

**CALIFORNIA COASTAL COMMISSION**

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# W25a

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Staff: Randall Stemler  
Staff Report: December 20, 2002  
Hearing Date: January 8, 2003  
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: **1-89-028-A4**

APPLICANTS: **GENE A. & C. J. MEREDITH**

APPLICANTS' AGENTS: Alan Block; Leventhal/Schlosser Associates; Bud Kamb

PROJECT LOCATION: 17230 Ocean Drive, Fort Bragg, Mendocino County (APN 017-330-10)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Division of a 56.7-acre parcel into five parcels of 8.6 acres, 10.6 acres, 11.1 are, 12.5 acres, and 13.9 acres, each with designated building envelopes; plus the construction of one paved roadway and one rocked roadway, two entrance gates, and six wells

DESCRIPTION OF AMENDMENT REQUEST: Change the existing location and configurations of the building envelope for the 10.6-acre parcel at the southern end of the subdivision at 17230 Ocean Drive, Fort Bragg, Mendocino County. The new configurations would be a 125-foot by 80-foot

rectangle retaining the 10,000 square foot size of the originally approved building envelope located a minimum of 50 feet from the coastal bluff edge

GENERAL PLAN DESIGNATION: Rural Residential – 5, Planned Unit Development  
(Rural Residential – 2, Planned Unit Development)

ZONING DESIGNATION: Residential Estates (R-E)

LOCAL APPROVALS RECEIVED: Mendocino County Minor Subdivision Approval  
Modification and LCP Consistency Review

SUBSTANTIVE FILE DOCUMENTS: (1) Coastal Development Permit No. 1-89-028  
through Amendment A3  
(2) Appeal No. A-1-MEN-01-51  
(3) Mendocino County LCP

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission **approve with conditions** the requested amendment to the coastal development permit granted originally for the Belinda Point Subdivision, a land division of a 56.7-acre parcel into five parcels of 8.6 acres, 10.6 acres, 11.1 acres, 12.5 acres, and 13.9 acres plus the construction of one paved roadway and one rockered roadway, two entrance gates, and six wells. The Belinda Point Subdivision is located on a coastal terrace within an area designated as highly scenic. The subject property—an undeveloped parcel, except for the existence of an established water well—is the southern-most of the five parcels in the subdivision, and is located at 17230 Ocean Drive, about 3 miles south of Fort Bragg, Mendocino County.

Coastal Development Permit No. 1-89-28 (E.F.S. Associates) was approved by the Commission on June 13, 1989 with six (6) special conditions intended to: (1) ensure protection of identified environmentally sensitive habitat areas (ESHAs) by requiring an open space deed restriction over the ESHAs to be executed and recorded; (2) ensure that no interference with public rights will occur for public access to or along the shoreline, including public trust and prescriptive rights; (3) require approval for and revisions to Belinda Point Subdivision Covenants, Conditions, and Restrictions related to water conservation measures, visual screening for satellite dishes, and requirements included in the original staff report; (4) provide public access to and passive recreational use of the blufftop, beach, and rocky cove at the northerly end of Belinda Point Subdivision; (5) provide public pedestrian ingress and egress to the public access easement required in Special Condition #4; and (6) protect archaeological resources.

The original building envelopes established through approval of the subdivision, were delineated to preserve open space and protect public views. The building envelope for Parcel 1—the subject property—is situated behind a stand of trees to the west that would serve to block public views of the development from Jug Handle State Reserve headlands located across a small bay southwest of the property.

The current amendment requests authorization to change the configuration and location of the existing building envelope established for Parcel 1, while retaining the 10,000-square-foot size of the building envelope. The new building envelope configuration would be located slightly to the southwest and encroach partially into the stand of trees to the west. To ensure that the visual screen currently provided by tree cover west of the proposed development is not compromised, staff recommends that Special Condition 7 be imposed. Special Condition 7 would require a recordation of a deed restriction that would prohibit future development, tree removal, or tree limbing from occurring in the area of native vegetation west of the proposed building envelope as depicted by Exhibit 5. Certain activities would be allowed in the protected native vegetation zone including the removal of three (3) particular trees within a designated view corridor and removal of other trees that may grow in the view corridor in the future where tree removal would not have significant visual impacts and would be permissible. Additionally, vegetation may be removed as required by fire management law for maintaining defensible space, as well as removal of non-native vegetation. Finally, reforestation with native species or non-invasive exotic species to replace dead or dying trees or trees removed for any other purpose may occur, as well as installation of berms for visual screening or landscaping purposes, and drainage improvements.

A second issue raised by the proposed relocation and recordation of the building envelope is whether the proposal conforms to the Environmentally Sensitive Habitat Area (ESHA) buffer policies of the certified LCP. The proposed relocated building envelope provides for buffers of less than 100 feet between buildable areas and environmentally sensitive habitat located on the site. A 60-foot buffer is proposed that would protect a rare plant population, and a 50-foot buffer is proposed to protect a riparian ESHA. The certified LCP allows for buffer widths to be reduced to as little as 50 feet provided that an analysis of buffer width has been conducted using certain factors detailed in the Coastal Zoning Code (CZC) that demonstrates that a narrower buffer is justified and acceptable to the Department of Fish and Game. Both the applicant's proposed 60-foot protective buffer around the rare plant ESHA, and the proposed 50-foot protective buffer around the riparian habitat are supported by analysis conducted by the applicant's botanist, which demonstrates that the future development of a single-family home within the proposed relocated and reconfigured building envelope would adequately protect the ESHA resources, and is acceptable to the Department of Fish and Game.

The riparian ESHA and its 50-foot buffer are already protected by an open space deed restriction recorded pursuant to Special Condition No. 1 of the original permit. The proposed building envelope would not encroach into the open space deed restriction area. The rare plant population, however, was only discovered recently during botanical surveys conducted for the

current development proposal. To ensure that this rare plant population is adequately protected from potential future development of appurtenant residential improvements or other development, staff recommends that the Commission impose Special Condition No. 8, which would require recordation of a deed restriction that would prohibit future development within the ESHA and the 60-foot buffer surrounding the ESHA.

As conditioned, staff has determined that the proposed development would be consistent with the certified Mendocino County LCP and public access policies of the Coastal Act.

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**STAFF NOTES:**

**1. Simultaneous Processing of CDP Appeal No. A-1-MEN-01-051**

After it reviews the permit amendment request, at a subsequent hearing the Commission will also review *de novo* an appeal of a decision by Mendocino County to approve a coastal development permit for the construction of a house and garage on the property. The house is the subject of Coastal Development Permit Appeal No. A-1-MEN-01-051. At the July 11, 2002 Coastal Commission meeting, the Commission found that the appeal raised a substantial issue with respect to the grounds on which the appeal was filed, and continued the hearing on the *de novo* portion of the appeal. As amended for purposes of the *de novo* review, the house proposed under Appeal No. A-1-MEN-01-051 is designed to fit within the revised building envelope proposed under Permit Amendment Request No. 1-89-028-A4. The proposed house that is the subject of the appeal would not fit within the building envelope established by the original subdivision permit.

The Commission notes that although approval to develop the particular house proposed by the applicants under Coastal Development Permit Appeal No. A-1-MEN-01-051 is dependent on Coastal Development Permit Amendment Request No. 1-89-028-A4 also being approved, the reverse is not true. That is, approval of the permit amendment is not dependent on the Commission approving Coastal Development Permit Appeal No. A-1-MEN-01-051. The amendment request only seeks relocation and reconfiguration of the building envelope, and does not seek authorization for any particular house. If for any reason, the applicants choose not to pursue development of the particular house proposed under Coastal Development Permit Appeal No. A-1-MEN-01-051, the applicants could seek separate authorization at a later date for approval of a different house to be located within the building envelope. Thus, in evaluating Coastal Development Permit Amendment Request No. 1-89-028-A4, the Commission must consider the effects of any future development, not just the particular house proposed under Coastal Development Permit Appeal No. A-1-MEN-01-051.

**2. Procedure and Background:**

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 procured before the permit was granted.

Coastal Development Permit No. 1-89-028 (E.F.S Associates) was approved by the Commission on June 13, 1989 with special conditions. This original permit approved the division of a 56.7-acre parcel into five parcels of 8.6 acres, 10.6 acres, 11.1 acres, 12.5 acres, and 13.9 acres; plus the construction of one paved roadway and one rockered roadway, two entrance gates, and six wells. The permit was approved with the following six Special Conditions. Special Condition No. 1 required recordation of an open space easement/deed restriction over environmentally sensitive habitat areas on the property and 50-foot buffers surrounding the ESHAs. Special Condition No. 2 states that by acceptance of the permit, the applicants agreed that approval of the permit did not prejudice any assertion of public rights of access on the property. Special Condition No. 3 required recordation of Conditions Covenants & Restrictions for the property that include requirements for the use of water-conservation measures such as water-conserving appliances and drought tolerant vegetation. Special Condition No. 4 required recordation of an offer to dedicate a vertical public access easement from the road at the east end of the property to the blufftop and beach. Special Condition No. 5 required the submittal of plans for the review and approval of the Executive Director providing for the creation of a public access opening through gates at the east end of the offered vertical public access easement. Finally, Special Condition No. 6 required the cessation of development activities if archaeological resources were found during development until a qualified archaeologist could inspect the project site, determine the nature and significance of the archaeological materials, and, if necessary, develop appropriate mitigation measures that would be incorporated into the permit by a permit amendment request.

In its approval of the project, the Commission adopted findings indicating the project was consistent with Coastal Act visual policies in part because the proposed building envelopes would ensure that the future development of homes would not create visual impacts from public vantage points along the public road east of the site and from the vertical public access way that was required to be offered for dedication. The findings indicated the project was consistent with Coastal Act geologic hazard policies because the building envelopes would all be located 75 feet back from the bluff edge in conformance with the recommendations of a preliminary geologic report prepared for the subdivision.

The current amendment request seeks approval to change the dimensions and location of the existing building envelope for Parcel 1. The proposed modified building envelope would retain the previously approved 10,000 square-foot coverage, but adjust the dimensional size from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle designed to encompass the proposed structural dimensions of the intended future residence. The location of the proposed

building envelope would be moved southwesterly to no closer than 50 feet from the edge of the coastal bluff consistent with the new recommended 33-foot geologic setback as described below.

The proposed amendment would not conflict with any of the special conditions of the permit. Although the proposed reconfigured building envelope would encroach to within 84 feet of the riparian habitat on the parcel protected by an open space deed restriction pursuant to Special Condition No. 1 of the original permit, the building envelope would not encroach into the open space deed restriction area. The original permit only required a 50-foot buffer around the riparian habitat.

The proposed amendment would also not conflict with the findings adopted for consistency of the proposed building envelopes with the visual resource policies of the Coastal Act. The approval of the existing building envelope was based on findings that the building envelope would not be visible from the road and would not affect views from the vertical access way required to be offered for dedication. The findings make no mention of protecting views from Jug Handle State Reserve or any other public vantage point besides the road to the east and the location of the required access way. As discussed in the staff recommendation, staff has determined that the relocated building envelope proposed under the current amendment request would not have significant visual impacts, and approval of the amendment would not conflict with the intent of the Commission's action as reflected in either the special conditions or the findings approved for the original project.

