

CALIFORNIA COASTAL COMMISSION

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Staff: Tiffany S. Tauber
Staff Report: December 22, 2000
Hearing on Revised
Findings: January 12, 2001
Commission Action on Findings:

STAFF REPORT:
REVISED FINDINGS

APPLICATION NO.: 1-83-223-A1

APPLICANT: **CHRISTINE & GARY WEBBER**
(formerly LARRY JACK WOOD)

**COMMISSIONERS ON THE
PREVAILING SIDE:** Commissioners Daniels, Desser, Dettloff, Estolano,
Hart, Nava, Reilly, Woolley, and Chairman Wan

PROJECT LOCATION: 4550 Highway One, Little River, west of
Highway One, 1.25 miles north of Albion,
Mendocino County (APN 123-010-29)

**DESCRIPTION OF PROJECT
PREVIOUSLY APPROVED:** Construction of a 20-foot-high, 7,938-square-foot
single-family residence with an attached garage,
guest studio with attached garage, tennis court,
swimming pool, well, and septic system.

**DESCRIPTION OF
AMENDMENT REQUEST:** Request by Gary & Christine Webber to: 1)
reconfigure the main residence foundation; 2)
change the design of the main residence with
revisions to the floor plans and elevations including
the addition of a partial second-story; 3) construct

an entry gate with columns; 4) add a deck to the existing guest studio; 5) construct a 28-foot-high observation tower; 6) install a 42"-high glass railing around the observation deck; 7) construct underground water pump and storage facilities; 8) install a bluff edge fence; and 9) temporarily use the existing guest studio as a residence with kitchen facilities during completion of the main residence.

SUMMARY OF

COMMISSION'S ACTION: Approve in part with conditions, deny in part

GENERAL PLAN DESIGNATION: Rural Residential - 10

ZONING DESIGNATION: Rural Residential - 1 (R-R-1)

LOCAL APPROVALS RECEIVED: Mendocino LCP Consistency Review

SUBSTANTIVE FILE DOCUMENTS: CDP# 1-83-223 (Wood); CDP# 1-94-113-A2 (Kaufman & Saunders); Mendocino County LCP

STAFF NOTES:

1. **Procedure**

At the Coastal Commission meeting of August 11, 2000, the Commission acted to approve in part with conditions and deny in part Coastal Development Permit Amendment No. 1-83-223-A1 that proposes changes and improvements to a single-family residence located at 4550 Highway One, Little River in Mendocino County. Staff made a change orally to the written recommendation at the Commission meeting that involved recommending denial of the entire second-story of the proposed residence instead of recommending denial of only the portion of the second-story proposed above the garage. The Commission adopted the staff recommendation as orally amended and denied the portion of the amendment request proposing the addition of the entire second-story and construction of an observation tower extending above an observation deck. This change is reflected in revisions to Special Condition No. 10(A)(1)(a) and Special Condition No. 14. As the Commission's action on the project differed from the written staff recommendation, staff has prepared the following set of revised findings for the Commission's consideration as the needed findings to support its action at the hearing.

The public hearing on revised findings was originally scheduled for the Commission meeting of November 17, 2000. Prior to the November hearing the applicants requested that the hearing be postponed so that staff could respond to questions and concerns raised by the applicants and modify the revised findings as needed (see Staff Note No. 4). The Commission will hold a public hearing and vote on the revised findings contained in this report at its January 12, 2001 meeting. The purpose of the hearing is to consider whether the revised findings accurately reflect the Commission's previous action rather than to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly.

2. Acceptance of Amendment for Processing

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

Coastal Development Permit No. 1-83-223 (Wood) was approved by the Commission on October 28, 1983 with nine (9) special conditions intended to: (1) ensure adequate public access for the development; (2) ensure that the development would not impact visual resources; (3) prevent adverse impacts from second units associated with new development; and (4) ensure the property owner assumed all risks from potential hazards. Special Condition No. 1 required the applicant to record an offer to dedicate an easement for public access along the shoreline and Special Condition No. 2 required the applicant to record an offer to dedicate an easement for public access to the shoreline along the north boundary of the property line and extending from the east boundary to the mean high tide line. Special Condition No. 3 required recordation of a deed restriction ensuring that the applicant assume liability from potential hazards and waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards. Special Condition No. 4 required the applicant to record a deed restriction prohibiting kitchen or cooking facilities in the guest studio and that it be subordinate and incidental to the main building, on the same site, and not separately rented, let, or leased. Special Condition No. 5 required that the applicant submit revised plans eliminating the gatehouse, reducing the size of the guest studio, and installing only one septic system. Special Condition No. 6 required submittal of a landscaping plan and Special Condition No. 7 required preservation of the natural vegetation between the residence and the bluff and along the southern and eastern property lines. Special Condition No. 8 required all exterior lighting and fencing to be subordinate to the area. Special Condition No. 9 required the applicant to notify the Executive Director for a final site review to ensure compliance with the conditions and plans on file in the Commission office prior to excavation and construction of the development. The conditions of the permit were met and remain in effect. The coastal development permit was issued in July of 1985 and site development was begun, but the main residence was never completed.

The current amendment request seeks to: 1) reorient the residence foundation; 2) change the design of the main residence with revisions to the floor plans and elevations; 3) construct an entry gate with columns; 4) add a deck to the existing guest studio; 5) construct a water pump

and underground storage facilities; 6) install a bluff edge fence; 7) install a glass railing around the observation deck; and 8) use the guest studio as a residence with kitchen facilities until the main residence is completed.

The amendment also proposes to: 1) add a partial second-story, and 2) construct a cylindrical observation tower extending above the second-story observation deck on the central portion of the residence.

The original permit approved the development of a single-family residence and guest studio with conditions that required the development to be subordinate to the character of the area and to be safe from geologic hazards. The proposed amendment would change the orientation of the development and some elements of the residence design. A redesigned and reoriented home could be conditioned to still meet the intent of the original permit. Therefore, the Executive Director found that the proposed amendment would not conflict with the intent of the conditions attached to Coastal Permit No. 1-83-223 because with further conditions, visual resources would continue to be protected to the same degree under the proposed amendment and the development would continue to be safe from geologic hazards. Since this amendment request would not result in a lessening or avoidance of the intent of the approved permit, the Executive Director accepted the amendment request for processing.

3. Standard of Review

The original permit was approved in 1983 as conforming to the policies of Chapter 3 of the Coastal Act. The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective certification of a certified LCP, the standard of review for all coastal permits and permit amendments for developments located between the first public road and the sea is the certified LCP and the public access policies of the Coastal Act.

4. Applicant's Concerns About Previously Prepared Revised Findings

Prior to the November 17, 2000 Commission hearing, the applicant raised concerns about the accuracy of the revised findings staff report dated October 27, 2000 and requested that the public hearing be postponed until those concerns were addressed. The issues of concern were laid out by the applicants' representative in a letter dated November 13, 2000 requesting a hearing postponement (Exhibit No. 15) and in a letter dated October 12, 2000 requesting a reconsideration by the Commission (Exhibit No. 14). Staff notes that the reconsideration request was received after the 30-day statutory deadline for such request had expired and therefore, the reconsideration request could not be accepted. The revised findings below attempt to address and clarify the applicant's concerns and to accurately reflect the Commission's action at the August 11, 2000 hearing on the amendment request. The three specific concerns expressed by the applicants in the above-referenced postponement request letter are quoted below in italics followed by staff's response.

- A. *Staff refers to an oral amendment of the staff recommendation which would result in the complete deletion of all second story elements of the Webber residence already constructed. We do not believe this was the Commission's intent, and such an outcome would be onerous and not supported by the evidence in the record. On the contrary, we believe the Commission may have intended to accept an oral staff recommendation to deny those portions of the second story that were not previously approved by the County or CCC staff – or those which did not otherwise satisfy certain CCC policies or criteria (such as the approved height limitation). We believe the specific second story elements which should be removed or remain within the scope of the vested prior approvals should be refined in revised plans approved by the Executive Director.*

As indicated in Staff Note No. 1 above, at the Commission meeting of August 11, 2000, the Commission acted to approve in part with conditions and deny in part Coastal Development Permit Amendment Request No. 1-83-223-A1. At the Commission meeting, staff made a change orally to the written recommendation that involved recommending denial of the entire second-story, including the constructed but never authorized portion of the second-story near the center of the residence and the proposed 1,400-square-foot portion of the second-story above the garage instead of recommending denial of only the 1,400-square-foot portion of the second-story proposed above the garage. These changes to the staff recommendation are reflected on pages 12 and 19 of the hearing transcript where staff states:

“If you will note there is a resolution that has two parts to it. It is to approve in part, and deny in part. And, the approved part would be those portions of the change that are other than the tower and the second story addition. The denial portion would cover all of the second story, whether above the garage or not, and the tower.” (page 12, lines 8-13)

“So, our view is whether 20 feet, or not, i[t] should be a one-story house, and that would require deletion of all of the second story. The way to do that would be to amend Condition 10.a. The first part there, architectural revisions, and Part A, that says approximately 1400-square-feet should be deleted. That actually should state the second story shall be deleted in its entirety. And, then appropriate changes to go with that should be made to the findings to reflect that the entire second story would be removed. And, also to the after-the-fact findings on page 26, there is a mention there that the cylindrical observation tower is completed. In fact, in addition to that, a portion of the second story is completed. So, with those changes, that is our recommendation.” (page 19, lines 3-17)

Staff believes it is clear from evidence in the record that the modified staff recommendation involving denial of the existing second-story and the proposed second-story, as well as the observation tower, was the recommendation before the Commission when it took action on the amendment. Additionally, staff clarified to the Commission that the existing portion of the second-story was being considered “after-the-fact” meaning that it was unpermitted development

and thus, must be treated as if it were not already constructed. No portion of the second-story has ever been approved by the Coastal Commission. The original approval (1-83-223, Wood) was for the construction of a two-level, one-story, 20-foot-high, 7,938 square-foot single-family residence with an attached garage, guest studio with attached garage, tennis court, swimming pool, well, and septic system. The two levels of the main residence consist of basement and first floor levels. The application for the original permit specified that the project would be 20 feet high. Standard Condition No. 3 of the original permit requires all construction to occur in strict compliance with the proposal as set forth in the application for permit. In addition, Special Condition No. 5 of the original permit required the submittal of final development plans for the review and approval of the Executive Director. The one-story, 20-foot-high building limitations are shown on the floor plan and elevations that were approved on July 17, 1985 to meet the conditions of the permit (Exhibit No. 5).

The applicant has referred to "vested prior approvals" of the second-story by both the Mendocino County staff and by North Coast District Commission staff. However, the County does not have the authority to approve an amendment to a coastal development permit originally approved by the Coastal Commission. Therefore, any approval from the County for development that deviates from the original permit, such as changes to the height, orientation, or design, is irrelevant with respect to amending the original coastal development permit (1-83-223). Additionally, while the North Coast District staff visited the site and set forth a recommendation to the Commission, it is not within the purview of the staff to administratively approve an amendment to the original permit. As indicated by the Executive Director on page 21, lines 7-10 of the hearing transcript, "Our recommendation is what is before you. The fact that the district staff may have indicated what their preference was does not complete the process of a recommendation coming to [the Commission]."

In addition, the letter from the applicant's representative dated October 12, 2000 (Exhibit No. 14) references a letter to the applicant from Commission staff dated January 20, 1995 that discusses the status of an alleged violation on the site. The letter concludes that there was no violation on the site which the applicant's representative claims led the applicant to believe that the "second story elements in place at the time of this letter were therefore permissible and vested." However, this letter was written regarding an alleged violation specifically pertaining to the guest house, not the main residence. In a subsequent letter to the applicant dated January 8, 1999 (Exhibit No. 16), Commission staff indicates that since construction of the foundation had commenced, the permit is considered vested. However, the letter also indicates that a violation exists with regard to the main residence in that what was constructed deviates from the plans approved pursuant to the original permit. The approved plans show a one-story, 20-foot-high residence with a basement. Therefore, staff believes that there are no second story elements within the "scope of vested prior approvals" as suggested by the applicant.

- B. *The oral instruction by the Executive Director to the Commissioners regarding the criteria to be applied to the second story elements was incorrect. This error is not reflected in the revised findings.*

Staff believes the Executive Director was correct in directing the Commission to the certified LCP policies to be applied to the second-story elements of the amendment request. The standard of review for the original permit approved in 1983 was the Chapter 3 policies of the Coastal Act, as Mendocino County did not have a certified LCP at that time. In 1993, the County's LCP was effectively certified and therefore, the standard of review that the Commission must consider for the proposed amendment is the certified LCP and the public access policies of the Coastal Act. With regard to the second-story elements, the LCP policy that the Commission was being directed to consider is LUP Policy 3.5-3. LUP Policy 3.5-3 states in applicable part:

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.

As indicated on page 20, lines 21-25 and page 21, lines 1-6 of the hearing transcript, the Executive Director directed the Commission to consider the proposed amendment, including the existing second-story as though it had not been constructed, and stated:

"I think what the gentleman [Gary Webber] means is that they [Commission staff] were proposing a recommendation of leaving the second story that has already been built after-the-fact, as opposed to the tower. And, from our perspective, as we looked at this, we felt it should be a one-story house, and the fact that there may have been an after-the-fact, or that part of the second story has already been built, is really beside the point. The question is, is it appropriate to have it as a one-story house, or to permit what is being proposed in the amendment..."

As discussed above, no portion of the second story has ever been previously authorized by the Coastal Commission. Therefore, the existing second story was built in violation of the original permit, as it did not conform to the plans approved pursuant to the conditions of the permit. The Commission must act on the merits of the proposed amendment and its consistency with the policies of the certified LCP regardless of whether the development is existing or not. Staff modified its recommendation to the Commission to reflect that the proposed amendment was inconsistent with LUP Policy 3.5-3 with regard to both the proposed and existing second-story elements and therefore, recommended denial of *all* second-story elements. This inconsistency is discussed in the revised findings below.

- C. *The staff report and evidence presented to the Commissioners included some zoning ordinance and LCP information but not others. We are surprised to note that these revised findings include a critical, previously omitted zoning code section. This section was not cited or presented to the Commissioners during the hearing and therefore did not form the basis of their action on August 11, 2000. Therefore, the revised findings improperly describe the standard of review applied by the Commission in this matter. Furthermore, we believe that if the Commission had been apprized of this zoning section and related approval information, the outcome at the hearing would have been different.*

In the original staff report to the Commission dated July 28, 2000, Mendocino Zoning Code section 20.504.015(c)(2) was not included in the list of referenced LCP policies regarding visual resources, as it was not a basis for the staff recommendation. In the revised findings staff report dated October 27, 2000, staff added this zoning code policy to the list of referenced policies for information purposes. However, zoning code policy 20.504.015(c)(2) did not form a basis for the staff recommendation, or for the Commission's action at the hearing on August 11, 2000. Therefore, this policy has been removed from the revised findings staff report below. The zoning policy states:

In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (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.

The original permit approved construction of a 20-foot-high residence and the Commission did not take action to change the previously approved height limitation. Given the LCP limitations on second stories in highly scenic areas, the Commission did consider whether the proposed amendment involving the addition of a second-story and other elements above the previously approved height limitation would be consistent with the certified LCP. That is, although the Commission could have evaluated the proposed second-story addition for its conformity with the 18-foot height limitation identified in Zoning Code Section 20.504.015(c)(2), the Commission instead focused on the LCP limitation on *any* second-story addition in highly scenic areas, regardless of height. Accordingly, regardless of height, the proposed second-story addition was independently found inconsistent with the certified LCP. Therefore, staff does not believe that inclusion of this zoning section in either the staff report or the Commission's deliberations would have resulted in a different outcome at the hearing as suggested by the applicant.

MOTION, STAFF RECOMMENDATION AND RESOLUTION:

The staff recommends that the Commission adopt the revised findings in Section IV below, in support of the Commission's actions on August 11, 2000 approving, in part, the project with conditions and denying, in part, the project. The proper motion is:

Motion:

I move that the Commission adopt the revised findings dated December 22, 2000, in support of the Commission's action on August 11, 2000, to approve in part with conditions and deny in part Coastal Development Permit Amendment No. 1-83-223-A1.

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the August 11, 2000 Commission hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action on the permit are eligible to vote. See the listing on Page 1.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for Coastal Development Permit No. 1-83-223-A1 on the ground that the findings support the Commission's decision made on August 11, 2000 and accurately reflect the reasons for it.

COMMISSION ACTION:

The adopted resolution, conditions, and findings in support of the Commission's August 11, 2000 action are provided below.

I. ADOPTED RESOLUTIONS:

Part A: Approval with Conditions of a Portion of the Proposed Permit Amendment

The Commission hereby approves a coastal development permit amendment for the proposed development involving the 1) reorientation of the residence foundation, 2) changes to the design of the main residence with revisions to the floor plans and elevations, 3) construction of an entry gate with columns, 4) addition of a deck to the existing guest studio, 5) construction of a water pump and underground storage facilities, 6) installation of a bluff edge fence, 7) installation of a glass railing around the observation deck, 8) an approximately 2,100-square-foot ground floor addition landward of the existing main residence, and 9) temporary use of kitchen facilities in the guest studio and adopts the findings set forth below on grounds that the development, as conditioned, will be in conformity with the policies of the certified Mendocino County Local Coastal Program and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Part B: Denial of a Portion of the Proposed Permit Amendment

The Commission hereby denies a coastal development permit amendment for the portion of the proposed development involving 1) the addition of a second-story, and 2) the addition of a 28-foot-high, cylindrical observation tower to the main residence on the grounds that the development would not be in conformity with the visual resource policies of the Mendocino

County LCP and would have a significant adverse impact on the environment within the meaning of CEQA.

II. STANDARD CONDITIONS: (See attached Appendix A)

III. SPECIAL CONDITIONS:

Special Conditions 1, 2, 3, 5, 6, 7, 8, and 9 of the original permit remain in effect. Special Condition No. 4 of the original permit is replaced by Special Condition No. 13 below. The following new Special Conditions are added.

10. Revised Architectural Plans

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised site, construction, and elevation plans to the Executive Director for review and approval. The revised plans shall show the following changes to the project:

1. ARCHITECTURAL REVISIONS

- (a) The second-story shall be deleted;
- (b) No more than approximately 2,100 square feet may be added to the ground floor at a location landward of the existing main residence;
- (c) The cylindrical observation tower above the observation deck shall be deleted from the development;
- (d) The bluff edge fence shall be no higher than 3-feet, and shall be of open-style construction; and
- (e) The glass railing around the observation deck shall be no higher than 42-inches and shall be constructed of non-reflective glass.

B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Final Foundation Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final foundation plans to the Executive Director for review and approval. The final foundation plans shall provide for the following:
- (a) The portions of the structures located between 25 and 45 feet of the bluff edge shall be founded on continuous or pier foundations extending to the less weathered bedrock.
- B. The revised plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission's approval and with the recommendations of the geotechnical report entitled, "Geologic Hazards & Septic System Feasibility Study – Residence Mendocino County, CA, AP #123-010-14," prepared by I. L. Welty & Associates dated August 3, 1983. Foundation footprints may be reoriented as shown in attached Exhibit No. 4.
- C. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

12. Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a plan for site drainage. The plan shall be prepared by a qualified licensed engineer.
- 1. The plan shall demonstrate that the guest studio, residence, and associated terraces have storm water runoff collected by storm gutters and catch basins that are directed to dry wells.
 - 2. The plan shall include, at a minimum, the following components: dry wells that are located no closer than 50 feet from the bluff edge and designed of rock filled pits which provide 2.5 cubic foot of pit per 100 square foot of flat work and roof area.
- B. The revised plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission's approval and with the recommendations of the geotechnical report entitled, "Geologic Hazards & Septic System Feasibility Study – Residence Mendocino County, CA, AP #123-010-14," prepared by I. L. Welty & Associates dated August 3, 1983.

- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

13. Second Structure Deed Restriction

- A. The following restrictions shall apply with respect to the guest studio:

1. Any rental, let, or lease of the structure separate from rental of the main residential structure is prohibited whether compensation be direct or indirect;
2. Use of the guest studio as a residence with cooking or kitchen facilities is temporarily allowed only during construction of the main residence;
3. All cooking and/or kitchen facilities must be removed upon 60 days of completion of the main residence; and
4. The guest studio shall be on the same building site and be subordinate and incidental to the main building.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, stating that the following restrictions shall apply with respect to the guest studio:

1. Any rental, let, or lease of the structure separate from rental of the main residential structure is prohibited whether compensation be direct or indirect;
2. Use of the guest studio as a residence with cooking or kitchen facilities is temporarily allowed only during construction of the main residence;
3. All cooking and/or kitchen facilities must be removed upon 60 days of completion of the main residence; and
4. The guest studio shall be on the same building site and be subordinate and incidental to the main building.

- C. The document shall run with the 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 Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. No changes in the use of

the guest studio shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

14. Approved Development

The approval of this permit amendment is limited to the 1) reorientation of the residence foundation, 2) change the design of the main residence with revisions to the floor plans and elevations, 3) construction of an entry gate with columns, 4) addition of a deck to the existing guest studio, 5) construction of a water pump and underground storage facilities, 6) installation of a bluff edge fence, 7) installation of a glass railing around the observation deck, 8) an approximately 2,100-square-foot ground floor addition landward of the existing main residence, and 9) temporary use of the guest studio as a residence with kitchen facilities. This approval does not include approval of 1) a second-story, or 2) a cylindrical observation tower extending above the observation deck.

15. Condition Compliance

Within 90 days of Commission action on this Coastal Development Permit application, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions which the applicants are required to satisfy as prerequisites to the issuance of this permit. Failure to comply with the requirements within the time period specified, or within such additional time as may be granted by the Executive Director for good cause, may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS FOR APPROVAL

The Commission hereby finds and declares:

1. Site Description & Project Description

The subject site is a 6.25-acre parcel atop a 90-100 foot-high bluff located west of Highway One and north of the town of Albion in Mendocino County. The northern portion of the parcel slopes steeply to Dark Gulch and a small beach below. A stand of grand fir is located at the eastern part of the parcel and on a portion of the bluff face. The central portion of the property contains some young redwood, which changes to shorepine at the western part of the parcel and along the bluff edge. Surrounding land uses include undeveloped coastal headlands to the south, Dark Gulch and the Heritage House to the north, rural residential and State Park land to the east, and the Pacific Ocean to the west (Exhibit No. 1 & 2).

The site is underlain by well-cemented and consolidated sandstones of the Franciscan formation, overlain by 6 to 12 feet of unconsolidated terrace deposits. The terrace deposits consist of 1 to 2

feet of very loose to medium dense silty fine to medium sand with some clay, underlain by a medium dense to dense fine to medium sand with some silt and clay.

