to be completely unfounded. Certainly these allegations have not been tested in court. While the California Department of Parks and Recreation has apparently ignored this lawsuit (the Parks Department was not named in 1996, but have been named in a Stay action filed on May 28, 1998) and the County seems to have done likewise until this year, the present Board of Supervisors of the County of Mendocino has chosen to come to a Conditional Settlement Agreement with the Berlincourts (signed 2/24 and 2/26 1998; the signature for the Board of Supervisors is unclear since it consists only of initials with no name). This agreement allowed the Berlincourts to describe their own project, choose their own planner, bypass the established public process described in the Coastal Code (Sections: 20.532.045, 20.532.050 and 20.536.010), bypassing the Coastal Permit Administrator and placing their highly controversial project directly before a political body, and even dictate how the public would be treated.

This process made public access to the records extremely difficult. The Berlincourts chose a planner who normally does not process coastal plans and is located inland in Ukiah rather than on the coast. All of the records were taken to Ukiah, a drive of one and one-half hours from Greenwood/Elk. It is difficult enough for the public to get to Fort Bragg to look at plans or attend meetings since that town is a forty-five minute drive away along windy coastal roads; having

records available only in Ukiah represents a hardship. Moreover, although the records were finally brought over at the request of the public, they were only available for one day. At the same time, the minimum time limit of 10 days was given for public review the project, adding yet another burden. Since the original plans were not easily available, the public had to request a copy of the staff report, wait for its arrival by mail, and then try to decipher the building and landscape plans from wording that was so reduced in size it was impossible to read.

This seems an irresponsible precedent for the Board of Supervisors to set, and leaves the public with little faith in the present Board of Supervisors' ability or willingness to protect the public's interests in relation to the Coastal Element and the certified local coastal plan. The public must, therefore, depend upon the Coastal Commission to be certain that the Berlincourt project is sited in a way that would most completely protect the public views, and be designed to meet all of the requirements of the certified local coastal plan and the coastal codes.

2) Subordination of design to surrounding areas:

The design the Berlincourts have chosen is one that strongly opposes both the natural landscape and the traditional architecture of the town of Greenwood/Elk. The complex is a statement of angles, projecting verticals, harsh corners, walls of glass. Nothing could be more out of keeping either with the long smooth lines of the headlands or the late-Victorian and Craftsman architecture of the village.

This large complex consists of two separate buildings that are apparently only tied together by walkways. Their angular bulk, placed at the edge of a bare, projecting cliff where strong gale winds have stunted even native trees, makes the proposed project loom large on the visual horizon. There has been no effort to design the project in relation to the smooth horizontal lines of the headlands, and thus to subordinate the house to its natural surroundings. If the Berlincourts wanted a modern plan, they could have chosen one of low, horizontal lines such as Frank Lloyd Wright designed for his prairie houses.

Although this project is legally outside the town limits, it sits prominently in the village viewshed. There would probably be much less opposition to the project had the design been compatible with the architecture of the town. For example, there are many one-story and rambling Craftsmen style houses that would not only be compatible with the architecture of the town but also blend with the surrounding landscape.

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Adams, 11/16/98

CDP # 19-98 (Berlincourt)

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3) Site and Description of the project:

In their presentation of CDP #19-98 to the Board of Supervisors on October 26, 1998 the Berlincourts proposed two sites at the same time: Site #3 and Site # 4. Site #3 is exactly the same as site #1 presented in 1994. This site was rejected by both the Coastal Permit Administrator and the Board of Supervisors at the time (CDP # 53-94, Appeal before the Board of Supervisors, September 28, 1995). At that time, the Coastal Permit Administrator recommended a site further to the southeast (see site map enclosed, marked 'Exhibit A'). This would pull the house further back from the cliff edge and from the most sensitive public views. That position was again supported by the local coastal Supervisor for District No. 5, who voted against the CDP #19-98 in the decision of October 26, 1998.

The Board of Supervisors have traditionally recommended that projects be pulled back from the eroding coastal cliffs and out of the public view. An almost parallel example from the Greenwood/Elk area is CDP #33-95 (Marino), proposed for the headlands off Navarro Bluff Road in "Little Geyserville." The project is described as a 1,600 sq. ft. single story dwelling with 700 sq. ft. of decking. The applicant asked for a 40' setback. A 75' minimum setback was recommended due to possible erosion of the unstable ocean cliffs. There was an issue of public vs. private views of the ocean. The permit was rejected on appeal to the Board of Supervisors on September 16, 1995 (copy of staff report and action enclosed).

The agreement the Berlincourts reached with the County of Mendocino for processing CDP #19-98 allowed them to describe their own plan. However, this plan has not changed significantly from the earlier plan they submitted under CDP #53-94 and the description there seems to be more accurate, more in accord with other descriptions of coastal permits. For example, in CDP 19-98, there is no mention of the square footage of the garage (given as 900 sq ft. by the staff during the hearing before the Supervisors on October 26). There is no mention of the total square footage of the decking, as there was, for example in the Marino CDP #33-95. The garage/ guest house are described as being part of the house in CDP #19-98, but these units do not share a common wall. Furthermore, the square footage of the house is given separately, as 3,125, sq. ft., while both units are presented under one permit as though they were one building. In other words, every effort has been made to diminish the perception of the size of the complex. Moreover, nothing seems to attach the two units except a walkway. In CDP # 53-94, the Coastal Administrator described these as separate units, and so they would appear to be. Generally, separate units would require separate permits.

The loft is described as a second story by the Coastal Permit Administrators report for CDP # 53-94. It is not mentioned in the description of #19-98, yet it remains in the plans.

EXHIBIT NO. 19
APPLICATION NO. A-1-MEN-98-94
Page 6 of 60

The setback from the cliff edge for site #1 (same as #3) is shown as 25' by a line drawn on the original plan for site # 1. This line has been omitted from the plan of CDP#19-98. A setback line of 40' reaching to another corner of the house on the south side was retained, however, and this is given as the setback figure in the text. The height of the house used for site #4 scales out at approximately 18' in height, but that for site # 3 appears to vary from 18' to 20' or possibly more in height. It is imperative that all of these elements be checked by a staff that is not laboring under the onus of complicated settlement agreements.

Another issue that needs to be resolved is the use of comparison photographs and photomontages. The Berlincourts have presented to the public other houses on the coast for comparison to their project. They showing these houses much larger and closer to the viewer than the human eye sees them. They have at several times presented the public with different photomontages of their proposed building from approximately the same viewpoint. In an earlier version, the house is very striking and evident, while a later version shows it as small and unnoticeable. In my opinion, photomontages should not be allowed as evidence, since they can be made to appear in any way the applicant desires. Similarly the Berlincourts choice of a wide-angle lens for their photographs radically distorts the size of any object seen in the distance, making it appear much smaller than it actually appears to the human eye.

It is very important that qualified staff visit the site and determine for themselves the visual impact of the proposed building. This can best be done with story poles erected at all corners of the proposed building sites at (sites 3 and 4 and the alternative proposed by the Coastal Administrator in 1995). Although several members of the public requested that story poles be erected for sites #3 and #4 prior to the hearing of October 26, only one pole was finally erected, and its relation to the plan was never given. Slim as it was, the story pole was very evident from the parking lot of the State Park. The public had nothing better to judge impact with than a row of telephone poles that happen to run across the property. These poles are approximately 25' in height, and it is therefore possible to deduce the effect of an 18' to 20' foot structure from them, but story poles would be better.

4) Landscape plans:

If the number of trees and their location is any indication from the Berlincourt's landscape plan, their screening ability would seem to be minimal. There are only 7 sea pines and 7 Monterey cypress to the north. These are not intermixed, so that the faster growing Sea Pines will not provide a shield while the Monterey Cypress are growing. Moreover, Sea Pines are generally a shorty-lived species here since they are prone to disease and do not withstand gale winds well, at

least that has been our experience. Yet the Sea Pines have been placed at the furthest western point. Monterey cypress take a very long time to grow to a height that would provide a visual shield (ten years according to the testimony of the Berlincourt's landscape architect). What will shield the public view of the house until that time? What is to prevent these trees from being limbed to provide better ocean views?

Moreover, the landscape plan presented appears to be for site #3. No separate plan was apparently submitted for site #4, although that site moves the house to the southeast far enough to make a difference in what could be planted around it. For example, the trees shown to the south of the house would apparently not be planted. What would then protect the southern exposure of the house from the public view? There are almost no trees to the east of the house, and large areas remain empty of all but a few low bushes. How will the 18' height of the house be adequately shielded from public view with only these few trees around it?

Sincerely,

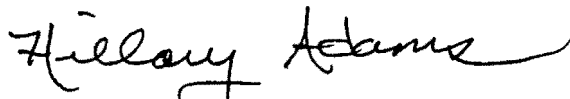

Hillary Adams

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Mary Pjerrou
P.O. Box 106
Elk, CA 95432
(707) 877-3405
fax (707) 877-3887

November 18, 1998

Jo Ginsberg
Coastal Planner
California Coastal Commission: North Coast Area
45 Fremont - Suite 2000
San Francisco, CA 94105-2219
Re: Mendocino CDP 19-98 (and 53-94) - Berlincourt

Dear Ms. Ginsberg and Coastal Commission Members:

I am writing in support of the Appeal that was filed by Mendocino CoastWatch and the Sierra Club Mendo-Lake Group regarding the Berlincourt building project (CDP 19-98) for the south headland above Greenwood State Beach, near Elk, in Mendocino County. The process by which this project was reviewed and approved by Mendocino County was extremely unusual, deliberately excluded the Coastal Permit Administrator, Coastal Planning staff and coastal residents, and was entirely inadequate for determining the potential impact of this project on one of the most famous ocean and headland views along Highway One--an area designated "highly scenic" in the Local Coastal Plan. This special process for the Berlincourt project not only provided inadequate protection for this important viewshed, but also set a bad precedent that could undermine enforcement of the Local Coastal Plan in Mendocino County.

The main issue in the Berlincourt project, in all of its versions (CDP 53-94; CDP 19-98 site #3 and site #4) has been the project's potential impact on the famous Cuffey's Cove view from Highway One, and other related coastal views that are designated "highly scenic." The Cuffey's Cove view, beloved of photographers and painters worldwide, is shown on the enclosed postcard (see attached Petition from the public re: CDP 53-94). Other threatened views include those of Greenwood State Beach and the town of Elk. These areas are afforded special protection in the Local Coastal Plan. (Mendocino County General Plan: Coastal Element, Sec. 3.5-1 thru 3.5-15; Mendocino County Zoning Code: Coastal Zone, Sec. 20.504.005, 20.504.010, and 20.504.015, and 20.504.020.)

The recent action of the County Supervisors in approving CDP 19-98 site #4 has created another major issue: the highly prejudicial process by which the Berlincourt project was reviewed and approved. The County Supervisors approved CDP 19-98 under threat of a S.L.A.P.P. ("strategic lawsuit against public participation") by the Berlincourts, and under the provisions of a questionable "Conditional Settlement Agreement" (CSA - see attached) that gave the Berlincourts the right to choose their own Planning Department staff person (Frank Lynch - CSA, p. 2, item 4), that specifically excluded the Coastal Permit Administrator (CSA, p. 3, item 11), and that contained other extraordinary provisions, for instance, that the Berlincourts in essence had the right to make all of the subjective judgements regarding impact on the view that are normally reserved to the Coastal Permit Administrator (CSA, p. 3, item 13).

See also the Mendocino County Superior Court “Stipulation to Stay Action” (attached), p. 2, item 5, which states: “5. Upon issuance of a coastal development permit *acceptable to the Berlincourts*, the Berlincourts shall dismiss the County of Mendocino from this action with prejudice.” [emphasis added.] The court did not rule on this case, but merely signed a stipulation. This stipulation clearly shows that the current permit (CDP 19-98) was issued under threat of legal action. It is difficult to see how the County could properly review this controversial project under these circumstances, and in fact the County did not provide proper review.

As a result of Berlincourt CDP 19-98, there is now discussion among developers and sympathetic politicians of amending the Local Coast Plan to eliminate the Coastal Permit Administrator altogether and take all decisions about coastal development away from the coast, out of the reach of coastal residents, to Ukiah.