The proposed amendment would conflict with the findings adopted for consistency of the proposed building envelope with the geologic hazard policies of the Coastal Act. As noted, approval of the building envelope was based in part, on the building envelope's adherence to a 75-foot setback from the bluff edge, as recommended by the preliminary geotechnical report prepared for the subdivision. The proposed amendment request would reduce that setback for the building envelope on Parcel 1 to 50 feet. However, newly discovered material information which the applicants could not, with reasonable diligence, have discovered and produced before the permit was granted exists. The amendment request was accompanied by an updated geotechnical report that was produced recently, many years after the Commission's action on the original permit. The geotechnical report not only reviewed current geologic conditions to update the available information about geologic hazards affecting the site, but the report also contained a site specific analysis of bluff retreat occurring at the project site. The preliminary geotechnical report prepared prior to the Commission's approval of the project in 1989 did not include a site-specific analysis of bluff retreat. Instead, the preliminary geotechnical report relied on general assessments of bluff retreat for other parts of California in making its recommendation for a 75-foot setback. The more recent report determined a bluff retreat rate and recommended a geologic setback from the bluff edge of 33 feet. This recommendation supports the proposed relocation of the building envelope to a location as close as 50 feet from the bluff edge. Therefore, as the updated geotechnical report provides newly discovered material information concerning the conformance of the amendment request with the geologic hazard policies of the Coastal Act which the applicants could not, with reasonable diligence, have discovered and produced before

the permit was granted, and as the proposed project would not result in a lessening or avoidance of the intent of the approved permit in other respects, the Executive Director accepted the amendment request for processing.

**4. Previous Request to Amend Original Building Envelope Withdrawn:**

On October 29, 2001 the Commission received a previous permit amendment request from the applicants to amend the original building envelope (Permit Amendment Request No. 1-89-028-A3). The previous request proposed to enlarge the original square-shaped, 10,000-square-foot building envelope, to a reconfigured irregularly shaped 18,000-square-foot building envelope, and to relocate it southwesterly within 35 feet of the coastal bluff. In the staff report dated July 25, 2002, mailed prior to the August 2002 Commission meeting, staff recommended the Commission deny the requested amendment to the coastal development permit granted originally by the Commission on June 13, 1989 on the basis that it would not be consistent with the certified LCP regarding the protection of visual resources from new development located in highly scenic areas, or with the LCP's environmentally sensitive habitat buffer policies. Prior to the Commission hearing the proposal, the applicants requested a postponement, and subsequently, the applicants withdrew the amendment request. Since that time the applicants have decided to pursue a new house design, and a different building envelope configuration. The new building envelope configuration and location is the subject of the current amendment request A4 submitted for Commission consideration (Coastal Development Permit Amendment Request No. 1-89-028-A4).

**5. Standard of Review:**

The original permit was approved by the Commission in 1989, 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 Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective certification of an 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 Local Coastal Program and the public access policies of the Coastal Act.

**6. Scope**

This staff report addresses only the additional coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources and achieve consistency with the certified LCP and the public access and recreation policies of the Coastal Act, and provides findings for conditional approval of the amended project. All other analysis, findings, and conditions related to the originally permitted project, except as specifically affected by the proposed permit amendment and addressed herein, remain as adopted by the Commission on June 13, 1989.

**I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 1-89-028-A4 pursuant to the staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT AMENDMENT:**

The Commission hereby approves the coastal development permit amendment and adopts the findings set forth below on the grounds that the development as amended and subject to conditions 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 amendment complies with the California Environmental Quality Act because there are either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

**II. STANDARD CONDITIONS: (See Attached Appendix A)**

**III. SPECIAL CONDITIONS:**

**NOTE:** Special Condition Nos. 7 and 8 are new conditions attached to the permit amendment. Special Condition Nos. 1-6 are unchanged from the original permit and remain in full effect.

**7. Area of Native Vegetation Open Space Deed Restriction**

**A.** No development, as defined in section 30106 of the Coastal Act, including tree removal or tree limbing, shall occur in the area between the approved revised building envelope and the bluff edge identified as the Area of Native Vegetation as depicted in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-A4 except for:

- 1.** Removal of three (3) specific trees within the Area of Native Vegetation as depicted by notations in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-

A4; removal of any new trees that grow within the portion of the open space area identified as a View Corridor in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-A4; and the removal of non-native vegetation.

**AND**

The following development and activities, if approved by the Coastal Commission as an amendment to this coastal development permit:

2. Tree limbing and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space; reforestation with native species or non-invasive exotic species to replace dead or dying trees or trees removed for any other purpose, installation of berms for visual screening or landscaping, and drainage improvements.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**

**AMENDMENT NO. 1-89-028-A4**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the entire parcel governed by this permit and a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit 5 attached to the staff report prepared for Amendment No. 1-89-028-A4. The deed restriction 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 legally required.

**8. Mendocino Coastal Paintbrush Open Space Deed Restriction**

- A. No development, as defined in section 30106 of the Coastal Act, including tree removal, tree limbing, or ground disturbance, shall occur in the area currently populated with Mendocino coast paintbrush or the 60-foot buffer around the paintbrush population as identified by the Rare Plant ESHA and Buffer area as depicted in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-A4 except for:

1. Removal of non-native vegetation

**AND**

The following development and activities, if approved by the Coastal Commission as an amendment to this coastal development permit:

2. Tree limbing and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space

**9. Future Residential Development.**

- A. All future development on the property shall require a coastal development permit or an amendment to Coastal Development Permit Amendment No. 1-89-028-A4. Any single-family house or other aboveground structure developed on the property in the future shall be located entirely within the building envelope approved pursuant to Coastal Development Permit Amendment No. 1-89-028-A4 and as shown on Exhibit 5. During construction of any such structures within the building envelope, a physical construction barrier (such as hay bales laid end to end) shall be provided between any proposed earth disturbance and the edge of the areas deed restricted as environmentally sensitive habitat areas (ESHA) and ESHA buffer area.
- B. Other appurtenant residential improvements, which do not involve aboveground structures may be developed outside of the approved building envelope approved pursuant to Coastal Development Permit Amendment No. 1-89-028-A4 and as shown on Exhibit 5 subject to the following requirements and any additional requirements imposed in the coastal development permit granted for such development:
  1. Such appurtenant residential improvements, which do not involve aboveground structures are limited to a septic system, well, underground water storage tank, underground propane tank, underground utilities, driveway and parking areas, landscaping, drainage improvements, tree lighting and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space, reforestation with native species or non-invasive exotic species, and installation of berms for visual screening.
  2. All such development shall be consistent with the requirements of Special Condition No. 1 of the original permit, Open Space Easement/Deed Restriction;
  3. All such development shall be consistent with the requirements of Special Condition No. 7, Area of Native Vegetation Open Space Deed Restriction;
  4. All such development shall be consistent with the requirements of Special Condition No. 8, Mendocino Coastal Paintbrush Open Space Deed Restriction
  5. All such development shall be setback at least 39 feet from the bluff edge and shall otherwise be developed consistent with the recommendations of the

geotechnical report entitled, "Geotechnical Investigation, Proposed Meredith Residence, Parcel 1, A.P. No. 017-330-10, Ocean Drive, Belinda Point Minor Subdivision, Mendocino County, California," prepared by Brunsing Associates, Inc., and dated June 28, 2001.

6. Best management practices shall be utilized during construction of such development to prevent adverse impacts on environmentally sensitive habitat areas from polluted runoff.
7. No invasive exotic vegetation shall be planted.

10. **Consistent Subdivision Map Act Approvals**

A. **Revised Tentative Map**

**PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-89-028-A4**, the applicants shall submit, for the review and approval of the Executive Director, a copy of the revised tentative map for the approved change in building envelope that has also been approved by Mendocino County. The revised tentative map shall be consistent with all terms and conditions of Coastal Development Permit Amendment No. 1-89-028-A4. All development shall take place consistent with the approved revised tentative map. Any proposed changes to the approved revised tentative map shall be reported to the Executive Director. No changes to the approved revised tentative map shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

B. **Final Subdivision Map**

**PRIOR TO RECORDATION OF THE FINAL SUBDIVISION MAP**, the applicants shall submit, for the review and approval of the Executive Director, a copy of the final subdivision map approved by Mendocino County. The final map shall be consistent with all terms and conditions of Coastal Development Permit Amendment No. 1-89-028-A4, including the approved **revised** tentative map. The applicant shall record the final subdivision map consistent with the approved revised tentative map.

IV. **FINDINGS AND DECLARATIONS FOR APPROVAL:**

The Commission hereby finds and declares:

1. **Project Setting:**

The subject property is a 10.6-acre bluff top parcel located within the Belinda Point Subdivision about three miles south of Fort Bragg, Mendocino County. The parcel is the most southerly of

the 5 lots in the subdivision, which range in size from about 9 acres to about 14 acres. The project site is located west of Ocean Drive, and south of Pacific Way, at 17230 Ocean Drive (Exhibit 1 and 2).

The subject parcel is undeveloped except for an existing water well on the property. The property is zoned Rural Residential, Five Acres Minimum, Planned Development (RR:L-5:PD). Within the Rural Residential Zone, a single-family residence is a permitted use, subject to approval of a coastal development permit. The Belinda Point subdivision was originally approved by the Commission pursuant to Coastal Development Permit No. 1-89-028, which was granted to E.F.S. Associates on June 13, 1989 (Exhibit 10). Each parcel has an approved building envelope proposed by the applicants as part of the subdivision (Exhibit 2). The building envelopes were initially developed to address environmental concerns related to bluff setback policies, riparian and other sensitive habitat areas, as well as archaeological resources located on the project site. In addition, conditions of the coastal development permit required that Environmentally Sensitive Habitat Areas (ESHA) on the property be deed restricted as open space. The majority of the deed restricted ESHA is located on the four parcels to the north of the applicants' property, with a small patch of protected riparian ESHA located on the applicants' parcel immediately to the east of the defined building envelope. Furthermore, an offer to dedicate a vertical public access way to a cove from Ocean Drive across the subdivision properties was required to be recorded in a location along the northerly boundary of the subdivision, well to the north of the applicants' property. The parcels are served by two common driveways extending from Ocean Drive toward the shoreline, along alignments that are north of the applicants' parcel. All of the subdivision parcels were proposed to be served by wells and septic systems.

The subject parcel is located on a coastal terrace that slopes gently to the west and south, and is largely vegetated by maritime pine forest dominated by Bishop pine, with some occurrence of shore pine—which extends to within a few feet of the steep ocean bluff. The parcel includes approximately 550 linear feet of bluff edge. The bluff is approximately forty to fifty feet in height, with mostly near-vertical slope gradients, and has four relatively small sea caves. A transition between forestland and grassland occurs in the northwestern corner of the applicants' parcel. Along the terrace area to the north, the land assumes more of the character of open coastal-grassland, vegetated with native grasses, ferns, various wildflowers, and associated species. The existing building envelope established in 1989 by approval of Coastal Development Permit No. 1-89-28 lies generally in a clearing within the transition area, with a stand of trees approximately 100 feet wide to the west between the clearing and the bluff (Exhibit 2 and Page 3 of Exhibit 3).

The subject parcel contains environmentally sensitive habitat areas. As noted previously, a riparian ESHA with a 50-foot buffer located immediately east of the building envelope was required to be deed restricted as open space as part of the original subdivision approval. In addition, a population of the rare plant *Castilleja latifolia* spp. *mendocinensis* (Mendocino coast

paintbrush) was discovered during a botanical survey performed for the proposed development by Dr. Gordon McBride in 2001.

The property is located two parcels to the north of the mouth of Mitchell Creek, within an area designated "Highly Scenic" in the Coastal Plan. Although the parcel is not visible from Highway One or other public roads, the parcel is visible from the publicly visited Jug Handle State Reserve headland to the southwest, across the small bay that forms the ocean inlet of Mitchell Creek (Exhibit 2). There are other residences in the view of the coastal bluff from Jug Handle State Reserve. On the parcel immediately south of the applicants' property is a partial two-story structure partly screened by trees. On the parcel immediately to the north is a one-story structure currently under construction, and north of it another single-story house, both of which are located in open grassland with no natural screening available. Although other houses can be seen from Jug Handle State Reserve, the viewscape from the park property along this stretch of coast is dominated by views of Pine Cove Beach located within the embayment at the mouth of Mitchell Creek, the dramatic coastal bluffs, and the forested bluff-top terrace (Exhibit 2 and Exhibit 6). The houses are generally scattered along the terrace about every 400-500 feet.