The original project approved by the Commission (1-83-223, Wood) is for the construction of a two-level, one-story, 20-foot-high, 7,938 square-foot single-family residence with an attached garage, guest studio with attached garage, tennis court, swimming pool, well, and septic system. The two levels consist of basement and first floor levels. Existing development at the site includes the guest studio, shed, water tank, well, septic system, and graveled driveways. The main residence foundation also has been constructed. However, the foundation has been constructed in a slightly different orientation and configuration than what was originally approved. In addition, it is unclear whether the foundation was constructed in substantial conformance with the recommendations of the original geotechnical report as approved under the original permit. Other existing development at the site includes a partially complete, three-level, two-story, section consisting of a basement and first and second-story levels that is sheathed and roofed and leads to a rooftop observation deck through an even taller cylindrical tower structure. This partially constructed portion of the residence near the center of the structure also is different from the site plans that were approved under the original permit. This amendment request seeks approval for these inconsistencies between what was originally approved and what was actually built. In addition, the amendment request seeks other changes and additions to the residence and the guest studio, including the addition of an approximately 1,400-square-foot second-story level over the garage on the northeast portion of the main residence and an approximately 700-square-foot second-story addition to the central part of the residence. The tennis court and swimming pool have not been constructed to date and although approved under the original permit, the applicant indicates that he does not plan to construct the tennis court or swimming pool. (see Exhibit Nos. 3-9)

In summary, the proposed amendment request seeks approval for 1) reorientation of the residence foundation, 2) changes to the design of the residence with revisions to the floor plans and elevations, 3) construction of an entry gate with columns, 4) addition of a deck to the existing guest studio, 5) construction of a water pump and underground storage facilities, 6) installation of a bluff edge fence, 7) installation of a glass railing around the observation deck, and 8) temporary use of the guest studio as a residence with kitchen facilities. This portion of the amendment proposal is the subject of Resolution "A" above.

The proposed amendment request also seeks approval for (1) adding a partial second-story, and (2) constructing a cylindrical observation tower extending above the rooftop observation deck. This development is the subject of Resolution "B" of this staff report.

2. Geologic Hazards and New Development

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:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

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

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) states that

Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.

LCP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that

Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.

The subject property is located atop a steep, 90-100 foot-high bluff. The original permit allowed for the construction of a 7,938-square-foot single-family residence and attached garage, a guest studio with attached garage, tennis court, swimming pool, well, and septic system. A geotechnical report was prepared for the original development by I. L. Welty & Associates, and dated August 3, 1983 (Exhibit No. 11). Slope stability analyses reported in the report indicate that the coastal bluff is grossly stable with a factor of safety of 5.6 (4.07 for earthquake conditions). The marine terrace deposits making up the upper portion of the bluff, however, are less stable, with a factor of safety of 1.44 (0.85 for earthquake conditions). Accordingly, they do not meet usual stability requirements. For this reason, the report recommends a 25-foot setback from the bluff edge, and that all structures located between 25 and 45 feet of the bluff edge be founded on bedrock. If constructed in this manner, the structure would be safe even if the terrace deposits failed and slid from beneath the structure. The geotechnical report determined that with proper foundation design, the structures could be safely located 25 feet or more from the existing edge of bluff. The report states that the portions of the structures located between 25 and 45 feet of the bluff top edge should be founded on continuous or pier foundations extending to the less weathered bedrock. The deep footings are intended to eliminate the effects of any potential slope instability of the marine terrace deposits at the top of the bluff. A report on an engineering geologic reconnaissance of the property was prepared by BACE Geotechnical and dated December 31, 1998 to determine whether site conditions had changed since the preparation of the original geotechnical report in 1983. The 1998 report affirms the findings and recommendations of the 1983 report, indicates that a 25-foot setback is still adequate, and determines that the foundations as constructed conform to the 25-foot setback requirement. The 1998 geologic report states:

“Based upon the geologic conditions of the bluff, including the bluff height, slope gradient, and the apparent retreat rate of an inch or two per year, a building setback of 25 feet from the bluff edge, as recommended in 1983 by ILWA, appears to be adequate. We were unable to determine how close the house was to the bluff when construction began in the 1980’s. However, our measurements have determined that the house is currently at the recommended 25-foot setback limit.”

The amendment request seeks to shift the foundation footprint in a slight southwesterly direction from the originally approved orientation (see Exhibit No. 4). This reorientation of the development footprint does not encroach within the required 25-foot bluff edge setback. The most seaward point of the residence would remain 25 feet from the edge of the bluff. However, reorienting the residence could result in a change to the direction of surface and subsurface drainage which could potentially cause or contribute to erosion or geologic instability of the bluff.

Mendocino County LUP Policy 3.4-9 requires that any development landward of the blufftop setback 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. The geotechnical report submitted with the original application includes construction recommendations relating to site drainage. The report states:

"The studio, residence, and associated terraces should have storm water runoff collected by storm gutters and catch basins and directed to dry wells. Dry wells should be located no closer than 50 feet from the bluff edge and designed of rock filled pits which provide 2.5 cubic foot of pit per 100 square foot of flat work and roof area."

To ensure that the reorientation of the residence does not result in drainage being directed toward the bluff in a manner that could potentially contribute to erosion or geologic instability, the Commission attaches Special Condition No. 12. The condition requires the applicant to submit a drainage plan demonstrating that site drainage has been constructed pursuant to the recommendations set forth in the geotechnical report.

The Commission notes that while the reorientation of the foundation with construction of adequate drainage would not create or contribute to geologic instability, improper construction of the foundation could pose a threat to the structural integrity and stability of the development. As noted above, the original geotechnical report states that the development could be safely located 25-feet or more from the bluff edge if portions of the structures located between 25 and 45 feet of the bluff edge are founded on continuous or pier foundations extending to the less weathered bedrock. The original geotechnical report states:

"Based upon the supporting data presented in subsequent sections of this report, it is our conclusion that the site can be further developed in such a manner as to lessen the geologic hazards associated with the site. The two major site hazards relate to earthquake potential and a combination of bluff retreat and bluff slope stability. By following our recommendations and accepted engineering practice for structural design in earthquake hazard areas, the proposed development can be accomplished." (emphasis added)

¹"With proper foundation design, the structures may be located within 25 feet of the existing top of bluff. The following FOUNDATIONS section of this report provides recommended foundations for structures sited within this distance of the bluff and alternate foundation recommendations for portions of the structure located beyond 45 feet distance from the top of the bluff. Portions of the structure may be cantilevered over the foundation line and into the setback zone. Earthwork such as cuts and fills should not be performed in the setback area nor should flatwork such as decks or driveways be constructed." (emphasis added)

¹ The Commission notes that the geologist who prepared the referenced geotechnical report states in the first sentence cited above, that with proper foundation design, the structures may be located "within 25 feet of the existing top of bluff." This chosen wording is somewhat ambiguous in that it could be read to mean that the structures could be sited *closer than* 25 feet from the edge of the bluff with proper foundation design. However, the Commission notes that it is clear throughout the context of the rest of the geotechnical report that this is to be read to mean that the structures could be sited *no closer than* 25 feet from the edge of the bluff with proper foundation design.

The FOUNDATIONS section of the geotechnical report referenced above states:

“Portions of structures located between 25 to 45 feet of the bluff top should be founded on continuous or pier foundations extending to the less weathered bedrock. Footings bearing on rock may be proportioned using a net bearing pressure of 4000 pounds per square foot. These deep footings will eliminate the effects of any potential slope instability of the Marine Terrace deposits (soil) along the bluff edge. Portions of structures supported by foundations located further than 45 feet from the top of bluff may be supported upon shallow spread and continuous foundations established upon the golden brown to brown fine to medium sand or structural fill. Under no circumstances should foundations be established upon the upper loose dark brown silty sand soils.” (emphasis added)

This recommendation is further emphasized in the bluff stability section of the geotechnical report and states:

“In order to account for the potential instability of the bluff top soils, the recommended 25-foot setback from bluff edge using foundations to bedrock plus basement should be followed. Where foundations are over 45-feet from the bluff edge conventional spread and continuous footings founded on soil are adequate. By founding structures located close to the bluff on bedrock, any failure of the marine terrace soils would not jeopardize the structure”

This statement indicates that conventional spread and continuous footings used for portions of the development that are closer than 45 feet to the edge of the bluff would be inadequate for protecting the proposed development. Therefore, the original permit was found to be consistent with Section 30253 of the Coastal Act based on the fact that appropriate foundations would be built according to the recommendations set forth in the submitted geotechnical report. Findings from the original permit state: (Exhibit No. 10)

“The applicant submitted a geologic report consistent with the Commission’s guidelines addressing the stability of the site and the impacts of construction. The report concluded that, with appropriate foundation construction, the development can be supported on the site if all development is set back a minimum of 25 feet from the bluff edge and there is no disturbance in this area. As proposed, and conditioned, the Commission finds that the development is consistent with Section 30253 of the Coastal Act.” (emphasis added)

Furthermore, the geotechnical report is referenced on the site plans submitted and approved by the Commission on July 17, 1985 thereby indicating that construction of the foundation as recommended was part of the proposed project description that was originally approved by the Commission (Exhibit Nos. 5 & 6). Standard Condition No. 3 of the original permit requires all construction to occur in strict compliance with the proposal as set forth in the application for permit. This standard condition also states that any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

The applicant has submitted excerpts of foundation plans that appear to show the constructed foundation footings bearing on bedrock (Exhibit No. 9). However, it is unclear from the plans whether the entire development substantially conforms to the foundation recommendations set forth in the original geotechnical report. Therefore, the Commission attaches Special Condition No. 11 which requires the applicant to submit final foundation plans that verify that the portions of the structures located between 25 to 45 feet from the edge of the bluff have been founded on continuous or pier foundations extending to the less weathered bedrock pursuant to the recommendations set forth in the geotechnical report prepared by I. L. Welty and Associates and dated August 3, 1983. In the event that portions of the foundation have not been founded on contours or pier foundations extending to the less weathered bedrock, the condition would allow the permittees to submit a plan to retrofit the existing foundation to meet the foundation requirements.

The proposed amendment also involves changes to the floor plan and elevations, the addition of a partial second-story, the installation of a bluff edge fence, and the addition of a deck to the guest studio. The changed floor plans and elevations and addition of a second-story do not result in any of the proposed development being closer than 25 feet from the bluff edge and therefore would not create or contribute to geologic instability of the site. The proposed deck on the west elevation of the guest studio would also not extend beyond the 25-foot bluff edge setback and would therefore not create or contribute to geologic hazards. The applicant is also proposing a minimal fence to delineate the bluff edge. To ensure that the fence is of minimal construction that would not create or contribute to erosion at the site, the Commission attaches Special Condition No. 10 (d) that requires the applicant to include the bluff edge fence on a revised site plan that shows the fence no higher than 3-feet, and of open-style construction.

The Commission notes that any future improvements within 50 feet of the bluff edge would not be exempt from the need to secure additional permit authorization pursuant to section 30610(a) of the Coastal Act and section 13250 of the Commission's regulations. Therefore, the Commission would be able to review any proposed future development for consistency with the Mendocino County LCP. This will ensure that any future development that may encroach within the 25-foot bluff edge setback or otherwise be sited such that it may cause or contribute to geologic instability will be analyzed accordingly. Therefore, the Commission is not requiring a future improvement deed restriction condition.

The Commission thus finds that the proposed development amendment, as conditioned, is consistent with the policies of the Mendocino County LCP regarding geologic hazards, including LUP Policies 3.4-7, 3.4-9, 3.4-12, and Zoning Code Sections 20.500.010 and 20.500.020, as the proposed development will not result in the creation of any geologic hazards, will not create nor contribute significantly to erosion or geologic instability of the coastal bluff.

3. Visual Resources

Section 30251 of the Coastal Act has been specifically incorporated into LUP Policy 3.5-1 of the Mendocino LCP and 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.

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its' setting. Any new development permitted in these areas shall provide for 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.

Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

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 the natural setting and minimize reflective surfaces. ...

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.

The subject parcel is located west of Highway One in an area designated in the Mendocino County LUP as "Highly Scenic." The site is not visible from northbound Highway One and views of the site from southbound Highway One are minimal and only involve brief glimpses through a corridor of eucalyptus trees. The development is set atop a steep bluff on the south side of Dark Gulch and is sited against a backdrop of dense vegetation. Therefore, the development does not appreciably obstruct public views to the coast from the Highway. However, the site is visible to the south across Dark Gulch from the Heritage House Inn, a public vista area which offers dramatic views of the coast.

The Heritage House Inn is a major visitor destination and historic landmark in Mendocino County that has been in operation since 1949. Many thousands of visitors come yearly to the Heritage House for overnight accommodations, dining, to visit the nursery, or just to walk on the grounds and enjoy the coastal views. Staff at Heritage House estimate that on average, each month approximately 3,000 visitors lodge and dine at Heritage House which has also been used as a location to film movies. The Heritage House and the nearby Little River Inn are the two most heavily patronized inns along the Mendocino Coast. Although the Heritage House is privately owned, the Commission has in the past considered the coastal views from the Heritage House to be of public significance. For example, in 1997, the Commission considered an amendment request (CDP #1-94-113-A2, Kaufman & Saunders) that would result in the relocation of a single-family residence to within 30-feet of the edge of the bluff on the open coastal terrace that is part of the coastal view from the Heritage House. The Commission attached a condition that required the residence to be sited at the eastern end of the property where it would not be visible from the Heritage House, thus minimizing visual impacts and protecting public views from the Heritage House. The Commission thus finds that new development in this highly scenic area must protect coastal views from this public vista area, consistent with the provisions of LUP Policy 3.5-3.

The development was originally approved by the Commission in 1983, prior to certification of the Mendocino County LCP. The standard of review for the project at that time was the policies of Chapter 3 of the Coastal Act. The approved project, as noted above, includes the construction of a 20-foot-high, one-story, 7,938-square-foot residence, a guest studio, tennis court, swimming pool, well, and septic system. The approved house site is located 25 feet from the edge of the bluff. Findings for the original project indicate that the proposed development would utilize existing vegetation to shield and screen the development as much as possible. Furthermore, the original permit included conditions that required additional plantings to screen the development and required the preservation of the natural vegetation between the residence and the bluff and along the southern and eastern property lines to minimize the impact on coastal views.

The proposed amendment involves multiple project elements including reorientation and reconfiguration of the residence footprint, redesign of the floor plan and elevations, addition of a second-story, installation of a bluff edge fence, addition of a deck to the guest studio, addition of a glass railing around the observation deck, and the construction of an entry gate at the driveway.

The proposed reorientation of the residence footprint is shifted slightly in a southerly direction and would not encroach on the 25-foot bluff edge setback. As reoriented, existing vegetation would continue to screen the basement and first floor portions of the residence in the manner originally approved by the Commission.

The proposed amendment also involves changing the floor plan and some design elements of the main residence (Exhibit Nos. 7, 8, & 12). The original permit approved a 20-foot-high, 7,938-square-foot residence with an attached garage. The approved residence is a two level, one-story structure with a basement and first floor level. The proposed "Mediterranean" style of the residence is essentially the same as that previously approved and would result in a decrease in total square footage to 6,380-square-feet. The approved portions of the development are significantly well screened from view from the Heritage House by existing trees and vegetation. However, the applicant has changed elements of the design to include a 2,100-square-foot second-story addition, including an approximately 1,400-square-foot second-story above the garage on the northwest portion of the house and an already constructed, approximately 700-square-foot portion of the second-story near the center of the structure. The applicant also seeks authorization for an already constructed observation tower extending above the rooftop observation deck built above the two-story portion of the building near the center of the structure.

New development must protect coastal views from public areas, be visually compatible with the character of surrounding areas and be subordinate to the natural setting

The Mendocino LCP requires permitted development to be sited and designed to protect views in scenic coastal areas and to be visually compatible with the character of surrounding areas. In addition to being visually compatible with the character of the surrounding area, the LCP policies require new development in designated "highly scenic areas," including the subject site, to be subordinate to the natural setting.

While in some respects the general design of the residence is similar to that approved under the original permit, the overall bulk and mass of the second-story additions, and the even higher observation tower, results in a design that does not protect coastal views from public areas and is not visually compatible with the character of the surrounding area or subordinate to the natural setting as required by LUP Policy 3.5-1 and 3.5-3 and Zoning Code Section 20.504.015(c)(3).

The character of the surrounding area is vastly defined by the densely vegetated, steep coastal bluff and open coastal headland which are predominately void of visible development. Unlike the basement and first floor portions of the residence, the second-story additions would not be screened by existing vegetation and would thus not be subordinate to the natural setting as required in highly scenic areas. Instead, the proposed second-story portions of the residence would protrude above the level of existing bluff-edge vegetation and would be visually prominent from the Heritage House. The proposed second-story addition would therefore not protect coastal views from a public visitor serving destination and public vista area. The 2,100-square-foot second-story and the observation tower would add visible mass to the residence that,

in the Commission's judgement, would prevent the structure from being subordinate to the natural setting and visually compatible with the character of the area, as the viewshed is characterized by a lack of visible structures along the bluff. In addition, the proposed observation tower extending above the second-story, rooftop observation deck, is an unusual shape, protrudes high above the rest of the building, and is not screened by vegetation which causes it to be particularly prominent in a way that would not protect coastal views from a public vista area and is not visually compatible with the surrounding area or subordinate to the natural setting. Therefore, the Commission finds that the project, as proposed to be amended by the applicants, would not protect coastal views from the public vista area and is not visually compatible with the character of the surrounding area or subordinate to the character of the setting. Therefore, the Commission finds the proposed development with the proposed amendment is not consistent with LUP Policy 3.5-3 or Zoning Code Section 20.504.015(c)(1).

New Development Is Limited To One-Story In Highly Scenic Areas

LUP Policy 3.5-3 states that new development west of Highway One in designated "Highly Scenic Areas" is limited to one-story unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed partial second-story addition would not affect public views to the ocean, as the development at the site does not obstruct any public view to the ocean. However, as discussed above, the proposed second-story addition would be visible from the Heritage House Inn. The proposed second-story addition would therefore not protect coastal views from a public visitor serving destination and public vista area and would be out of character with surrounding structures. The subject development and associated guest house are the only structures visible from the Heritage House Inn along the stretch of coastal bluff to the south above Dark Gulch. The character of the bluff is defined by an absence of visible structures and by the densely vegetated bluff top above the rugged gulch and the undeveloped coastal terrace to the west. The second-story and the observation tower would extend above the vegetation line and add visible mass to the residence that would not be compatible with surrounding structures. Therefore, the Commission finds that the development as proposed is inconsistent with LUP Policy 3.5-3 with respect to the policy's limitation on allowable building stories.

With changes to the design and configuration of the residence, the development could be made subordinate to the natural setting, compatible with the character of the surrounding area and structures, one-story, and protect coastal views from the Heritage House Inn. Therefore, the Commission attaches Special Condition No. 10 (a-c) which requires the applicant to submit revised site plans and elevations that (1) shows the approximately 2,100-square-foot second-story removed, (2) allows for this approximately 2,100-square-foot area to be relocated to a ground level landward of the existing residence and (3) shows the observation tower deleted from the development. Relocating the proposed second-story addition on the ground floor behind the rest of the structure would screen it from public view from the Heritage House Inn and would not add to the apparent mass of the residence, thereby keeping the development subordinate to the character of its setting and visually compatible with the character of the surrounding area and structures. As conditioned, the project would not result in a highly visible

development in an area otherwise characterized by a lack of surrounding structures. As conditioned, the view of the development from the ocean would be no more visible than the originally approved residence. The bluff top site is set back an appreciable distance from the open ocean due to an intervening coastal terrace. In addition, as discussed above, at one-story, the residence is sited such that it is well screened by existing vegetation, as viewed from the ocean. Thus, the project would not adversely impact public views from the ocean or a public vista area. Therefore, as conditioned, the residence would be limited to one story and would be subordinate to the natural setting and compatible with the character of surrounding structures, consistent with LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(3).

Special Condition No. 7 of the original permit requires that the natural vegetation be retained between the residence and the bluff and along the southern and eastern property lines. The Commission retains this condition to ensure the vegetation will remain in place to screen the development from view and keep the structure subordinate to the character of its setting and visually compatible with the character of the surrounding area and structures.

The applicant also proposes to construct an entry gate at the east end of the driveway off of Highway One. The driveway is bordered by dense forest vegetation that would screen the entry gate from view. In addition, the elevation of the driveway is such that only a portion of the entry gate would be visible from Highway One. The entry gate as proposed would be subordinate to the natural setting and compatible with the character of surrounding structures and would not adversely impact coastal views from Highway One or other public areas.

The applicant also proposes to construct a deck on the west side of the existing guest house. The guest house is almost entirely screened from view from both Highway One and the Heritage House and construction of the deck would be subordinate to the natural setting and compatible with the character of surrounding structures and would not result in adverse impacts to coastal views from either Highway One or the Heritage House Inn.

The applicant also proposes to install a short fence of minimal construction to delineate the edge of the bluff. Although the applicant has not submitted detailed plans, a short bluff edge fence would be entirely screened from public view. To ensure that the fence is constructed in a manner consistent with LUP Policy 3.5-3, the Commission attaches Special Condition No. 10 (d) which requires revised site plans to show the fence no higher than 3-feet, of open-style construction, and of materials subordinate to the natural setting and compatible with the character of surrounding structures. In addition, the applicant proposes to construct a glass railing around the perimeter of the observation deck. To ensure that the railing is subordinate to the natural setting and that it minimizes reflective surfaces as required by Zoning Code Section 20.504.015(c)(3), the Commission attaches Special Condition No. 10 (e) that requires the revised site plan to show the railing no higher than 42-inches and constructed of non-reflective glass.

The Commission finds, therefore, that only as conditioned can the proposed development with the proposed amendment be found to be consistent with Policies 3.5-1 and 3.5-3 of the LUP and with Section 20.504.015(c)(1) and 20.504.015(c)(3) of the Zoning Code, as the amended

development will be (1) sited and designed to protect coastal views from a public area, (2) visually compatible with the character of the surrounding area and structures, (3) limited to one story, and (4) subordinate to the natural setting.

4. Locating New Development/Second Structure

Policy 3.9-1 of the Mendocino County LUP states that new development shall be located in or in close proximity to existing areas able to accommodate it, and shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources. Policy 3.8-1 of the LUP requires consideration of Highway One capacity and availability of water and sewage disposal when considering applications for coastal development permits. The intent of the policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

As noted above, the subject property is zoned in the County's LCP as Rural Residential-10 acres minimum (RR: L-10), meaning that there may be one parcel for every 10 acres, and that the parcel is designated for residential use. The subject parcel, which is approximately 6.2 acres in size, is a legal, nonconforming lot. Section 20.376.025 of the Zoning Code states that the maximum dwelling density for parcels designated RR:L-10 is one unit per 10 acres.

As described above, the proposed amendment request seeks approval for the temporary use of the guest studio as a residence with kitchen and cooking facilities while the main residence is being completed. The certified LCP does not allow more than one residential unit on most residential parcels in Mendocino County because of a concern that the increase in density could potentially result in cumulative adverse impacts on highway capacity, groundwater resources, and scenic values, inconsistent with LUP Policies 3.9-1 and 3.8-1. To prevent such cumulative adverse impacts, Special Condition No. 4 was attached to the original permit requiring the applicant to record a deed restriction prohibiting kitchen or cooking facilities and requiring that the guest studio not be rented, let, or leased. On December 2, 1983, the applicant recorded a deed restriction to satisfy this condition.