County approval of Berlincourt CDP 19-98 violates Local Coastal Plan Sections 20.532.045 and 20.536.050, regarding the authority of the Coastal Permit Administrator, and threatens to entirely destroy the process by which the Highway One ocean viewshed has so far been largely protected from excessive and harmful development.

The Local Coast Plan specifically grants the Coastal Permit Administrator the authority to judge whether or not a building project is “subordinate to its natural setting.” (LCP-Coastal Zone, Sec. 20.532.045, Sec. 20.504.015 (C) (2,3, 5).) This judgement is necessarily subjective, and might involve height in relation to surrounding terrain, color of the building, reflectivity of the building, the effect of night-lighting, and other such matters. To transfer this power of judgement out of the hands of the County and to specifically grant this power to the plan submitter is a direct violation of the Local Coastal Plan.

Given this transfer of permitting authority to the plan submitter, all of the subjective—as well as the objective—components of CDP 19-98, including building placement, height and size, vegetative screening, paint color, reflectivity, night-lighting (20 exterior lighs proposed) and other components, need to be reviewed by the Coastal Commission for compliance with the Local Coastal Plan.

Even the objective components of the plan are unclear. No story poles were provided in the review of this project, even though the height of the building structure is one of the most critical components of the project’s potential impact on the ocean and headland views.

The “Conditional Settlement Agreement” allowed the Berlincourts to bypass the authority of the Coastal Permit Administrator, and to remove the entire process of project review from the Coastal Planning Department in Fort Bragg (on the coast), to Ukiah--a three-hour, two-way drive for coastal residents. The results of this prejudicial review process were that planning documents were unavailable to coastal residents, the hearing was too far away for many interested coastal residents to attend, and no one—including the Planning Department, the Supervisors and the residents of this coast—has a clear understanding of the height and other potential impacts of this project.

The Coastal Element of the Mendocino County General Plan, on Page 4 (“Public Participation, 1.3”), states that, “The Coastal Act calls for the ‘widest opportunity for public participation’ in coastal planning (Section 30006).” The actions of the County Supervisors, County counsel and

the County Planning Department in this case served to restrict public participation to the narrowest possible parameters. Indeed, the effort here was to entirely exclude the public.

Sec. 20.536.010 (B) states that a public hearing on Coastal Development Permits “may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.” In the case of Berlincourt CDP 19-98, the location of review documents in Ukiah and the location of the public hearing in Ukiah were very unusual procedures, that appeared to be calculated to confuse and exclude the most affected part of the public--coastal residents. In addition, while Sec. 20.536.010 (C) states that the public shall be noticed “*at least 10 calendar days*” prior to the hearing” [emphasis added], the County provided the *least* number of days possible for public review, even though the Berlincourt project was known to be highly controversial.

In the Berlincourt legal documents (the Superior Court lawsuit petition no. 74134, the letter of the Berlincourts’ lawyers Zumbrun & Findley to County Counsel, and the “Conditional Settlement Agreement” – all attached), it is quite plainly evident that the Berlincourts, unhappy with the decision of the Coastal Permit Administrator on CDP 53-94, and unhappy with the public process of review, sought to achieve project approval by filing a S.L.A.P.P. (“strategic lawsuit against public participation”) aimed at County employees, to pressure the County into an unusual process of review that would better suit the plan submitters, and to force the County to issue a permit that might otherwise have been deemed harmful to Local Coastal Plan values.

The Berlincourts’ original application (CDP 53-94) aroused overwhelming opposition from the public, including numerous coastal residents who value our “highly scenic” coastal views. This opposition was not hostile to the Berlincourts, however, but merely stated opinions of strong support for protection of the coastal views, asked questions, asked the Coastal Permit Administrator to do his job, and sought an acceptable compromise by which the Berlincourts could build and the view could be adequately protected. The Petition from the public (attached) and a sampling of letters from the public (attached) demonstrate the attitude of the community—firm but friendly. None of these letters attacked the Berlincourts’ wealth, as alleged in the lawsuit (no. 74134, p. 6).

The Petition and the letters were reasonable and fair, and certainly provided no cause for the actions later taken by the Berlincourts and the County.

The Coastal Permit Administrator process in the case of the Berlincourts’ original project (CDP 53-94) was entirely proper and in keeping with the Local Coastal Plan. It resulted in a fair and proper decision to allow the Berlincourts to develop their property provided that they locate the structure out of the viewshed. (See attached map for CDP 53-94, with cross-hatched area for an acceptable location of the building.) This process worked as it should to protect the view, while allowing development that does not harm Local Coastal Plan values. The public participated in this process and desired such a compromise. The County Supervisors at that time supported the Coastal Permit Administrator’s decision, as they should have.

Now, however, the Berlincourts, by their lawsuit, and the new Board of Supervisors, by their unusual procedures, have overtuned that proper and legal process, and have allowed the Berlincourts to effectively review and approve their own project.

The Berlincourts' S.L.A.P.P. Petition contains references to the Petition from the public on their previous application, CDP 53-94, a Petition that was signed by 164 people including 71 residents of our tiny community of Elk. It is this participation by the public—which is encouraged and, indeed, is mandated, by the Local Coastal Plan—that is under attack, in the current situation, along with the authority of the Coastal Permit Administrator.

The allegations against the Coastal Permit Administrator and Coastal Planning staff in the Berlincourts' S.L.A.P.P. are baseless. They have not been reviewed or ruled upon by any court of law. And yet these baseless allegations resulted in a draconian "Agreement" in which the County Supervisors abdicate the County's responsibility to protect coastal views from potentially harmful development.

The public was not aware of this "Conditional Settlement Agreement" between the County Supervisors and the Berlincourts that arose as a result of these unfounded allegations, and the "Agreement" was not available to the public until a few days before the Supervisors' hearing in Ukiah, and only then by virtue of the insistence of a member of the public that the document be produced.

The letter from the Berlincourts' attorneys (Zumbrun & Findley, December 8, 1997) to County Counsel Frank Zotter (see attached) contains the misinformation that there was an "Elk Town Meeting" where a "straw vote" was taken on the current Berlincourt applications. No such "Elk Town Meeting" occurred. There was a meeting of an entirely informal, self-appointed group, which was poorly noticed to local residents, with no announcement whatsoever that a "straw vote" would take place. Many local residents had only a day's notice or less of this informal meeting--or didn't hear about it at all--and certainly were not told that the meeting was important to approval of the Berlincourt project.

The current Petition from the public, re: CDP 19-98 (the Berlincourts' site #4), which I understand is attached to the letter of Hillary Adams, indicates that numerous coastal residents and residents of Elk continue to be very concerned about this project, and are not convinced that the project has been properly reviewed and mitigated.

Regarding to the "Conditional Settlement Agreement: In effect, the County allowed its hands to be tied in the review of this project. The reviewing County staff person chosen by the Berlincourts, Frank Lynch, who doesn't normally review coastal permit applications, was in essence debarred by the "Agreement" from performing the proper and normal review of Coastal Permit applications. The "Conditional Settlement Agreement" tells Mr. Lynch when and what he can read of previous planning documents, and tells him who he can consult with on the Planning staff (CSA, p. 2, item 5). The reservation of power over the subjective elements of the plan to the Berlincourts, under threat of the Berlincourts proceeding with their lawsuit (CSA, p. 3, item 13) also seriously hampered review of this project. Although the "Conditional Settlement Agreement" contains a provision stating that the Berlincourts are not guaranteed a Coastal Development Permit, the "Agreement" in effect provides that guarantee.

County approval of CDP 19-98 was improper and illegal, and poses a serious threat not only to the views under discussion but also to the future protection of coastal views, when other plan submitters come along and want special rules and special procedures for their projects.

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The Coastal Commission should deny Berlincourt CDP 19-98, should reprimand the County for these irregular procedures, and should require that the Berlincourt project follow the initial ruling of the Coastal Permit Administrator on CDP 53-94, including locating the structure within the cross-hatched area indicated on the attached map for CDP 53-94.

I would like to include here a special plea regarding night lighting. Elk is one of the few towns left in California where you can see a night sky full of stars. This is a very special scenic pleasure that local residents enjoy and that the millions of tourists who visit here every year appreciate. Currently, when you look out at the ocean from locations in the town of Elk, the State Beach headlands and other places, you see darkness and many stars. The night sky is breathtaking in its brilliance. I notice that there are 20 outdoor light fixtures in the Berlincourt project, plus the night light impacts from large windows. I am very concerned about this impact. It could well destroy the night view of ocean and sky for me and many others.

Concerning the location of the Berlincourt project: Please see the postcard attached to the Petition from the public (re: CDP 53-94). The Berlincourt building, in its current placement (CDF 19-98 site #4) cannot be compared to existing structures such as the Elk Cove Inn. The Greenwood State Beach headland (Berlincourt location) is unique in the ocean viewshed in this "highly scenic" corridor. All other structures in the area are contained within the inward curve of the coast (as seen from the Cuffey's Cove lookout), whereas the Berlincourt structure will be prominently placed on a headland that juts far out into the ocean, and will be the only structure so placed.

Looking at the postcard, the town of Elk and all other structures are tucked back in the upper left-hand corner, unseen in this photograph and largely out of this view, whereas the Berlincourt structure (site #4 – the approved site) will be placed in the middle of this view, only slightly to the left of the arrow indicated on the postcard view for CDP 53-94.

This is why the Berlincourt project has been of such very great concern to coastal residents. Its potential for damaging this important viewshed is unique. The project therefore requires careful scrutiny and review, which it has not received.

Thank you for your consideration of this matter. It is of great importance to residents of the coast and to the millions of visitors that we welcome to the coast every year.

Sincerely

Mary Pjerrou

Mary Pjerrou

ATTACHMENTS:

Petition from public re: CDP 53-94	20 pgs
"Conditional Settlement Agreement"	6 pgs
Berlincourt lawsuit petition No. 74134	30 pgs
Superior Court stipulation to stay (No. 74134)	5 pgs
Letter of Zumbrun & Findley 12/8/97	2 pgs
Site location map CDP 53-94	1 pg
Letters from the public on 53-94	20 pgs

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Gary Berrigan
Coastal Permit Administrator
Mendocino Planning and Building Services Dept.
143 West Spruce Street
Ft. Bragg, CA 95437

Pierron
attachment
Mendocino
CDP 19-98
(+ 53-94)

Re: CDP-53-94; Berlincourt property

Dear Mr. Berrigan,

I am unequivocally opposed to the Berlincourt development project as it is currently planned. The monolithic structure is extreme and too close to the pristine coastline which we cherish.

My husband and I are owners of three properties on the Mendocino Coast: two are commercial (one with a detached residence); the other is our primary residence. All parcels are within a few hundred feet of the ocean. We are strong advocates of the rights of the property owner. In fact, we are on record as being opposed to some of the restrictions placed by the Mendocino Historical Review Board in regards to property owner rights and freedoms. However, the Berlincourt project goes well beyond the rights of the property owner and callously infringes upon the rights of the population at large, the Community of Elk in particular, and the future generations of visitors and residents alike.

The Berlincourts' proposed residence and satellite structures indicate to me an unabashed disrespect for the perfect hillsides, bluffs, ocean view, sea stacks and beaches of Cuffy's Cove, Greenwood State Beach, and its environment. And what about its impact on the natural flora and fauna, the magnificent viewshed, the sea creatures and the town water system? Is an environmental impact study needed?

I believe the Berlincourts have worked long and hard to realize their dream to live here -- we all have. I can understand their desire to be a part of this special community. Nonetheless, their obligation to the environment must be addressed in their plans. That is the responsibility that comes with the privilege of ownership of such a spectacular piece of land. And their claims of unity with the community don't ring true when threats are made that they may limit access to sections of Greenwood State Beach which they consider their personal property.

Please reject their plan as it was submitted and insist on a scaled-down version (no loft or separate buildings) moved further inland and well camouflaged.

Incidentally, and to their defense, I feel Mr. and Mrs. Berlincourt were poorly served by their architect, Michael Leventhal. As you know, Mr. Leventhal has many years of experience with the Mendocino County Planning Department and the Coastal Commission. His reputation for oversized developments is well known. Apparently, his knowledge of the potential public opposition to this project was not communicated to the Berlincourts and they have been caught off guard and ill prepared for the inevitable reaction. Shame on him.

Thank you for the time spent in review of this project.