## **2. Project Amendment Description**

The proposed permit amendment would move the approved building envelope for the applicants' parcel to the southwest, closer to the bluff and within the approximately 100-foot wide grove of trees on the terrace mentioned above that exists near the bluff along the southwest portion of the parcel. The proposed permit amendment would maintain the same size building envelope of 10,000 square feet, but reconfigure it from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle, and reduce the setback from the bluff edge from 75 to 50 feet. The northwest end of the revised building envelope would extend as close as 74 feet from the population of Mendocino coast paintbrush found along the bluff edge in 2001, 14 feet from the proposed 60-foot buffer around the plant population. The northeast end of the proposed revised building envelope would extend to within 84 feet of the deed restricted open space area that encompasses the riparian ESHA to the east, 34 feet from the proposed 50-foot buffer space around the riparian habitat.

As was the case with the building envelope approved under the original permit for the subdivision, the revised building envelope is intended to entirely encompass the future development of the one single-family house on the subject parcel that is allowed as a principally permitted use under the Rural Residential Zoning District applied to the property. However, appurtenant residential development such as a utility/generator shed, underground propane tank, water well, an underground water storage tank, septic system, driveway, walkways, and landscaping features such as decorative berms is contemplated to be located outside of the building envelope.

The configuration of the proposed revised building envelope is shown in Exhibit 2, Page 3 of Exhibit 3, and Exhibit 5. The applicants indicate that the purpose of moving and reconfiguring

the building envelope is to enable the future home to be built on the site to take advantage of the scenic whitewater and blue water views to the northwest and west through specific view corridors as shown on the plans. The view corridors have been purposely designed to protect views from Jug Handle State Reserve, and maintain screening vegetation in front of the building envelope.

The proposed relocation and reconfiguration of the building envelope is designed to accommodate a specific house design that is separately proposed by the applicants. The proposed house is the subject of Coastal Development Permit Appeal No. A-1-MEN-01-051. The proposed house that is the subject of the appeal would not fit within the building envelope established by the Commission's original subdivision permit.

### 3. Visual Resources

The subject property is located in an area designated by the Mendocino County Land Use Plan as "highly scenic." The property is also within view of Jug Handle State Reserve, a State park open to the public that includes a promontory extending into the ocean across a cove from the shoreline of the subject property (Exhibit 2 and Exhibit 4). The development was originally approved by the Commission in 1989, 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. Applicable LUP Policies and Coastal Zoning Ordinance Standards regarding the protection of visual resources from the impacts of new development are as follows:

#### LCP Policies

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. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting."*

Policy 3.5-3 in applicable part states:

*"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 development permitted in these areas shall provide for the protection of ocean and coastal views*

*from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

- *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. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies."*

LUP Policy 3.5-4 states in applicable part:

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists...*

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

LUP Policy 3.5-5 states, in applicable part:

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

Coastal Zoning Ordinance Section 20.504.010 – Purpose.

*"The purpose of this section is to insure that permitted development shall be sited and designated 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."*

Coastal Zoning Ordinance Section 20.504.015 – Highly Scenic Areas.

(A) *The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:*

...

(2) *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.*

...

(C) *Development Criteria.*

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

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

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

(4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.*

(5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area*

...

(7) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development, other than farm buildings, in large open areas if alternative site exists; (b) minimize the number of structures and cluster them near existing vegetation, natural landforms, or artificial berms; (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline." and (d) design development to be in scale with rural character of the area.*

**Discussion:**

**Visual Setting:**

The proposed permit amendment would move the approved building envelope for the southernmost of the five lots in the Belinda Point subdivision to the southwest, closer to the bluff and within an approximately 100-foot wide grove of trees on the terrace that exists near the bluff along the southwest portion of the parcel. The proposed permit amendment would maintain the building envelope at 10,000 square feet, but reconfigure it from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle, and reduce the setback from the bluff edge from 75 to 50 feet.

The property is located two parcels to the north of the mouth of Mitchell Creek, within an area designated "Highly Scenic" in the Land Use Plan (LUP). Pursuant to LUP Policy 3.5-3 and CZC Section 20.504.015(A)(2), the Highly Scenic Area designation covers all those areas west of Highway One between the Ten Mile River estuary south to the Navarro River with noted mapped exceptions. LUP Map No.14 does not exclude the subject property or any of the Belinda Point area from the highly scenic designation.

Although the parcel is not visible from Highway One or other public roads, the parcel is visible from the ocean and the publicly visited Jug Handle State Reserve headland to the southwest, across the small bay or cove that forms the ocean inlet of Mitchell Creek (Exhibit 2 and Exhibit 4). Trails extend to the bluff edges along the reserve headland from parking areas along Ocean Drive. The view from the State Reserve to the northeast and north along the shoreline that extends north from the headland is dramatic and an attraction to visitors to the reserve headland. In the distance to the north, one can see the rocky Mendocino coastline extending for many miles. The more immediate view to the northeast is of Pine Cove Beach, the cove separating the headland where the Reserve is located from the main coastline where the subject property is located. The greenish-blue open waters of the cove are fringed by whitewater as ocean swells surge against rocky tidepools and wash over Pine Cove Beach at the head of the cove. Steep and rugged 40 to 50-foot-high bluffs composed of sandstone, shale, and siltstone rise above the tidepools and beach to the nearly flat continuous coastal terrace. The dark green shades of the Bishop pine forest that envelopes most of the terrace contrast dramatically with the gray and yellow earthtones of the sandstone bluffs.

There are other residences within this view northeast and north from Jug Handle State Reserve. On the parcel immediately south of the applicants' property is a partial two-story structure partly screened by trees. Farther to the south, the viewer on the blufftop at Jug Handle State Reserve can see several other one and two story structures. The house on the parcel due east of the vantage points on the bluff top of Jug Handle State Reserve dominates the view of this group of houses south of the applicants' site, both because of its closer proximity, and because of the structure's unusual central tower or cupola structure with a pyramid-shaped roof (Exhibit 6). This house was built prior to the Coastal Initiative and therefore was not subject to coastal development permit requirements. On the parcel immediately to the north is a one-story structure currently under

construction, and north of it another single-story house, both of which are located in open grassland with no natural screening available. Although other houses can be seen from Jug Handle State Reserve, the visual character of the viewscape from the park property is dominated by the open waters of the cove, the dramatic coastal bluffs, and the forested bluff-top terrace. The houses are scattered along the terrace about every 400-500 feet, generally small in stature (with the exception of the closest house which appears large because of its proximity and its tall pyramidal shaped tower) and are muted in appearance by the backdrop of pine trees that rise above the homes.

**Analysis of Conformance of Amendment to Visual Resource Policies:**

The visual policies of the certified Mendocino County LCP are extensive and detailed as evidenced by the listing in the previous section of this finding of the subset of those policies that are relevant to the proposed permit amendment request. It should be noted that the County's LCP policies are more detailed and restrictive than the provisions of Section 30251 of the Coastal Act, the Chapter 3 policy pertaining to the review of new development for the protection of visual resources. Section 30005 of the Coastal Act allows local governments to adopt more restrictive policies, as Mendocino County did when it adopted its LCP.

LUP Policy 3.5-3 states that all proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the visual resource policies of the LCP and shall not be allowed if development of resulting parcels could not be consistent with the visual resource policies. As the proposed amendment is an amendment of a coastal development permit for a subdivision and involves moving a building envelope established, in part, by the original permit to protect visual resources, the impacts of future development as they relate to the proposed revised building envelope must be considered in the review of the proposed amendment. The development with the proposed amendment as conditioned is consistent with the visual resource policies in the Mendocino LCP.

**Compatible With The Character Of Surrounding Areas And Be Subordinate To The Natural Setting:**

The development with the proposed permit amendment as conditioned would be consistent with the provisions of LUP Policies 3.5-1, 3.5-3, and Coastal Zoning Code Sections 20.504.010 and 20.504.015(c)(3) that require new development to be visually compatible with the character of surrounding areas and to be subordinate to the natural setting. As discussed above, the natural setting of the site as viewed from the Reserve is comprised largely of the open waters of the cove, the 40 to 50-foot-high bluffs of the coastal terrace, and the pine forest that forms a dark green generally 30 to 35-foot-high band of trees that appears to cover most of the terrace when viewed from Jug Handle State Reserve.

Although the proposed relocation of the building envelope would result in the future development of a house that would require removal of a portion of the pine forest on the terrace

visible from Jug Handle State Reserve, the major portion of the pine forest would remain, and the house would still be substantially shielded from public views by the trees that would remain.

Page 3 of Exhibit 3 and Exhibit 5 depicts the proposed relocated building envelope superimposed against a diagram showing the existing trees. The trees are shown as dots that range in size to reflect the relative sizes of the trees in each location. The exhibit shows that numerous existing trees sufficient to screen a future home would remain between the proposed building envelope and the edge of the coastal bluff on the side facing Jug Handle State Reserve. However, establishing a building envelope that comes to within 50 feet of a bluff edge where there are magnificent ocean and coastal views would likely encourage occupants of any home built there to try to take advantage of those views by clearing and limbing trees that would otherwise block these views from the structure's windows. Because the view that would be gained by any permissible tree limbing and vegetation clearance would look out at the headland where Jug Handle State Reserve is located, such limbing and vegetation clearance would conversely further expand views of the house from Jug handle State Reserve. In addition, because of the pine forest's proximity to the future house, future residents may desire to locate other landscaping requirements associated with single-family residences in this location, which could also lead to tree cutting and limbing that would adversely affect views. Thus, the combination of direct displacement of forest trees by future development of residential structures within the proposed relocated building envelope, and the potential for further removal of limbs and vegetation between the building envelope and the bluff edge by future occupants of residential structures built within the proposed relocated building envelope would result in the removal of a significant portion of the pine forest that is a major element of the natural setting as viewed from public vantage points at Jug Handle State Reserve. Therefore, the Commission attaches Special Condition No. 7 requiring the recordation of an open space deed restriction to prohibit any future development and the removal of any trees or parts of trees or other vegetation in the area west of the proposed building envelope depicted as the Area of Native Vegetation on Exhibit 5. To accommodate the applicants' desire to gain additional ocean views by moving the building envelope as proposed closer to the bluff edge while still retaining sufficient tree cover to protect views of the site from Jug Handle State Reserve, the condition allows for the removal of trees and tree limbs within a cone-shaped view corridor within the open space area as shown on Exhibit 5. An additional view corridor is identified outside of the open space area.

The two proposed view corridors have been purposely designed to substantially limit public views of the house from Jug Handle State Reserve by selecting angles that are, for the most part, out of alignment with views from public areas. The northern-most view corridor would provide views to the west and northwest, where there is no opportunity to view the subject parcel from Jug Handle State Park. The southern-most view corridor would provide views to the southwest with limited opportunity from Jug Handle State Reserve to see a very small portion of the subject parcel where the northwest corner of the proposed house would be located (Exhibit 4 and Exhibit 5). Even this limited view would be screened by trees and shrubbery protected from removal by deed restriction. Views from watercraft at sea would be afforded only fleeting glimpses of development located within the proposed building envelope. Because the view corridors are

designed as cones rather than swaths of cleared vegetation, the view from the subject parcel toward the ocean would be like looking through a keyhole, while the public view back toward the subject parcel would be of a forested marine terrace (Exhibit 6).

By imposing the requirement as a deed restriction, future buyers of the property will be informed through title reports secured during purchase of the property that the grove of trees between the home site and the bluff must be protected in the manner specified. As conditioned, the proposed amendment would protect public views from Jug Handle State Reserve from future development within the building envelope by protecting a key portion of the natural setting as viewed from Jug Handle State Reserve. Future development of the site would be consistent with this rural coastal setting where homes are scattered relatively far apart and the visual character is established mostly by the natural features of the site including the cove, the rugged bluff face, and the pine forest that envelops the terrace.