The main residence has not been completed and therefore, allowing temporary use of kitchen and cooking facilities in the guest studio until the main residence is complete would not result in adverse cumulative impacts to highway capacity, water supply, or scenic values. To allow the temporary use of kitchen and cooking facilities requires that the applicant revise the previously recorded deed restriction. To ensure that the guest studio will not be used at any time as an additional residential unit, the Commission replaces the original Special Condition No. 4 with the new Special Condition No. 13, requiring the recordation of a revised deed restriction stating that all kitchen and cooking facilities must be removed upon completion of the main residence and that the guest studio shall not be separately rented, let, or leased.

The development is served by an existing well and septic system. The Commission thus finds that, as conditioned, the proposed development with the proposed amendment is consistent with LUP Policies 3.9-1 and 3.8-1 to the extent that the parcel is able to accommodate the amount of

development and that adequate services are available. In addition, the Commission finds that, as conditioned, the proposed development with the proposed amendment is consistent with these LUP policies and with Zoning Code Section 20.376.025 because Special Condition No. 13 will ensure that there will be only one residential unit on the parcel and the project will not contribute to adverse cumulative impacts on highway capacity, groundwater resources, and scenic values.

5. Public Access

Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Section 30211 and 30212, the Commission is also 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 avoid or offset a project's adverse impact on existing or potential access.

The Mendocino County LCP includes a number of policies regarding standards for providing and maintaining public access. As a condition of permit approval in 1983, the Commission required that the property owner of the subject parcel (then Wood) record an offer to dedicate a public access easement for lateral and vertical access. This offer was recorded in December, 1983.

As there is already a recorded offer to dedicate a public access easement on the property, required as a condition of permit approval of 1-83-223, the Commission finds that no requirement for additional public access is warranted. The proposed amended project would not increase the demand for public access above that created by the originally approved project to necessitate the provision of additional access.

Therefore, the Commission finds that the proposed amendment does not have any adverse effect on public access, and that the project as proposed to be amended without additional public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

6. Violation: Unpermitted Development

Without benefit of a coastal development permit, development has been undertaken consisting of changes to the orientation and configuration of the main residence foundation, changes to the floor plan and elevations of the main residence, addition of a second-story located near the center of the residence, a cylindrical observation tower extending above the rooftop observation deck, and use of the guest studio as a residence with kitchen and cooking facilities.

Consideration of the application by the Commission has been based solely upon policies of the certified Mendocino County Local Coastal Program and the public access policies of the Coastal Act. Action on this permit request does not constitute a waiver of any legal action with regard to

the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

7. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. FINDINGS AND DECLARATIONS FOR DENIAL

The Commission hereby finds and declares:

1. Project Description

The proposed amendment request seeks approval for the 1) reorientation of the residence foundation, 2) changes to the design of the main residence with revisions to the floor plans and elevations, 3) construction of an entry gate with columns, 4) addition of a deck to the existing guest studio, 5) construction of a water pump and underground storage facilities, 6) installation a bluff edge fence, 7) installation of a glass railing around the observation deck, and 8) temporary use of the guest studio as a residence with kitchen and cooking facilities during the completion of the main residence. Staff is recommending that this portion of the development be approved with special conditions as discussed in Section IV and Resolution "A" of this staff report above.

The proposed amendment request also seeks approval for (1) adding a partial second-story, and (2) constructing a cylindrical observation tower above the second-story, rooftop observation deck. Staff is recommending that this portion of the development be denied under Resolution "B" above and as discussed below.

2. Visual Resources

Section 30251 of the Coastal Act has been specifically incorporated into the certified LCP as LUP Policy 3.5-1 and states in applicable 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.

LUP Policy 3.5-3 states in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its' setting. Any new development permitted in these areas shall provide for 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.

Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

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 the natural setting and minimize reflective surfaces. ...

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.

The development was originally approved by the Commission in 1983, prior to certification of the Mendocino County LCP. The standard of review for the project at that time was the policies

of Chapter 3 of the Coastal Act. The Coastal Commission effectively certified the Mendocino County LCP in 1992 and thus, the standard of review for the permit amendment is the certified LCP and the public access policies of the Coastal Act. The originally approved project, as noted above, includes the construction of a two-level, one-story, 20-foot-high, single family residence, guest studio, swimming pool, tennis court, well, and septic system sited 25-feet from the edge of the bluff on the subject parcel. The original project findings indicate that the proposed development was sited and designed to utilize existing vegetation to shield and screen the development as much as possible to minimize visual impacts. Special conditions were attached to the permit to ensure that significant adverse impacts to visual resources were minimized by requiring submittal of a landscaping plan and requiring preservation of the natural vegetation along the bluff and along the southern and eastern property lines.

The proposed amendment seeks to revise the originally approved residence design and elevation plans to include an approximately 2,100-square-foot second-story and a 28-foot-high, cylinder-shaped observation tower extending above the second-story observation deck. (Exhibit Nos. 7, 8, & 12).

The subject site is located west of Highway One and is designated as "Highly Scenic" in the Mendocino County LCP. The site is not visible from northbound Highway One and views of the site from southbound Highway One are minimal and only involve brief glimpses through a corridor of eucalyptus trees. The development is set atop a steep bluff on the south side of Dark Gulch and is sited against a backdrop of dense vegetation. Therefore, the development does not obstruct public views to the coast. However, the proposed second-story and observation tower would be noticeably visible across Dark Gulch to the south from the nearby Heritage House Inn which offers spectacular public coastal views.

The Heritage House Inn is a major visitor destination and historic landmark in Mendocino County that has been in operation since 1949. Many thousands of visitors come yearly to the Heritage House for overnight accommodations, dining, to visit the nursery, or just to walk on the grounds and enjoy the coastal views. Staff at Heritage House estimate that on average, each month approximately 3,000 visitors lodge and dine at Heritage House which has also been used as a location to film movies. The Heritage House and the nearby Little River Inn are the two most heavily patronized inns along the Mendocino Coast.

From many vantage points on the Heritage House property one can see dramatic views of the spectacular headland on which the development is sited. The few houses that are built on nearby parcels are set back in trees and/or away from the bluff edge where they do not interfere with coastal views. Although the Heritage House is privately owned, the Commission has in the past considered the coastal views from the Heritage House to be of public significance. For example, in 1997, the Commission considered an amendment request (CDP #1-94-113-A2, Kaufman & Saunders) that would result in the relocation of a single-family residence to within 30-feet of the edge of the bluff on the open coastal terrace that is part of the coastal view from the Heritage House. The Commission attached a condition that required the residence to be sited at the eastern end of the property where it would not be visible from the Heritage House, thus

minimizing visual impacts and protecting public views from the Heritage House. The Commission thus finds that new development in this highly scenic area must protect coastal views from this public vista area, consistent with the provisions of LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(1).

New development must protect coastal views from public areas, be visually compatible with the character of surrounding areas and be subordinate to the natural setting

The Mendocino LCP requires permitted development to be sited and designed to protect views in scenic coastal areas and to be visually compatible with the character of surrounding areas. In addition to being visually compatible with the character of the surrounding area, the LCP policies require new development in designated "highly scenic areas," including the subject site, to be subordinate to the natural setting. Although the development does not interfere with views to the coast, it is within a coastal scenic area that is visible from a public vista area.

The character of the surrounding area is vastly defined by the densely vegetated, steep coastal bluff and open coastal headland which are predominately void of visible development. As noted above, the majority of the development at the site has been sited and designed such that existing vegetation screens it from public view. However, the proposed siting and design of the second-story and the observation tower extending above the second-story observation deck would be highly visible along the bluff, would not be screened from view and would be more prominent than the rest of the development. The proposed second-story and the observation tower would not protect views from a public vista area, be visually compatible with the character of the surrounding area or subordinate to the natural setting as required by LUP Policies 3.5-1 and 3.5-3 and Zoning Code Section 20.504.015(c)(3).

The second-story and the tower structure are sited in an area where they would not be screened by existing vegetation like the single-story portion of the structure, thereby exposing these additions to public view. In addition, the proposed cylindrical observation tower extending above the rooftop observation deck is an unusual shape and structure that tends to draw particular attention when viewed across the gulch from the Heritage House. The second-story and the observation tower would thus be entirely exposed and its unusual design is not subordinate to the natural setting of this highly scenic area as required by LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(3).

The residence with the proposed second-story and observation tower results in an overall bulk and mass of the development that is beyond what would be considered visually compatible with the character of the surrounding area and subordinate to the natural setting. Although views of the tower structure and the second-story are minimal from Highway One and do not interfere with views to the ocean, they are particularly visible from various locations on the Heritage House property, a public vista area. Thus, the second-story and the tower structure would have a significant adverse impact on coastal views from a public area, inconsistent with LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(1).

New Development Is Limited To One-Story In Highly Scenic Areas

LUP Policy 3.5-3 states that new development west of Highway One in designated "Highly Scenic Areas" is limited to one-story unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed second-story addition and the tower would be out of character with surrounding structures in that they would be highly prominent on the headland among other development that is hidden or screened from view. The subject development is the only structure within the viewshed otherwise characterized by dense vegetation along the bluff above the gulch, an open coastal terrace to the west, and a lack of other visible structures. The residence with the proposed second-story and observation tower results in an overall visible bulk and mass of the development that would protrude above the level of existing vegetation along the bluff edge. The addition of the proposed second-story and observation tower would cause the residence to be beyond what would be considered compatible with the character of surrounding structures, as the subject development would be the only visible structure in a viewshed otherwise void of visible development.

The Commission notes that there are practical alternatives to the proposed additions that would avoid adverse impacts to public coastal views. For example, the square footage of the proposed second-story could be redesigned and relocated to a single story landward of the main residence to avoid visual impacts and to be subordinate to the natural setting of the area. This demonstrates that there are practical alternatives to constructing the second-story addition in the proposed location that would preserve the visual character of the coastal headland. The intended purpose of the proposed tower structure is to provide a convenient exit from the internal stairway to the top of the observation deck and to provide protection from harsh wind and rain when accessing the deck. However, elimination of the cylindrical tower together with the installation of a hatch arrangement would provide a suitable alternative exit from the stairway. The Commission also notes that its approval allows for the approximately 2,100-square-foot second-story addition to be constructed on the ground level landward of the existing main residence.

Conclusion

Although the Heritage House is privately owned, the Commission finds the views from Heritage House to be coastal views from a public vista area as contemplated by LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(1), as the historic Heritage House is a heavily visited, unique visitor-serving facility that serves the public. Furthermore, the public is permitted to visit the Heritage House even if they are not staying as overnight guests. The second-story and the observation tower are highly conspicuous and would not be visually compatible with the character of surrounding areas and would not be subordinate to the natural setting, inconsistent with visual resource policies of 3.5-1 and 3.5-3 of the certified LCP and Zoning Code Section 20.504.015(c)(3). Therefore, the proposed second-story and observation tower would be inconsistent with LUP Policy 3.5-3 and Zoning Code Section 20.504.015(c)(1), which requires that any development in highly scenic areas protect the coastal views from public areas. Additionally, the proposed second-story and observation tower would be inconsistent with LUP Policy 3.5-3 which requires new development west of Highway One in "highly scenic areas" to

be limited to one-story unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

Thus, the Commission denies the construction of a second-story and the observation tower extending above the rooftop observation deck because they are not consistent with the visual resource protection policies and development standards of the certified Mendocino LCP.

3. Violation: Unpermitted Development

Without benefit of a coastal development permit, development has been undertaken consisting of changes to the orientation and configuration of the main residence foundation, changes to the floor plan and elevations of the main residence, addition of a 700-square-foot second-story located near the center of the main residence, a cylindrical observation tower, and use of the guest studio as a residence with kitchen and cooking facilities.

The cylindrical observation tower and the portion of the second-story located near the center of the residence are completed. This development has been performed in violation of Coastal Act permit requirements. As discussed in the above findings, the proposed development is inconsistent with the visual resource policies of the certified LCP. Each day that the second-story and the observation tower remain in place causes on-going resource damage to the visual resources of Mendocino County.

Consideration of the application by the Commission has been based solely upon policies of the Mendocino Local Coastal Program and the public access and recreation policies of the Coastal Act. Action on this permit request does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 Commission incorporates its findings on inconsistency with LCP policies at this point as if set forth in full. As previously stated, the proposed development of the cylindrical observation tower and the second-story is not consistent with visual resource protection policies of the Mendocino County LCP. The Commission has found that approval of these structures would have adverse visual impacts. As such, these elements of the proposed permit amendment cannot be found consistent with LCP policies and are recommended for denial.

There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the development may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Location Map
3. Site Plan – Existing Development
4. Site Plan – Proposed Development Footprint
5. Originally Approved House Plans
6. Originally Approved Site Plan
7. Proposed Elevations
8. Proposed Floor Plans
9. Proposed Foundation Plans
10. Original Staff Report (1-83-223, Wood)
11. Geotechnical Report, I. L. Welty & Associates, August 3, 1983
12. Proposed House Design
13. Transcript of Commission Hearing of August 11, 2000
14. Request for Reconsideration (letter dated October 12, 2000)
15. Request for Postponement (letter dated November 13, 2000)
16. Violation Notification Letter (letter dated January 8, 1999)

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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

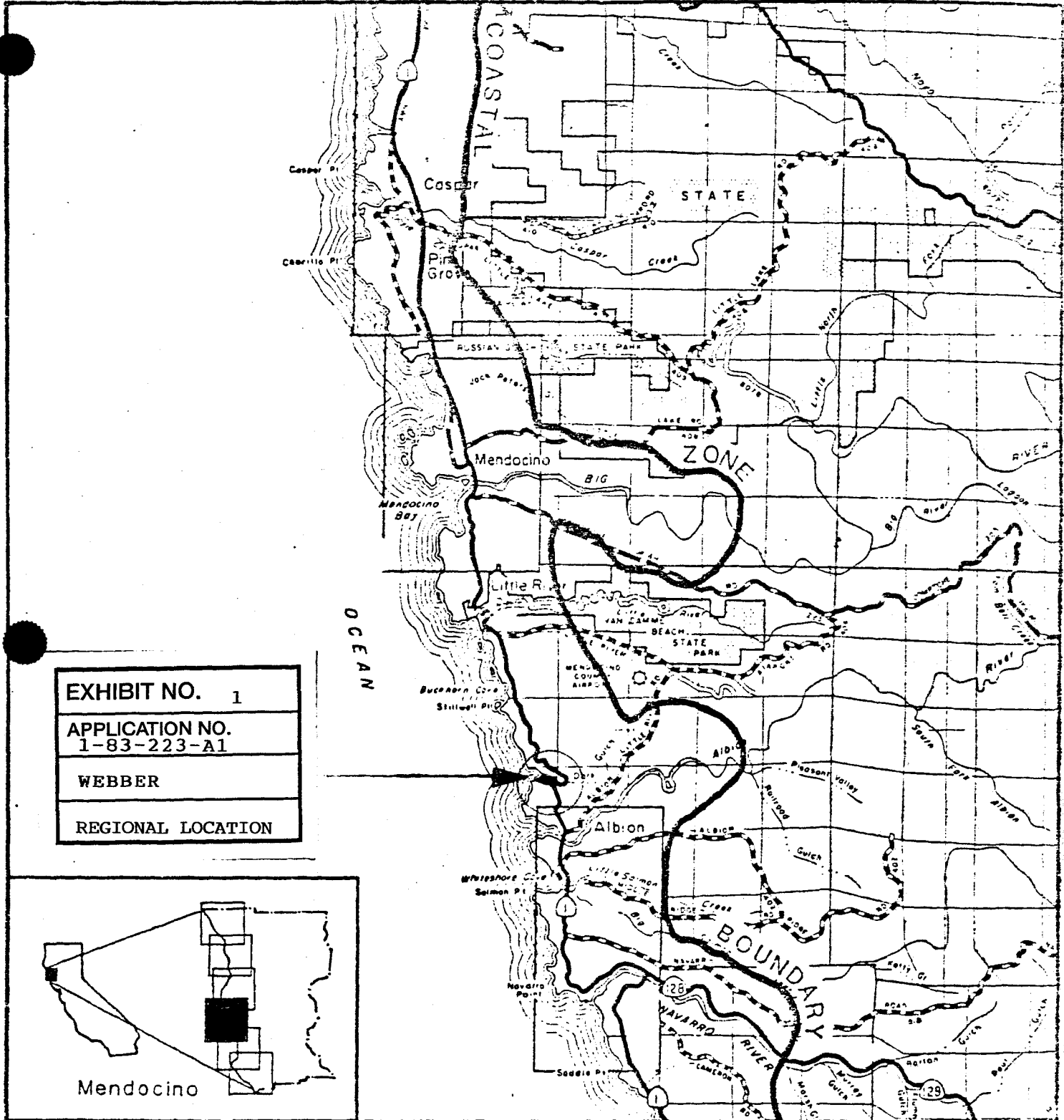
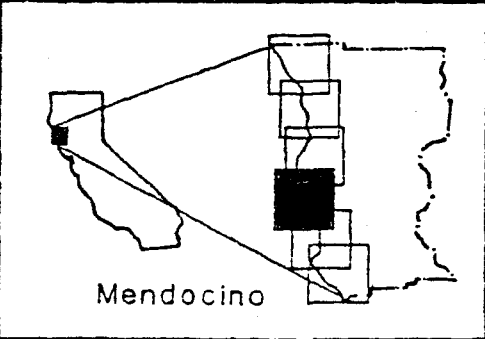
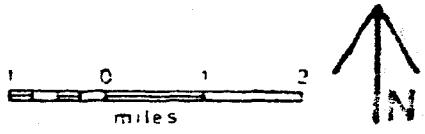
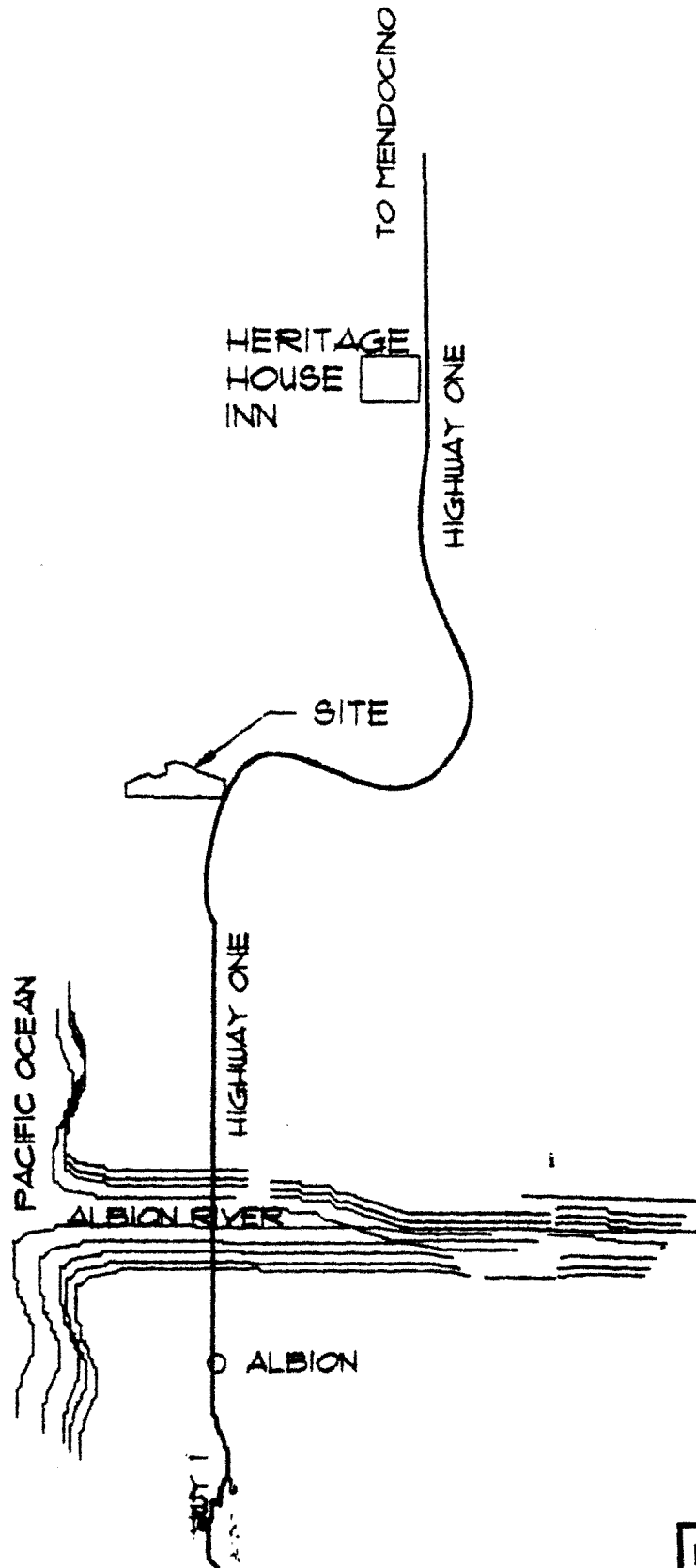