Tawny MacMillan

cc: Ted and Marjorie Berlincourt

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COPY

P.O. Box 23
Elk, CA 95432
August 20, 1995

Gary Berrigan
Coastal Permit Administrator
County of Mendocino
Department of Planning and Building Services
143 West Spruce Street
Ft. Bragg; CA 95437

Re: CDP-53-94
Berlincourt, 7000 South Highway 1, AP# 127-260-01

Dear Mr. Berrigan,

After meeting personally with Ted Berlincourt for more than an hour about his plans and hopes for his Elk coastal property, I have come to believe that he is a talented and honorable person. However, I am also convinced that he neither understands the depth nor comprehends the scope of the community's response to his current plans for construction on his highly visible coastal headland property.

People who live here, and visitors from all around the world, truly appreciate our magnificent coastline for the natural beauty and lack of development. The views of Greenwood/Elk cove and its ocean bluffs are a particular treasure which needs to be preserved in as natural a state as possible. As owner of the Elk Store, I am in a very good position to hear many people's thoughts about this particular building proposal and its related potential impact upon the local economy and tourism. Locals, visitors, even film producers all regard our sweeping and unspoiled views critical to their desire to live, work, and visit here.

Based upon numerous discussions with local residents and visitors, the overwhelming feeling is that any residence built in such a commanding view location should be both smaller in size and blended into the environment more carefully. (In fairness, four local residents did express support for the plans as presented, and more than twenty said no building should occur at all.)

The Planning Department and Mr. Berlincourt have different viewpoints of the proposed home and associated structures. Regardless of the discrepancies evident in the computer-aided photographs, both viewpoints clearly convey an image of a structure which is significantly larger than the majority opinion of the community feels appropriate for the highly prominent location. This fact should not be lost in all the technical discussions about whose photos are more accurate. Becoming ensnared in the arena of technical triviality obscures the key issues of the community's feelings.

Compromise appears to point to a smaller and more concealed structure.

Sincerely,


Ben MacMillan

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Mary Pjerrou
P.O. Box 106, Elk, CA 95432
tel. (707) 877-3405

August 23, 1995

Gary Berrigan
County Permit Administrator
Mendocino County Planning and Building Services Department
143 W. Spruce, Fort Bragg, CA 95437
via fax to (707) 961-2427

CPD case no. 53-94

Dear Mr. Berrigan:

I have already conveyed to you the petition listing several areas of concern regarding the Berlincourt building project (CPD 53-94), which was signed by 164 Elk residents, property-owners, business owners and visitors. This petition has merely been sitting on the counter of the Elk Store. No one has pushed it or promoted it. It has not been widely circulated nor has it been mailed out. No one was asked to sign. No phone calls were made concerning it.

I think that I can safely say that the petition represents widespread concern about the Berlincourt project, and that each signature represents many other people who did not have an opportunity to sign it and perhaps didn't even know about it.

For the record, I would like to note some statistics about the signators to this petition: Of the 164 signatures, 71 are signatures of Elk residents. Of those 71 Elk signatures, 32 are known to me to be property-owners in the community of Elk. Some of these are business people; some are homeowners; some are both. There may be other Elk property-owners on the list--whom I don't know to be property-owners, or who live elsewhere.

The other signatures on the petition come from Point Arena, Philo, Boonville, Mendocino, Ukiah, and elsewhere in California, as far south as Imperial Beach in San Diego County--and elsewhere in the country and the world, including Fairbanks, Alaska, and London, England--reflecting Elk's great attractiveness as a visitor destination.

Also, for the record, I myself am a property-owner in Elk. My home is located in town, across from Greenwood Beach headlands. My view of the headlands and the ocean will be adversely affected by the Berlincourt project.

As Elk is a tiny community of only 250 people, 71 residents, and 32 property-owners are not insignificant numbers. The reason I am pointing to the property-owners signatures is that there are a few people in Elk who believe that only property-owners have a right to an opinion on this project--as if people who don't own property, people who rent, have no rights as citizens--an obnoxious attitude, in my view. They also seem to believe that property rights are absolute. Those who hold such views are a small minority; but their views need answering.

I think that the vast majority of people in this community recognize that property rights have never been absolute--not here, not anywhere in the country. The ownership and use of private property is subject to the laws that we have all agreed upon for the common good. You cannot drive your car in a reckless manner. You cannot build a car manufacturing plant in an area that is zoned residential. And you cannot build anything you want in a highly scenic area of the California coast. This is the law.

Furthermore, regulation of the use of private property is itself a private property right, which protects all property owners from degradation of their property by the actions of adjacent or other property-owners. The goal is to balance everyone's rights, as well as possible.

This petition with 164 signatures asks that certain questions be answered by the County Planning and Building Services Department, and by others responsible for regulating and protecting our coastal views and environment. The CPD staff report of June 22, 1995, goes a long way to answer many of these questions, and to provide mitigations that will minimize visual and environmental impacts of the project. I would guess that about half of the signers of the petition (and others whom they represent) want no development at all of the south headland of Greenwood State Beach, and that about half would be satisfied with the mitigations recommended by staff, if those mitigations are adopted.

My own views lie somewhere in between. I am uneasy with the Berlincourt's attitude toward mitigating the project. In reading their various documents, and in discussions with Ted Berlincourt (who came to see me, on his own initiative, to show me some illustrations and to discuss the project), I am left with the feeling that the Berlincourts have no sympathy with valid community concerns about the impacts of this project, and will oppose any mitigations of it. This does not bode well for the success of the mitigations.

On the scale of things in the small village of Elk, the Berlincourt compound is a major construction project. As such--and as presently designed and located--it will be a very big eyesore on the coastal landscape. It violates every scenic value mentioned in the Local Coastal Plan. It destroys the last remaining open view of the ocean from the town of Elk. It places a large, two-story human habitation into what was previously an unobstructed view of headlands and ocean from Highway One north and south, from Cuffey's Cove, from the path to the beach, and likely from the beach itself--from virtually everywhere in Elk. And I am very concerned that the mitigations recommended by the staff will not sufficiently mitigate this project, particularly if the Berlincourts approach the mitigations in a grudging manner.

Among the recommended mitigations is tree and vegetation planting to disguise the building complex and to protect the headland and ocean view. I am concerned that the proposed trees and shrubs will not grow in the headland environment. It is a rugged area, buffeted by strong ocean winds and storms. If this building compound is to be built, it is essential that it be moved east and back from the bluff, as recommended--in case the vegetation fails to take root. I am also concerned about the planting of non-native species of vegetation.

Down along Highway One, toward Gualala, we see extensive plantings of Japanese pine and Monterey pine, for windbreaks and viewshed, etc. Many of these trees got blown down by recent winter storms. They have weak trunks and root systems. They are hazardous. They don't do well in headland areas.

I remain concerned about the septic system for this project--where it will be located, how it will drain, and so forth. We don't need more sewage draining into the headland bluffs and ocean.

My sister recently visited me in Elk, and she was awestruck by the clear night sky full of stars. Elk is one of the few inhabited places left in California where you can see the Milky Way at night. And Greenwood Beach and its headlands are the darkest night areas, where the most stars can be seen. I remain very concerned that, even with mitigations, this large building complex will dim the night sky. This would be a great misfortune.

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I don't find the argument persuasive that, since there is development on the north headland and the mid-headland, it is okay to ruin the open view on the south headland. On the contrary, these other human habitations make the south headland view all the more precious to Elk residents and visitors, and all the more important to maintaining the values stated in the Local Coastal Plan. In addition, the south headland, where the project is to be located, is particularly prominent in the ocean view landscape. When you face the ocean, everything else is behind you, or to the side. The Berlincourt project sticks way out into the ocean, and will dominate the scene.

Regarding the Berlincourts discussion of Elk residents and visitors as "trespassers" on a portion of the south end of Greenwood Beach which they say that they own, I don't think this is a valid property claim—given that the area has been in public use for more than a hundred years. The Berlincourts state (in their document for the 6-22-95 hearing) that they "would prefer it if the landscapes we view from our property were devoid of buildings." Perhaps they ought to look elsewhere for such a natural landscape.

If they do, they will find that there aren't many such landscapes left in the United States. Californians have made a very special effort to preserve some coastal values for the common good. The Planning Department has my full support in insisting upon adherence to those values.

I gave a couple of years of my life—and a lot of blood, sweat and tears—to the effort to prevent beach fees from being imposed on state beaches in Mendocino County, so that everyone, rich and poor, can enjoy the benefits of these natural coastal treasures. I would not like to see one of those treasures--Greenwood Beach--marred by inappropriate development.

I am also a founder and co-chair of the Greenwood Watershed Association, and a committed environmental activist. I would like it noted, however, that I do not have a knee-jerk reaction against development projects. I supported a development project that is located behind the town, east of the highway. I think we could use a few more houses and businesses in Elk—so long as they respect this special place and help take care of it and help preserve it for everyone's use.

In conclusion, I agree with all of the mitigations recommended by staff, and with the concerns expressed by the State Department of Parks and Recreation and by others, including eliminating the second story, reducing the overall size of the project, and relocating the project. I only hope that these mitigations and expressions of concern result in a project that is more in harmony with our beautiful and priceless coastal environment.

Yours sincerely,

Mary Pjerrou

Mary Pjerrou

EXHIBIT NO.	19
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Ella Russell
P.O. Box 84
Elk, California 95432
(707) 877-3500

August 22, 1995

Mendocino County Coastal Planning Administrator
Mendocino County Planning Department
Fort Bragg, CA. 95437

re: BERLINCOURT CDP-#53-94

Dear Sirs, Ms.,

As a resident of the Town of Elk for the past 25 years, and the mother of four sons, all of whom have been raised within this community, and as an active community member I wish to express my opposition to the size and magnitude of the proposed Berlincourt development.

As a healthworker myself, I am very pleased that the Berlincourts wish to be as reasonable as possible for themselves in their later years, I believe that their objectives can be accomplished within a much smaller scale.

I would like them to know that I sincerely appreciate that of all the places which are available to them, that they have chosen Elk as their future home. But we are a small close knit community, and sincerely believe that every development must be within a concept of scale, in other words, "large" by itself is not necessarily within keeping of this concept of scale.

I am personally surprised that the project architects, who are local to the area, have failed to understand our community. While they advertise themselves in the Yellow Pages as "contemporary architects", their modernism is simply too much for Elk, which has been designated a Special Village within the Local Coastal Plan Zoning Ordinances.

Because the parcel is within a Highly Scenic Designated Area, NO structure, for any purpose, should be able to be observed from the State Park, either on the beach or from the other point to the north of the beach.

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Russell-Coastal Permit Administrator

2

While I hope to attend your hearing in this matter, I wish to enter this written statement into the record of those proceedings.

Sincerely,

Ella Russell

Ella Russell

cc: Mendocino County Planning Dept.
California Coastal Commission
Sierra Club-North Coast Chapter
Mendocino Environment Center
Mendocino Coast Environment Center
California Coastal Conservancy

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David Gurney
P.O. Box 121
Elk, California
95432

August 21, 1995

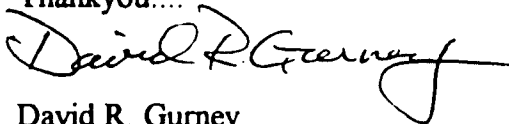
Coastal Zone Administrator
Mendocino County Planning Dept.
Fort Bragg, California 95437

Dear Mr. Administrator,

I am against the building of the Berlincourt house south of Elk, I feel that such a project violates the responsibility of the California Coastal Commission to keep headland areas free of private development.

Please place my name and letter into the record in opposition.

Thankyou....



David R. Gurney

cc: California Coastal Commission
Mendocino Environment Center

EXHIBIT NO.	19
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Norman L. de Vall
P.O. Box 3
Elk, California 95432
(707) 877-3551 877:1861
e-mail: ndevall@mcn.org

August 22, 1995

Mendocino County Coastal Zoning Administrator
Mendocino County Planning Office
Fort Bragg, California 95437

re: BERLINCOURT
CDP #53-94

Dear Sirs, Ms.,

I wish to enter into the record my objection to the above referenced project for the following reasons:

- 1) Page 1: Categorical Exemption Qualification: There is inadequate information contained within the Staff Report to argue in favor of Cat Ex 3. Please refer to Page 213 of the California Environmental Quality Act, (June 1986 edition), which specifically states that Cat Ex 3 may apply only to: "-----limited numbers of new, small facilities or structures;-----" (Section 15303). Rationale: There is simply no way that this proposed project can be considered "small". At 5,000 +/- sq. ft. of covered area, and many additional feet of infrastructure improvements, this development is by any definition, large.