Therefore, relocating the proposed building envelope as approved and conditioned would provide for future development of the site in a manner that would be visually compatible with the character of surrounding areas and subordinate to the natural setting as it would retain key portions of the pine forest that forms an important part of the natural setting of the site as a visual screen. Therefore, development with the permit amendment is consistent with views from Jug Handle State Reserve, and with the provisions of LUP Policies 3.5-1, 3.5-3, and Coastal Zoning Code Sections 20.504.010 and 20.504.015(c)(3).

**Bluff Setbacks For Development Adjacent To Or Near Public Areas Along The Shoreline:**

The permit amendment request is also consistent with the provisions of LUP Policies 3.5-4, and Coastal Zoning Code Section 20.504.015(C)(7)(c) that require new development to minimize the visual impacts of development on terraces by providing bluff setbacks for development adjacent to or near public areas along the shoreline.

As described earlier, the subject property is located on a coastal terrace near Jug Handle State Reserve, a public park along the shoreline. The setbacks required by LUP Policy 3.5-4 and CZC 20.504.015(C)(7)(c) are distinct from setbacks required for geologic reasons and are necessary to provide visual screening. In this instance, the original coastal development permit for the subdivision established a 75-foot setback from the bluff edge for all of the building envelopes. Although this setback was established primarily for geologic hazard concerns, the 75-foot setback did serve to help separate and screen future development within the building envelope on the subject property from the nearby Jug Handle State Reserve. As discussed above, significant visual screening is retained by protecting intervening forested area. Although the proposed permit amendment to relocate the building envelope would reduce the existing 75-foot setback to 50 feet, it would retain a significant number of trees between the proposed development and the coastal bluff that would serve to effectively screen future development within the building envelope from Jug Handle State Reserve to reduce its visual impact. Therefore, the Commission finds that the development with the proposed permit amendment is consistent with the provisions

of Coastal Zoning Ordinance Section 20.504.015(C)(7)(c) that require that visual impacts of development on terraces should be minimized by providing bluff setbacks for development adjacent to or near public areas along the shoreline.

**Protection of Ocean and Coastal Views From Public Parks:**

The permit amendment request is consistent with the provisions of LUP Policies 3.5-1 and Coastal Zoning Code Section 20.504.010 and 20.504.015(C)(1) that require new development to protect views to and along the coast from public areas including parks. Jug Handle State Reserve is a state park located across the cove from the subject property. As discussed previously, the trails on the headland at Jug Handle State Reserve afford dramatic coastal views, including the view to the northeast and north along the shoreline where the subject property is located. This view includes blue water and whitewater views of the cove, the rugged coastal bluffs, and the pine forest that envelopes most of the terrace. The proposed permit amendment would move the building envelope (within which future development of a house and/or other aboveground structures could occur) closer to the coastal bluff. However, as conditioned, a visual screen of trees would be left to block prominent views of future development from Jug Handle State Reserve. Thus, relocating the building envelope on the subject property as proposed would protect views to and along this scenic coastal area. Therefore, the proposed permit amendment as conditioned would be consistent with the provisions of LUP Policies 3.5-1 and Coastal Zoning Code Section 20.504.010 and 20.504.015(C)(1) that require new development to protect views to and along scenic coastal areas from public areas, including parks.

**Conformance to Other Visual Policies:**

The development with the proposed amendment is consistent with the other visual policies of the certified LCP. LUP Policy 3.5-1 states that new development shall minimize the alteration of landforms. Moving the building envelope as proposed would not require extensive alteration of relatively flat landforms, because the amendment would simply move the building envelope from one part of the terrace to another. Therefore, the development with the proposed amendment is consistent with the landform alteration policies of LUP Policy 3.5-1. LUP Policy 3.5-4 states in applicable part that buildings and building groups that must be sited within the highly scenic area shall be sited in or near the edge of a wooded area. The relocated building envelope would be relocated to be within a Bishop pine forest. Therefore, the development with the proposed amendment is consistent with the siting provisions of LUP Policy 3.5-4.

**4. Environmentally Sensitive Habitat Areas:**

**LCP Policies:**

3.1-7 *"A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future*

*developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution."*

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

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*
- pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;*
- existing agricultural operations;*
- removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values."*

Section 20.496.010 of the Coastal Zoning Ordinance states in applicable part:

*“Purpose.*

*The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabiting them as well as the enjoyment of present and future populations.*

*Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.”*

Section 20.496.015 of the Coastal Zoning Ordinance states in applicable part:

*“ESHA- Development Application Procedures*

- (A) *Determining Extent of ESHA. The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if*
- (1) The development is proposed to be located on a parcel or proximate to a parcel identified on the land use plan map with a rare and/or endangered species symbol;*
  - (2) The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information;*
  - (3) The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.*

*Development proposals in ESHA's including but not limited to those shown on the coastal land use maps, or which have the potential to impact an ESHA, shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of the sensitive resource, to document potential negative impacts, and to recommend appropriate mitigation measures. The biological survey shall be submitted for the review and approval of the Coastal Permit Administrator prior to a determination that the project application is complete. The biological survey shall be prepared as described in Section 20.532.060, 'Environmental Sensitive Habitat Area – Supplemental Application Procedures.'*

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

*“ESHA- Development Criteria*

(A) *Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

(1) *Width.*

*The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width [emphasis added].*...Standards for determining the appropriate width of the buffer area are as follows:

(a) *Biological Significance of Adjacent Lands.*

*Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

*Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*

(b) *Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

(i) *Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*



- (2) *Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*
- (3) *Land Division. New Subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*
- (4) *Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:*
  - (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
  - (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
  - (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
  - (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
  - (e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
  - (f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
  - (g) *Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*

- (h) *Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*
- (i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*
- (j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*
- (k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats."*

Section 20.496.035 of the Coastal Zoning Ordinance states in applicable part:

*"Riparian Corridors and other Riparian Resource Areas.*

- (A) *No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:*
  - (1) *Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);*
  - (2) *Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;*
  - (3) *Existing agricultural operations;*
  - (4) *Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.*
- (B) *Requirements for development in riparian habitat areas are as follows:*
  - (1) *The development shall not significantly disrupt the habitat the habitat area and shall minimize potential development impacts or changes to natural stream flow*

*such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;*

- (2) No other feasible, less environmentally sensitive alternative exists;*
- (3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;*
- (4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent."*

**Discussion:**

In 1989, when the permit was granted, the subject property was known to contain one riparian ESHA to the east of the existing and proposed building envelopes. This ESHA was protected in the original permit through the imposition of an open space deed restriction over the ESHA itself and a 50-foot buffer surrounding the ESHA. Since that time, one additional ESHA has been discovered on the property, consisting of a population of Mendocino paintbrush, a rare plant population. The Mendocino paintbrush is located along the edge of the bluff to the southwest of the existing building envelope. This discovery was made in 2001 by the applicants' biologist.

LUP Policy 3.1-7 and Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) sets forth specific standards to be considered when determining the width of a buffer. These standards include: (a) an assessment of the biological significance of adjacent lands and the degree to which they are functionally related to wetland resources, (b) the sensitivity of species to disturbance such that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development, (c) the susceptibility of the parcel to erosion determined from an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel, (d) the use of natural topographic features to locate development so that hills and bluffs adjacent to ESHA's can be used to buffer habitat areas, (e) use of existing cultural features such as roads and dikes to buffer habitat areas, (f) lot configuration and location of existing development such that buildings are a uniform distance from the habitat area, and provision for additional mitigation if the distance is less than 100 feet, and (g) the type and scale of development proposed.

The applicants intend to build a single-family residence in the building envelope proposed for relocation. This and other probable future development must be taken into account during the review of this permit amendment. It is apparent that the proposed building envelope would not provide for ESHA buffers of 100 feet for the riparian and rare plant habitat. The northwest end of the revised building envelope would extend to an area as close as 74 feet away from the population of Mendocino coast paintbrush (*Castilleja latifolia mendocinensis*) that was discovered on the property in June 2001, 14 feet from the proposed 60-foot buffer around the plant population. The northeast end of the proposed revised building envelope would extend to within 84 feet of the deed restricted open space area that encompasses the riparian ESHA to the east, 34 feet from the proposed 50-foot buffer space around the riparian habitat.

For the purposes of the Commission's *de novo* review of a house proposed to be built with the proposed building envelope, the applicants have provided a supplemental biological evaluation that substantiates that less than 100-foot buffers are adequate to protect both the riparian ESHA and the Mendocino coast paintbrush ESHA taking into account the factors set forth in Coastal Zoning Ordinance Section 20.496.020(A)(1)(a) through (g) for determining the width of a buffer. The applicants propose to maintain the 50-foot buffer for the riparian ESHA as originally approved by the Commission in 1989, and propose to establish a 60-foot buffer (increased by 10 feet from the consulting botanist's recommended 50-foot buffer) for the rare plant ESHA. The applicants have provided evidence that the California Department of Fish and Game was consulted with and agreed to reductions of the two ESHA buffers below the minimum standard of 100 feet (Exhibit 8). As noted previously, LUP Policy 3.1-7 and Zoning Code Section 20.496.020 states that the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the Department of Fish and Game and County Planning Staff, that one hundred feet is not necessary to protect the habitat resources, in which case the buffer can be reduced to not less than 50 feet.

Dr. Gordon E. McBride performed the supplemental evaluation of the buffer widths, and considered the following seven criteria of CZC Section 20.496.020(A)(1)(a) through (g) in arriving at recommendations for the following two ESHA areas (Exhibit 7).

Rare Plant ESHA—Mendocino coast paintbrush (*Castilleja latifolia mendocinensis*)

(a) Biological Significance of Adjacent Lands

Dr. McBride notes a significant functional relationship between Mendocino coast paintbrush and plant species growing in adjacent areas. The Mendocino coast paintbrush has a parasitic or hemiparasitic relationship with salal. He points out that the paintbrush population is growing in reasonable proximity to salal, and "...if the parasitic or hemiparasitic relationship is true, the host plant is present in the immediate vicinity and the symbiotic status is not in jeopardy." He goes on to state: "The only other functional relationship that I am aware of between the Mendocino paintbrush and other organisms is that of potential pollinators. The

floral structure of the Mendocino paintbrush flower would suggest the plant is hummingbird pollinated.” Since a 50-foot buffer (or any buffer less than 100 feet) would not inhibit hummingbird access, the proposed buffer would be adequate. In fact, the presence of a domestic residence with other potential flowering ornamental plants often attracts hummingbirds and provides them additional sustenance, which would work to the advantage of the Mendocino paintbrush.

(b) Sensitivity of Species to Disturbance

Dr. McBride also examined the distance necessary to ensure that the rare plant species would not be disturbed by the permitted development in a significant way. Dr. McBride concluded that in relation to potential significant adverse impacts resulting from increased activity levels, aside from direct impact, there is no evidence that Mendocino coast paintbrush is sensitive to human activity, and the proposed 50-foot buffer would be adequate to protect the population of Mendocino coast paintbrush.

(c) Susceptability of Parcel to Erosion

Dr. McBride considered the susceptibility of the subject parcel to erosion in determining that the proposed buffer would be sufficient to protect the rare plant population from impacts resulting from the proposed development. He concluded that the erosion hazard for the soil type existing at the site is slight, and it “...does not appear that construction of a single residence would pose an erosion hazard to the Mendocino coast paintbrush population.” He does recommend, however, that during the construction of any residence within the building envelope, a physical construction barrier (such as bales of straw laid end to end) should be provided between any proposed earth disturbance and the edge of the proposed 50-foot buffer to minimize and mitigate the slight chance of adverse impact due to soil erosion and maintain the integrity of the buffer area and the rare plant population.

(d) Use of Natural Topographic Features to Locate Development

Dr. McBride evaluated natural topographic features located on the property in recommending the rare plant buffer. He states that there are no natural topographic features (hills, bluffs, etc.) on the site that would be of use in determining the recommended buffer 50-foot for the Mendocino paintbrush population.