EXHIBIT NO.	1
APPLICATION NO.	1-83-223-A1
WEBBER	
REGIONAL LOCATION	



LOCATION MAP





LOCATION MAP

NOT TO SCALE



EXHIBIT NO.	2
APPLICATION NO.	1-83-223-A1
WEBBER	
VICINITY MAP	

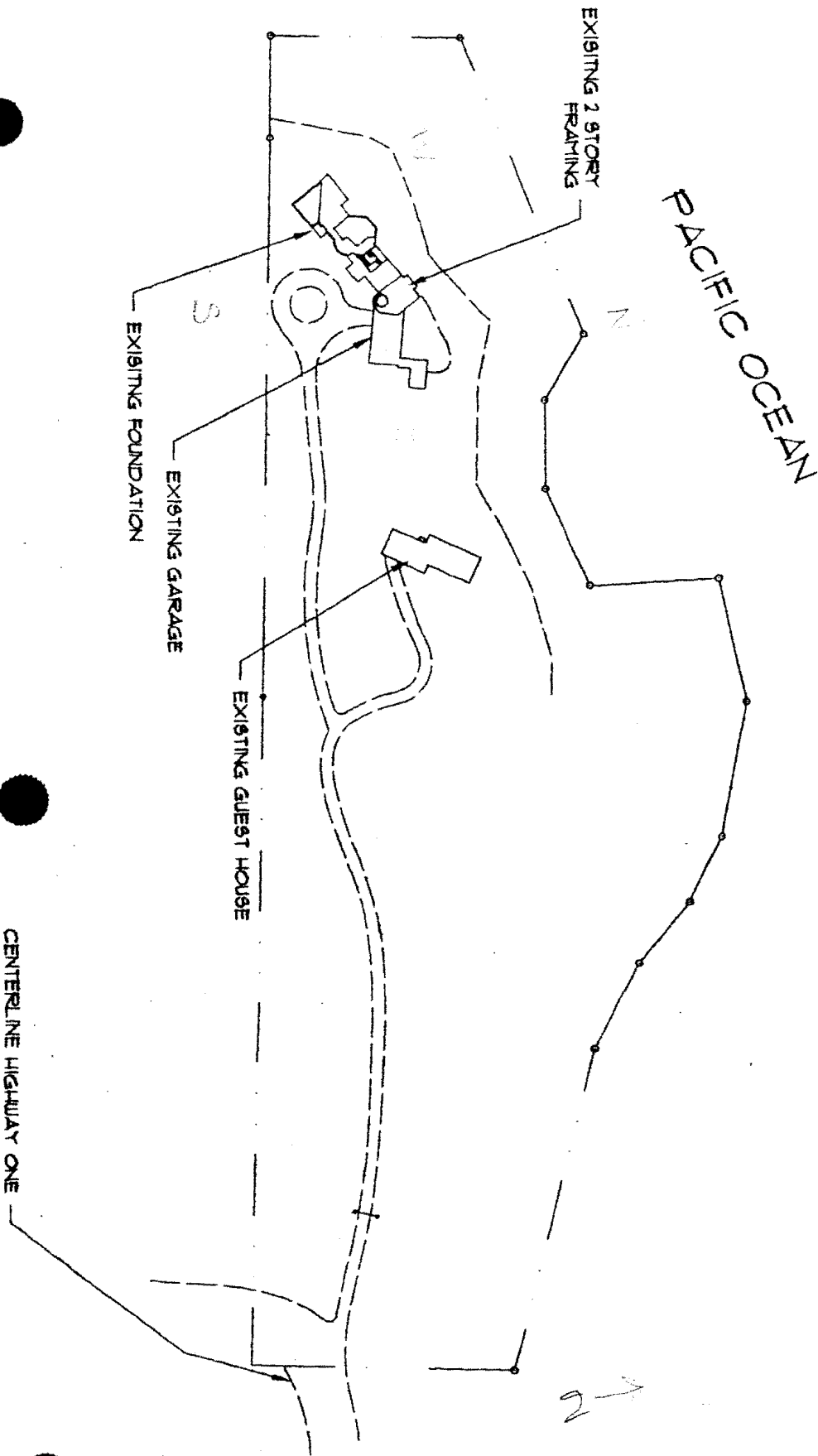
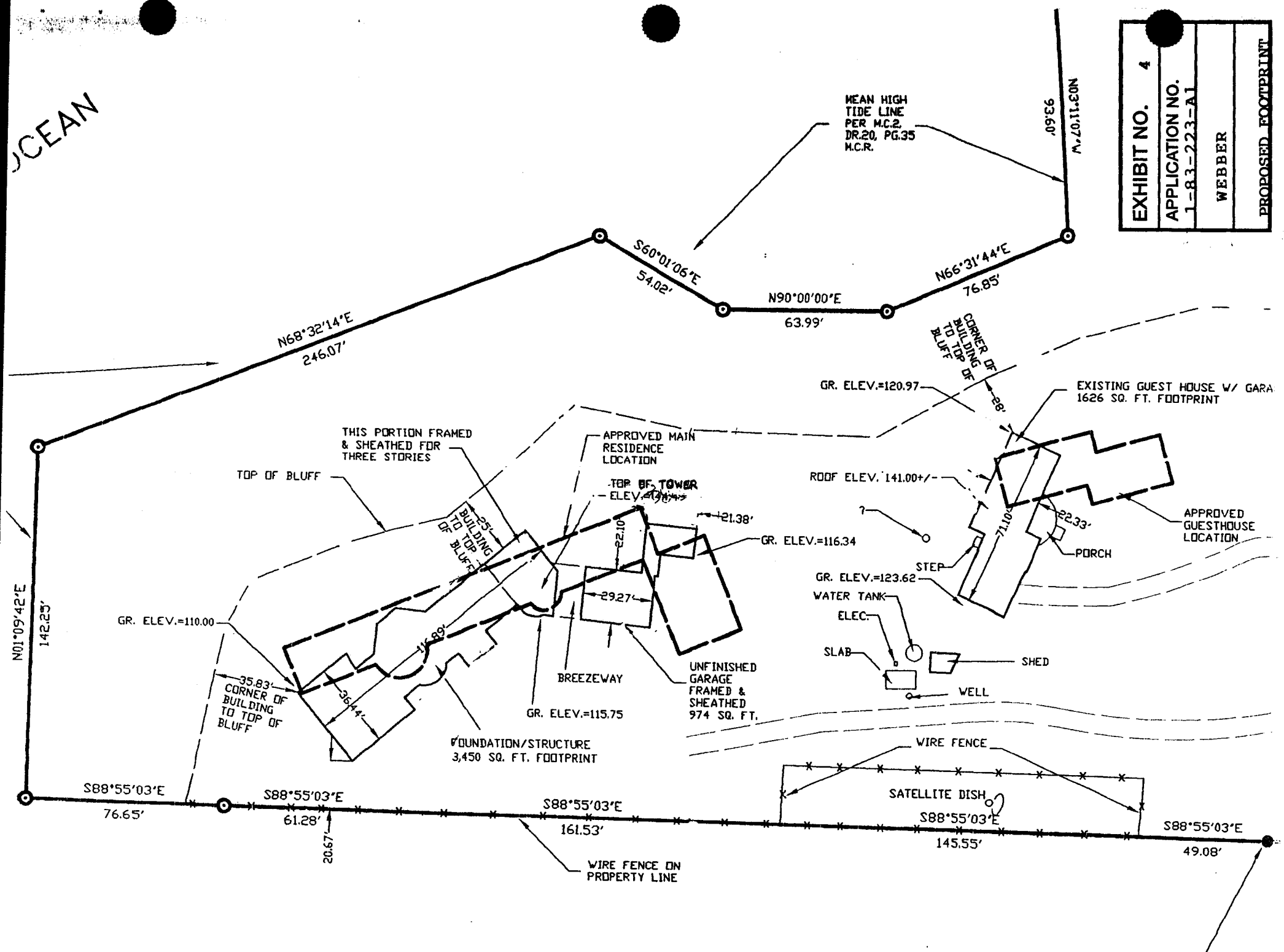


EXHIBIT NO.	3
APPLICATION NO.	1-83-223-A1
WEBBER	
SITE PLAN -	
EXISTING DEV.	

OCEAN

EXHIBIT NO. 4
APPLICATION NO. 1-83-223-A1
WEBBER
PROPOSED FOOTPRINT



N O R T H E R N E L E V. (STUDIOS) BLDG. LEVELS

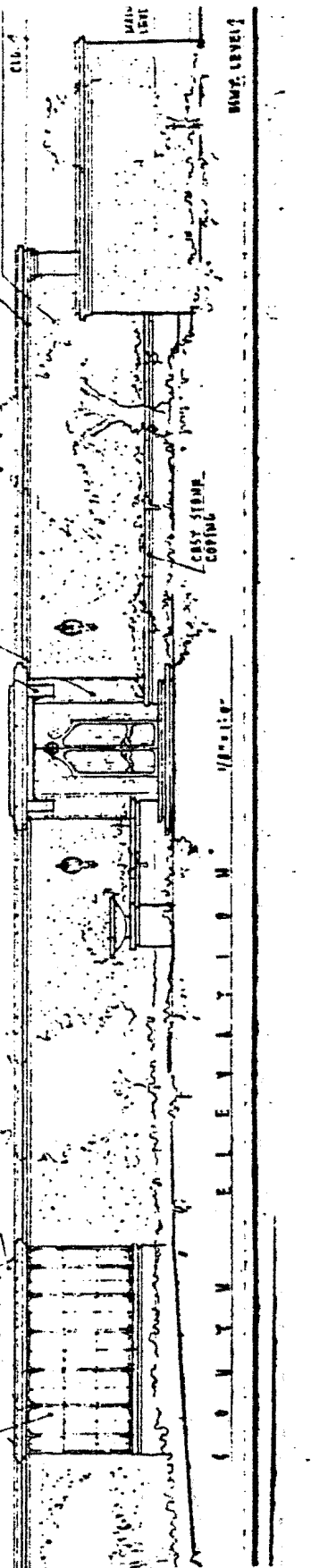
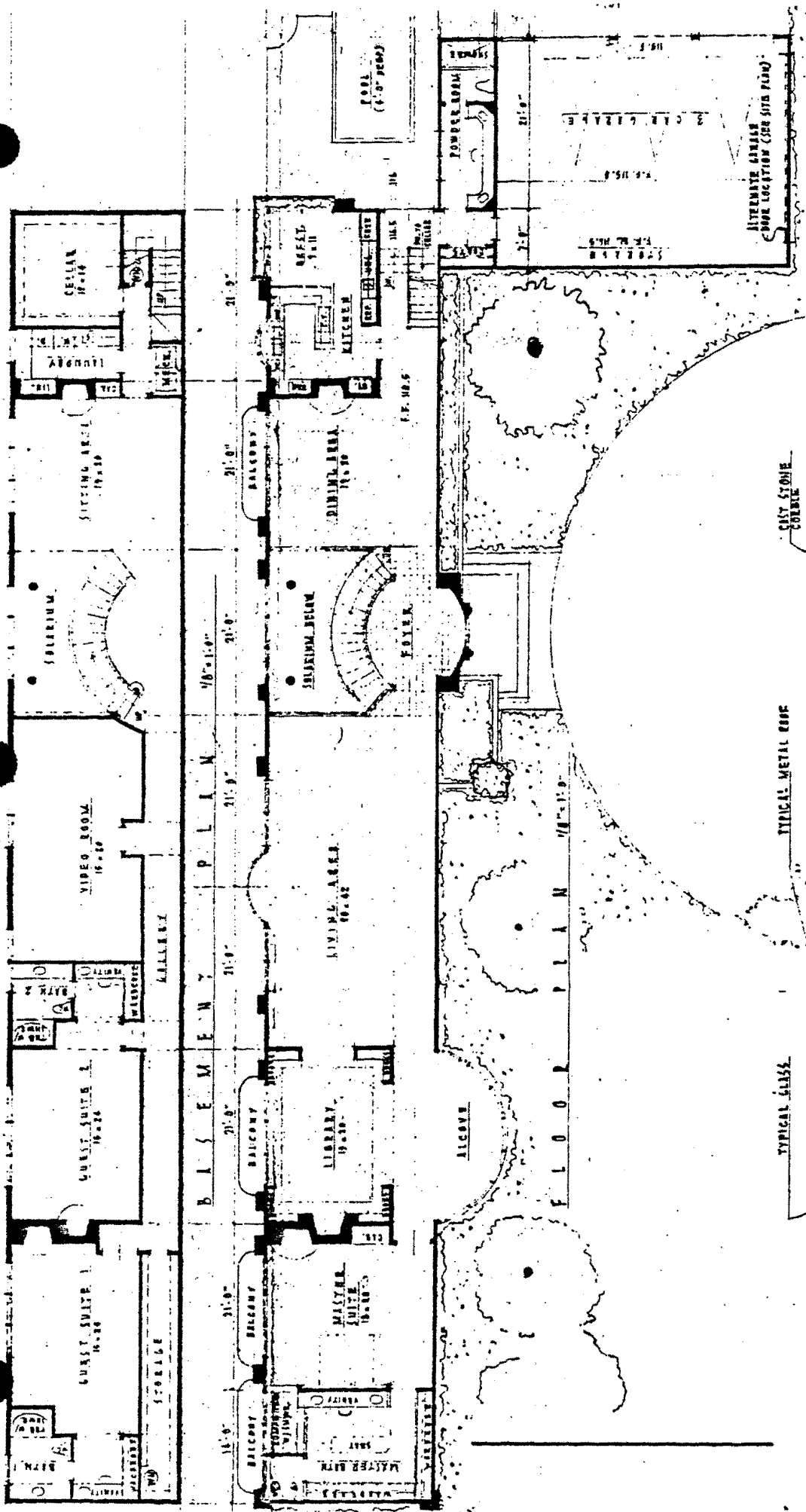
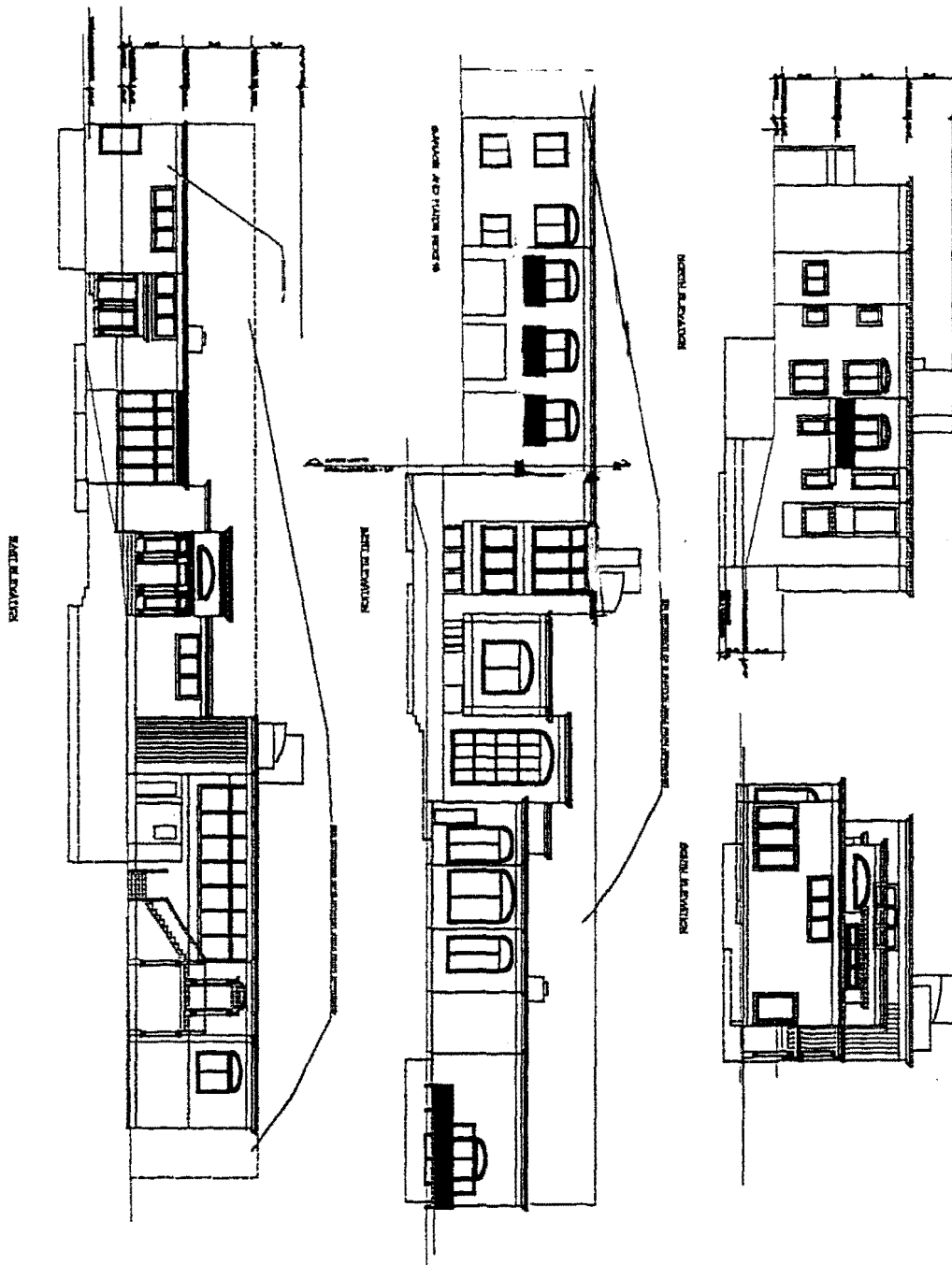


EXHIBIT NO.	5
APPLICATION NO.	1-83-223-A1
WEBBER	
ORIGINALLY APPROVED HOUSE	



ELEVATIONS- 1/8" SCALE

"LONG WALK"

DATE: 10/10/83

1000 1000 1000 1000 1000 1000

Debra Lennart

1000 1000
 1000 1000
 1000 1000

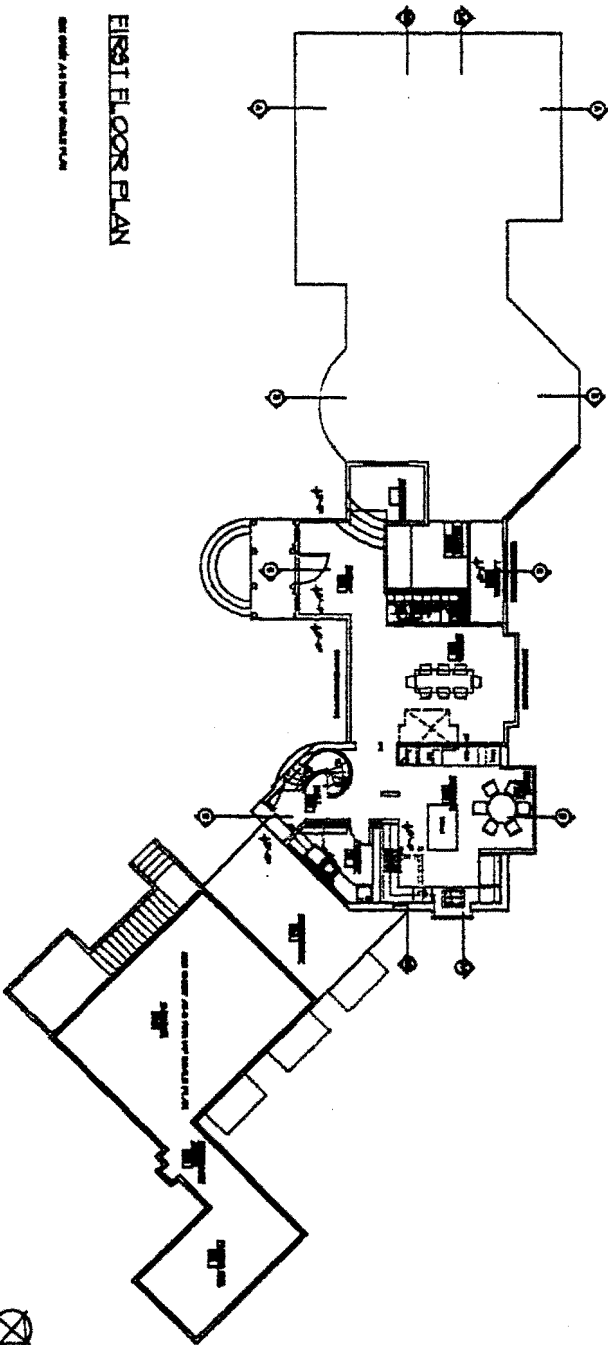


Art & Design

EXHIBIT NO.	7
APPLICATION NO.	1-83-223-A1
WEBBER	
PROPOSED ELEVATIONS	

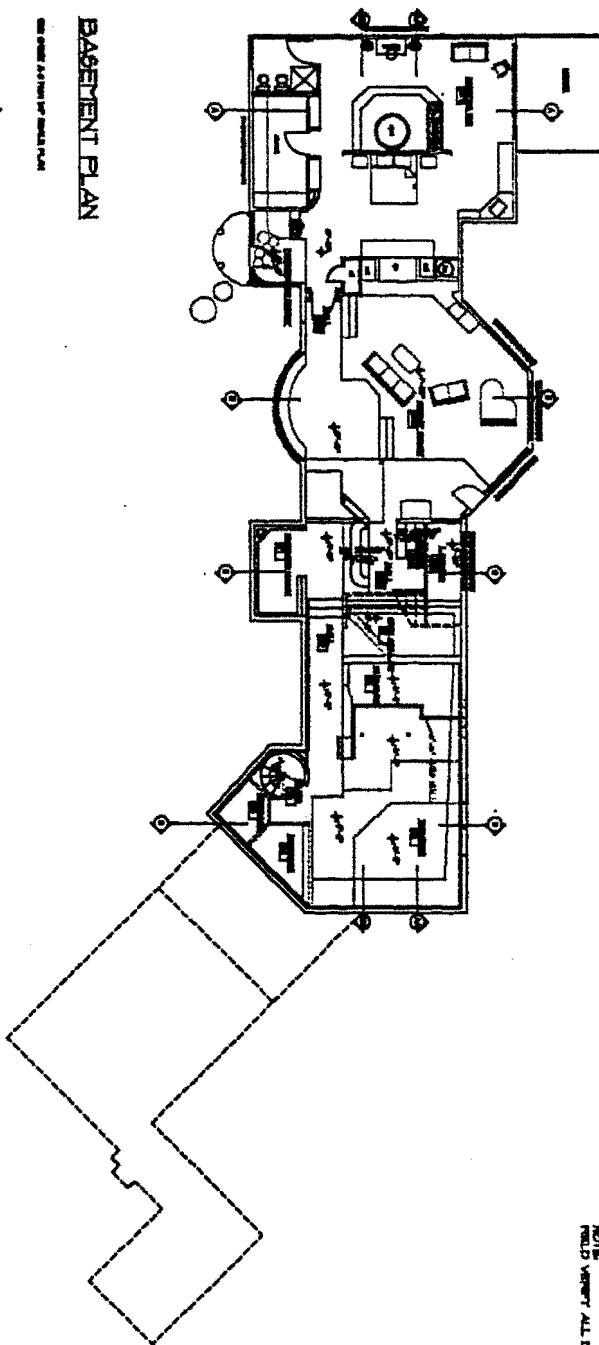
FIRST FLOOR PLAN

SEE SHEET A-1 FOR FIRST FLOOR PLAN



BASEMENT PLAN

SEE SHEET A-1 FOR BASEMENT PLAN



NOTE: VERIFY ALL DIMENSIONS

EXHIBIT NO. 8

APPLICATION NO.
1-83-223-A1

WEBBER
PROPOSED FLOOR
PLANS

BASEMENT & FIRST FLOOR PLAN- 1/8" SCALE

LONG WALK

DATE: 11/15/83
DRAWN BY: [illegible]
CHECKED BY: [illegible]