Please note part (d) of Section 15303: in that the hook up to the Elk Co. Water District alone, and by itself, would meet the Cat Ex 3 criteria.

- 2) Page CPA 1: Project Description: There is no assurance or guarantee whatsoever, at this time, that the project will have a connection to the Elk County Water District AND BE WITHIN THE DISTRICT BOUNDARIES. This "statement" should reference Page CPA-17, Number 13 in an attempt to clarify the inconsistency.

A loft is a loft, and constitutes a second floor, which is not permissible. A loft is not a portion of a living room,

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regardless of overall height or ceiling height.

The scope of the project brings into challenge the definition and concept of "single family dwelling", in that the proposal calls for "maids quarters", and "guest house". If this were to be a residence, such magnitude of development might be understandable, however, a "dwelling" is not a "residence", and for a partially occupied structure, this amount of development within a "highly scenic" area is beyond the intention of the Local Coastal Plan.

- 3) Page CPA-2 By what authority has this land been cleared in "preparation of the proposed development"?

What research for rare and endangered species was conducted and by what authority? What and where are the results of these studies?

re: Land Use:

While it is not within the purview of the County or Coastal Commission to recommend acquisition of this parcel by the California State Department of Parks and Recreation, such purchase is within reason due to its proximity and impact on the state park property immediately to the north, (Greenwood State Beach), especially because of its highly scenic nature and very high visibility.

- 4) Page CPA-3 I have come to believe, after my 30 plus years on the Mendocino Coast, that a 40 foot set back is, simply, inadequate. The California Coastal Commission has seen numerous examples of remarkable and significant erosion, some caused by action of the sea, and other from disturbance of the soils and strata above the mean high tide line.

The California State Park at Greenwood Beach itself is an excellent example of this detrimental and significant erosion well above the high tide line. Soils on coastal parcels are fragile and suffer considerably when disturbed.

The above sentiments are affirmed in the Geotechnical Report referenced on Page CPA-4.

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- 5) Page CPA-5 Re: Visual Resources: This portion of the Staff Report contains, perhaps the most serious impact upon the community, and those citizens of the State and others who visit Greenwood State Beach.

The area is "highly scenic", and development within such areas must be subservient to the setting. Such is not the case in the proposed project. Its scale, bulk, shear, modern design, and sharp angles all combine to make not only the building stand out, but also every portion and part of the structure to stand out. It is not often that something is so designed.

An analogy is the significance of an electrical wire against the sky, another is a mole or pock mark on one's face: these are very real examples, and if built the Berlincourt House will stand out as another glaring example. It simply does not blend into its setting.

- 6) Page CPA-7 I wish to go on record as supporting the State of California Department of Parks and Recreation comments.

- 7) Page CPA-8 After only a few years, we have all come to learn that redwood, left to be seasoned by salt spray, ocean wind and sun, requires some coating or painting before much damage has been done to the wood. I would recommend that an additional Special Condition be added which would require the applicant to bring any future consideration of painting or wood treatment back to the Zoning Administrator for approval.

Didn't we learn enough with the new Elk (Greenwood) Post Office?

- 8) Page CPA-9, 10, and 11

The LCP Policies stated are all valid concerns, and give reason for limiting the size of the project.

- 9) Page CPA-13: The Berlincourts do have a right to utilize their property but not infringe on the goals and policies of the Local Coastal Plan. The project is too big, and staff has addressed this in many ways. The entire project should be made smaller, AND all of the Special Conditions should apply (with the one noted above added).

In addition, no development permit should be issued unless and

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until the subject parcel is contained within the Elk County Water District.

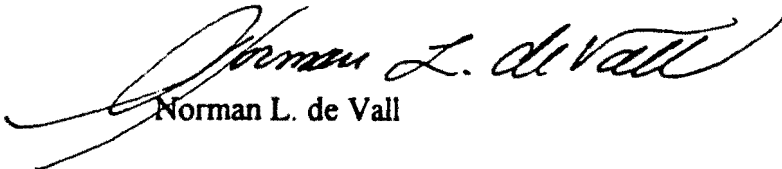
I personally wish to disagree with (4) as stated within the Findings. In my view, the proposal is SIGNIFICANT, and I again state that Cat. Ex. 3 exemption is improperly applied.

Also under Findings: Please add "liquid wastes" to (6), but recognize that no long term placement for septage is either under contract or available for septic wastes from the coast within a reasonable distance.

Finding (8) is vague: The "resource as identified....." does not refer to anything. If not made clear, the finding should be stricken.

- 9) CPA-16 While I am opposed, as stated for the many reasons above to the project, I do respect the opinion of Staff and recommend that if the project is supported, that NONE of the special conditions be modified or eliminated; and as noted before, suggest that a new special condition re color or wood treatment be added.

Sincerely,


Norman L. de Vall

cc: California Coastal Commission
Mendocino Environment Center
Supervisor Charles Peterson
Mendocino Coast Environment Center
Sierra Club - North Coast Chapter

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UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

COLLEGE OF ENVIRONMENTAL DESIGN
DEPARTMENT OF ARCHITECTURE

BERKELEY, CALIFORNIA 94720-1800

August 23, 1995

Mr. Gary Barigan
Coastal Permit Administrator
Department of Planning and Building Services
143 W. Spruce St.
Fort Bragg, CA 95437

BY FAX 707-961-2427

PAGE 1 of 1

Dear Mr. Barigan:

I am writing to express my concern over the proposed development of a large residence on the bluff at Elk, California. I understand you are conducting a hearing on this property on August 24. I apologize for my late letter, but I have been away on sabbatical and have only recently been appraised of the proposed project.

I have three major concerns about the house as proposed:

1. The property is zoned for a single family residence and the house is really designed as three units. Although the owners say they intend to use it for themselves, their children's families, and a caretaker, their intended use is not the criteria for zoning permission. In fact, the house will have three separate kitchens in three separated living quarters. Any architect or Realtor would acknowledge that this constitutes three units.
2. The proposed dwelling is nearly 5000 square feet if one includes the caretaker quarters over the garage and all other inhabited space. This is simply out of scale with any dwellings in the Elk community. The size has more in common with Bed and Breakfasts in town. The opportunity to covert from residential to tourist use is obvious and wholly inappropriate to the site.
3. Because the owners propose a caretaker unit over a garage, and because the scale of the proposed dwelling is so large, it will be extremely difficult to conform to any masking of the structure, even through landscape and siting. The simple fact that living space over a two car garage space must be nearly 20 feet tall without a roof prevents architectural attempts to minimize the bulk of such a structure.

I have other technical concerns about how the setback is measured and what materials would be used. But these are secondary to the simple fact that the project as proposed is not a single family residence in keeping with scale of the local community. It is three units masked as one, and it is grossly out of scale with the town of Elk, and with most coastal development throughout the county. For 25 years, we in California have maintained strict regulatory control over development along the coast in order to preserve the natural beauty of the coast for all Californians. I am not opposed to building in areas zoned for development. I am opposed to projects that push the envelope in terms of use and scale.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary C. Comerio".

Mary C. Comerio
Professor of Architecture
Resident of Elk
28230 Greenwood Road

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August 22, 1995

Mr. Gary Berrigan
County Permit Administrator
Mendocino County Department
of Planning and Building Services
143 West Spruce
Fort Bragg, California 95437

Dear Mr. Berrigan;

I am writing to you today concerning the Berlincourt construction (CDP #53-94) in Elk. I have lived in Elk for 17 years, second house on the south from the bottom of Greenwood Road (35995 Greenwood Road).

I am asking the Berlincourt construction be moved further to the east and that the building be a one story structure. I received their letter, and I understand their concerns and reasons for the rooms, etc; I feel they can create a structure to meet these needs that is not two stories high.

I know they plan to grow trees and vegetation to blend and conceal the buildings, however as Mr. Gary Shannon of Parks & Services concurs (and anyone who knows the land and weather of this coast) that no vegetation but grasses will survive the winds there. This is but another reason the building should be modified to one level and moved further east.

I also am very concerned about the amount of night lighting the plan calls for. I feel this is unnecessary and hinders view at night. What view? Often is the time I sit on my deck at night and look out towards the ocean, and out into the sky. Sky is a small word for it, universe tends to be more appropriate, and the earth's darkness and the world's momentary hush yield to ocean rhythms and heaven's splendor; I cannot tell you how important this nighttime dark-tide is to me, other than to say it is vital. This is true also for others who live here and those who visit Elk. Residential lights here in town are of the nature of windows lit from within and every so often a porch light over a front and back door (some have the kind that go on and off as a person passes, so as not to disturb the rest of the neighborhood. I ask they modify their lighting in keeping with this; especially because of the prominent placement of their buildings.

I also ask they keep a gentle awareness of the rare species of paintbrush growing on the bluff there. I understand it is not on the construction site, I am just asking that they take gentle care of that plant and its habitat.

I am enclosing a poem I wrote about that very spot, the headlands of Cliff Ridge. I wrote this about 11 years ago, and wanted to share it with you today. It is clear from this poem how much I do not want any more structures on our headlands, especially this one. My above requests are in keeping with an understanding of the nature of growth and our civilization's concept of land ownership. I live in a community; it is a compromise. And I ask they too join us in this spirit. Thank you.

Sincerely,

Kate Dougherty

Kate Dougherty

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Kate Younger,

01

Planning dept.
P 3 of 7 P

UNNAMING

§

Three cormorants on a limb
in the Navarro
who knows how any of it
will go after that.

§§

It's always been Cliff Ridge.
That's how I heard it.
That's how it was said.
That's how I recorded it, a poem
on the day of the divorce settlement,
walking to the creek's mouth, simply naming
things there, and watching
how things change.

§§§

Reading the history of Greenwood
and Cuffey's Cove, my eye
snagged on Clift's Ridge
as it would on any misplaced word
or transposed letter, burr caught
in my sock, somewhere back there...
momentary jab, then nothing more
but an unheard whisper the rest of the way,
by the time you remember
to stop and ask yourself
what it was, or where, you've forgotten.
But this persisted.
Named by Orso Clift, and is known
as Clift's Ridge to this day.

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1 new copy for scanning ref. [signature]

§§§§

I know loss when I feel it.
I felt it.
Told myself: change the poem.
Still, loss remained.
Facts, reality, history...
but this, this would not go, stayed,
was deep, began to draw blood.

It was as if the ridge had lost
itself, its name, its independence.
All ridges here lead to the sea,
and roll into their own headlands
but this one was named for it.
This one was what it was, a cliff
against, above, within.
It was the earth. This one stayed free.

§§§§§

Free,
in name but not in commerce.
How much is my country
made of this?
I hear them, the logging trucks
in the dark, as I am waking,
in some distance straining their engines,
their load, their haul, their work.
My neighbors are fed doing this work.
When I buy redwood, any wood,
this is where it comes from.
If not here, then somewhere.
Callie says we won't even know
they've been there, they've gotten so good
and careful at it.
She has faith in them, like her husband
and her son, and the memory of them
now they're gone.

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010 000

§§§§§§§§

Parcel by parcel, sold
to lumber companies by the man
who inherited it from his father.
Some days he'll ride through town
in a svelte black sports car, others
in a fully outrigged emergency equipped
rifle displayed three antenna four wheel drive;
a Cadillac if he's got the Stetson,
and some days come and go
without him at all.
But all along, each dawn
each dusk, out my kitchen window
past the creek, alders and willow, Cliff Ridge.

The stars and moon know its spine,
the fog its undersides. They seem
to trail it faithfully.
It's where eyes can go to daydream
rest, wake up, realize.
How can all of this
be claimed by the name of one man?
Whoever Steller was,
I hope he is satisfied,
Steller's Jay,
the selfish bastard, handsome yes,
handsome, and how it carries on.

§§§§§§§§

Well I won't. I just won't.
When I asked, what about History?
History simply said, for you it stays.
In the poem, in my mind,
when I speak or write,
look out my window or walk the cove
it stays Cliff Ridge.

As though I gave it back to itself.
Not that such a thing can be taken,
but rape is a kind of taking,
calling something yours
when it goes on without you
while you rot in it
rot so far the letters
of your name get slurred
with daily town use.