(e) Use of Existing Cultural Features to Locate Buffer Zones.

In evaluating the adequacy of the buffer width, Dr. McBride considered whether any existing cultural features within the proposed buffer could be utilized to protect the rare plant population. He stated that there are no cultural features available on the site that would be of use in determining the recommended 50-foot buffer for the Mendocino paintbrush population.

(f) Lot Configuration and Location of Existing Development

Dr. McBride evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. He states: "I have no information of the relationship of development on adjacent parcels to ESHAs." Dr. McBride believes that the proposed 50-foot buffer would be adequate to protect the rare plant population if the buffer around the Mendocino paintbrush population is established and respected.

(g) Type and Scale of Development

Dr. McBride considered the type and scale of the proposed development and listed the square footage for the proposed house. Dr. McBride believes that the proposed 50-foot buffer is sufficient to protect the rare plant population.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by the applicant would be adequate to protect the population of Mendocino coast paintbrush located on the subject parcel. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other standards. For instance, the fact that there is no evidence that Mendocino coast paintbrush is sensitive to human activity aside from direct impact weighs more heavily than does the fact that no cultural or topographic features could be identified to better ensure protection of the rare plant population, as the buffer may be of no greater value even if cultural or topographic factors were present that would create more of a barrier between the development and the paintbrush population.

Those factors that support the establishment of a 50-foot buffer as adequate to protect the population of Mendocino coast paintbrush identified on the subject parcel include (1) the presence of salal within the proposed buffer area would assure that the suspected symbiotic relationship between the Mendocino coast paintbrush and the salal would not be jeopardized at this site as the fact that a 50-foot buffer would not inhibit potential pollinators such as hummingbirds, and may actually better attract hummingbirds by providing additional flowering plants in the form of landscaping closer to the habitat area, (3) the lack of sensitivity of the rare plant population to human activities aside from direct impact, and (4) the fact that the erosion hazard for the soil type existing at the site is slight. No factors have been identified that suggest a buffer of 50 feet would not be adequate.

To maximize the width of the Mendocino coast paintbrush buffer, the applicant has increased the proposed buffer size by 10 feet, from the recommended buffer width of 50 feet, to 60 feet. When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the rare plant buffer as provided by Dr. McBride, and as adjusted by the applicant to increase the width to 60 feet, sufficiently demonstrates that no significant adverse impacts will result from a 60-foot buffer width.

As stated above, staff of the California Department of Fish and Game (DFG) has reviewed the rare plant buffer width analysis, and determined that the recommended 60-foot buffer would be an acceptable buffer for this particular project (Exhibit No. X). DFG noted that the paintbrush population, as determined and flagged by the botanical consultant, "...would be adequately protected with a sixty-foot no-development buffer between the perennial flower population and a proposed house development footprint."

Dr. McBride's determination that a 50-foot buffer width would be adequate to protect the Mendocino coastal paintbrush habitat is based in part, on his recommendation that a physical construction barrier, such as a row of hay bales laid end to end, is installed during construction between the area of earth disturbance and the edge of the rare plant buffer to avoid sedimentation impacts to the habitat. Special Condition No. 9 requires that such a barrier be installed during future development of residential structures within the building envelope to ensure that Dr. McBride's recommendation is carried out and the buffer will be adequate to protect the riparian habitat. The proposed project would allow for the future development of appurtenant residential improvements outside of the building envelope. To ensure that any such appurtenant residential improvements that might be proposed in the future also is developed consistent with Dr. McBride's recommendations, Special Condition No. 9 also requires that best management practices be utilized during construction of any allowable appurtenant residential development to prevent adverse impacts on environmentally sensitive habitat areas from polluted runoff.

Based on the foregoing, the Commission finds that a 60-foot buffer between the Mendocino coast paintbrush population and the proposed development is consistent with LUP Policy 3.1-7, and CZC Section 20.496.020, which require that the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the Department of Fish and Game that one hundred feet is not necessary to protect the habitat resources.

As mentioned above, in 1989 when the original permit was granted, the subject property was known to contain one riparian ESHA to the east of the existing building envelope. This ESHA was protected in the original permit through the imposition of an open space deed restriction over the ESHA itself and a 50-foot buffer surrounding the ESHA. Since that time, in 2001 Dr. McBride, the applicants' biologist, discovered the rare plant population of Mendocino coast paintbrush. However, unlike the riparian ESHA and its 50-foot buffer, this rare plant ESHA and recommended 60-foot buffer are not currently protected by open space deed restriction. Therefore, the Commission attaches Special Condition No. 8 requiring the recordation of an open

space deed restriction to prohibit any future development, ground disturbance or disruption of the area currently identified as supporting the rare plant population of Mendocino coast paintbrush (*Castilleja latifolia mendocinensis*) and a protective buffer of 60-feet around the population of Mendocino coast paintbrush as depicted by the Rare Plant ESHA and Buffer area on Exhibit 5. By imposing the requirement as a deed restriction, future buyers of the property will be informed through title reports secured during purchase of the property that the rare plant ESHA must be protected in the manner specified.

### Riparian ESHA

#### (a) Biological Significance of Adjacent Lands

Dr. McBride states that this area is only minimally differentiated from the Bishop pine forest, and presents very little cover or structural diversity associated with better defined riparian plant communities. It does not appear to hold water long enough after a rainfall event to provide permanent habitat for invertebrates, amphibians, reptiles, birds or mammals. Any or all of these organisms would have to depend on the larger diversity and productivity of the associated Bishop pine forest to survive. Dr. McBride summarizes his assessment of the biological significance of the area by stating: "A 50 foot buffer, measured from the edge of the habitat as flagged on September 9, 2002, is in my opinion, more than adequate to protect the habitat."

#### (b) Sensitivity of Species to Disturbance

Dr. McBride believes that the habitat value of the identified riparian community is so minimal that, in itself, it will not support any invertebrate, amphibian, reptile, bird or mammal populations. He states that: "If the area is protected by a 50 foot buffer, any organisms that utilize it would have more than adequate access to the associated diversity and productivity of the Bishop pine forest."

#### (c) Susceptibility of Parcel to Erosion

Dr. McBride considered the susceptibility of the subject parcel to erosion in determining that the proposed 50-foot buffer would be sufficient to protect the riparian habitat from impacts resulting from the proposed development. He concluded that the erosion hazard for the soil type existing at the site is slight. He does recommend however, that during the construction of any residence within the building envelope, a physical construction barrier (such as bales of straw laid end to end) should be provided between any proposed earth disturbance and the edge of the proposed 50-foot buffer to minimize and mitigate the slight chance of adverse impact due to soil erosion and maintain the integrity of the buffer area and the riparian habitat.

#### (d) Use of Natural Topographic Features to Locate Development

Dr. McBride evaluated natural topographic features located on the property in recommending the riparian habitat buffer. He states that the site is essentially flat, and that there are no natural topographic features to utilize in locating buffer areas.

(e) Use of Existing Cultural Features to Locate Buffer Zones.

In evaluating the adequacy of the buffer width, Dr. McBride considered whether any existing cultural features within the proposed buffer could be utilized to protect the riparian habitat. He stated that there are no cultural features available on the site to locate buffer zones.

(f) Lot Configuration and Location of Existing Development

Dr. McBride evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. He states: "I have no information of the relationship of development on adjacent parcels to ESHAs." Dr. McBride believes that the proposed 50-foot buffer would be adequate to protect the riparian habitat if the buffer around the riparian habitat is established and respected.

(g) Type and Scale of Development

Dr. McBride considered the type and scale of the proposed development and listed the square footage for the proposed house. Dr. McBride believes that the proposed 50-foot buffer is sufficient to protect the riparian habitat.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by the applicant would be adequate to protect the riparian habitat located on the subject parcel. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other standards. For instance, the fact that the identified riparian habitat has very little cover or structural diversity capable of supporting invertebrates, amphibians, reptiles, birds or mammals resulting in a habitat with "minimal value", or the fact that the soil erosion hazard for the subject parcel is "slight" weighs more heavily than does the fact that no cultural or topographic features could be identified to better ensure protection of the rare plant population.

Those factors that support the establishment of a 50-foot buffer as adequate to protect the identified riparian habitat on the subject parcel include (1) the fact that the soil erosion hazard at the site is slight, and (2) the minimal value of the habitat and resulting low capability to support invertebrates, amphibians, reptiles, birds, or mammals. No factors have been identified that suggest a buffer of 50 feet would not be adequate.

When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the riparian buffer as provided by Dr. McBride sufficiently

demonstrates that no significant adverse impacts will result from the 50-foot recommended buffer width.

As stated above, staff of the California Department of Fish and Game (DFG) has reviewed the riparian habitat buffer width analysis, and determined that the recommended 50-foot buffer would be an acceptable buffer for this particular project (Exhibit No. 8). DFG noted that the identified riparian habitat "...would be adequately protected with a fifty-foot no-development buffer." The Commission notes that when the subdivision was approved, the Commission determined that a 50-foot buffer would be adequate to protect the riparian area and required an open space deed restriction that only provides for a 50-foot buffer.

Dr. McBride's determination that a 50-foot buffer width would be adequate to protect the riparian habitat is based in part, on his recommendation that a physical construction barrier, such as a row of hay bales laid end to end, is installed during construction between the area of earth disturbance and the edge of the riparian buffer to avoid sedimentation impacts to the habitat. Special Condition No. 9 requires that such a barrier be installed during future development of residential structures within the building envelope to ensure that Dr. McBride's recommendation is carried out and the buffer will be adequate to protect the riparian habitat. The proposed project would allow for the future development of appurtenant residential improvements outside of the building envelope. To ensure that any such appurtenant residential improvements that might be proposed in the future also is developed consistent with Dr. McBride's recommendations, Special Condition No. 9 also requires that best management practices be utilized during construction of any allowable appurtenant residential development to prevent adverse impacts on environmentally sensitive habitat areas from polluted runoff.

Based on the foregoing, and as conditioned, the Commission finds that the proposed development with the proposed amendment is consistent with LUP Policy 3.1-7 and CZC Section 20.496.020, which require that the width of a buffer shall be a minimum of 100 feet unless an applicant can demonstrate, after consultation with the Department of Fish and Game, that one hundred feet is not necessary to protect the habitat resources.

Therefore, the Commission finds that the proposed permit amendment as conditioned is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between future development on a parcel and existing ESHA because the proposed amendment would establish buffer widths based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g). Furthermore, the Commission finds that the proposed permit amendment as conditioned is consistent with the provisions of LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (1) for reducing the minimum buffer below 100 feet because evidence has been provided that all the necessary criteria for reducing the buffer to a width less than 100 feet have been satisfied.

5. Geologic Hazards and New Development:

LCP Policies:

LUP Policy 3.4-7 states:

*"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) state:

*“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:

*“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.”*

**Discussion:**

The building envelopes established on each lot of the subdivision pursuant to the original permit were originally located at least 75 feet back from the edge of the bluff to ensure that bluff retreat would not affect the development over the life of the structure. The preliminary geotechnical report prepared prior to the Commission's approval of the project in 1989 did not include a site specific analysis of bluff retreat. Instead, the preliminary geotechnical report relied on general assessments of bluff retreat for other parts of California in making its recommendation for a 75-foot setback. A new geologic investigation by BACE Geotechnical has been performed since that time with a site-specific evaluation of the expected bluff retreat rate at the site. BACE Geotechnical concluded that the bluff is eroding at a relatively low average rate of about one and three quarters of an inch per year, therefore, over a period of 75 years representing the economic life span of a house, the bluff would erode back approximately 11 feet. A factor of safety of three was applied to arrive at the 33-foot recommended bluff setback. A report was issued, dated February 12, 2001, that determined that the setback from the coastal bluff could be reduced to 33 feet. An additional geotechnical investigation was performed for the subject parcel with a report dated June 28, 2001. This report contained recommendations related to site grading, foundation support, seismic design criteria, concrete slabs-on-grade, and site drainage. Future construction of a house on the parcel will need to take these recommendations into account or provide additional geotechnical analysis that supports why different recommendations may be more appropriate.