LITTLE BROS. CO. 11/15/83

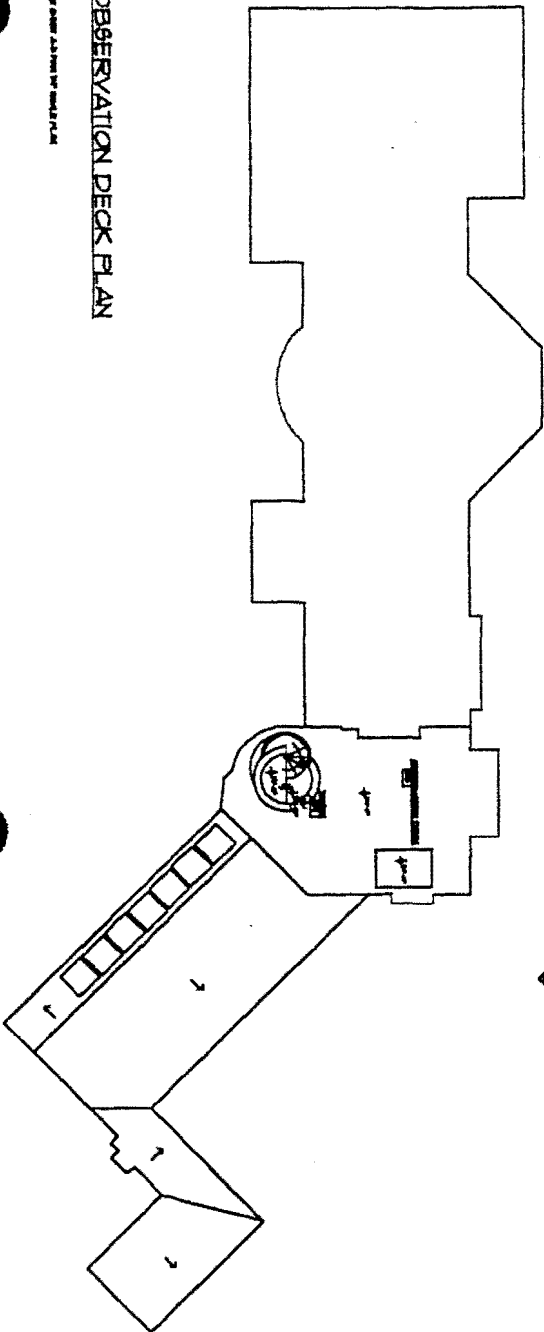
Debra Lennox
REGISTERED ARCHITECT

702 2nd ST.
COSTA MESA, CA
TEL: 949/441-1111
ADDRESS: [illegible]

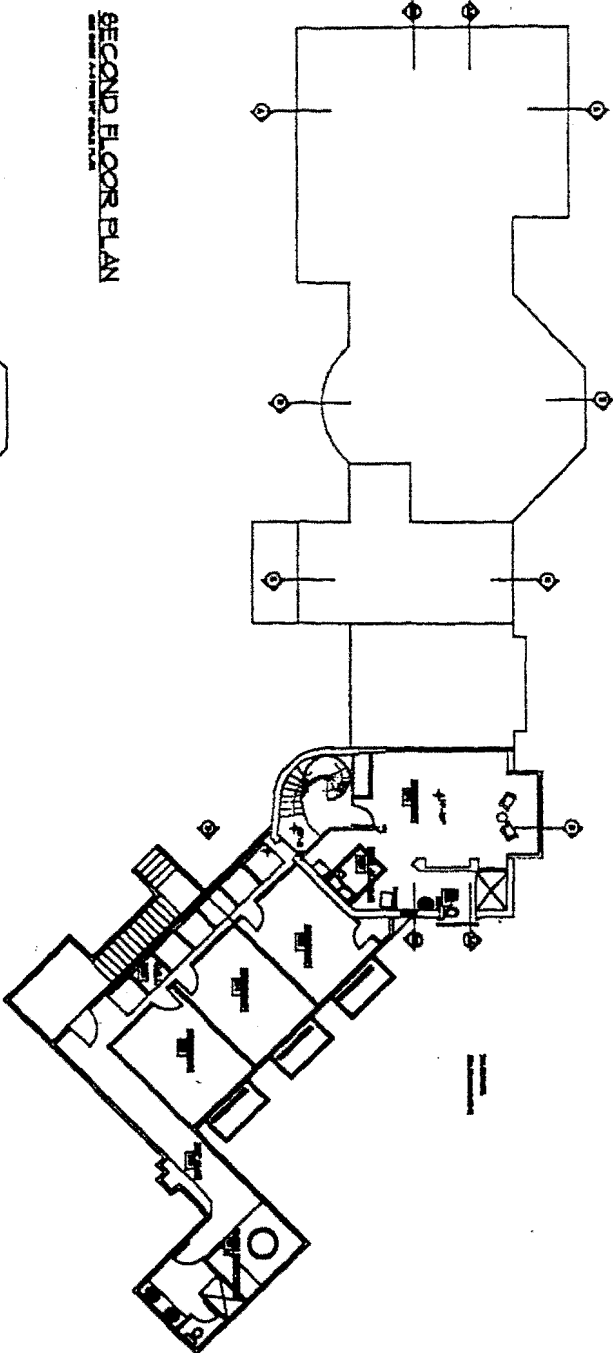
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A2.0

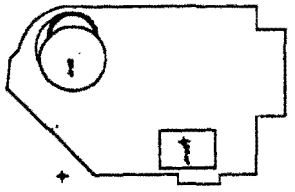
OBSERVATION DECK PLAN



SECOND FLOOR PLAN



TOWER ROOF PLAN



SECOND FLOOR & OBSERVATION DECK PLAN - 1/8" SCALE

LONG WALK

DATE & DRAWING NUMBER

LITTLE ROCK, AR 72201 APP/20-010-00

Debra Lemox
ARCHITECT
PO Box 287
Oxnard, CA
707-927-1123
db@debralemox.com



A2-1
DATE
SCALE
PROJECT
CLIENT
ARCHITECT
DRAWN BY
CHECKED BY
DATE

TYP. @ BOTH SIDES
(STAL. NAILING)

W/ 7/10" ϕ x 12 A.O.
@ 21" O/C
CONC. BLK. WALL (8")

OVERLAP 40. DI.
REBAR FROM FO

11

DETAIL

12

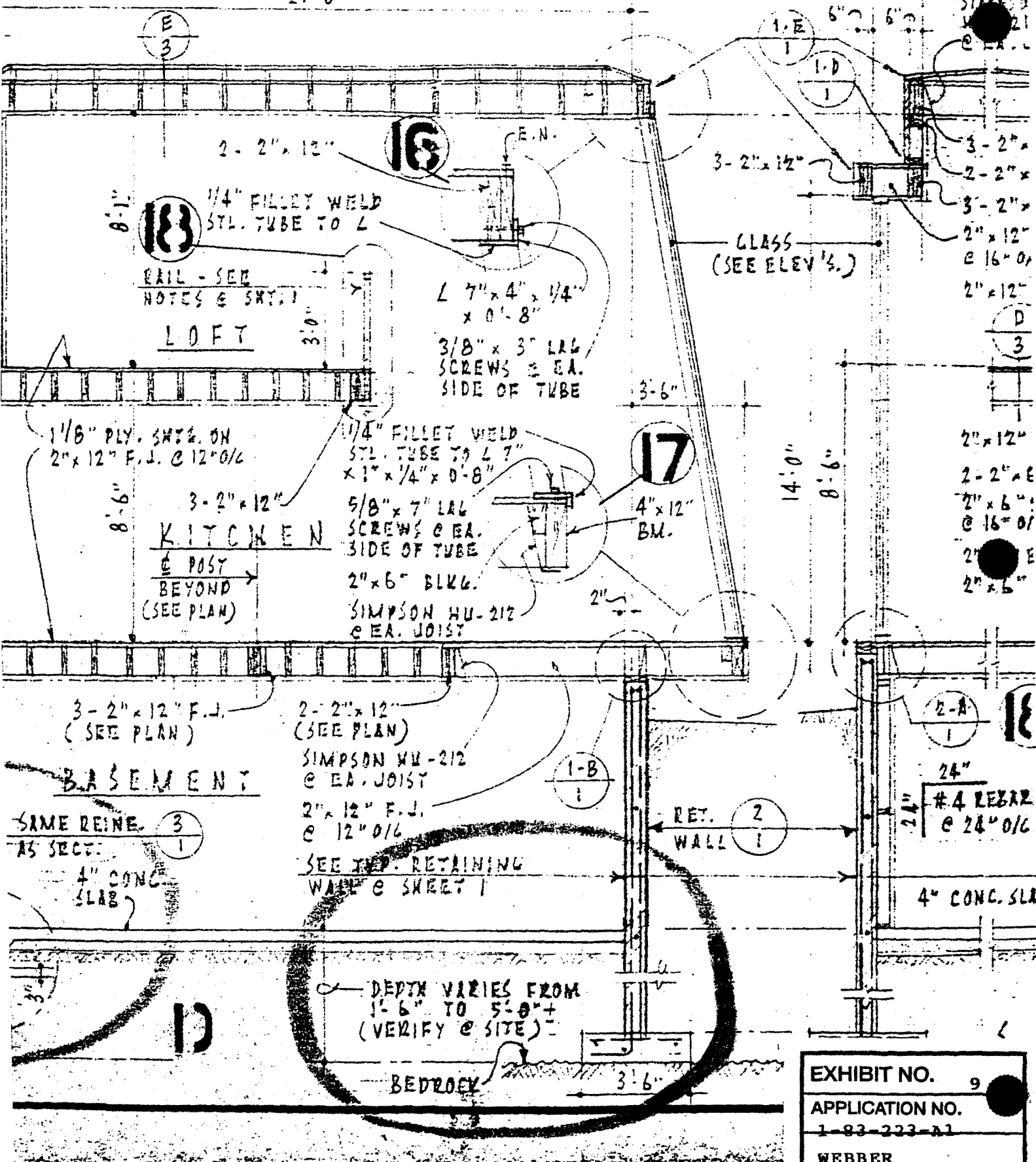
1/2" = 1'-0"
21'-0"

DETAIL

14

NO SCALE

2



1/4" FILLET WELD
STL. TUBE TO L

RAIL - SEE
NOTES & SKT. 1

LOFT

L 7" x 4" x 1/4"
x 0'-8"

3/8" x 3" LAG
SCREWS @ EA.
SIDE OF TUBE

1/4" FILLET WELD
STL. TUBE TO L 7"
x 1" x 1/4" x 0'-8"

5/8" x 7" LAG
SCREWS @ EA.
SIDE OF TUBE

2" x 6" BLK.

SIMPSON HU-212
@ EA. JOIST

KITCHEN

@ POST
BEYOND
(SEE PLAN)

3- 2" x 12" F.J.
(SEE PLAN)

BASEMENT

SAME REIN. @
AS SECT. 3

4" CONC.
SLAB

2- 2" x 12"
(SEE PLAN)

SIMPSON HU-212
@ EA. JOIST

2" x 12" F.J.
@ 12" O/C

SEE TYP. RETAINING
WALL @ SKET. 1

DEPTH VARIES FROM
1'-6" TO 5'-0"+
(VERIFY @ SITE)

BEDROCK

EXHIBIT NO.	9
APPLICATION NO.	1-83-223-A1
WEBBER	
PROPOSED FOUNDATION PLAN	

STEP

PLATE
PLY. SHEETS
(1/2")

3-15d @ 12" O/C
TYP. @ BOTH SIDES
(STAL. NAILING)

14
3
2" x 8
W/ 5/8
@ 21
CONC.

DETAIL 11
1/2" = 1'-0"

DETAIL 12
1/2" = 1'-0" 21'-0"

LOPE FLOOR 2"

6" X 12" CURB (TYP.)

21'-0"
15'-0"

1/2" PLY. -
SEE SMT. 2

RIP JOISTS
@ BALCONY
(SEE DETAILS)

RAIL - SEE
NOTES @
SMT. 1

RAIL - SEE
NOTES @ SMT. 1

LOFT

1/8" PLY. SMT. 2 ON
2" x 12" F.J. @ 12" O/C

1/4" FILLET WELD
STL. TUBE TO L
x 1" x 1/4" x 0'-8"

3-2" x 12"
KITCHEN
@ POST
BEYOND
(SEE PLAN)

5/8" x 7" LAL
SCREWS @ EA.
SIDE OF TUBE
2" x 6" BLK.
SIMPSON HU-
@ EA. JOIST

A35 CLIPS

2" x 6" STUDS
@ 16" O/C

2" x 6" P.T.
PLATE W/
5/8" @ x 10"
A.B. @ 64" O/C
4" CONC. SLAB

2" x 8" PL W/
5/8" @ A.B.
@ 48" O/C

3-2" x 12" F.J.
(SEE PLAN)

2-2" x 12"
(SEE PLAN)

BASEMENT

SIMPSON HU-212
@ EA. JOIST

SAME REINF. @
AS SECT. 1

2" x 12" F.J.
@ 12" O/C

4" CONC.
SLAB

SEE TYP. DETAIL
WALL @ SHEET

DEPTH VAR
1'-6" TO
(VERIFY @

BEDROCK

C

SECTION 20

D

SECTION 19

1/4" = 1'-0"

FILED October 3, 1983
49t November 21, 1983
180 Day: April 3, 1984
Staff: GARY J. BARRISAN/EP
Staff Report: October 7, 1983
Hearing Date: October 21-23, 1983

California Coastal Commission
North Coast District
1636 Union Street, Room 150
Eureka, California 95501
(707) 443-1623

WJC
PC ED

STAFF REPORT: CONSENT CALENDAR

PROJECT DESCRIPTION

APPLICANT: Larry Jack Wood

PERMIT NO. 1-83-223

PROJECT LOCATION: West of Highway One, 1.25 miles north of Albion, Mendocino County.

PROJECT DESCRIPTION: Construction of a 7,938 square foot single family residence with an attached garage, a 2,261 square foot studio with attached garage, a 441 square foot gatehouse, tennis court, swimming pool, well, and septic systems.

LOT AREA 6.25 acres ZONING R-R-1

BLDG. COVERAGE 6,349 square feet (LCP) PLAN DESIGNATION R-R-10

PAVEMENT COVERAGE 2,800 square feet PROJECT DENSITY 1 du/6.25 acres

LANDSCAPE COVERAGE 5.9 acres HEIGHT ABV. FIN. GRADE 20 feet

LOCAL APPROVALS RECEIVED: Mendocino County Planning, Building, and Health Departments

STAFF NOTES

SITE CHARACTERISTICS: The site is a bluff top parcel located adjacent to Highway One. Development is proposed along the level southern portion of the property. The northern portion of the parcel slopes steeply to Dark Gulch and a small beach. A stand of grand fir is located in the eastern part of the parcel and on the slopes into Dark Gulch. The gulch contains a small stream and associated riparian vegetation. The central portion of the property contains some young redwood, which then succeeds to shorepine located on the western part of the parcel and along the bluff edge. The height of the bluff is approximately 90-100 feet.

SURROUNDING LAND USE: Undeveloped coastal headlands to the south; Dark Gulch and the Heritage House to the north; rural residential and State Park land to the east; Pacific Ocean to the west.

COASTAL ACT ISSUES: Public Access; Concentration of Development; Visual Resources; Hazards

STANDARD CONDITIONS: See attached.

EXHIBIT NO.	10
APPLICATION NO.	1-83-223-A1
WEBBER	
ORIGINAL STAFF REPORT	

STAFF RECOMMENDATION

Staff recommends the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions 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.

Conditions

1. Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement shall extend landward from the mean high tide to the first line of terrestrial vegetation. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such easement shall be 25 feet wide located along the north boundary of the property line and extend from the east boundary to the mean high tide line. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. Prior to transmittal of the permit, the applicant shall submit to the Executive Director, a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and

approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site is subject to extraordinary hazard from waves during storms, erosion, and landslides, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms, landslides and erosion.

4. Prior to transmittal of the permit, the applicant shall submit for review and approval of the Executive Director, a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The deed restriction shall provide that: "The studio shall be without kitchen or cooking facilities, subordinate and incidental to the main building, on the same building site, and not separately rented, let, or leased, whether compensation be direct or indirect." Any change in the use of the structure shall require a separate coastal permit or amendment to Commission permit 1-83-223.

5. Prior to transmittal of the permit, the applicant shall submit revised plans to the Executive Director for his review and approval indicating that the gatehouse is not a part of the project; that the size of the studio has been decreased consistent with its use as a studio; that only one septic system will be utilized on site.

6. Prior to transmittal of the permit, the applicant shall submit a landscaping plan to the Executive Director for his review and approval. The landscaping plan shall include an analysis by a qualified professional forester evaluating the impacts of the basement construction on the root systems and survival of the existing trees. If basement excavation adversely affects survivability, the residence shall be resited to avoid adverse effects. The landscaping plan shall also include location and types of proposed plantings that will be used to screen the development from public views.

7. The applicant shall preserve the natural vegetation between the residence and the bluff and along the southern and eastern property lines.

8. There shall be no exterior lighting used for the tennis court and the exterior of the proposed structures including fencing of the tennis court, shall blend with the area with a goal of subordination.

9. Prior to excavation and construction of the development, the applicant shall notify the Executive Director for a final site review to ensure compliance with the conditions and plans on file in the Commission offices.

FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

Project Description: The applicant proposes to construct a 6,762 square foot single family residence with a basement and 1,176 square foot attached garage, an 1,820 square

foot studio with a basement and 441 square foot attached garage, a 441 square foot gatehouse, a swimming pool, tennis court, well and septic systems on a 6.25 acre bluff top parcel (Exhibit 2).

Public Access: Sections 30210 - 30212 of the Coastal Act require that public access to the shoreline and along the coast be maximized and provided in all new development projects located between the first public road and the shoreline. The project is located between the first public road and the shoreline, and as conditioned, will ensure maximum public access to and along the shoreline.

In prior action in this area, the Regional Commission required the dedication of vertical and lateral, bluff top access 1/4 mile south and vertical access on the opposite side of Dark Gulch to the beach below the applicant's site. Bluff top access is not being required of the applicant because this wooded site would not provide the type of open coastal panoramas available on the headlands to the south. Vertical access from the public road to the shoreline is not required because there is adequate existing and dedicated vertical access nearby. As conditioned, the proposed development will provide a lateral accessway over the beachfront land to the first line of vegetation, and a vertical accessway along the edge of the stream. This will enable the public to make maximum use of these lands for passive recreational use. In addition, the vertical accessway will allow future access to the coast from State Parks and Recreation lands east of the subject property. The Commission finds that, as conditioned, the development will be consistent with Sections 30210 - 30212 of the Coastal Act.

Development: Section 30250(a) of the Coastal Act provides, in part:

"New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively on coastal resources. . ."

The Commission generally approves the construction of a single family residence on existing parcels in rural Mendocino County. As proposed, the development consists of three separate structures, each with a septic system and kitchen facilities. These developments have the potential to be separate and independent dwelling units. While the Commission can approve one residence on the parcel, the potential for three units exceeds appropriate densities for rural Mendocino County where adequate public services are not available. As conditioned, the development will ensure that densities will be consistent with the character of this rural area and that there will not be uses inconsistent with residential development. The Commission finds that, as conditioned, the development is consistent with Section 30250(a) of the Coastal Act.

Scenic Resources: Section 30251 of the Coastal Act provides, in part:

"The scenic and visual qualities of 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."

The proposed development is located west of Highway One on a bluff top parcel in a scenic area of the Mendocino coast. The site is also visible from the Heritage House, a visitor destination point. The applicant proposes to utilize the existing vegetation to shield and screen the development as much as possible. The applicant also proposes additional plantings to screen the development, and to use exterior colors that will subordinate the development to the area.

As proposed and conditioned, the Commission finds that the development will be consistent with Section 30251 of the Coastal Act.

Hazards: Section 30253 of the Coastal Act provides, in part, that:

"New development shall:

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

The applicant submitted a geologic report consistent with the Commission's guidelines addressing the stability of the site and the impacts of construction. The report concluded that, with appropriate foundation construction, the development can be supported on the site if all development is set back a minimum of 25 feet from the bluff edge and there is no disturbance in this area.

As proposed and conditioned, the Commission finds that the development is consistent with Section 30253 of the Coastal Act.

Local Coastal Program: The proposed Mendocino County Land Use Plan designates this site as Rural Residential, ten acre minimum parcel size. As proposed, the development raises some concerns relative to use and density. The conditions will ensure residential development and appropriate densities consistent with the proposed LUP. The Commission finds that, as conditioned, the development will not prejudice the ability of Mendocino County to prepare a local coastal program consistent with the provisions of the Coastal Act.

California Environmental Quality Act: As conditioned, the development will not have a significant adverse environmental effect within the meaning of CEQA.

I. L. WELTY & ASSOCIATES

CONSULTING CIVIL ENGINEERING & LAND SURVEYING

45080 LITTLE LAKE STREET

P. O. BOX 1069

MENDOCINO, CA 95460

(707) 937-0194

August 3, 1983

Larry Wood
4671 Webb Canyon
Claremont, CA 91717

Re: Geologic Hazards & Septic System
Feasibility Study - Residence
Mendocino County, CA
AP #123-010-14

Attention: Larry Wood

INTRODUCTION

This report summarizes our findings related to a geologic hazards and septic system feasibility study performed by this office for the proposed residence located approximately one mile north of Albion in Mendocino County, California. Plate 1, Vicinity Map, shows the location of the site in relation to natural and man-made features of the area. Plate 2, Plot Plan, shows the proposed site development, existing site slopes, and the location of test pits conducted in conjunction with this study.

PURPOSE AND SCOPE

The purpose of this study was to identify potential geologic hazards associated with the site development and to provide appropriate foundation and earthwork recommendations. In accomplishing this purpose, our scope included: (a) A field reconnaissance of the ocean bluff within the vicinity of the site and the excavation of five test pits to depths ranging from 6.0 feet to 12.5 feet below existing grade; (b) A review of pertinent available data; (c) Engineering analyses of relative safety factors associated with critical areas of the ocean bluff; and (d) The preparation of this summary report.

CONCLUSIONS

GENERAL

Based upon the supporting data presented in subsequent sections of this report, it is our conclusion that the site can be further developed in such a manner as to lessen the geologic hazards associated with the site. The two major site hazards relate to earthquake potential and a combination of bluff retreat and bluff slope stability. By following our recommendations and accepted engineering practice for structural design in earthquake hazard areas, the proposed development can be accomplished. The following subsections provide detailed recommendations for site development.

EXHIBIT NO.	11
APPLICATION NO.	1-83-223-A1
WEBBER	
GEOTECHNICAL REPORT	

STRUCTURE SITING

With proper foundation design, the structures may be located within 25 feet of the existing top of bluff. The following FOUNDATIONS section of this report provides recommended foundations for structures sited within this distance of the bluff and alternate foundation recommendations for portions of the structure located beyond 45 feet distance from the top of bluff. Portions of the structure may be cantilevered over the foundation line and into the setback zone. Earthwork such as cuts and fills should not be performed in the setback area nor should flatwork such as decks or driveways be constructed.

FOUNDATIONS

Portions of structures located between 25 to 45 feet of the bluff top should be founded on continuous or pier foundations extending to the less weathered bedrock. Footings bearing on rock may be proportioned using a net bearing pressure of 4000 pounds per square foot. These deep footings will eliminate the effects of any potential slope instability of the Marine Terrace deposits (soil) along the bluff edge. Portions of structures supported by foundations located further than 45 feet from the top of bluff may be supported upon shallow spread and continuous foundations established upon the golden brown to brown fine to medium sand or structural fill. Under no circumstances should foundations be established upon the upper loose dark brown silty sand soils.

Shallow foundations should be proportioned using the 1982 Uniform Building Code criteria for footings established upon sand soils. Bearing values may be increased by one-third for infrequently applied live loads.