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010 0 0 0 0 0

§§§§§§§§

The text says, "Orso Clift came to Mendocino County in 1858 from a life on the sea. He settled on 2,000 acres of land known as Clift's Ridge to this day. He married Margaret Ryan in 1865 and the couple had two children, girls a newspaper clipping of March 20, 1887 states, 'Orso Clift of Cuffey's Cove has sold his ranch some distance back of that place, together with his stock, etc., to John S. Kimball. The ranch comprises of 2,000 acres, about one-half of that is timber land. Mr. Clift, we believe intends to remove to Oakland.'"

And then his photograph. His face throws off a sadness, and has a refined regret, a well-bred melancholy. Man of the sea, naming the land, removing to Oakland, things not being what they seem, his rotting bones now an earth of a stranger's name.

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01 1 0 0-0

§§§§§§§§

The rains have momentarily stopped
or else out there in the dark
it's that fine drizzle
that reminds me of a mare's low whicker,
her muzzle nuzzling your palm
looking for sugar.
The air is pregnant with this new season,
though it is fall, and brings loss.
My woodpile is low. I'll be needing
to call Everett soon. I know this.
History, men, trees, claimers -
hearth, ashes, dust.

The couple had two children, girls,
Charlotte and Lizzie. No record
of them after that. Most likely
they dropped their father's name
when they took on their husband's.

Perhaps Charlotte used to ride
to the headlands and dream out
over the ocean, passed distance
into time, there still.
Sometimes I think Lizzie's hair
frizzed in the fog
as she walked the ridge
and that maybe she loved
the wild of it.

§ § § § § § § §

Quote in section VIII from The Mendocino
Historical Review, Volume II, Number 4,
Autumn, 1975

Kate Donaherty
Eureka, California

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RABBI MARGARET HOLUB
4201 CAMERON ROAD
ELK, CALIFORNIA 95432

NOV 18 1998

CALIFORNIA
COASTAL COMMISSION

November 16, 1998

Jo Ginsberg
California Coastal Commission
45 Fremont Street, suite 2000
San Francisco, California 94105

Dear Ms. Ginsberg,

I am writing to support the appeal of CDP #19-98. The piece of land on which Mr. and Mrs. Berlincourt wish to build their home is a highly scenic area and one that I often enjoy as I walk on Elk beach. I understand that the Berlincourts have claimed that there is no opposition from local Elk residents to their plans. This is not so. I am sorry to have to object to something about which they obviously care very much. But it would be a great loss to our community to have that lovely south point of the beach built on in a visible way.

It is especially disturbing to me that the Berlincourts sued Mendocino County as well as the Department of Parks and Recreation, which resulted in the normal process of public input being short-circuited. This is obviously a very controversial project, and it doesn't seem right to limit the amount of information and opportunity for comment.

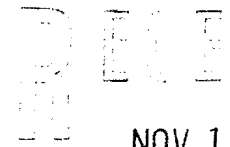
Thank you very much for your attention to this matter.

Yours sincerely,

Margaret Holub

Rabbi Margaret Holub

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NOV 18 1998

CALIF
COASTAL COMMUNITY

Nov. 2, 1998

4601 Cameron
Elk Ca 95432

To whom it may concern Re: CDP # 19-98

I object to sites # 3 + # 4. These two sites could spoil the view from The Elk Beach and the bed + breakfast inns of Elk. I want this house sited to the Southeast out of the public view where native trees + bushes grow.

Bo year Elk resident,
Sophia Sutherland

EXHIBIT NO. 19

APPLICATION NO.
A-I-MEN-98-94

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November 13, 1998

Ms. Jo Ginsberg
Coastal Commission
45 Fremont Street, Suite 2000
San Francisco CA 94105

NOV 17 1998
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO.	19
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Dear Ms. Ginsberg,

I am writing to support the appeal of CDP#19-98 (Berlin court). Please protect the public view of our coast as provided in the Coastal Element and the certified Local Coastal Plan. This headland is in a Highly Scenic area. It is one of the most sensitive on the North Coast because it can be seen from the town of Elk, from a State Park and from the pull-out that overlooks historic Cuffy's Cove.

Our magnificent coast provides pleasure to countless people both local and visitors. Because of this many of us not only choose to live here but earn our livelihood from the services provided to tourists. So for reasons both lofty (preserving wild, natural views) and pragmatic (providing vacations to tourists and jobs to locals), I urge you to interpret the coastal act in the most environmentally conservative manner possible.

The Berlin court's Elk property has several building sites which would give them an ocean view but leave the beautiful headland above the Elk Beach State Park untouched. This was the original plan proposed to them by the Department of Planning and Building Services. I agree with this plan because on all ^{but two} of Mendocino County's State ~~State~~ Park beaches, homes are visible on the headlands.

NOV. 16, 1998

MS JO GINSBERG.
COASTA COMMISSION
45 FREMONT ST. SUITE 2000
SAN FRANCISCO, CA. 94105

NOV 17 1998

CAUTION
COASTAL COMMISSION

DEAR MS GINSBERG,

I AM WRITING TO SUPPORT THE APPEAL OF CDP #19-98
(BERLIN COURT) PLEASE PROTECT PUBLIC VIEW OF OUR COAST AS
PROVIDED IN THE COASTAL ELEMENT AND THE CERTIFIED LOCAL
COASTAL PLAN. THIS HEADLAND IS IN THE HIGHLY SCENIC AREA.
IT IS ONE OF THE MOST SENSITIVE ON THE NORTH COAST, BECAUSE
IT CAN BE SEEN FROM THE TOWN OF CLK, FROM A STATE PARK,
AND FROM THE PULL-OUT THAT OVER LOOKS HISTORIC CUFFYS COVE.

I HAVE BEEN A RESIDENT OF THE MENDOCINO COAST FOR
THE PAST TWENTY YEARS AND I WOULD LIKE TO SEE THE COAST
REMAIN AS BEAUTIFUL AS IT WAS WHEN I FIRST MOVED HERE.

THANK YOU.

SINCERELY, ROBERTA L. TEWES

Roberta L. Tewes

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COLLEGE OF ENVIRONMENTAL DESIGN
DEPARTMENT OF ARCHITECTURE
232 WURSTER HALL # 1800
BERKELEY, CA 94720-1800

(510) 642-4942
(510) 643-5607 FAX

11/16/98

Ms. Jo Ginsburg
Coastal Commission
45 Fremont Street 2000
San Francisco CA 94105

NOV 17 1998

COASTAL COMMISSION

Dear Ms Ginsburg

I am writing to support the appeal CDP #1998 (Berlincart).
Please protect our public view of our coast as provided
in the Coastal Element certified local coastal plan.

This headlands is a "Highly Scenic" area - one of
the most sensitive on the north coast, because it
can be seen from the town of Elk, from a state park,
and from the pullout that overlooks historic Coffy's cove.

I strongly believe we need to uphold the strict coastal
development regulations as set out by the Coastal
Commission for the good of all Californians -

I am a part time resident of Elk.

Mary Comerio
28320 Greenwood Rd
Elk CA 95432

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November 10, 1998

RECEIVED
NOV 17 1998

California Coastal Commission
North Coast Area
45 Fremont, Ste. 200
San Francisco, CA 94105-2219

CALIFORNIA
COASTAL COMMISSION

Attention: Jo Ginsberg
Re: CDP # 19-1998

To the Commission:

We are writing this letter to clarify our perceptions of what transpired at a public forum that was held in the village of Elk on November 13, 1997. That meeting was sponsored by the Greenwood/Elk Community Advisory Group comprised of seven volunteers (business people and residents) from Elk, who were concerned about pending land development in the village and close by. (If you'd like more history about how the group came to be, Charles Peterson can give that to you.) The undersigned are four of the seven members of the Advisory Group, and were all present at the meeting. So that you can see how the meeting was presented to the community, a flyer is attached.

Before we discuss what we believe happened (and didn't happen) on November 13, we believe that a bit more information about how the meeting was publicized is important. To begin with, the announcements concerning the meeting were posted less than a week before the meeting was to occur. We had had to cancel a previously-scheduled meeting because of the weather, and we were feeling the press of time, since some of the projects to be discussed were headed to the planning commission (and to other governmental bodies) before the end of that month, or soon after the first of the year. We did notify as many of the project proposers as we could by phone, however, so that they would have at least a little time to prepare their presentations. (We believe that the only proposers we were not able to get in touch with were the Smileys.) We believe that these factors had the following effects on the turnout at the meeting that evening:

1. Turnout was light (about 30-35 people, not including the Advisory Group members). In addition to the short notice, some believed that the fact that it was held on a week-night/school-night limited the number of parents that could attend. When you consider that there are probably 500 people who call Elk "home", this must be regarded as an extremely small number ($\pm 7\%$).
2. Although one can (and many do) make the argument that most governmental policy decisions are made by "those who show up", we believe that this group was NOT representative of the community as a whole, since only those proposing the projects were individually notified of the meeting. Therefore, they had more opportunity than others to bring along and notify those they thought would be in favor of the projects.

The second issue we wish to address is that of how the outcome of the "straw vote" that was taken on two of the projects is now being interpreted by the Berlincourts. Our collective answer is that the most you can say about the outcome of those votes is **that they were an expression of opinion of the people in attendance: period.** We do not believe that they can or should be construed as a vote of support by the Elk community. Here's why:

1. Low meeting turnout.
2. In an effort to maintain neutrality, all 7 of the Advisory Group members abstained from expressing a formal opinion that night, even though all of us had fairly strong feelings about

the projects. Had we voted, it's possible that the outcome could have been substantially different, but we'll never know. If our neutrality is now being interpreted as support for any of those projects it's not only a ludicrous interpretation, it's a misrepresentation of fact.

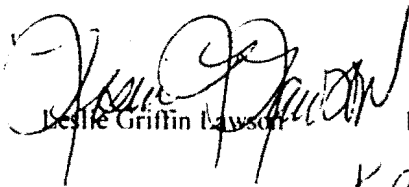
3. When the Berlincourts presented their project, they presented more than one version. It is our opinion that at least some of those expressing support for the project were supporting the modified version of the project, not necessarily the version the Berlincourts now seem to want at the exclusion of the other options. We do believe that people were encouraged that the Berlincourts appeared to be making an effort to lessen the impact of their proposed residence on the local viewshed. We do not believe that the vote reflected strong support of their more intrusive, original plan (Version 3). At the very least, the actual tally of the vote leaves room for almost any interpretation one wishes to make, and is not definitive.

YES (either Version) = 21
NO (Version 3) = 11
NOT SURE (Version 4) = 1
YES (Version 4) = 1
NO (either Version) = 2
UNDECIDED (either Version) = 8

Furthermore, at least 10 of the 30 (or so) people present had projects "on the table" and not yet approved. This fact, in and of itself, lends an important bit of context to the outcome of the "straw vote."


4. It is extremely important that it is understood that---prior to taking any of the votes---the Advisory Group members assured the audience that this was simply an advisory vote to give the project proposers some sense of whether or not they were headed in the right direction in the eyes of those present. We even went so far as to say that, as a body, **we would not take the outcome of these votes to any public agency as a statement either "for" or "against" these projects.** As the definition of "straw vote" suggests, it was really a "whaddaya think?" kind of non-binding expression of opinion, that is now being used by the Berlincourts as something it was never intended to be. In retrospect, the four of us agree that it was a mistake to have taken the vote, and that if we had a chance to revisit that decision, we would not do it again.

Please take all of this information into account as you make your decision about the appropriateness/legality of the Berlincourt project. Those of us who have strong opinions about it will send our letters under separate cover to state our positions, so as not to contaminate the basic intent of this communique. We believe the outcome of this process will affect the future of Elk in dramatic ways. Be wise.


Leslie Griffin Lawson

Kay Curtis




Polly Green

Kirk Handley

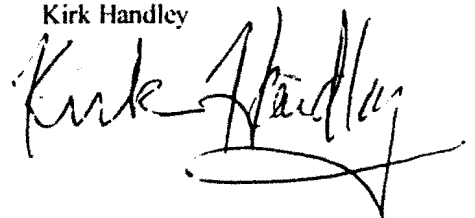


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November 13, 1998

Ms. Jo Ginsberg
Coastal Commission
45 Fremont Street, Ste 2000
San Francisco, CA 94105

CALIFORNIA
COASTAL COMMISSION

Re: CDP= 19-98 (Berlincourt)

Dear Ms. Ginsberg:

I am writing to support the appeal of CDP #19-98 (Berlincourt). Please protect the public view of our Coast as provided in the Coastal Element and the Local Coastal Plan. This headland is a unique and beautiful spot and should be covered by protections for highly scenic spots on our Coastline. It is one of the most sensitive on the North Coast because it is visible from the town of Elk, from a State Park and from the pull out that overlooks historic Cuffey's Cove.