The Coastal Commission staff geologist has reviewed the BACE reports, visited the site, and met with the applicants' geologist. After reviewing requested additional documentation concerning the analysis of aerial photos, the Commission staff geologist determined that the applicants' geologist's projection of the bluff retreat rate and other recommendations were reasonable, but recommended that the development setback of 33 feet begin at a distance from the bluff edge equal to the rear of the small sea caves located at the base of the coastal bluffs on the subject property, adding an additional 6 feet to the 33-foot recommended setback, for a total 39-foot blufftop setback (Exhibit 9).

The southwestern boundary of the proposed modified building envelope provides for a bluff setback of 50 feet from the coastal bluff edge, consistent with both the recommendations of the geotechnical report of 33 feet, and with the Commission geologist's recommended 39-foot recommendation. The proposed reconfigured building envelope is in all other respects consistent with the recommendations of the geotechnical report. The proposed project would allow for the future development of appurtenant residential improvements outside of the building envelope. To ensure that any future development outside the building envelope will also be developed in a manner that would avoid contributing to geologic hazards, the Commission attaches Special Condition No. 9. The condition, in part, prohibits all above ground structures outside the building envelope and requires that all future appurtenant residential improvements developed on the property be setback at least 39 feet from the bluff edge and be otherwise consistent with the recommendations of the geotechnical report.

Therefore, the Commission finds that the development with the proposed amendment to reconfigure and move the building envelope 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, because the development with the proposed amendments would not result in the creation of any geologic hazards, and would not create nor contribute significantly to erosion or geologic instability of the coastal bluff.

**7. California Environmental Quality Act (CEQA)**

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application 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 and the public access and recreation policies of the Coastal Act at this point as if set forth in full. As discussed above, the development with the proposed amendment has been conditioned to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project with the proposed amendment that were received prior to preparation of the staff report. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. 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 development with the proposed

amendment, as conditioned to mitigate the identified impacts can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

**Exhibits:**

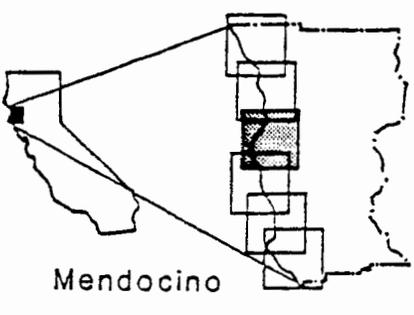
1. Regional Location Map
2. Vicinity Map
3. Site Plans
4. Projected View Corridors
5. Open Space Areas
6. Photo of Forested Terrace
7. ESHA Buffer Analysis
8. DFG Concurrence on ESHA Buffers
9. Staff Geologist's Letter
10. Staff Report for Original Permit

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 or interpretation of any condition will be resolved by the Executive Director of 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.

A B C D E F G H I J K L M N O

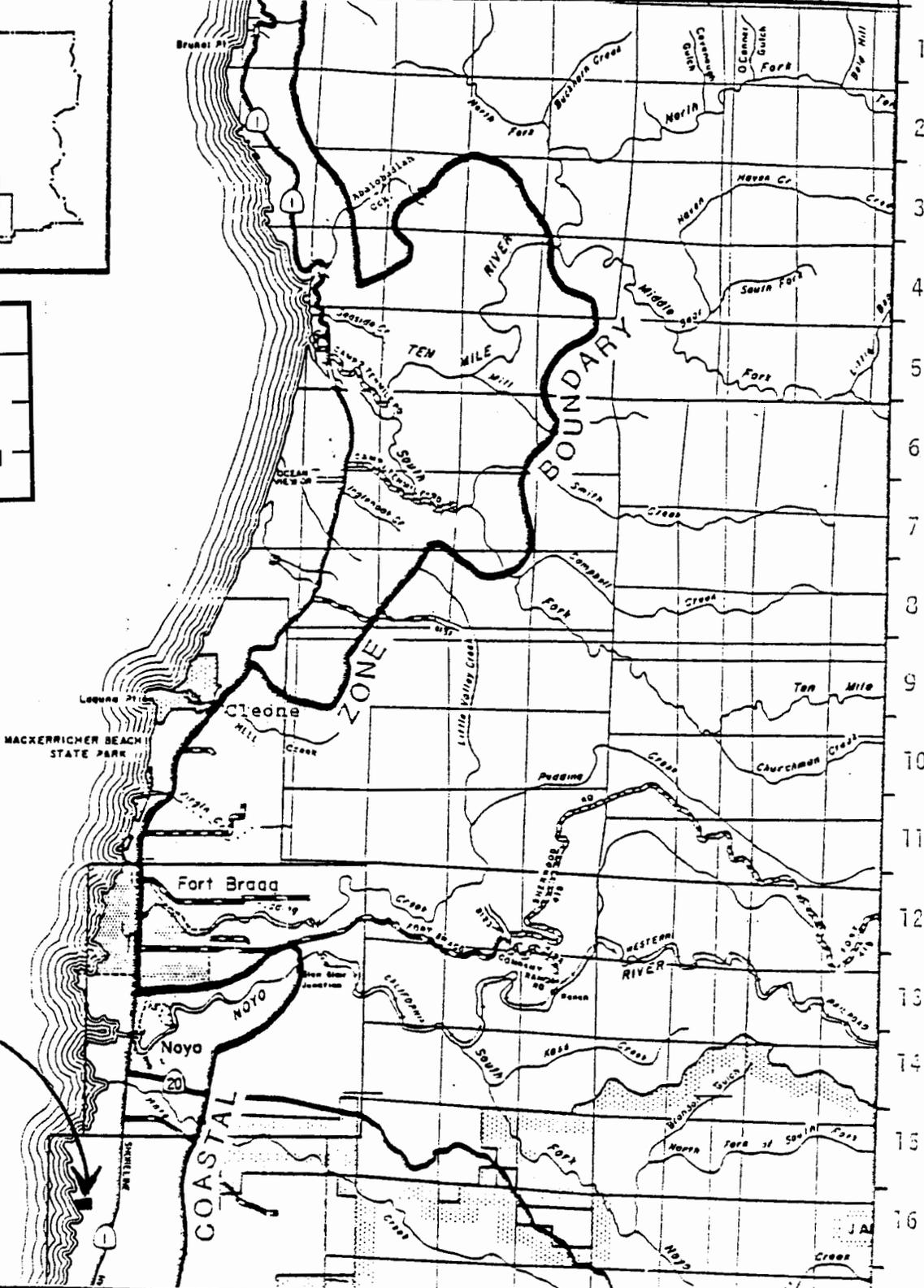


Mendocino

EXHIBIT NO. 1  
APPLICATION NO.  
1-89-028-A4  
MEREDITH  
REGIONAL LOCATION  
MAP

PACIFIC

Project Site

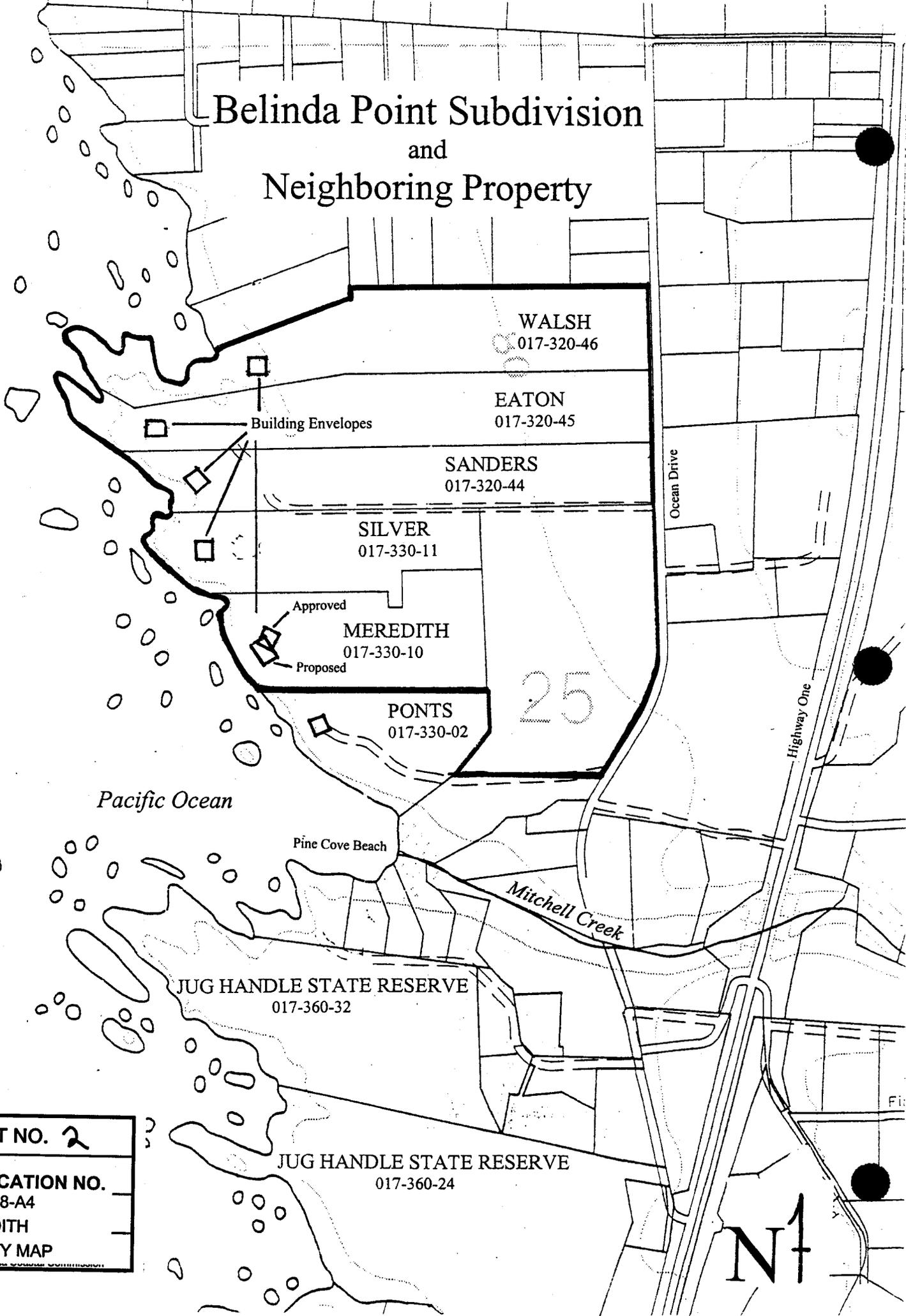


LOCATION MAP



County of Mendocino

# Belinda Point Subdivision and Neighboring Property



**EXHIBIT NO.** 2  
**APPLICATION NO.**  
1-89-028-A4  
**MEREDITH**  
**VICINITY MAP**

N1



## A1.1 KEY NOTES

- ① PROPOSED BUILDING ENVELOPE (125' X 80')
- ② PROPOSED RESIDENCE
- ③ ORIGINAL BUILDING ENVELOPE (100' X 100')
- ④ UNDERGROUND PROPANE TANK
- ⑤ UNDERGROUND WATER STORAGE TANK
- ⑥ UTILITY SHED
- ⑦ UNDERGROUND UTILITIES
- ⑧ PROPOSED 10' WIDE DRIVEWAY WITH GUEST PARKING
- ⑨ EXISTING DRIVEWAY EASEMENT
- ⑩ DECORATIVE BERMS
- ⑪ NEW DRIVEWAY EASEMENT
- ⑫ ENDANGERED PLANT AND SETBACK
- ⑬ VEGETATION CHANGE AND SETBACK
- ⑭ EXISTING WELL AND SETBACK
- ⑮ SEPTIC SYSTEM
- ⑯ SEPTIC REPLACEMENT



## A1.2 KEY NOTES

- ① PROPOSED BUILDING ENVELOPE 125' X 80'
- ② PROPOSED RESIDENCE
- ③ ORIGINAL BUILDING ENVELOPE 100' X 100'
- ④ UNDERGROUND PROPANE TANK
- ⑤ UNDERGROUND WATER STORAGE TANK
- ⑥ UTILITY SHED
- ⑦ UNDERGROUND UTILITIES TO RESIDENCE
- ⑧ GUEST PARKING
- ⑨ STONE 'PLAZA' AND MAIN PATH TO RESIDENCE
- ⑩ DECORATIVE BERMS
- ⑪ AREA OF NATIVE VEGETATION
- ⑫ CONCRETE WALKWAY
- ⑬ TANK AND PUMP FOR SEPTIC SYSTEM
- ⑭ DEAD TREE TO BE REMOVED
- ⑮ LIVE TREE TO BE REMOVED
- ⑯ ENDANGERED PLANT AND SETBACK
- ⑰ VEGETATION CHANGE AND SETBACK
- ⑱ VIEW CORRIDOR

EXHIBIT NO. 4

APPLICATION NO.