Lateral forces imposed upon the foundation may be resisted by friction between the base of the footing and the supporting sub soil and/or the development of passive earth pressures within the backfill. For frictional resistance, a coefficient of 0.4 may be utilized. A properly compacted granular backfill may be considered equivalent to a fluid with a density of 300 pounds per cubic foot. When both friction and passive resistance are used in combination, the smaller of the two values should be reduced by one-half.

Installation of foundations should not be attempted in standing water. The bottom of all excavations should be cleaned to remove loose soil.

Settlement of structures founded as recommended above will be minimal.

EARTHWORK

Prior to commencing construction activities, the upper 6 to 12" of the site soils termed topsoil, should be removed and stockpiled for future use as site grading fills and for revegetation.

Earthwork on the site should be limited to minor cuts and fills, not in excess of 5 feet around the structures and at the tennis court. Structural fill should be used in areas subject to structural loading. The on-site sands and any free draining material free of organics may be used as structural fill. Compaction should occur in 8 inch lifts and to 90 percent of the maximum dry density as determined by the ASTM* D-1557 Method of Compaction.

Prior to placing the structural fill, the upper 12 inches of the near surface soils should be removed and the exposed native sandy soil conditioned and compacted to structural fill requirements. The near surface soils may then be placed above the prepared subgrade to structural fill requirements.

Permanent shallow cuts should have slopes no steeper than 3 horizontal to 1 vertical.

SLOPE STABILITY

The stability of the bluff slope was analyzed using a Victor 9000 computer and the Modified Bishop Method of circular arc stability analysis. This method was selected over others because of the geometry of the slope and the physical properties of the rock and soil which comprise the slope and are described in "Site Conditions, Bluff Slope" section of this report. All failure modes were considered for the typical bluff section shown on Plate 5; however, detailed analyses was limited to the Marine Terrace deposits which overlay the relatively unweathered Franciscan bedrock. Deep seated failure of the bedrock itself is considered remote.

The soil properties for the medium dense to dense sand soil of the Marine Terrace deposit was assumed at $\phi = 30^\circ$, $c = 0$ psf, and a unit weight of 120 pounds per cubic foot. The bedrock interface was taken at depth 12.0 feet. Assumed bedrock properties were taken as $\phi = 0^\circ$, $C = 10,000$ psf and a unit weight of 140 pcf. Depth of water was assumed at 8.5 feet based on soil coloration in Test Pit 4, with bedrock considered unsaturated.

A factor of safety of 1.44 and 0.85 was obtained for static and earthquake loading conditions in the Marine Terrace soils, and 5.60 and 4.07 for static and seismic failures through bedrock. A 0.20 coefficient was used in analyzing earthquake conditions. The factor of safety is defined as the total relative resistive forces within the soil and/or rock mass divided by the total driving forces imposed by the loading condition. Detailed computer printouts of the above stability analyses are presented on Plates 6A and 6D. The failure circles and factors of safety are presented for the "typical" bluff section on Plate 5.

A factor of safety less than 1.0 indicates that instability of the Marine Terrace deposits (upper 12 feet of bluff) may occur with a combined high water table and earthquake loading condition. The upper slope demonstrates an acceptable factor of safety for static conditions. Such an earthquake induced failure would lead to a bluff

*American Society for Testing Materials

top retreat of approximately 10 to 12 feet where the soil cover is greatest along the bluff top. (Plate 2). In areas where there is little or no soil cover at the bluff edge and all bedrock conditions below the Marine Terrace soils, no failures will occur.

In order to account for the potential instability of the bluff top soils, the recommended 25 foot setback from bluff edge using foundations to bedrock plus basement should be followed. Where foundations are over 45 feet from the bluff edge conventional spread and continuous footings founded on soil are adequate. By founding structures located close to the bluff on bedrock, any failure of the Marine Terrace soils would not jeopardize the structure.

The steeper portion of the slope into Dark Gulch should be considered subject to shallow slope failures which would tend to strip the surface soils from the underlying bedrock. Test Pit 3 indicates that the soil cover approaches 6 feet in thickness near the upper portion of this slope. Therefore, it is recommended that a 15 foot minimum setback from the slope break (to 1:1) be maintained for any site development.

BLUFF RETREAT

Minor bluff retreat at the site due to wave and wind action is anticipated over the expected life of the structure (50 years). Precise calculations of the rate of retreat are not possible; however, examination of aerial photographs taken in 1963 and again in 1972, our examination of the bluff prior to and following the severe winter storms and high tides of 1982 - 1983 (estimated as one in five hundred year combined events) and the presence of vegetation on the bluff face, indicate that the relative bluff retreat due to the weathering process will be less than two feet over the 50 year period.

The proposed setback is considered adequate for the anticipated bluff retreat.

SEISMICITY

The proximity of the site to the San Andreas Fault Zone requires that any structure be designed to withstand the effects of earthquake-induced loads. In order to limit damage to the structure itself, it is recommended that as a minimum, the design incorporate the criteria outlined in the 1982 edition of the Uniform Building Code for structures located in Seismic Zone 4.

SEPTIC SYSTEM

The septic system for the proposed structures will be located a minimum of 60 feet from the bluff top and 24 feet from the steeper portions of the Dark Gulch ravine. Our analysis indicates that there is no shallow groundwater located above the relatively impervious

Franciscan bedrock. Based on textural analysis, 90 feet of standard leach trench, three feet deep, two feet wide, having 12 inches of rock below the pipe, will be required for each proposed bedroom. The toilet in the gate house will require 20 feet of standard leaching trench.

A 1200 gallon septic tank will be required for the three bedroom house, while 810 gallon tanks will suffice for the studio and gate house. Prior to final design of the septic system, a topography map of this site should be prepared in order to determine the fall of the effluent line from the septic tank to the leach field. It appears the primary septic system will gravity flow; however, the replacement area may require pumping of effluent should it ever require installation.

The site conditions and the geometry of the proposed development and septic system installation will meet Mendocino County and California State Water Quality Control Board standards for residential on-site sewage disposal. The well drained nature of the soils indicates that the effluent infiltration will not affect slope stability.

Plate 2, Plot Plan, depicts the layout of the proposed septic systems. Plate 8 shows a section of the standard trench.

SITE DRAINAGE

Site drainage considerations should be minimal. The driveways, parking area, and tennis courts will not adversely affect the site drainage characteristics. However, the studio, residence, and associated terraces should have storm water runoff collected by storm gutters and catch basins and directed to dry wells. Dry wells should be located no closer than 50 feet from the bluff edge and designed of rock filled pits which provide 2.5 cubic foot of pit per 100 square foot of flat work and roof area.

Since the exact location of wet wells will depend on structural consideration, etc., of the building, it is recommended that detailed design of these drainage features be made by this office during the final design stages of the project. Tentative locations of dry wells are shown on Plate 2.

In addition, basement areas should be waterproofed and drained to dry wells, possibly via sump pumps.

SITE CONDITIONS

SURFACE

The site is located one mile north of Albion between Highway One and the Pacific Ocean. Two thirds of the northern site boundary is formed by Dark Gulch. The Pacific Ocean and associated bluff form the west and remaining (western) one third of the north boundary. From

the southern site boundary, the ground surface slopes gently down towards the north and west at approximately 5 percent. The slope increases gradually to on the order of 1 horizontal to 1 vertical as it nears Dark Gulch. The floor of Dark Gulch is slightly above sea level, flat, and a backwater area for the stream. In the area of the bluff, the ground surface slopes at on the order of one-half horizontal to one vertical for an elevation change of 90 feet to the Pacific Ocean, where little to no beach is present. The general slope of the ground surface is indicated on Plate 2.

Vegetation on the site ranges from tall pines and fir on the east end of the site to a thick cypress grove in the mid portion to open meadow and bull pines on the west. Some grass and small pines cover portions of the upper one-third of the bluff slope.

SUBSURFACE

Subsurface conditions at the site were determined by excavating five test pits to depths ranging from 6 to 12.5 feet below existing grade and by examination of the bluff face. The site is underlain by 1.0 to 2.0 feet of very loose to medium dense silty fine to medium sand with some clay. The upper 6 to 12 inches contain major roots and is classified as topsoil. Underlying the near surface sand, a medium dense to dense golden brown to brown fine to medium sand with some silt and clay was encountered. This layer sometimes grades with zones of relict rock structure with depth. In all test pits moderate to slightly weathered gray to gray brown sandstone was encountered at depths ranging from 6.0 to 12.0 feet below existing grade. From 0 to 12 feet of soil appears to be present on the bluff face.

Groundwater was not encountered in any of the test pits, however, groundwater is indicated by the coloration of soil in test pit 4 at 8.5 feet below existing grade. Logs detailing the soils and groundwater conditions encountered in each test pit are depicted on Plates 3A through 3E. The nomenclature used to describe the soils is presented on Plate 4, Unified Soil Classification System.

BLUFF FACE AND SLOPES

Examination of the slope into Dark Gulch and the ocean bluff face indicates that the bedrock is relatively resistant to erosion. The bedrock exposed on the bluff face ranges from moderate to highly fractured and is unweathered along the ocean becoming moderate to highly weathered at the mouth of Dark Gulch. Some fresh surface exposures in the more weathered areas indicate recent spalling of the rock surface. This spalling is relatively shallow and associated with the bluff retreat toward the upstream direction of Dark Gulch. Another small spall area is present in the less weathered area of the bluff. Several minor vertical fracture zones and minor seepages of water were noted at the ocean level. Plate 5 depicts the bluff section near the proposed house.

SEISMICITY

The site is near the San Andreas Fault which is located in the ocean floor approximately 8 miles to the west. This fault is postulated to be capable of an 8 - 3/4 (Maximum credible) magnitude on the Richter Scale.


LABORATORY TESTING

In order to aid in classifying the soils and to determine the suitability of the soils to accept sewage effluent, a series of grain size analyses were performed on the representative soil samples obtained from the test pits. The results of these tests are presented on Plates 7A and 7B of this report.

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If you have any questions regarding the information presented herein, please contact us.

Yours very truly,

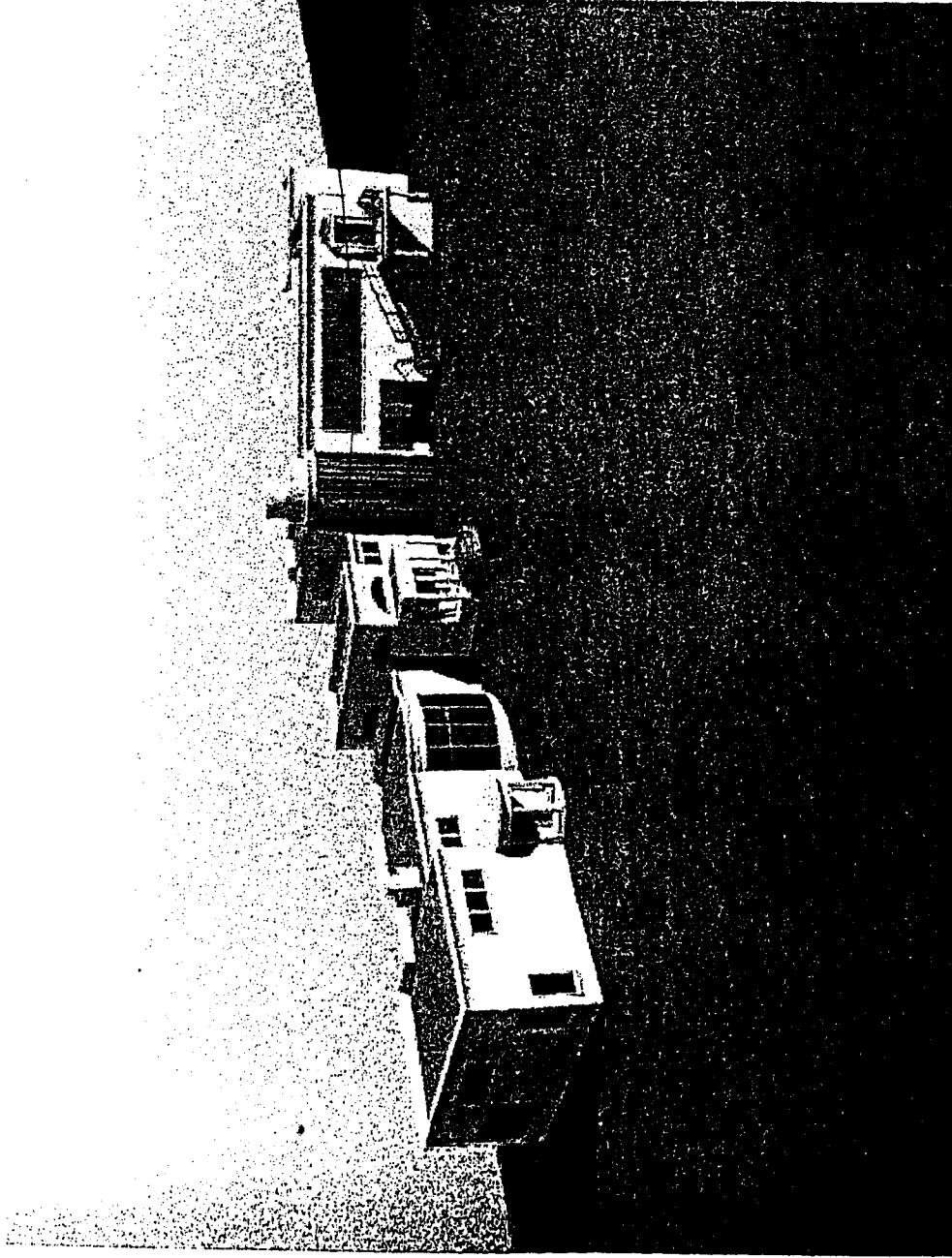


Ronald E. Rager
R.C.E. C32586
State of California

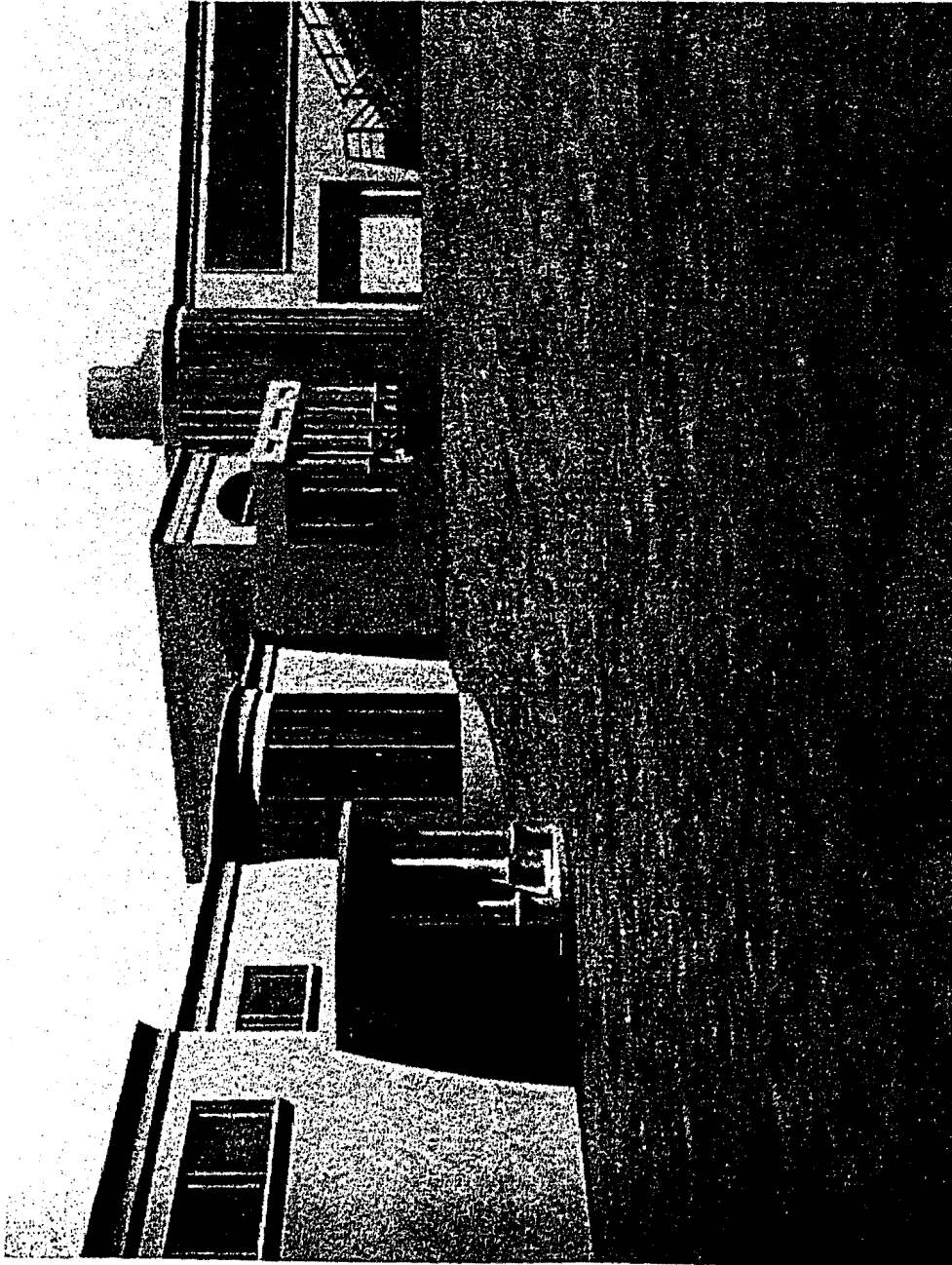
Plates:

Plate 1	. . .	Vicinity Map
Plate 2	. . .	Plot Plan
Plates 3A - 3E	. . .	Log of Test Pits
Plate 4	. . .	Unified Soils Classification System
Plate 5	. . .	Bluff Sections
Plates 6A - 6D	. . .	Slope Stability
Plates 7A - 7B	. . .	Soil Test Results
Plate 8	. . .	Leach line Section

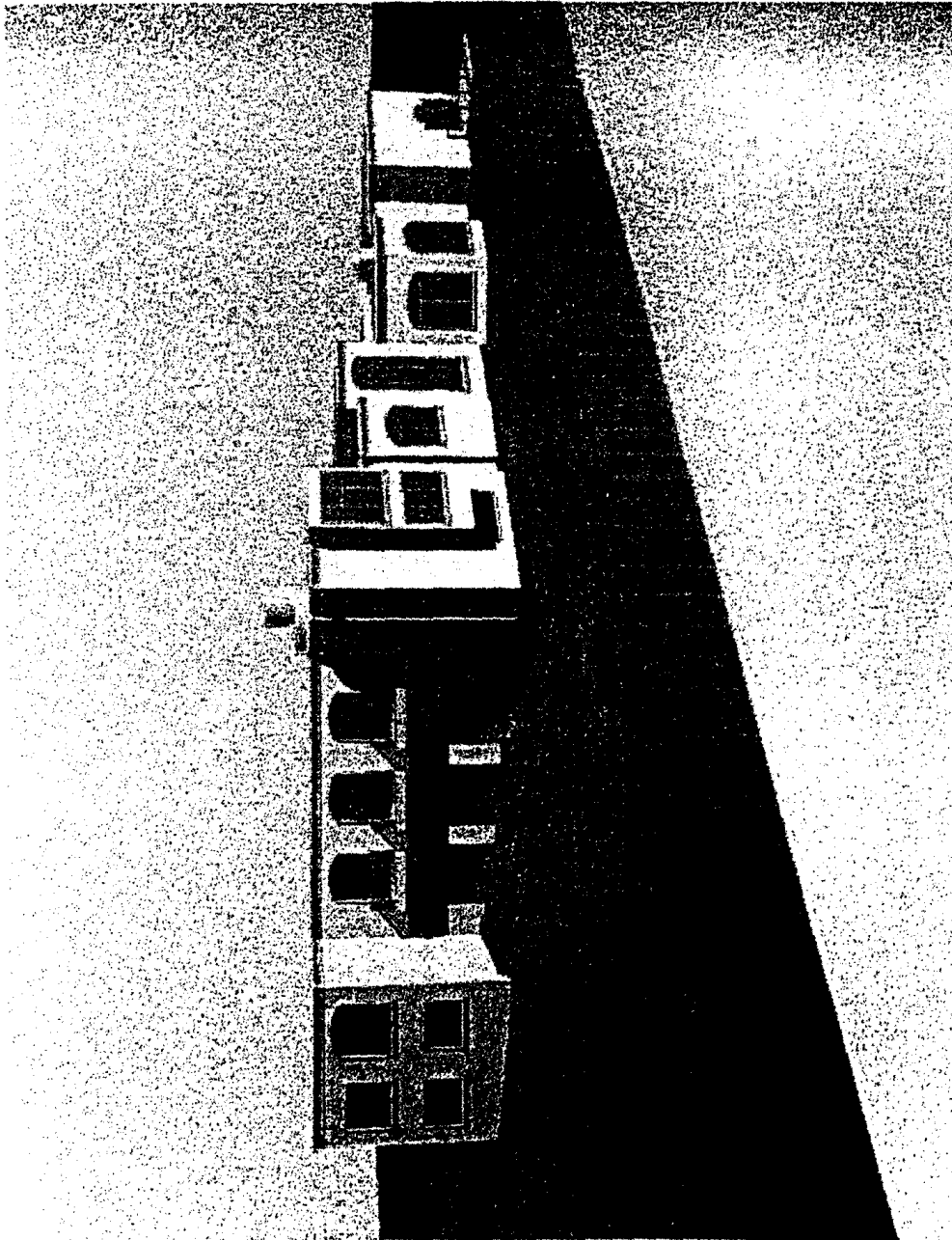
EXHIBIT NO.	12
APPLICATION NO.	1-83-223-A1
WEBBER	
PROPOSED HOUSE DESIGN	



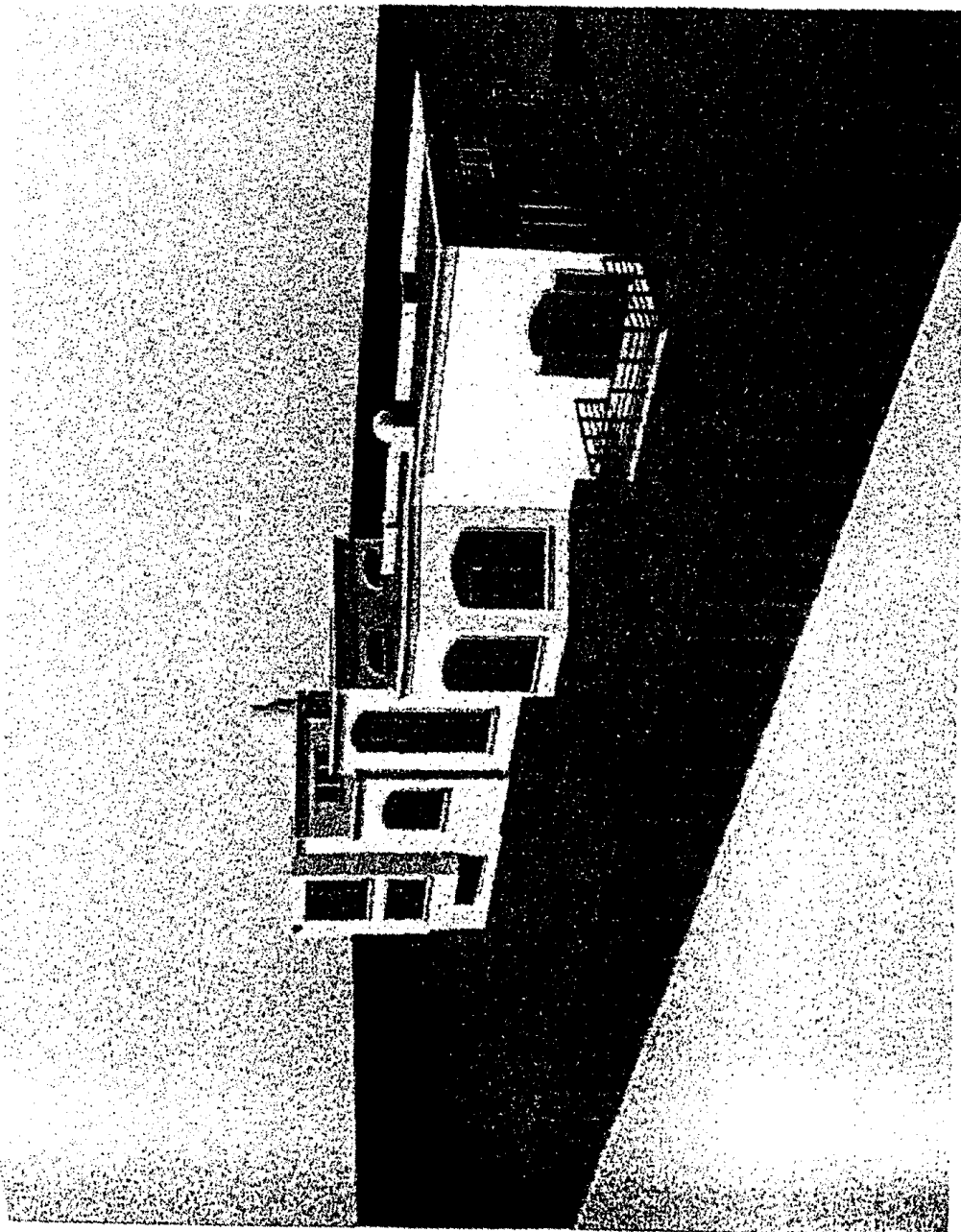
view from southeast



view from southeast - ground level view



view from northwest



view from southwest

1 STATE OF CALIFORNIA
2 COASTAL COMMISSION

3
4 CERTIFIED COPY

5
6 GARY & CHRISTINE WEBBER)

7 COMMUNITY OF LITTLE RIVER)

8 COUNTY OF MENDOCINO)
9

Permit No. 1-83-223-A

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11
12
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14
15
16
17 Friday
18 August 11, 2000
19 Agenda Item No. 7.a.