These series of incidents have caused a great many of us to distrust the parties involved:

- 1.) The citizenry of Elk have been personally visited by the Berlincourts and given an explanation of the project that was extremely confusing and misleading.
- 2.) The Visions group panel was completely misled by the presentation and visit to the site. Member needed to be called the next day to explain that the Berlincourts had allowed us to misinterpret their intentions and that the site they had shown us was not the one they intended to submit.
- 3.) The results from the straw pole taken at the Public Forum were used in an dishonest way to misrepresent the town's position to the Board of Supervisors on October 26, 1998.
- 4.) The story poles for the Location #4 were never clearly marked which made the public response for the October 26, 1998 Board of Supervisor's Meeting frustrating and difficult.
- 5.) The County seems to have granted these people special privileges based upon the fears they had about the law suit. Ordinary citizens could not call to make inquiries to the Planning Department staff without their names and phone numbers being given to the Berlincourts. Later the Berlincourts contacted these people.
- 6.) The Berlincourts have threatened to sue our county and weaken the visual element of the Coastal Act.
- 7.) Obtaining information about this proposed building has been difficult and made timely public letter writing (which I thought was our right) difficult if not impossible.

It seems to me that we currently have in place a certified Local Coastal Plan and Coastal Element with a set of persons some elected and some hired to interpret these rules. This system has prevented our Coastline from resembling places like Carmel or Malibu. I would expect that the reason families like the Berlincourt's want to relocate their lives to our particular Coast is because of the unspoiled beauty that is

here. It seems ironic that the first contribution they make to our Community is to question and ridicule and threaten suits against the people and rules that have attempted to protect the Coast. It seems equally silly that people like myself who work overtime to make ends meet must take time to write letters and attend meetings to protect laws that are already in effect. But this is the way life is here.

The Berlincourts own sixteen acres of land. The findings of the Coastal Permit Supervisor on September 28, 1995 was to recommend a site further to the southeast of the currently proposed sites. Supervisor Peterson supported this position October 26, 1998. I believe that through the threat of the lawsuit the Berlincourts have been allowed to bend the rules and that site four was approved to appease them. If this is true what is to stop this from occurring again. This sets a bad precedent. I suggest the Berlincourts take the time and effort to comply with the rules that come with the invitation to move to our Coast. Each of us has had our turn compromising and readjusting our dreams to fit into the regulations set forth to protect this wonderful place. It is their turn.

I begin my day every morning with a walk on the Elk beach.

Sincerely,

Kay Curtis

Kay Curtis
6031 S. Hwy one.
Elk, CA. 95432

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Greenwood Pier

INN/COUNTRY STORE/GARDEN SHOP/CAFE
5928 HWY ONE ☎ BOX 336 ☎ ELK, CA 95432
707-8779997 ☎ (fax) 707-8773439 ☎ gwupier@mcn.org

11.15.98

To whom it may concern
I'm writing to support the appeal of
CDP # 19-98 BERLINCOURT

The issue is not that the Berlincourt's
can build or not, but how high it
will be and how visible. To build on
the bluffs is a very windy endeavor
so I would build into the hill, if
I were the owner of such a piece of
land. There will be no dispute about
that. I oppose any building plan that
makes the house visible as an eyesore,
from the road or Elie beach.

Sincerely, Andrew McC

11/14/98

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Mr. J. Ginsberg
Coastal Commission
45 Fremont St. Suite 200
San Francisco CA 94105

NOV 17 1998
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Ginsberg,

I am writing this letter in an attempt to preserve one of the remaining beautiful stretches of the California Coastline. I want to express my support for the appeal of CDP #19-98 (Berlencourt). Please protect the views of the coast as the Local Coastal Plan calls for. This is a beautiful area and this house will be visible from the town of Elk and even from the Laffer Cove Cemetery which is one of the finest views on the entire California Coastline. The Berlencourts have 16 acres to choose a site, and the future will judge harshly on buildings that dominate the landscape rather than blend in with it. Private property rights should not supersede the public good. The Berlencourts have been less than forthright and helpful in their statements.

They have proposed previously rejected plans and sites and keep pushing their proposals. They refused to erect story poles so the public could visualize the project. They have tried to get their way for their dream project at the expense of the public good. Please tell them that they are trying to circumvent regulations and that the public says NO!

Thank you,

George Montoy

George Montoy
33410 Greenwood Rd
E IK, CA, 95432

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November 11, 1998

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38410 Greenwood Rd
ELK. Co 95432
707-877-3243

Coastal Commission
45 Fremont St
San Francisco, Ca 94105

RECEIVED

NOV 17 1998
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Gussb-S

I have lived & voted in Elk since 1971.
I've brought my children up here. We love the view
of our Coast. We support the appeal of CDP#19-98
Bedin court. The landfill is one of the most scenic,
& seen from the longest distance on the Coast, as
well as for the State Park & the pull out for
Caffrey's Cove. This latter is the most favorite
view of everyone here - on way postcards as well
as family pictures. My daughter has it on
her refrigerator in NYC. Please don't allow
these people, or anyone, to take a national
treasure. I object to the Bedin court's saying
Elk supports them. That is not true.
Sincerely
H. M. T. O. A.

Ms Jo Ginsberg
Coastal Commission
45 Fremont St.

San Francisco, CA 94105

RECEIVED
NOV 17 1998
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO.	19
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Dear Ms Ginsberg,

I'm writing to support the appeal of COP 19-98
(Berlincourt.)

With the Coastal Commission in place for so long,
many miles of our ocean front have continued to
be developed. Most of the total has been the result
of individually decided appeals, amendments,
variance and other special case approvals.

In this case the Berlincourts have included
the use of the courts in their attempts to
circumvent the intent of the state's population
who voted to preserve the natural and
beautiful character of their one and only
coastal environment. The voters knew that some
restriction of free will in regards to the use of
private property would be needed to accomplish
such preservation.

An example of an uncontrolled exploitation
of natural phenomena exists right here on
the north coast and in Elk. Timber provided a
prosperous living for most of this area's modern
history. But the cynical failure to include the
cumulative effect in considering what if any
controls be placed on an individual harvest plan
led to the closing of all but a few mills

the entire county with the Ft Bragg mill scheduled for closure ~~quite~~ soon. Elk's mill closed in the 1960's.

Well at least the ocean and coastline still looked beautiful and the woods were soon green enough to be pretty, ~~so~~ ^{so} Elk has embraced tourism and while most locals don't appear prosperous, there is high employment and a friendly, cooperative spirit here.

The inns, the wineries, restaurants, services, shops, outdoor and indoor attractions keep people working and being able to live somewhere beautiful at the same time.

The Greenwood State Beach puts ^{us} on the map. ~~It~~ ^{It} is a beautiful, minimally developed piece of rugged ocean and cliffs. The bluff in question looms above it and is visible from much of the park. It's like putting a house on Half Dome.

Elk needs our ~~piece~~ piece of the coast to remain naturally beautiful.

Ask the Berlincourts, ^{to visit their home} where it can't be seen from the Greenwood State Beach Park.

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Ronald Karish
27500 Philo Greenwood Rd
Elk, CA 95432

November 13, 1998
Kirk Handley, Pat Hanks
5911 S. Hwy. 1, P.O.Box 157
Elk, CA., 95432

RECEIVED
NOV 16 1998

CALIFORNIA
COASTAL COMMISSION

Ms. Jo Ginsburg
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA., 94105

Dear Ms. Ginsburg;

We are writing to you today to support the appeal of the decision of the Mendocino County Board of Supervisors granting CDP #19-98 (Berlin court).

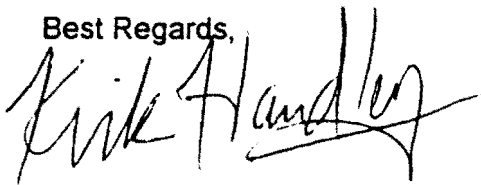
The proposed project is in a Highly Scenic area, and would be very visible from the State Park, the town of Elk and from the pull-out overlooking Cuffey's Cove. The latter location possesses the distinction of being possibly the most beautiful and most photographed view on the entire Mendocino Coast. The Berlin court parcel is approximately 16 acres, and much less visible locations exist to the south and east of the proposed location.

In addition to the proper siting of the project, the applicant should be required to plant and maintain vegetation that suitably masks the compound from view.

When this project was first considered (CDP # 53-94), it was rejected and the Coastal Permit Administrator recommended a site further to the southeast. The Berlin courts filed a lawsuit alleging wrongdoing by the County and the Department of Parks and Recreation. Although no court order was issued in the case, the Board of Supervisors made an agreement to allow the Berlin courts to bypass many normal procedures in their reapplication in exchange for suspension of the lawsuit. That settlement agreement makes many concessions in the permit process which are suspect and in our opinion, of questionable legality and advisability.

Please protect the public view of our coast as provided by the Coastal Element.

Best Regards,



Kirk Handley, Pat Hanks

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NOV 16 1993

CALIFORNIA
COASTAL COMMISSION

13 XI 98

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To: Ms. Jo Ginsberg
Coastal Commission
45 Fremont St, Suite 2000
San Francisco, CA 94105

Dear Ms. Ginsberg -

I too am writing you to support the appeal of CDP# 19-98 (Berlin court). Although I am a strong believer in private property rights, I have always felt that the Coast of any country, and access to it as well as visual impacts on it deserve close scrutiny.

This particular plan has been classic case of what the Coastal Commission

was created to rule upon. This home, built according ^{to} either option #3 or #4, will impact on one of the most highly admired scenic views in all of Northern Calif. the question is "How much." That is for you decide

The Berlincourts own a rather large piece of land and can build in a number of other areas and still have the ocean view. It is not a matter of denial, but one of whether this particular view need be impacted to provided the housing needs of a particular land owner -

I'm sure you are aware that this view has been photographed by some of America's most beloved photographers - Ansel Adams. →

Imagine Cunningham, Weston and
the like - You can refer to their photos
when considering how a house on that
bluff would look - before and after.

Thank you for your time

Vincent Clark

Weaver

Elk Ca, 95432

P.S. My Computer Ran out of ink

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NOV 13 1998

November 12, 1998

Ms Jo Ginsberg
Coastal Commission
45 Fremont St, Suite 2000
San Francisco, CA 94105

Re: Berlincourt
CDP# 19-98

Dear Ms Ginsberg:

I am writing to support the appeal of CDP# 19-98. Please protect the public view of our coast as provided in the Coastal Element and the certified Local Coastal Plan. This headland is in a Highly Scenic area. It is one of the most sensitive on the North Coast because it can be seen from the town of Elk, from a State Park, and from the pull-out that overlooks historic Cuffey's Cove.

Sincerely,

Kathy MacDonald
Kathy MacDonald

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November 13, 1998

Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
ATTN: Jo Ginsberg

Dear Ms. Ginsberg,

I am writing in support of the appeal to the Berlincourts Case- CDP #19-98. I am urging you to be strong and clear-sighted when evaluating the Berlincourts uncompromising effort to build their house on a site that will perceptibly alter one of California's most beautiful sights.

I live in the town of Elk and spend a lot of time on the beach so I am speaking from the point of personal loss as well as loss to future generations. I realize that change is inevitable and one must accept that, but in this case, when an alternate site ("site #3") is an option, I hope you will question the Berlincourts' (and their representatives') tenacity in fighting against the Local Coastal Plan.

I have been present at hearings at which the Berlincourts have misrepresented the "facts," e.g. taking photos of their view of the ocean if site #3 were selected from a ground vantage point rather than taking into consideration that their living room window would be many feet higher. One of the architects personally told me that there was 'no way' that site #4 would be acceptable. Why did he not tell the Berlincourts this? And why is it now still in question? Is the threat of a lawsuit enough to change the rules to appease these people?

over->

Thus, my hope is that the Commission will remain impartial and judge this case against the rules that were created to protect our coastline, for all of us, including the Berlincourts.