1-89-028-A4

MEREDITH

PROJECTED VIEW  
CORRIDORS

Coastal Headlands  
of  
Jug Handle State Reserve

Pine  
Cove  
Beach

VIEW TO  
STATE PARK

*Pacific Ocean*

Projected View Corridors

VIEW TO  
PACIFIC OCEAN

PROPOSED  
RESIDENCE

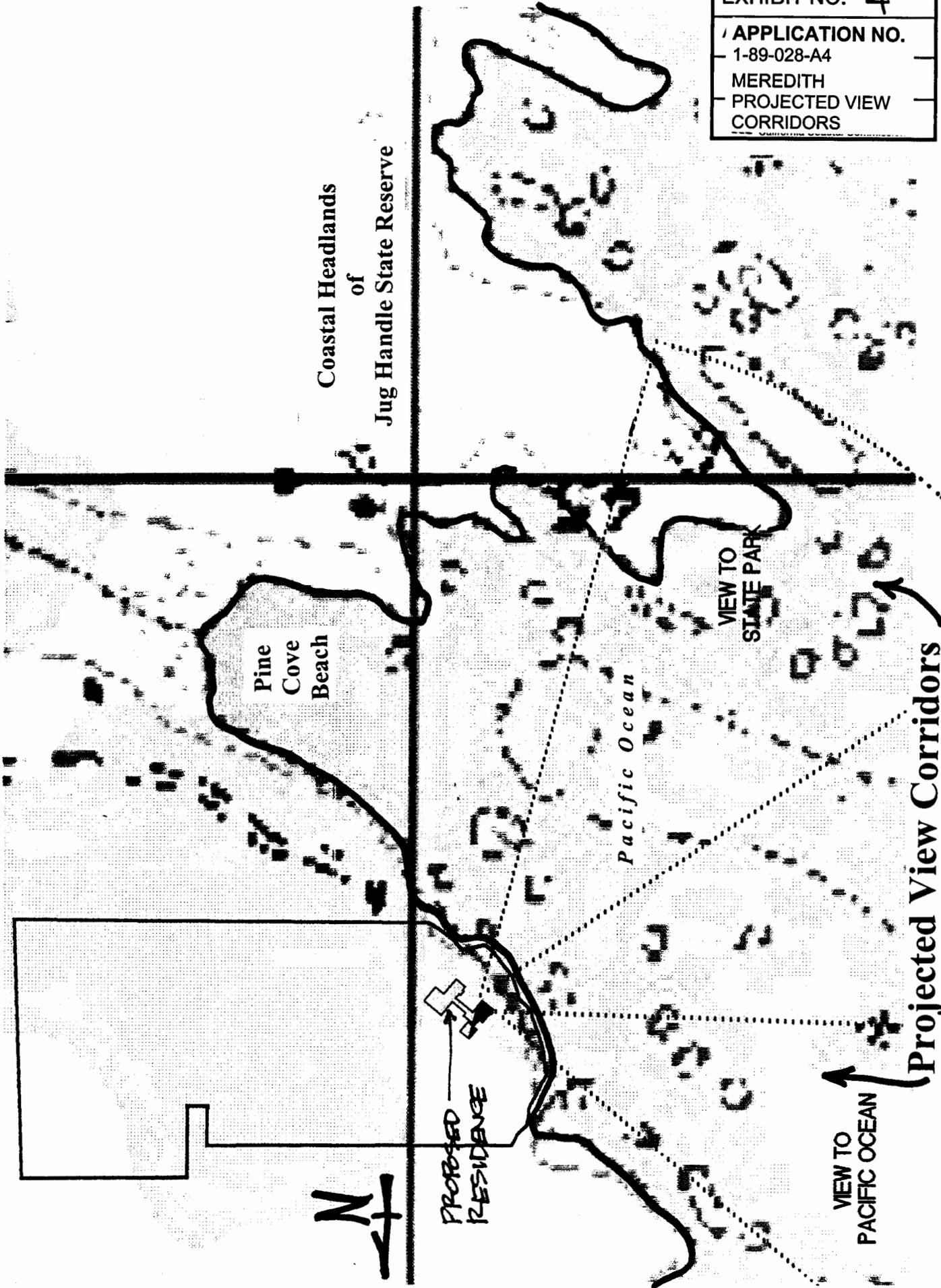




EXHIBIT NO. 6  
APPLICATION NO.  
1-89-028-A4  
MEREDITH  
PHOTO OF FORESTED  
TERRACE

PROPOSED  
BUILDING  
ENVELOPE  
←



*Botanical Surveys*  
**GORDON E. McBRIDE, Ph.D.**  
 September 23, 2002

EXHIBIT NO. 7
APPLICATION NO. 1-89-028-A4
MEREDITH ESHA BUFFER ANALYSIS (1 of 4)

Mr. Randall Stemler  
 California Coastal Commission  
 North Coast District Office  
 710 E Street, Suite 200  
 Eureka, CA 95501-1865

**RECEIVED**

NOV 12 2002

CALIFORNIA  
 COASTAL COMMISSION

RE: APPLICATION #1-89-028-A3, MERIDITH, A7320 OCEAN DRIVE, APN#  
 017-330-10

Dear Mr. Stemler:

This letter addresses the items delineated in Section 20.496.020 (A) (1) a - g, in relation to the proposed 50 foot buffers recommended around the two ESHAs - a Mendocino Paintbrush population I discovered in 2001, and a riparian habitat recognized by another botanist. Each issue will be addressed separately.

**Mendocino Coast Paintbrush**

I revisited the Mendocino Paintbrush population on September 9, 2002. It is undisturbed and appears to be prospering, however it is showing signs of vegetative senescence associated with the onset of short days. The Mendocino Paintbrush is a perennial, but most if not all of the above ground vegetative portion dies back in the fall, and the plant is very difficult to identify during the late fall, winter or spring.

**Section 20.496.020 (A) (1) (a) Biological Significance of Adjacent Lands:** This section does not appear to address individual rare plant populations. It appears to focus on the animals associated with a wetland, stream or riparian habitat. To the best of my understanding the Mendocino Paintbrush population discovered on the subject site and identified on the map submitted with my 2001 botanical survey does not have a functional significance to the surrounding land in the sense of nesting, feeding, breeding or resting. One significant functional relationship I am aware of regarding the Mendocino Coast Paintbrush is that it is a parasite or hemiparasite on Salal (Jepson Manual, pg. 1016). The several Mendocino Paintbrush plants are growing in reasonable proximity to Salal, and if the parasitic or hemiparasitic relationship is true, the host plant is present in the immediate vicinity and the symbiotic status is not in jeopardy. The only other functional relationship that I am aware of between the Mendocino Paintbrush and other organisms is that of potential pollinators. The floral structure of the Mendocino Paintbrush flower would suggest the plant is hummingbird pollinated. Nothing in the proposed 50 foot buffer around the plant would militate against hummingbird access to the flowers. Indeed, from my experience feeding and watching hummingbirds in coastal Mendocino County, a residence with other potential flowering ornamental plant species

Stemler, Pg. 2

often attracts hummingbirds and provides them additional sustenance, which would work to the advantage of the Mendocino Paintbrush.

**Section 20.496.020 (A) (1) (b) Sensitivity of Species to Disturbance:** Outside of direct impact from human activity, I am aware of no evidence that the Mendocino Paintbrush is sensitive to human activity that is at least 50 feet away from the plant. There are numerous large populations of Mendocino Paintbrush on Glass Beach headlands that receives a great deal of foot, bicycle, domestic and wild animal traffic throughout the course of the year. Each April - based on more than 15 years of my personal observations - these plants sprout and blossom with exceptional beauty and vigor, often within five feet of the most popular trails that circuit Glass Beach headlands. Here they prosper without a 50 foot buffer. I see no reason that the Mendocino Paintbrush population on the Meridith site requires anything more than a 50 foot buffer to continue to prosper.

**Section 20.496.020 (A) (1) (c) Susceptibility of Parcel to Erosion:** The soil type, according to the on line Mendocino County Soil Survey, is either Cabrillo-Heeser complex or Tregoning-Cleone complex (Soil Survey maps do not permit better resolution). The erosion hazard for both types of soil is slight if the surface is left bare (see attached printouts). It does not appear that construction of a single family residence would pose an erosion hazard to the Mendocino Paintbrush population. However, to minimize and mitigate the slight chance of negative erosion impact, I recommend a physical construction barrier between any proposed earth disturbance and the edge of the proposed 50 foot buffer to protect the integrity of the buffer area and the Mendocino Paintbrush population. Bales of straw, laid end to end, between any construction or earth disturbance, make a very effective physical barrier to erosion.

**Section 20.496.020 (A) (1) (d) Use of Natural Topographic Features to Locate Development:** There are no natural topographic features (hills, bluffs, etc.) on the site that would be of use in determining the recommended buffer for the Mendocino Paintbrush population.

**Section 20.496.020 (A) (1) (e) Use of Existing Cultural Features to Locate Buffer Zones.** There are no cultural features available on the site that would be of use in determining the recommended buffer for the Mendocino Paintbrush population.

**Section 20.496.020 (A) (1) (f) Lot Configuration and Location of Existing Development:** I have no information of the relationship of development on adjacent parcels to ESHAs. If a 50 foot buffer around the Mendocino Paintbrush populations is established and respected, the Mendocino Paintbrush population will not be negatively impacted.

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Stemler, Pg. 3

**Section 20.496.020 (A) (1) (g) Type and Scale of Development:** The proposed Meridith single family dwelling is +/- 7700 square feet.

#### The Riparian Habitat

In my botanical survey and addendum of 2001 I did not call the area in question a riparian habitat because it lacks at least one of the critical features - a permanent watercourse with evidence of flowing water for at least part of the year such as a cut bank - which corresponds to the popular definition of riparian. Admittedly, there is some hydrophytic vegetation (Wax Myrtle (*Myrica californica*), Salmon Berry (*Rubus spectabilis*), Fern (*Dropterhis expansa*) and Sedge (*Carex obnupta*), associated with a slight depression in the soil, but taken in the context of the Bishop pine overstory, it does not appear to me to be predominant vegetation. Also, the depression appears to originate and terminate on the parcel. The depression and the hydrophytic vegetation associated with it do not continue to the bluff. The depression may contain standing water during a heavy rainfall event, but there is no evidence of a cut bank. I marked the boundary of the depression and associated vegetation with 1" orange plastic surveyor's tape on September 9, 2002.

**Section 20.496.020 (A) (1) (a) Biological Significance of Adjacent Lands:** This area is minimally differentiated from adjacent Bishop pine forest, and presents very little cover or structural diversity associated with better developed riparian plant communities. It does not appear to hold water long enough after a rainfall event to provide permanent habitat for invertebrates, amphibians, reptiles, birds or mammals. While any or all of these organisms may utilize the habitat, they would have to depend on the larger diversity and productivity of the associated Bishop pine forest to survive. A 50 foot buffer, measured from the edge of the habitat as flagged on September 9, 2002, is in my opinion, more than adequate to protect the habitat.