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20 CALIFORNIA
21 COASTAL COMMISSION

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23 Waterfront Hilton Beach Resort
24 21100 Pacific Coast Highway
25 Huntington Beach, California

EXHIBIT NO. 13
APPLICATION NO. 1-83-223-A1
WEBBER (pg. 1 of 26)
TRANSCRIPT FROM AUG. 11, 2000 HEARING

A P P E A R A N C E S

COMMISSIONERS

Sara Wan, Chair
Paula Daniels
Christina L. Desser
Shirley Dettloff
Cecilia Estolano
Gregg Hart
Pedro Nava
Mike Reilly
John Woolley

Pat Neal, Transportation & Housing Agency

STAFF

Peter Douglas, Executive Director
Ralph Faust, Chief Counsel
Dan Olivas, Deputy Attorney General
Steve Scholl, Deputy Director

-oOo-

I N D E X T O S P E A K E R S

STAFF

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Chief Counsel Faust.....	24

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Nava.....	23
Reilly.....	19

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1 California Coastal Commission

2 August 11, 2000

3 Gary & Christine Webber -- Permit No. 1-83-223-A

4 * * * * *

5 DEPUTY DIRECTOR SCHOLL: The next item then is
6 7.a., and this is an amendment to a permit. It is a permit
7 for construction of a home in Mendocino County, and the
8 permit is vested. There is a partial structure there --

9 EXECUTIVE DIRECTOR DOUGLAS: Would you speak up a
10 little bit. They are having trouble --

11 DEPUTY DIRECTOR SCHOLL: Oh, okay, sorry.

12 There is a structure there, partially completed
13 home, built under a permit approved many years ago by the
14 Commission. The project that is before you is an amendment
15 to make certain additions and changes to that originally
16 approved plan.

17 Some of what has been built was not in accordance
18 with the original plan, so this project is kind of a mix of
19 after-the-fact elements, and then new unbuilt, as yet
20 unbuilt, elements. And, I'll show some pictures to try and
21 explain that.

22 The standard of review here is the LCP, and then
23 the public access policies of Chapter 3, because this is an
24 area with a certified LCP. And, the two issues that are
25 raised by it are geologic stability, the proximity to the

1 bluff --

2 CHAIR WAN: Could you hold on just a moment.

3 Can you hear him? Because the applicant has a
4 hearing problem. Can you hear him? does it need to go up a
5 little bit?

6 MR. WEBBER: Just a little bit, please.

7 CHAIR WAN: Just a little bit? He asked us
8 specifically. And, maybe it is very loud for us, but he has
9 a hearing problem.

10 EXECUTIVE DIRECTOR DOUGLAS: Can you turn it up,
11 Tyrone?

12 CHAIR WAN: If we could turn it up, the sound,
13 just a little bit.

14 DEPUTY DIRECTOR SCHOLL: I'll talk a little
15 closer, if that --

16 CHAIR WAN: Oh, yes, that will do it, too, okay.

17 [Overhead Presentation]

18 DEPUTY DIRECTOR SCHOLL: Okay.

19 So, the two issues are geologic stability, the
20 proximity to the bluff, and then the effect of the project on
21 visual resources.

22 First, let me show some overheads of the site, and
23 try to explain the changes that have been proposed here. The
24 bluff line is here, and the originally approved house is the
25 green. It was kind of a long block, and now what is proposed

1 is the red. So, as you can see, it is approximately on the
2 same footprint as the original house, but it is a little
3 different shape.

4 [Discussion off microphone]

5 Oh, I am sorry, you are right. The top of the
6 bluff is the lighter dashed line. The setback is 25 feet,
7 and so the effect of changing the footprint and design of the
8 house does not change it with respect to that. It would
9 remain 25 feet from the bluff.

10 Can I have the next overhead, then.

11 And, this is showing the originally approved floor
12 plan of the dwelling. It was, what was called in the plans a
13 one-story house with a 20-foot height limit, but it had two
14 living levels. There was a basement level up here, and then
15 this is the first floor level above that, and the elevation
16 at the bottom. So, again, a one-story house, but with a
17 20-foot height, and, then contrast that with what is proposed
18 now.

19 If we can have the next overhead.

20 Now, what is proposed are three living levels,
21 plus a rooftop observation deck. So the bottom level, again,
22 there is a basement level here, and then a first floor level
23 here, with a garage in this area.

24 And, then the next slide has the upper levels.
25 This would be a second story addition here, and then there is

1 an observation tower that gives access to a rooftop deck
2 here. So that is the contrast of what was proposed before,
3 from what is proposed now. And, just to highlight this area,
4 our conditions addressed removal of the second story, and it
5 is this area that is suggested for removal from the proposed
6 design.

7 Can I have the next overhead.

8 And, then here a series of elevations. The one
9 that is most relevant, that would be seen from Heritage House
10 to the north, is the middle one here. And, the house is at
11 kind of an angle. This doesn't make it look like that. It
12 looks like a long straight line, in fact, it is angled in the
13 middle. But, the second story that we are talking about
14 deleting is here. There is a tower here that is also
15 recommended for deletion.

16 And, then one point I want to clarify, because the
17 staff report was not entirely clear on this. There is a
18 second story here. This portion of the second story has
19 already been constructed. It is within the height limit
20 originally approved, which was 20 feet, but it is a second
21 story. So, there is kind of an anomaly. That original
22 permit said a one-story house with a 20-foot roof. What was
23 actually constructed, this portion is already built, it is a
24 second story, but it is within the 20 feet. And, our staff
25 recommendation did not make clear that that was to be

1 deleted. So, I do want to clarify that, that what the LCP
2 standard is is not the height limit. It is one story. It
3 says one story in highly scenic areas, unless an increase
4 would be compatible with the surroundings, and subordinate to
5 the character. And, I will show you some additional
6 pictures, showing why our conclusion is that a second story
7 in this area, and the tower, including this portion, are
8 really not subordinate to the character of this surrounding
9 area.

10 EXECUTIVE DIRECTOR DOUGLAS: I might just point
11 out the fact that it is already built is really irrelevant,
12 because it is an after-the-fact, so you have to treat it as
13 though it were not in place.

14 DEPUTY DIRECTOR SCHOLL: So, if we could have the
15 next overhead, then.

16 And, by the way, this is overhead No. 5. This is
17 an overhead that was supplied by the applicant. It is
18 available on his web site, actually. I don't if any of you
19 have had a chance to see that, but I did make some trans-
20 parencies from that. And, showing the as built, here is an
21 area -- here is the second story area. Here is the tower.
22 This part, at the south end, is just the foundation and the
23 lower portion of the home. So, it is a partially constructed
24 house that is there.

25 And, then if we contrast that with what is

1 proposed. The next overhead, this is taken from the air --
2 no, that is a aerial shot, so not a view that people would
3 get from the ground.

4 Here is another aerial shot showing the house as
5 proposed to be built. This is the completion of the first
6 floor, at the south end, and the other facilities. That is
7 overhead No. 6.

8 And, then moving to No. 7, this is a view also
9 from the air, kind of from the north, again, showing the
10 uncompleted portion of the south end of the house, the
11 basement level. And, here is the tower that is recommended
12 for removal. The second story that is there now. And, over
13 here is where the proposed additional second story would go.

14 The next overhead, which I believe is No. 8. This
15 is the applicant's rendering of how the completed house would
16 look, with the second story added over here, and then the
17 first floor added over there.

18 And, then the next overhead, which would be No. 9
19 -- oh, No. 10, I am sorry. Okay, No. 10, this is a view from
20 ground level, approximately what you would see if you were
21 somewhere in space between the Heritage House grounds, and
22 the project.

23 And, I have some slides that right after this I
24 will show, from actually where you would see.

25 But, this is an artist's rendering of completion

1 of the tower, and the existing second story here, and then
2 this is the proposed additional second story, there. And,
3 most of the house from that view, as you can see, there are
4 trees, and there is vegetation. Most of it is screened, but
5 the second story portions, and the tower, do project above
6 the tree line there.

7 That completes the overheads, and then I just have
8 a handful of slides.

9 [Slide Presentation]

10 And, thank you, we do need it dark here, because
11 it is a little hard to see.

12 This is slide No. 1, from the grounds of the
13 Heritage House, not from the Inn, itself, but from the
14 extensive grounds. When you are out on the lawn, that is the
15 existing house on the bluff across, the tower, and the second
16 story portion are right there.

17 Then this is a view from the grounds looking more
18 seaward. The house site is over off of the picture here.
19 But, the purpose of this is to show that the view from the
20 ocean of the house is really not a significant matter,
21 because the bluff extends way out. So, the main viewing
22 place where this would be seen is from the grounds of
23 Heritage House.

24 And, then another view from the grounds. Again,
25 the structure is right there. There are no other houses

1 visible from the grounds of Heritage House. This would be
2 the only structure that is in the viewshed there. As you
3 look south, it is basically an open completely undeveloped
4 view.

5 That completes the slides then.

6 So, back to the two issues: on the geologic
7 stability issue, although the angle of the house has been
8 suggested to be changed, it would be no closer to the bluff
9 then before. So, there is no additional hazard proposed, in
10 comparison with what was originally approved.

11 The original project did have a geologic report
12 that was updated in 1998, and indicates that as long as
13 construction stays out of that 25-foot zone, and is anchored
14 to bedrock, that the project would be safe for a lifetime of
15 75 years. And, Dr. Johnson could, perhaps answer any
16 questions you have about the geologic report.

17 On the other issue, the visual protection issue,
18 again, this is highly scenic, although it cannot be seen from
19 Highway One, it can be seen from the grounds of Heritage
20 House. The Commission has previously found that that meets
21 the test of a public place for purposes of this policy.
22 Another applicant had a proposal for a house on the bluff to
23 the south that was moved back in order to keep it out of the
24 viewshed.

25 And, again, the standard for highly scenic areas

1 is one story, unless it would not affect public views to the
2 area, or be out of character with the surrounding structures.

3 This proposed amendment would add a significant
4 second story element, as well as the tower, which reaches 28
5 feet, and so in sum we are recommending denial of that
6 portion. And, because part of this is already built, we are
7 doing that through a somewhat unusual procedure.

8 If you will note there is a resolution that has
9 two parts to it. It is to approve in part, and deny in part.
10 And, the approved part would be those portions of the change
11 that are other than the tower and the second story addition.
12 The denial portion would cover all of the second story,
13 whether above the garage or not, and the tower.

14 And, that concludes my report.

15 CHAIR WAN: I have two speaker slips, Gary Webber,
16 and Lou Zystra. And, Mr. Webber, would you tell me how long
17 you will need?

18 MR. WEBBER: I beg your pardon.

19 CHAIR WAN: How long will you need to speak?

20 MR. WEBBER: Probably 10 minutes.

21 CHAIR WAN: All right, 10 minutes.

22 MR. WEBBER: Ten minutes.

23 A little background, how did it come that this
24 project received a violation? And, it is interesting. We
25 had the property for sale. We had an escrow. We were ready

1 to close, and the realtor decided to notify Jo Ginsberg that
2 the tower was 34-feet tall. Now, of note, staff has agreed
3 that the tower is 28-feet tall. And, so Ms. Ginsberg wrote a
4 letter of violation. We got it.

5 And, the realtor said, "Gee, there is a violation
6 here. My customer will still buy the property, but they are
7 going to reduce the price \$100,000."

8 Now, from my point of view, what that realtor did
9 was to use the Coastal Commission to unwittingly leverage a
10 real estate deal. The communications, it seems, should be
11 between the Coastal Commission and the permittee. That said,
12 we want to comply with everything that is necessary.

13 This summarizes what I propose, with respect to
14 action on this issue. Let's take the first two issues. And
15 I have shared with Steve the information that he didn't have
16 before this hearing with regard to Conditions 11 and 12. I
17 have furnished him with evidence of engineered plans for
18 septic, engineered plans for retaining walls. I have
19 furnished him with permitted working drawings for the
20 construction, wherein the foundation condition is specified,
21 and, furnished him with a county permit, and the inspection
22 of that condition, and the county signed all of it off. They
23 didn't have this information before they prepared the report,
24 and I suspect that if they did, it would not have been a
25 condition.

1 And, we also have a permit for the septic tank,
2 and the dry well. They are already installed. So, the thing
3 that is a little complicated about this application is the
4 foundation is in, and it is in bedrock. The septic tank is
5 in. It was approved by the county and inspected. And, the
6 dry well, and the drainage system is in.

7 The only thing that I would say that might be
8 sensible, with respect to a condition, is that the new plans
9 reflect diversion of roof drainage through pipes to the
10 existing dry well. We weren't going to divert the water with
11 surface flow. We were going to run it through pipes, like is
12 the condition on the existing studio.

13 [Slide Presentation]

14 Now, this issue of the second story bedroom suite.
15 Let's go to the first slide. You have seen this. This is
16 the existing construction. What is important to us is that
17 we be able to move ahead. This has been in the weather for
18 eight years. Structural engineer has looked at it, and says
19 it hasn't deteriorated, which is miraculous, but it will in
20 time. We are anxious to get this thing wrapped up before
21 winter, so it doesn't deteriorate.

22 The other thing that is of note is that that
23 tower, and that fairly ugly structure has been there for ten
24 years, but it is really out of sight of public view, except
25 from Heritage House, and there have been no complaints. So,

1 it is not as if you need to speculate whether or not this is
2 something that will be objectionable to the public. It has
3 not been, and it is not even finished.

4 Next slide, this site is entirely subordinate.
5 This construction is entirely subordinate. The red arrow,
6 sloppy red arrow, points to all of the trees that surround
7 the property, and it is not visible from any place. It is
8 not visible from the end, or two-thirds of Heritage House.
9 But, it is visible from the kiosk area of Heritage House, and
10 you have seen some of those pictures.

11 Next picture, you have seen this. This is the
12 existing construction. Most of the -- all of the basement,
13 most of the first floor, is concealed with the existing
14 vegetation. This was built ten years ago, and I have to give
15 the builder owner credit, because he did ten years ago what
16 you want done now. And, he did everything he could to insert
17 this home within the natural greenery and the natural trees.

18 Now, the floor above the kitchen is a bedroom.
19 The first I have heard that that was not permissible was
20 today. The county has approved it. The county issued a
21 permit on it. The staff in Eureka approved it as built.

22 The issue that I think is relevant is that it is
23 within the 20-foot envelope, and as such it is justified and
24 should stay. It would cause an undue hardship if it had to
25 be removed.

1 Now, we get to the tower issue. We believe the
2 tower is necessary for safety purposes, because you go up on
3 the observation deck, sometimes it is windy, and this
4 provides a way to get up there.

5 What I proposed is reducing the height of the
6 tower by two feet, and by putting planters around the base of
7 the tower, and planting ferns or greenery that will
8 completely blend it in with the green background.

9 The next slide please. The next issue has to do
10 with the second story that we propose over the garage. Now,
11 the plans that I have that were permitted by the county has a
12 second story over the great room, and the master bedroom,
13 that we plan now. That was the second story of about 1900-
square feet.

14 The second, we are eliminating that, and reducing
15 the height, and reducing the most visible angle at which the
16 building is visible from Heritage House. What we are adding,
17 angles from that building at 45 degrees, and it is north
18 facing. Inasmuch as it is north facing, that part of the
19 building is always in the shade. It is also screened by
20 trees.
21

22 Bob Merrill commented when he stood on the roof of
23 the garage, and looked at it, he said it was screened on all
24 sides, from everything, except from the gazebo at Heritage
25 House. Yes, it is visible from that point.

1 So, let me look here at my notes.

2 The proposed plan reduces the square footage of
3 this structure from 7938-square feet, to 6380. The square
4 footage of the second floor is reduced from 1900 to about
5 1400. The portion of the second story that we propose is far
6 less visible than the 20-foot height that is approved.

7 So, the issues have to do with the permitted
8 items, which I think can be resolved when I produce the
9 evidence of inspection of things that are built, that being
10 the foundation, the septic, and the drainage.

11 The other issue has to do with the 1400-square
12 feet. It is within the 20-foot height limit that is approved
13 by the Coastal Commission, and as such it doesn't impose any
14 -- in fact, it is less of a visual proposition than what was
15 before.

16 The last is the tower. We propose mitigation that
17 would make that tower blend in with the scenery behind it.

18 And, if you have any questions, I would be happy
19 to answer them.

20 CHAIR WAN: I have to call up the next speaker,
21 and the Commission's rules are that if you will take your seat
22 if you are finished, we will continue with the public
23 hearing. If the Commissioners have questions, they do that
24 at the end.

25 Next speaker is Lou Zystra.

1 [No Response]

2 Is Mr. Zystra here?

3 [No Response]

4 Okay, with that, I will close the public hearing
5 and return to staff.

6 DEPUTY DIRECTOR SCHOLL: Yes, Madam Chair, just to
7 respond to a couple of things to try to clarify.

8 Exhibit 5 in the staff report is the same
9 originally approved floor plan as what I showed on the
10 overhead, and that shows a two-level structure, one of them
11 being a basement.

12 So, Mr. Webber referred to something the county
13 had approved as a second story. I am not sure what that is,
14 because the plans approved by this Commission, or its
15 predecessor Commission, were for a one-story house, one level
16 below grade, and then a one-story house.

17 And, Exhibit 10 is the originally approved permit.
18 It does not specifically state a 20-foot height limit.
19 Rather, it has plans attached to it, that show a one-story
20 house with a 20-foot height. So, staff's position is the
21 applicant has a vested permit. He could build the remainder
22 of that project as originally approved.

23 Since he has come to the Commission for an
24 amendment, however, we believe it is appropriate to apply the
25 LCP standard. And, the LCP standard is unless it is sub-

1 ordinate to the character of the surrounding, it should be
2 one story.

3 So, our view is whether 20 feet, or not, is should
4 be a one-story house, and that would require deletion of all
5 of the second story. The way to do that would be to amend
6 Condition 10.a. The first part there, architectural
7 revisions, and Part A, that says approximately 1400-square
8 foot second story should be deleted. That actually should
9 state the second story shall be deleted in its entirety.

10 And, then appropriate changes to go with that
11 should be made to the findings to reflect that the entire
12 second story would be removed. And, also to the after-the-
13 fact findings on page 26, there is a mention there that the
14 cylindrical observation tower is completed. In fact, in
15 addition to that, a portion of the second story is completed.

16 So, with those changes, that is our recommend-
17 ation. I am available to answer any questions.

18 CHAIR WAN: Commissioners?

19 Commissioner Reilly.

20 COMMISSIONER REILLY: A couple of questions.

21 I don't know whether this goes to the applicant,
22 or staff, but there was a statement that the Eureka staff
23 approved this as built. What does that mean? The applicant
24 made the statement that the Eureka staff approved this as
25 built?

1 MR. WEBBER: Yes, except for the tower --

2 COMMISSIONER REILLY: Come to the microphone,
3 please.

4 CHAIR WAN: Yes, come to the tower.

5 COMMISSIONER NAVA: Come to the microphone.

6 CHAIR WAN: I mean come to the microphone.

7 When you talk --

8 COMMISSIONER REILLY: What did they approve?

9 MR. WEBBER: It was my impression that staff
10 approved the existing construction as built, except for the
11 tower, and the tower was the only issue that was in
12 contention.

13 COMMISSIONER REILLY: What staff are we talking
14 about?

15 MR. WEBBER: I beg pardon?

16 COMMISSIONER REILLY: What staff are we talking
17 about?

18 MR. WEBBER: Eureka.

19 CHAIR WAN: Commission, or county?

20 MR. WEBBER: Bob Merrill, and Tiffany.

21 EXECUTIVE DIRECTOR DOUGLAS: I think what the
22 gentleman means is that they were proposing a recommendation
23 of leaving the second story that has already been built
24 after-the-fact, as opposed to the tower.

25 And, from our prospective, as we looked at this,

1 we felt that it should be a one-story house, and the fact
2 that there may have been an after-the-fact, or that part of
3 the second story has already been built, is really beside the
4 point. The question is, is it appropriate to have it as a
5 one-story house, or to permit what is being proposed in the
6 amendment.