Sincerely,

Carole Raye

Carole Raye

Box 311

EIK, CA 95432

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Nov. 13, 1998

Elle Russell

P.O. Box 84

Elk, CA 95432

Ms Jo Ginsberg
Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105

Dear Ms. Ginsberg,

I am an Elk resident and homeowner since 1970. I raised my 4 sons here and the Elk beach has been our own pristine natural playground. I am writing to support the appeal of CDP #19-98 (Berlincourts.) Quite simply, we need to protect the public view of our coast as provided in the Coastal Element and the Certified Total Coastal Plan.

I do not object to the size of the Berlincourts' proposed house — merely its visibility from the town of Elk, the State Park + from Cuddy's Cove.

Yours truly,

Elle Russell

NOV 16 1998

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Nov. 11, 98

1 Dear Mr. Ginsberg,
I am writing in support
of the appeal of CDP# 19-98
(Berlin court plan). My concern
is to protect the pristine
view for the public of Elk
Beach + headlands. Why, that
view is on postcards!

Not only do I go there for
that view, but tourists (the
backbone of our local economy)
come also for that same
view.

I moved here in 1986 to
enjoy views like that + am
a local trader + innkeeper.

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NOV 13 1998

CALIFORNIA
COASTAL COMMISSION

Lynda Hubrey

PCB126

E/K CA 95432

Sincerely,

Yuda Rubrey

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A-1-MEN-98-94

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NOV 13 1998

CALIFORNIA
COASTAL COMMISSION

P.O. Box 44
Elk, CA 95432
November 11, 1998

Ms. Jo Ginsberg
Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: CDP #19-98 (Berlincourt)

Dear Ms. Ginsberg:

I am writing in support of the appeal of CDP #19-98 (Berlincourt), to support the protection of the most magnificent, breathtaking panoramic view of the Mendocino Coast, and to ask you to protect this pristine part of the Coast from over-development. Select the most protected viewpoint for the building site with the maximum height limited to one story - no loft. Landscape screening and maintenance to further mitigate the impact of the view of the open headlands is vital.

The Berlincourt's proposed development will be highly visible from Cuffy's Cove, Greenwood State Beach and the village of Elk. Elk is a rural town that runs along some twelve miles of rugged coastline. As co-owner of the Elk Store, the only grocery store in the village, I hear comments from tourists visiting from all over the United States, Europe and the Orient. Repeatedly, they express amazement at the unspoiled beauty of this stretch of coast commenting specifically about the lack of development here. These are seasoned travelers who claim this is the most beautiful area they have ever seen.

My husband and I own three properties on the North Coast. We are not against development or property owner rights. We favor compliance with Coastal Commission guidelines for the protection of our diminishing public viewsheds and open spaces along the coast be mandated to all. We challenge the false representation the Berlincourts have made regarding the town's support. They have organized a handful of local moneyed, retired property rights advocates to campaign on their behalf. Most of these same people have publicly (and on record) opposed building projects that are literally next door to their own property.

Of significance is the precedent that this project may set. The Berlincourts have already sued the County of Mendocino to get their way - and their bullying tactics have secured a settlement that ensured limited public access or comments regarding their proposal. This is alarming. Are you aware that they did not erect story poles at the four corners of the proposed complex? Did you know that public access to their building plans has been limited and mostly unavailable? The Berlincourts were allowed to choose their own planner, the description of their project and limit the planner's ability to discuss the project with any coastal planner. This is a gross injustice and totally unacceptable. With enough time and money dedicated to building and development, lawsuits and uncontrolled growth are a dangerous possibility. Do we really want to send the message that money can buy exemptions to the Coastal Element and Local Coastal Plan?

Please, do the right thing. Preserve this spectacular view and limit development on the North Coast by ensuring this project is built away from the bluff edge, limited to one story without a loft, and in the least publicly visible site, screened by landscaping that is permanently maintained. Please work to ensure the authority of the Coastal Commission, its integrity and the reason it was created.

Thank you.

Tawny MacMillan

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EXHIBIT NO. 19

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RECEIVED

NOV 13 1998

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Jo Ginsberg
Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

I am writing to support the appeal of CDP # 19-98 (Berlincourt.) I am a 17 year old, who was born on Greenwood road and has always lived in this beautiful area. I go thru the town of Elk twice a day on my way to and from school. I would like to have the town of Elk changed as little as possible. I love how small and cozy it is. I love feeling like I know everyone in the town. I find it very important that the beautiful public views in Elk are protected. Please protect the public views of our coast as provided in the Coastal Element and certified local Coastal plan. This headland that the Berlincourts wish to build on is in a highly scenic and beautiful area. It is one of the most sensitive on the North Coast because it can be seen from the town of Elk, from Greenwood Beach State Park and from the pull-out that overlooks historic Coffey Cove. Tourists often stop to take photographs from this pull-out. The tourists would not want to take pictures of a house. Artists often stop to paint this view. They would much rather paint this view, than a house. Most Bed and Breakfasts look out over this headland. Would the Bed and Breakfasts be as popular if they overlooked a head with a house on it, rather than a headland which is seen as one of the most beautiful spots on all of the California coast. Please support the appeal of the Berlincourt project.

Ms. Jo Ginsberg
Coastal Commission
45 Fremont Street, Suite 2000
San Francisco Ca 94105

RECEIVED
NOV 12 1998
CALIFORNIA
COASTAL COMMISSION

Dear Ms. Ginsberg,

I am writing in regards to CDP# 19-98 Berlincourt. It is my understanding that the Permit approved by the Board of Supervisors has been appealed by the Sierra Club and Coast Watch.

I have been a resident of Elk since 1979. I served on the Elk Advisory Board during its short life. It was formed to make recommendations to the Board of Supervisors for the revision of the General Plan for Mendocino County. However, shortly after we formed the committee (by a very long process which involved input from all town members), a number of building permits came before the Coastal Administrator which would seriously impact this small historical village. As a group we felt we needed to address the permits immediately. One of the first permits to come before the committee was the Berlincourt project. Actually it became an issue before the committee was formed and we hoped that we would be able to become a bridge between townspeople and the Berlincourts and thus prevent more acrimony and bad feelings. It has been impossible to do that mainly because the Berlincourts are unwilling to compromise their original plan in any way. This location is almost impossible to landscape due to the strong and incessant winds. Therefore whatever is designed for this spot needs to be very carefully considered and the Berlincourts are unwilling to change their original plan though they told us at one of our meetings that they would do just that. At this time it is truly in the hands of the Coastal Commission to save this very rare and sensitive view corridor.

Though many permits and appeals come before the Coastal Commission, I believe there is no other permit that impacts our town as seriously as this permit. I applaud the commission members for their care and concern that our coastline remain visible to all those driving along Highway One and thereby providing protection for the unique character of the small towns along the coast. Please help us keep the unique character of our village with its awesome oceanviews.

Sincerely,

Polly Green

Polly Green

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RECEIVED
NOV 13 1998

P.O. Box 44
Elk, CA 95432
November 12, 1998

CALIFORNIA
COASTAL COMMISSION

Ms Jo Ginsberg
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105

Re: CDP #19-98 (Berlincourt)

Dear Ms Ginsberg,

I am protesting the decision of the Mendocino County Board of Supervisors to approve any version of this development plan. I therefore totally support the appeal of this plan. My protest and subsequent appeal support are based upon the following:

1. Meaningful public input to the Mendocino County Planning Department and/or the Board of Supervisors was impossible because essential information concerning the proposed location and height of plans was not made available. A single story pole was erected and visible from the community of Elk on Saturday October 24, 1998. This was one day after the final day for written public input concerning the project. This pole was apparently erected only after my written protest was sent to Frank Lynch and another FAXed to Charles Petersen, 5th District Supervisor, with a subsequent copy FAXed to County Counsel. (Copy attached for reference ... the original should be in the CDP #19-98file.)
2. Apparently the Berlincourts presented two alternative plans to the County. Because information about the alternative plans was neither available to the public (Ft. Bragg Planning Department office), nor separately marked with story poles on the proposed alternate building sites, it makes any call for public input at best a joke and more realistically a travesty of legally mandated procedures.
3. The decision of the Board of Supervisors on October 26, 1998, to approve "version #4" was made without appropriate public input. Additionally the terms of the County's legal (?) agreement with the Berlincourts to reconsider the previous denial appear highly suspect. It seems the Berlincourts were allowed unprecedented latitudes in their most recent presentation of their plan(s) to the County and almost guaranteed some form of approval (under pressure of a continuing lawsuit).
4. I am opposed to any exceptions being granted to them (e.g., a loft above the living area constitutes a second story, and the location of the building site is not subordinate to the magnificent location in which they propose to build). I am not opposed to the Berlincourt's right to build on their property, only to their ongoing attempts to achieve their own wishes above what was voted into law by the majority of the citizens of California.

Thank you for hearing me out. As local residents know and visitors from throughout the world attest, the visual splendor of this beautiful and relatively unspoiled section of the coast is unmatched anywhere in California. Please do all you can, following existing laws, to help preserve it.

Sincerely,


Benton Y. MacMillan

EXHIBIT NO.	19
APPLICATION NO.	A-1-MEN-98-94
Page 60 of 60	

Hillary Adams
1391 Cameron Road
Elk, California 95432

December 3, 1998

Ms. Jo Ginsberg, Coastal Planner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Ms. Ginsberg:

Enclosed are the last pages of the public petition for the Berlincourt project (CDP#19-98, Elk, Mendocino County). Please add these to the pages sent on November 17th.

The petition was placed in the Elk Store from November 6th to 30th. The tally for all ten pages is: 89 Elk residents and 104 visitors.

The visitors on these final pages (8-10) include tourists from Chicago and Denver. The Mendocino Coast is becoming more and more famous for its unspoiled beauty. These signatures represent the desire of people around the country to keep the public viewsheds along the coast looking as natural as possible.

Sincerely,

Hillary Adams
Hillary Adams

encl. 3

EXHIBIT NO. 20
APPLICATION NO. A-1-MEN-98-94
Petition in Opposi- tion to Project
Page 1 of 4

RECEIVED
DEC 04 1998
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NOV 18 1998

CALIFORNIA
COASTAL COMMISSION

PETITION TO PROTECT OUR COASTAL VIEWS

71 residents of Elk signed this petition within a two week period. It was placed at the village grocery where it was available for signature. It was not taken from house to house (some accidentally signed in the Visitors column)

There are approximately 65 adult residents in the immediate town.

Others from surrounding areas such as Comptche (inland), Manchester, Albion (coastal) also signed, sometimes in the "local" column.

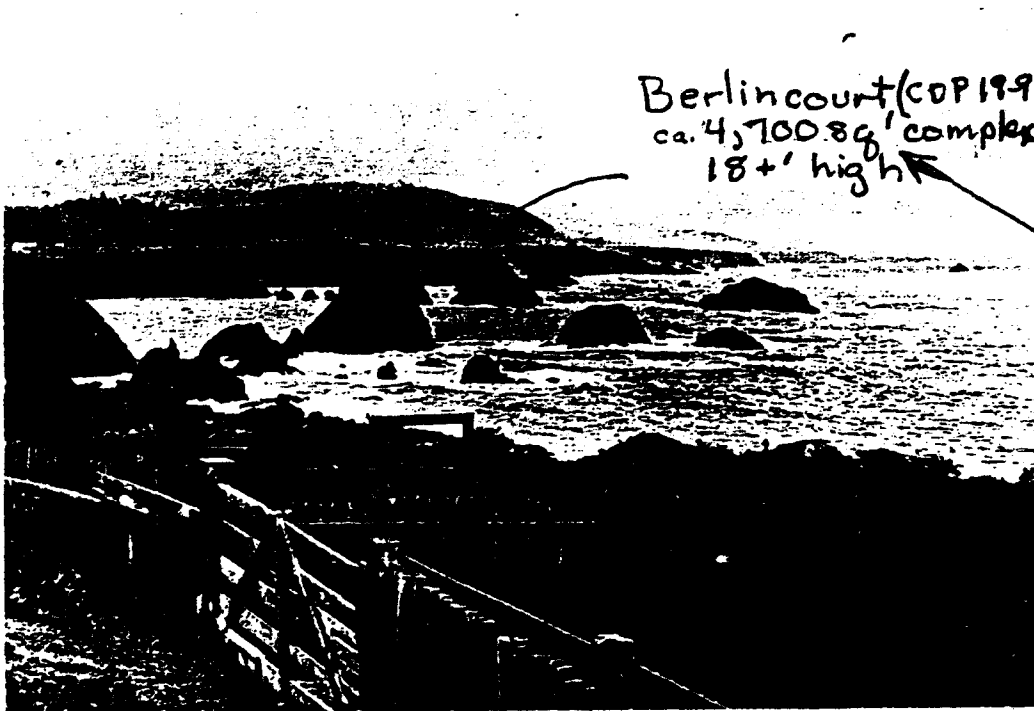
Visitors in these two weeks of "off season" came from as far as Alaska, and from many places in the Bay area, such as San Francisco, Berkeley and Oakland. The East was represented by Washington, D. C., and the Midwest by Illinois and Nebraska.