7 Our recommendation is what is before you. The
8 fact that the district staff may have indicated what their
9 preference was does not complete the process of a recommend-
10 ation coming to you.

11 COMMISSIONER REILLY: That helps to clarify, Mr.
12 Director, thank you.

13 Another, what permits did you pull for this design
14 from the County of Mendocino?

15 MR. WEBBER: If I understand what you said, Larry
16 Wood was the builder, and he pulled a permit to construct,
17 essentially what is there, from the County of Mendocino, and
18 it reflected the two-story configuration.

19 COMMISSIONER REILLY: And, do you know -- was it
20 your contractor that did that, then, and not you personally?

21 MR. WEBBER: I beg your pardon?

22 COMMISSIONER REILLY: It was your contractor who
23 did that?

24 MR. WEBBER: Larry was the -- was an architect,
25 and he was subcontracting the work.

1 COMMISSIONER REILLY: When was the decision made
2 to change the design from what the Commission approved to the
3 new design?

4 MR. WEBBER: It was changed -- I was very good
5 friends with Larry. And, from my discussions and knowledge
6 of this, the 20-foot height envelope was never changed. He
7 retained compliance with that, with the exception of the
8 tower, No. 1.

9 No. 2, the plans that were approved by the county
10 were approved in 1988 or '89, and I think this Coastal
11 approval was in '85.

12 COMMISSIONER REILLY: And, to your knowledge, no
13 one said to the architect, or the owner, that if you want to
14 modify these plans, you have to go back and amend your
15 coastal permit?

16 MR. WEBBER: He would of, if he knew he should of,
17 but he didn't.

18 What is curious, Larry is gone, the tower is
19 exactly 28 feet. Somewhere in this whole proposition
20 somebody told him what the legal limits were. He didn't
21 follow the right procedures, I admit that. But, that tower
22 is exactly 28 feet. It is not happenstance. Somebody was
23 telling him that. I don't know who.

24 COMMISSIONER REILLY: Well, one of my comments is,
25 in addition to whatever we decide to do with this particular

1 application, I remain concerned that we keep seeing things
2 happen in Mendocino where the county approves things that,
3 you know, are not in conformance with what we are doing, and
4 you know there is no information in here at all from staff
5 about what the county's action were relative to letting this
6 thing get built ten years ago. I would be very curious to
7 see exactly what that is, because I think there needs to be,
8 you know, a better level of communication between the
9 Commission, and the County of Mendocino, in terms of how
10 these things are handled.

11 CHAIR WAN: Any other comments?

12 [No Response]

13 A motion?

14 [No Response]

15 Can I get some motions here?

16 [MOTION]

17 COMMISSIONER DESSER: I'll move per staff.

18 COMMISSIONER NAVA: I'll second it.

19 CHAIR WAN: Well, we have two motions here.

20 DEPUTY DIRECTOR SCHOLL: It is one motion, but a
21 two-part resolution.

22 CHAIR WAN: Okay, I see.

23 DEPUTY DIRECTOR SCHOLL: And, the one will take
24 care of both.

25 CHAIR WAN: I have a motion by Commissioner

1 Desser, and a second by Commissioner Nava.

2 CHIEF COUNSEL FAUST: If I might, Madam Chair,
3 just to clarify.

4 The purpose for the two resolutions, is to make it
5 very clear of what the staff is approving, and what the staff
6 is rejecting, so that if enforcement action is necessary it
7 will be clear what the Commission is --

8 CHAIR WAN: Okay, but there is only one motion
9 needed.

10 EXECUTIVE DIRECTOR DOUGLAS: What the staff is
11 recommending, and if you adopt it, what the Commission will
12 have done.

13 CHAIR WAN: Okay.

14 Commissioner Desser, do you want to speak to your
15 motion?

16 COMMISSIONER DESSER: Yeah, I mean, I just think,
17 for whatever the reasons, under whatever circumstances, that
18 we need to discourage flouting of the law. People need to
19 come in and get coastal permits for this work. I can't
20 believe it comes as a surprise.

21 I might be -- I want to ask Steve, though, would
22 you adjust the conditions of the permit as the applicant has
23 suggested, if you had had this other information?

24 CHAIR WAN: Are you talking about 11 and 12?

25 COMMISSIONER DESSER: Yeah, would you change -- I

1 would be open to amending it, if you were persuaded by the
2 applicant that the Conditions 11 and 12 wouldn't be necessary
3 if you had the information that he had provided?

4 DEPUTY DIRECTOR SCHOLL: I think our stance would
5 be we would propose to leave the --

6 COMMISSIONER DESSER: Okay, then fine.

7 DEPUTY DIRECTOR SCHOLL: -- conditions intact, but
8 then if he has already met them, then --

9 COMMISSIONER DESSER: No problem, right.

10 DEPUTY DIRECTOR SCHOLL: -- we would certainly
11 take care of that right away.

12 CHAIR WAN: Okay, I have a motion and a second.
13 Do you want to call the roll?

14 [No Response]

15 Any objection to a unanimous roll call?

16 [No Response]

17 Seeing none, the permit amendment is approved as
18 per staff, parts A and B.

19 *

20 *

21 [Whereupon the hearing concluded.]

NOTICE

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF MADERA

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ss.

I, PRISCILLA PIKE, Hearing Reporter for the State of California do hereby certify that the foregoing 2 pages represent a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission on August 11, 2000.

Dated: September 26, 2000

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October 12, 2000

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CALIFORNIA
COASTAL COMMISSION

Mr. Robert Merrill
California Coastal Commission
North Coast District Office
P.O. Box 4908
Eureka, CA 95502-4908

Re: Reconsideration Request for Permit Amendment 1-83-223-A1

Dear Mr. Merrill:

This letter is to formally request a reconsideration of the Commission's action regarding the permit amendment A-83-223-A1 for the Webber residence in Mendocino County. While we appreciate that the Commission approved a portion of this amendment request, we believe significant errors of fact and law occurred at the hearing that compel the Commission to reconsider its denial of all portions of the second story and certain other conditions placed on this permit amendment. In addition, we believe that the applicant's hearing impairment - acknowledged at the time of the hearing - and the delay in receiving the written transcript of the proceedings, did not allow Mr. Webber to fully ascertain the extent of these errors and their impact on his residence, until he received the Notice of Intent to Issue Permit (the "Notice") on October 4, 2000. On these and other bases, this request is timely submitted so that the Commission might reconsider factual and legal errors which occurred at the hearing, and which resulted in a requirement that he remove the previously constructed and approved second story of his residence. (Special Conditions 10 (a) and (b) in the Notice.)

EXHIBIT NO.	14
APPLICATION NO.	1-83-223-A1
WEBBER	
RECONSIDERATION REQUEST (1 of 7)	

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Applicable Law

A request for reconsideration by the Commission is governed by Public Resources Code §§ 30627, and California Code of Regulations, Title 14, Division 5.5, Article 18, Section 13109 et seq. We understand that the Commission will accept a matter for reconsideration if at least one of two tests is met. They require either that "there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision." (Pub. Res. Code Section 30627 (b)(3)).

We believe Special Conditions 10 (a) and (b) in the Notice, that require Mr. & Mrs. Webber to remove the entire second story, including the main bedrooms of the residence, would not have been imposed in the permit if the proper standard of review had been applied. In addition, the Commission did not receive critical evidence from staff - the omission of which prejudiced the outcome at the hearing. Overall, this portion of the amendment request and the applicable law was incorrectly stated at the hearing and applied outside of its legal context.

The following is a partial list of the errors which occurred during the hearing:

1. Prior CCC Approval. In 1995, the Webbers received official correspondence from the California Coastal Commission that the residence was substantially in compliance with the original permit. (See Attachment A - Letter of January 20, 1995 from CCC Coastal Planner Jo Ginsburg) This inspection was done by three members of the North Coast staff. The letter received by Mr. Webber from Jo Ginsburg was not mentioned to the Commission in staff's presentation at the August 11, 2000 hearing, and was not included in the staff report or attachments. This letter states in pertinent part "With the assistance of Jim Robichaud, Bob Merrill (our Chief of Permits) and I conducted a site visit to the subject property to determine if there was a violation. (. . .) In addition, we have determined that what was built conforms essentially to the plans approved by the County. (. . .) We have therefore concluded that no violation exists." The second story elements of this residence, including the tower, were present on the site at the time of this inspection.

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Mr. Webber relied on this letter, and believed that the second story elements in place at the time of this letter were therefore permissible and vested. Moreover, in 1994 the County of Mendocino inspected and approved these improvements. When asked at the hearing by the Commissioners about previous Commission approvals, staff did not mention the January 1995 letter. Mr. Webber was not able to hear the request, and therefore could not respond at the time of the hearing with the supplemental information.

2. Height Limit. The original staff report and findings clearly authorized a 20 foot height limit on this residence. This height limit was approved by the Commission in 1983 — using the same LUP policy which analyzed the project's impact on views and its subordination to the landscape. From the outset, this residence was envisioned at this height and the vested plans and construction relied upon this height limit. When the Commission considered this project in August 2000, it was not properly advised about the earlier height approval by both the County or Commission. When considering this issue Staff did not provide the Commission with the correct LUP Policy or zoning ordinance regarding permissible height limits in the certified LCP. Staff incorrectly informed the Commissioners that the only controlling policy was the current LUP policy allowing only one story in certain areas. This was incorrect and misleading.

3. Misapplication of Certified LCP. The LUP Policies 3.5-1 and 3.5-3 regarding new development in highly sensitive areas along the coast state that such development shall be subordinate to the character of its setting and shall protect ocean and coastal views from public areas. LUP Policy 3.5-3 also states that new development is limited to one story unless the above criteria are met. These same policies were in place at the time the original permit with the 20 foot height of the residence was approved.

As the Commission is well aware, a certified LCP contains two essential elements. The LUP Policies and the implementing coastal zoning ordinances, which are incorporated in the County Coastal Zoning Code. The LUP policies cited above are specifically implemented in the Coastal Zoning Code of Mendocino County §§ 20.504.015(C)(1) (2) and (3).

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At the August 11, 2000 hearing, and in the staff report, the Commission was not informed of the applicability or relevance of the implementing Coastal Zoning Code sections that were necessary for them to complete the analysis of the amendment request. We find it quite alarming that the Executive Director expressly instructed the Commission to disregard existing portions of the second story and to give no weight to that status — while providing no background to the Commission regarding the prior approvals that authorized those second story elements. In addition to ignoring the relevance of the zoning ordinances, he indicated that only the LUP policies should apply.

Most importantly, the staff report only made reference to two of the three pertinent Coastal Zoning Code sections, and at the hearing made no reference to the applicable certified LCP Zoning Code section regarding height. The omitted Zoning Code section § 20.504.015(C)(2) states:

(2) In highly scenic areas west of Highway 1 (...), new development shall be limited to eighteen (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. (Emphasis added)

In light of this implementing ordinance, the Webber structure was approved at 20 feet in 1983, and the corresponding amendment must continue to allow modifications which are at least 18 feet, and may permit 20 feet where other evidence indicates this was permitted under the appropriate policies. The Commission was instructed otherwise at the hearing. The Webber residence is already constructed and vested at the 20 feet limit — and this has already been found by the Commission to be acceptable under the applicable policies and ordinances.

4. Views from Heritage House. In evaluating the second story elements of the Webber residence, the Commission did not treat this structure similarly to other structures it has permitted along the coast. The staff report acknowledges that the second story does not interfere with any views to the ocean or coast (staff report p. 25, paragraph 3), yet concludes that the second story is not visually compatible with the character of the surrounding area. The only evidence to support this conclusion is

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that there is a gap in the existing vegetation, making part of the second story visible to public view from Heritage House. Ironically, it is the Heritage House that most interferes with views of the coast and ocean.

While the Commission has previously found that views of the ocean from Heritage House are considered public views because it is a heavily used visitor-serving facility, this in itself should not result in a condition to demolish the entire second story. First, only a portion of the second story proposed in the amendment would be visible from Heritage House, and such visibility could easily be eliminated by a condition to plant screening vegetation. This has been done frequently by the Commission in other permits in this area. As discussed below, the Commission has an obligation to consider this option before imposing a more burdensome condition on the applicant. Secondly, portions of the originally approved residence in 1983 were also visible from Heritage House, and the Commission found that the residence was still acceptable as subordinate to the landscape. Third, the second story elements have been in place since 1991, and at no time — despite numerous visits and inspection of the site by the Commission staff and County officials — was there any indication that the structure was in violation or otherwise unacceptable to the Commission or the County (or to Heritage House) until 1999 when this amendment was conceived.

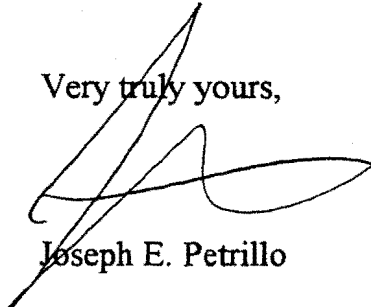
5. Less Burdensome Alternatives. The Commission has an obligation to consider less burdensome conditions to protect public views, especially when the second story (with the exception of the observation tower) in all other ways complied with the permissible height limitation. To further reduce the impact the residence might have on views from a public vantage point, the Commission could have imposed many alternative conditions to reach an equitable and reasonable resolution of the applicant's and the public's interests. This impact could have been easily remedied by requiring the applicant to create a vegetative buffer and other mitigation regularly imposed by the Commission. Mitigation measures could also have included requirements of natural exterior and non-reflective colors, and possible height reduction to 20 feet. Such conditions would have placed a lighter burden on the applicant than the requirement to demolish a structure already in place, which is otherwise in compliance with the permitted height of the original CDP. Since the Commission considered none of these options — and the evidence does not support removal as the appropriate outcome, the result appears arbitrary and capricious.

Mr. Robert Merrill
October 12, 2000
Page 6

6. Finally, we would like to note that Mr. Webber's inability to hear the proceedings was noted at the time of the hearing. Earphones provided to him at the hearing did not function. To the extent that the staff and the Commission imposed new questions and conditions at the hearing, and clarified their recommendations during the proceedings, Mr. Webber was unable to hear them and respond on the spot. This did not provide him with due process at the hearing. His first clear understanding of the results of the hearing was on October 4, 2000, when the Notice of Intent to Issue Permit was received. To date, no revised findings have been provided. Therefore, we believe that this request for reconsideration should toll from the date of the Notice. We also note that because this is not a jurisdictional time frame, the Commission has discretion whether to accept such a request at a time beyond 30 days from the Commission's vote, when appropriate circumstances are present.

For the reasons stated herein we respectfully request reconsideration of this permit amendment.

Very truly yours,



Joseph E. Petrillo

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SF:FLR\LET\100\61227641.3

cc: Mr. and Mrs. Gary Webber
Mr. Peter Douglas
Mr. Steve Scholl
Ms. Tiffany Tauber
Ms. Renée Robin
California Coastal Commissioners

6 of 7

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

COMMISSION



20 January 1995

Gary Webber
4 Glacier
Mt. Baldy, CA 91757-0820

RE: Coastal Development Permit No. 1-83-223 (Wood);
Enforcement File No. V-1-94-7

Dear Mr. Webber:

With the assistance of Jim Robichaud, Bob Merrill (our Chief of Permits) and I conducted a site visit to the subject property to determine if there was a violation. We have determined that there is no kitchen in the guest cottage. In addition, we have determined that what was built conforms essentially to the plans approved by the County (although the guest cottage appears to have been built mirror-image to the plans). We have therefore concluded that no violation exists, and will close our violation file.

If you or a future owner of the property wishes to use the guest cottage as a residence while construction of the main house is taking place, and install a temporary kitchen, an amendment to the coastal permit would be necessary. Please contact us if this is the case. However, please be aware that once the main house is completed, the guest cottage may not be used as a residence, may not be rented, let, or leased, and may not contain a kitchen or cooking facilities, pursuant to Special Condition No. 4.

If you have any questions, please don't hesitate to call. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo Ginsberg".

JO GINSBERG
Coastal Planner

7751p

Attachment A

7 of 7

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

SEVENTEENTH FLOOR

FOUR EMBARCADERO CENTER

SAN FRANCISCO, CALIFORNIA 94111-4106

TELEPHONE (415) 434-9100

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WRITER'S DIRECT LINE
(415) 617-6215
rrobin@smrh.com

EXHIBIT NO. 15
APPLICATION NO. 1-83-223-A1
WEBBER
POSTPONEMENT REQUEST (1 of 3)

OUR FILE NUMBER
53L-77810

November 13, 2000

Mr. Robert Merrill
California Coastal Commission
North Coast District Office
P. O. Box 4908
Eureka, CA 95502-4908

BY FAX

RECEIVED
NOV 13 2000

CALIFORNIA
COASTAL COMMISSION

Mr. Steven Scholl
California Coastal Commission
75 Fremont St.
San Francisco, CA 94110

BY HAND DELIVERY

Re: Postponement Request for Hearing on Revised Findings:
Re: Webber Residence Reconsideration Request for Permit
Amendment 1-83-223-A1

Dear Messrs. Merrill and Scholl:

The letter is to convey our request that the Commission postpone its review and determination on the revised findings for the Webber Residence in Mendocino County and refrain from taking any action on this matter at the currently scheduled hearing on November 17, 2000. We believe that these revised findings contain certain inaccuracies and do not completely reflect the Commission's action - or the basis for that action - at the hearing on this matter on August 11, 2000. We believe that additional time to discuss these finding with staff may result in a consensus which can be presented to the Commission at its next meeting in December, 2000.

In addition, the applicant has formally requested a reconsideration of the Commission's action on that date. We respectfully request that the Commission refrain from adopting revised findings on this project, until the complete evidence regarding this project can be presented. We also believe that improper instructions were provided by staff to the Commission at the August 11, 2000 hearing regarding the standard of review to be applied to the project. The reconsideration of this project

Mr. Robert Merrill
Mr. Steven Scholl
November 13, 2000
Page 2

will allow this instruction to be corrected - thereby allowing revised findings to properly reflect terms and conditions on which this permit has been partially approved or partially denied. A copy of the reconsideration request which details some of these discrepancies is attached to this letter as attachment A.

The following are some of our concerns about the revised findings:

1. Staff refers to an oral amendment of the staff recommendation which would result in the complete deletion of all second story elements of the Webber residence already constructed. We do not believe this was the Commission's intent, and such an outcome would be onerous and not supported by the evidence in the record. On the contrary, we believe the Commission may have intended to accept an oral staff recommendation to deny those portions of the second story that were not previously approved by the County or CCC staff -or those which did not otherwise satisfy certain CCC policies or criteria (such as the approved height limitation). We believe the specific second story elements which should be removed or remain within the scope of the vested prior approvals should be refined in revised plans approved by the Executive Director.

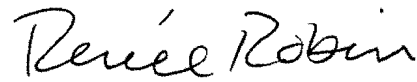
2. The oral instruction by the Executive Director to the Commissioners regarding the criteria to be applied to the second story elements was incorrect. This error is not reflected in the revised findings.

3. The staff report and evidence presented to the Commissioners included some zoning ordinance and LCP information but not others. We are surprised to note that these revised findings include a critical, previously omitted zoning code section. This section was not cited or presented to the Commissioners during the hearing and therefore did not form the basis of their action on August 11, 2000. Therefore, the revised findings improperly describe the standard of review applied by the Commission in this matter. Furthermore, we believe that if the Commission had been apprized of this zoning section and related approval information, the outcome at the hearing would have been different.

Mr. Robert Merrill
Mr. Steven Scholl
November 13, 2000
Page 3

These are a few of the discrepancies in the revised findings we would like to discuss with staff in the next month. We respectfully request that the Commission defer any action on this matter so that we may reach consensus on these findings and their implications for the project.

Sincerely yours,



Renée L. Robin

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

WORD-SFFLR\61233750.1

Attachment

cc w/attach.: Mr. Joseph Petrillo
California Coastal Commissioners

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



8 January 1999

CERTIFIED AND REGULAR MAIL

Chris and Gary Webber
Webbco
P.O. Box 820
Mt. Baldy, CA 91759

RE: Coastal Permit No. 1-83-223 (Wood);
File No. V-1-99-01 (Webber)

Dear Mr. and Mrs. Webber:

Our office has recently become aware that development undertaken on your property some time ago does not fully comply with the final approved plans and project description of previously issued coastal development permit No. 1-83-223. The unauthorized development activity performed on your property consists of the construction of a foundation and partial construction of structures that differ somewhat in size, location, configuration, and orientation on the property from that which was approved, and in the construction of an unpermitted 29-foot tower structure.

The Coastal Commission issued coastal development permit No. 1-83-223 to you on October 28, 1983 for construction of a 20-foot high, 7,938-square-foot single-family residence with an attached garage, a studio with an attached garage, a tennis court, swimming pool, well, and septic system on APN 123-010-14, located north of Albion in Mendocino County. Since construction of the foundation was commenced pursuant to the coastal permit, the permit is considered to have been vested and is therefore still valid. However, Standard Condition No. 3 attached to your permit states:

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. (Emphasis added)

EXHIBIT NO.	16
APPLICATION NO.	1-83-223-A1
WEBBER	(1 of 3)
VIOLATION	NOTIFICATION

CHRIS AND GARY WEBBER

Page 2

Please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Please do not perform any additional work on the property that is not permitted by Coastal Permit No. 1-83-223. Any additional work may be considered a knowing and intentional violation of the Coastal Act.

One way to resolve this violation is for you to submit to the Commission a request to amend the coastal permit to authorize the unpermitted work. It appears that the minor changes to the size, location, configuration, and orientation of the residence might be changes for which staff could recommend approval. However, the matter of the height of the tower structure is more problematic, since the site is in a designated Highly Scenic Area where the height of structures west of Highway One may be limited to 18 feet. In any case, there is a height limit of 28 feet for all residential structures on property. Thus, it is unlikely that staff would recommend approval of an amendment request that included construction of a 29-foot-high structure, which is clearly inconsistent with the certified Local Coastal Program (LCP). Another option to consider would be removal or partial removal of the tower structure to bring it down to an acceptable height, which would require a coastal permit or permit amendment.

Furthermore, as part of the amendment process, the County must complete an LCP Consistency Review of the project to determine if the project is consistent with the County's certified LCP. Should the County not approve an LCP Consistency Review for the proposed changes, based on its inconsistency with the LCP, the Commission would be unable to file the application for a coastal permit amendment. Therefore, you should contact the Mendocino County Planning office in Fort Bragg to discuss this matter as well.

I understand that there is an interested buyer for the property. Coastal Act violations run with the land, and so any new buyer would be responsible for resolving the violation if it were not resolved prior to the sale.

Please contact me within 30 days of receipt of this letter to discuss remedies for resolving the violation. We realize that the unpermitted development has been in place for more than ten years, although it has only just come to our attention. We are interested in working cooperatively with you to resolve this violation administratively, and to avoid litigation or monetary penalties if at all possible.

2 of 3

CHRIS AND GARY WEBBER
Page 3

If you have any questions, please do not hesitate to call.

Sincerely,



JO GINSBERG,
Coastal Planner

cc: Linda Ruffing

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