EXHIBIT NO. 20

APPLICATION NO.
A-1-MEN-98-94

Page 2 of 4

Petition to Protect our Coastal Views



We, the undersigned, petition the California Coastal Commission to protect our coastal views in Mendocino County as established by the certified Local Coastal Plan.

* New development must have as little impact as possible upon public viewsheds and be in compliance with all aspects of the local Coastal Element (including policies 3.5-1,4). We are concerned about CDP #19-98 (Berlin court).

* CDP #19-98 (Berlin court) would be located on one of the most visually sensitive headlands on the North Coast. The headlands is in a Highly Scenic area visible from the town of Greenwood/Elk, from the adjacent California State Park, and from the view area overlooking historic Cuffey's Cove.

* It is essential that the house-garage-guesthouse complex (totaling about 4,700 square feet) be placed so that it has the least impact on public views. For example, an area to the southeast was recommended by the Coastal Permit Administrator in a previous version of this same plan (CDP #53-94, appeal of Sept. 28 1995). The Mendocino County Supervisors supported the Coastal Permit Administrator's position.

* We also ask that the landscape plan be strongly worded for establishment, maintenance, trimming and replacement; and that fast-growing native trees provide temporary screening to protect the public from the visual impact of this large complex while more slow-growing species become established.

Petition to Protect our Coastal Views

2

CDP 19-98 (Berlincourt)

November, 1998

Local Petitioners (Please Print)

Name

Town

Visitor Petitioners (Please Print)

Name

Town/Country

1. Hillary Adams ELK

2. Carol to Carol ELK

3. TAWNY MacMILLAN ELK

4. BEN MacMILLAN ELK

5. MARLYN Douglas ELK

6. Ellen Rushinsky ELK

7. Stephen Parker ELK

8. Judith Hall ELK

9. ~~Joseph Huckaby~~

10. Joseph Huckaby ELK

11. George Montag ELK

12. Ron Blomquist ELK

13. KAY CURTIS ELK

14. KAY CURTIS ELK

CHACON, CA

Carol to Carol, Redwood

ALICIA NAY REDWOOD

Linda Lough, Redwood

TOWN OF ELK, SAN MATEO, CA

Lisa Greco, Pacific Palisades, CA

JOHN ADAMS, PACIFIC PALISADES, CA

BILL WHIPPLE, SAN FRANCISCO, CA

DREW Schoedel, SAN FRANCISCO, CA

Eva Diaz Martinez, CA

James Ferris Oakland, CA

Steve Kelly, Redwood Park, CA

Anna Huck A Conifer, CA

Silly happen Berkeley, CA

PETITION TO PROTECT OUR COASTAL VIEWS
CDP # 19-98 (Berlincourt)

DEC 01 1998

CALIFORNIA
COASTAL COMMISSION

71 Elk residents
73 Visitors
144 Total names

Time period: The petition was available for approximately two weeks in early November, 1998. The petition continues to be available for signature.

(Note: Some visitors, especially those from other local towns such as Albion and Comptche, accidentally signed in the "Local" column; and some local residents accidentally signed in the "Visitors" column).

The petition was made at the request of a number of residents of Greenwood/Elk. It was available for signature at the Elk Store, and was not taken from house to house.

There are approximately 65 adult permanent residents in the town of Elk, as defined by those living in houses connected to the Greenwood/Elk Water District.

Visitors in these two weeks of "off season" came from as far away as Alaska. The East was represented by Washington, D. C., and the Midwest by Illinois and Nebraska. One visitor signed with two addresses, Evanston, Illinois and Italy. In the larger state of California, the greatest number of visitors came from places in the Bay area, such as San Francisco, Berkeley and Oakland.

The conclusion which can be drawn from this petition is that local residents, people in nearby towns, and visitors from both elsewhere in California and across the United States care very much about preserving the integrity of the coastal viewshed as provided by the Coastal element and our certified local coastal plan.

This is further reinforced by an Editorial dated November 9, 1995 and published in the Mendocino Beacon. This editorial refers to the previous application of the Berlincourts (CDP #53-94), which is very similar to their CDP # 19-98. The editorial recommends public support of the position taken by the Coastal Permit Administrator (Berrigan) in recommending that the house/ garage/ guesthouse complex be sited further back from the cliff and to the southeast.

Encl: editorial
Petition sent 11/17/98 by priority mail

EXHIBIT NO.	21
APPLICATION NO.	A-1-MEN-98-94
Petition in Opposi- tion to Project	
Page 1 of 4	

THE

MENDOCINO

A COAST PAPER FOR COAST PEOPLE SINCE

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Thursday, November 9, 1995

Page
one

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Supes will hear Elk house appeal

A Virginia couple's proposal to build a house on a prominent headland south of Elk goes before the county Board of Supervisors Monday, Nov. 13.

Ted and Marjorie Berlincourt are proposing a 3100 square foot house with a 1600 square foot garage and guest quarters on the headlands south of Elk and adjacent to Greenwood State Beach.

The proposal has run into controversy, including a petition

drive and numerous letters arguing that the project would interfere with views of Elk's famous ocean front from town and park.

In an August hearing, the county's Coastal Permit Administrator, Gary Berrigan, denied the Berlincourt's request to build. Berrigan argued the building did not fit in with its surroundings and urged the couple to build further in from the bluff's edge.

The Berlincourts declined

comment for this article, but argue in correspondence with the county that their proposed house would occupy only a tiny fraction of the headland vista. They offered to put up a screen of shrubs and trees to partially cover the structure.

Supervisors will hear the Berlincourts' appeal in Ukiah Nov. 13. If it is denied, the project cannot be resubmitted for a year. If approved, opponents may appeal it to the state Coastal Commission

Lawsuit suggests 'conspiracy' behind failed home permit

By NEIL BOYLE
Of the Beacon

The owners of two oceanside parcels located south of Elk who lost an appeal to build on one of the properties have filed a law suit for damages against the county and agencies involved in the permit process, according to County Counsel Frank Zotter. Owners Ted and Marjorie Berlincourt filed the suit in March, and a court date is expected next spring.

The Berlincourts are planning to sue the county on various fronts, including an alleged violation of their civil rights, and that they have been deprived of the value of their property, Zotter reported in a phone interview last Wednesday.

"They want the denial of their dream house overturned, or they

want the county to pay for damages," added Zotter. "They claim there was a conspiracy between State Parks and the county to deny their project."

Depositions have been taken from several county employees. The Berlincourts have hired the Sacramento law firm of Zumbun and Findley, who are experienced in the field of property rights, to present their case.

The suit includes up to 20 individual defendants, all of whom are part of the coastal development permit process, including the appeal process through the board of supervisors.

The Berlincourts, whose project file is nearly two feet thick, lost an appeal to the board of supervisors

See ELK on Back Page

Elk

From Page 1

for construction of the 3,100-square-foot house in November of 1995. "They wanted to build within 100 feet of the cliff, it was a geological hazard, and there is a visibility issue from State Parks land," said Zotter. "The original planner, Mary Stinson, recommended approval if the house was smaller and placed further away from the bluff." The Berlincourts fought the recommendations and the project was later denied by Planning and Building Services' Gary Berrigan.

A court document filed on behalf of the Berlincourts claims that a public notice announcing a public hearing on their project contained an inaccuracy that listed the size of the project as 5,000 square feet, and another that described a bedroom as a "maid's quarters." These references, they claim, were highly prejudicial to their application.

The document states the project description in the public notice "was designed to incite public opposition to the project and to overall prejudice the Berlincourt application in the community by creating an exaggerated impression of the petitioner's wealth, a point repeatedly attacked by members of the public during the petitioner's application process."

A petition against the project, located in the project file, was signed by 161 area residents, some of whom later reported they received threats of lawsuits from the Berlincourts. The California Anti-SLAPP Project, which protects citizens against Strategic Lawsuits Against Public Participation, issued a written warning to the Berlincourts.

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Page
One

MENDOCINO BEACON

Thursday September 19, 1996

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EXHIBIT NO. 21

APPLICATION NO.
A-1-MEN-98-94

Page 3 of 4

Editorial

*Editorials reflect the opinion of the Mendocino Beacon.
All other views are strictly those of the author.*

Next week the Board of Supervisors will rule on two planning matters of local interest. On the face of it, the two cases are unrelated. One seems relatively minor, the second clearly has more impact. What they have in common is that both cases are appeals of decisions made by planning entities based here on the coast.

Here's the first situation. Last month, the Mendocino Historical Review Board turned down Fetzer Vineyards' application to enlarge the storefront window at the company's new retail store on Main Street between Dick's Place and the hotel. "Leave the window the size it is," was the MHRB's decision.

The second case is rooted not in Mendocino but to the south in Elk. As described more fully in the story on page one of today's edition, the county permit administrator on the coast denied a building permit for a proposed home on the headlands south of Greenwood State Beach. The proposal was deemed too prominent a design for the scenic location. The property owners can redesign the house to better harmonize with its surroundings.

As is their right, in both cases the applicants opted to appeal these decisions in hopes of getting reversals "over the hill" in front of the Board of Supervisors. Their appeals will be heard in Ukiah Monday.

We strongly urge the entire board to trust and uphold the decisions of the MHRB and the county permit administrator. Overturning their decisions would compromise the intent of Mendocino's historic preservation district on the one hand and of the coastal zone on the other.

While different in magnitude, when added together they are significant, along with the dozens of appeals that have been lodged from the coast in the past 20 years, and the dozens more that can be expected in the future. In that context, past and present Board of Supervisors have the power to significantly contradict the will of the people as embodied in county and state law. In our book, that's not what they were elected to do.

Community Forum

EXHIBIT NO. 21

APPLICATION NO.
A-1-MEN-98-94

Page 4 of 4

Page 4 — Thursday, November 2, 1995 — MENDOCINO BEACON

Protect This View

EDITOR — I would like to advise artists and photographers, and everyone who values our beautiful coastline, of an important hearing, Monday, Nov. 13, at 9 a.m., before the Mendocino County Supervisors in Ukiah, regarding a building project that is planned for the south headland of Greenwood State Beach.

The building project - a two-story, single family dwelling (3,100 sq. ft. house, plus 1,600) sq. ft. detached garage) including guest quarters, decking, patios, driveway, parking area, septic system and other appurtenances - will be located on the most prominent spot on the headland that juts out into the ocean from the town of Elk, and will have a serious impact on many public views, including the famous Cuffey's Cove view from Highway One, cherished by artists and photographers.

The County Permit Administrator found the project to be out of conformance with the local Coastal Plan, and denied the building permit (case no. CDP 53-94). The owners have the option of re-designing the project to lessen the impact on coastal views. This seemed like a good compromise - a balancing of everyone's rights. The owners, Ted and Marjorie Berlincourt, of McLean, Virginia, have chosen instead to appeal the

Letters

From Page 4

decision to the County Supervisors. I urge you to attend the Nov. 13 hearing (Supervisors chambers, 301 S. State St., Ukiah), and to write to the County Supervisors, asking them to uphold the County Permit Administrator's decision.

No one is telling these landowners that they can't build. All that is being asked is that they build with more careful consideration for this precious bit of earth, the Mendocino coast. The value and beauty of their property has been protected and enhanced by the California Coastal Act. They should respect its provisions.

To write or call the Supervisors Mendocino County Courthouse Ukiah, CA 95482. Tel. 463-4221 Fax 463-4245.

Mary Pjerrou
Elk

Letters to the Editor

2
3
4