**Section 20.496.020 (A) (1) (b) Sensitivity of Species to Disturbance:** The habitat value of the riparian community is so minimal that, in itself, will not support any invertebrate, amphibian, reptile, bird or mammal populations. Each of these groups of organisms would have to depend, as stated in the previous paragraph, on the larger diversity and productivity of the associated Bishop pine forest to survive. If the area is protected by a 50 foot buffer, any organisms that utilize it would have more than adequate access to the associated diversity and productivity of the Bishop pine forest.

**Section 20.496.020(A) (1)(c) Susceptibility of Parcel to Erosion:** As stated previously the soil on the site is either Tregoning- Cleone complex or Cabrillo-Heeser complex. The susceptibility of these soil types to erosion, if left bare, is slight (see-attached printouts from the online Mendocino Soil Survey). In order to protect the riparian community

Stemler, Pg. 4

from erosion associated with any proposed development I recommend a physical barrier – bales of straw placed end to end – between any proposed construction and the edge of the recommended fifty foot buffer around the riparian community during construction.

**Section 20.496.020 (A) (1) (d) Use of Natural Topographic Features to Locate Development:** The site is essentially level. There are no natural topographic features to utilize in locating buffer areas.

**Section 20.496.020 (A)(1)(e) Use of Existing Cultural Features to Locate Buffer Zones:** There are no cultural features available on the site to locate buffer zones.

**Section 20.496.020 (A)(1)(f) Lot Configuration and Location of Existing Development:** I have no information on the relationship of development on adjacent parcels to ESHAs. If a fifty foot buffer, measured from the edge of the riparian habitat as marked on September 9, 2002 is established and respected the habitat will not be negatively impacted.

**Section 20.496.020(A)(1)(g) Type and Scale of Development Proposed:** The proposed Meridith single family dwelling is +- 7700 square feet.

Please do not hesitate to contact me if you have questions or comments.

Sincerely,

  
Gordon E. McBride

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State of California - The Resources Agency

**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
(707) 944-5500

GRAY DAVIS, Governor

EXHIBIT NO. 8
APPLICATION NO. 1-89-028-A4
DFG CONCURRENCE ON ESHA BUFFERS (1 of 2)

November 27, 2002

Mr. Randall Stemler  
California Coastal Commission  
Post Office Box 4908  
Eureka, CA 95502-4908  
FAX (707) 445-7877

**RECEIVED**

NOV 27 2002

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Stemler:

Gene and Kittie Meredith Project  
Coastal Development Permit Amendment #1-89-028-A4

On November 14, 2002, Liam Davis of the Department of Fish and Game (DFG) and Robert Schlosser (project consultant) visited the Meredith house development site. The project is about two miles south of the town of Fort Bragg and west of Highway 1 in the County of Mendocino. The property address is 17230 Ocean Drive, Assessor's parcel number 017-330-10. The proposed project is a single house and asphalt driveway.

DFG has read the Botanical Survey (September 23, 2002) which both delineated the wetland swale area and documented a rare Mendocino coast Indian paintbrush (*Castilleja mendocinensis*) population on-site. The Mendocino coast Indian paintbrush flower is a California Native Plant Society 1B plant and is protected under the California Environmental Quality Act, Section 15380.

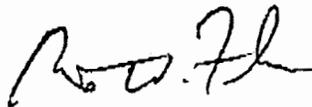
DFG determined that the wetland swale area, as determined and flagged by the botanical consultant, would be adequately protected with a fifty-foot no-development buffer between the wetland and asphalt driveway adjacent the house.

We have also determined that the paintbrush population, as determined and flagged by the botanical consultant, would be adequately protected with a sixty-foot no-development buffer between the perennial flower population and a proposed house development footprint.

Mr. Randall Stemler  
November 27, 2002  
Page 2

This concludes our comments on this project at this time. If you have any comments regarding our letter, you may contact Liam Davis, Environmental Scientist, at (707) 944-5529; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,



Robert W. Floerke  
Regional Manager  
Central Coast Region

cc: Gene and Kittie Meredith  
110 Frederick Street  
Santa Cruz, CA 95062

Robert Schlosser  
Leventhal Schlosser Architects  
435 North Main Street  
Fort Bragg, CA 95437  
FAX (707) 961-0912

Gordon E. McBride, Ph.D.  
Botanical Surveys  
30301 Sherwood Road  
Fort Bragg, CA 95437

County of Mendocino  
Department of Planning and Building Services  
790 South Franklin  
Fort Bragg, CA 95437

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## CALIFORNIA COASTAL COMMISSION

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



12 April 2002

## GEOTECHNICAL REVIEW MEMORANDUM

To: Randy Stemler, Coastal Program Analyst  
From: Mark Johnsson, Staff Geologist  
Re: A-1-MEN-01-051 (Meredith)

EXHIBIT NO. 9
APPLICATION NO. 1-89-028-A4
MEREDITH STAFF GEOLOGIST'S LETTER (1 of 3)

In regard to the above referenced appeal, I have reviewed the following documents:

- 1) BACE Geotechnical 2001, "Geotechnical investigation, proposed Meredith residence, Parcel 1, A.P. No. 017-330-10, Ocean Drive, Belinda Point Minor Subdivision, Mendocino County, California", 11 p. geotechnical report dated 28 June 2001 and signed by E. E. Olsborg (CEG 1072) and P. R. Dodsworth (GE 278).
- 2) BACE Geotechnical 2001, "Response to comments, California Coastal Commission review of BACE Geotechnical's June 28, 2001, Geotechnical investigation report for proposed Meredith residence, Parcel 1, Belinda Point Minor Subdivision, Mendocino County, California", 2 p. response letter dated 12 December 2001 and signed by E. E. Olsborg (CEG 1072) and P. R. Dodsworth (GE 278).
- 3) BACE Geotechnical 2002, "Supplemental aerial photograph analysis, planned Meredith residence, Parcel 1, Belinda Point Minor Subdivision, Mendocino County, California", 2 p. letter report dated 8 March 2002 and signed by E. E. Olsborg (CEG 1072) and P. R. Dodsworth (GE 278).

In addition, I visited the site on 27 February 2002, where I met with the project geologist, Mr. Erik Olsborg.

Reference (1) contains an evaluation of the site conditions, bluff retreat rate, and provides recommendations for site grading, foundation support, seismic design criteria, concrete slab design, and drainage. The report recommends a 33 foot building setback from the bluff edge, which is accurately located on plate 2 according to criteria consistent with Coastal Act regulations and the Mendocino County LCP. No quantitative slope stability analysis was performed, but I agree with the project geologist that such an analysis is unnecessary given the dense, well cemented sands of the Franciscan Formation that make up the lower bluff together with the recommended building setback. The report identifies four sea caves at the subject site; all are relatively small, consist of single passageways nearly perpendicular to the bluff, and appear to pose little immediate danger to the stability of the site. The largest cave approaches to within 35 feet of the proposed building envelope. The report identifies an area of

shallow erosion at the southeastern corner of the property, where runoff has been directed over the bluff edge by a shallow swale.

The report does not make note of a larger erosional gully, apparently formed largely by ground water piping, that lies just off the site to the north. I noticed this erosional feature during my site visit and noted that it lead directly to the cove at the north edge of the property, and was probably responsible for the location of that cove. Mr. Olsborg and I agreed that this major erosional feature is propagating to the northeast along a drainage swale, away from the subject property, and thus poses little or no threat to the proposed development.

Reference (1) recommends that a low berm be constructed near the bluff edge to direct drainage away from the erosional feature at the southeast corner of the property. In response to staff questions, Mr. Olsborg prepared reference (2), explaining that the berm must be constructed relatively close to the bluff edge to be effective. I concur with this assessment, and also agree that this berm is a prudent measure to increase the stability of the bluff in that area.

Reference (1) estimates that the bluff retreat rate at the site is approximately 1.75 inches per year, based on "the results of our aerial photographic study." Given the vague nature of this comment, I asked Mr. Olsborg to prepare reference (3), explaining how this aerial photograph analysis was undertaken. Reference (3) provides three photographs, dated 1963, 1981, and 2000. The centerline of Ocean Drive was used as a reference feature, and the distance to a point on the bluff at the subject site was measured on the three photographs. The analysis indicates that the bluff retreated at an average rate of 1.3 inches per year between 1963 and 1981, and 1.4 inches per year between 1981 and 2000. Reference (3) indicates that these figures were rounded upwards to 1.5 inches per year to estimate the amount of erosion over the 75-year anticipated economic life of the structure; in actuality reference (1) makes use of a figure of 1.75 inches per year. Both figures are supported by the aerial photograph analysis presented in reference (3).

On the basis of this analysis, reference (1) estimates that the bluff will retreat 11 feet over the next 75 years. The building setback recommended is based on multiplying this figure by a factor of 3 (by a factor of 4 at the southeast corner of the site if the proposed drainage berm is not constructed). As stated in reference (3), "the intent of the safety factor is to allow for the possibility of localized landsliding (rock falls) and the potential effects of a rise in sea level." To this I would add the concern that the relatively short time interval spanned by the photographs may not allow for the establishment of a long-term average bluff retreat rate. The conservative approach of tripling the calculated bluff retreat rate does, in my opinion, provide a setback that assures geologic stability over the anticipated life of the development.

The sea caves on the site present an additional cause of concern regarding bluff stability. Although these small caves currently do not greatly weaken the bluff, they are loci of greater than average erosion at the site. It can be anticipated that they will grow in size, ultimately leading to bluff collapse and retreat of the bluff edge, likely at a greater rate than the average rate calculated by the analysis of aerial photographs. Given the conservative approach of tripling the calculated rate, I concur that a 33 foot setback would assure geologic stability, but feel that the most conservative approach would be to measure this setback from the rear of any sea cave that extends landward of the bluff edge. Reference (1) indicates that two of the sea caves extend landward of the bluff edge, the larger one extending approximately six feet (as scaled from Plate 2) landward of the bluff edge. I recommend that the 33-foot building setback be measured from the most landward position of the sea caves in these areas. I note that the slightly larger building setback generated by this approach does not affect the proposed building envelope.

I hope that this review is helpful. Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Johnsson", with a long horizontal flourish extending to the right.

Mark Johnsson, Ph.D., CEG

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

HOWARD STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
(415) 543-8555

F.10.a. SFS 

Project Approved: June 13, 1989  
Revised Staff Report: June 30, 1989  
Hearing Date: July 14, 1989  
Staff: Jo Ginsberg

STAFF REPORT: REVISED FINDINGS

APPLICATION NO.: 1-89-28

APPLICANT: E.F.S. Associates AGENT: Bud Kamb

PROJECT LOCATION: 17200 Ocean Drive, Fort Bragg, Mendocino County,  
APN 017-320-24 and 017-330-01.

PROJECT DESCRIPTION: Division of a 56.7-acre parcel into five parcels of  
8.6 acres, 10.6 acres, 11.1 acre, 12.5 acres, and 13.9  
acres; plus the construction of one paved roadway and  
one rocked roadway, two entrance gates, and six wells.

COMMISSION ACTION: Approval with Revised Conditions

DATE OF COMMISSION ACTION: June 13, 1989

COMMISSIONERS ON PREVAILING SIDE: Commissioners Hisserich, Glickfeld, Howard,  
MacElvaine, Malcolm, McInnis, Nathanson, Carter, Calvo, Wright, Chairman  
Wornum.

COMMISSION ACTION:

The Commission has adopted the following Resolution:

I. Approval with Conditions

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

II. Standard Conditions: See attached.

EXHIBIT NO. 10
APPLICATION NO. 1-89-028-A4
STAFF REPORT FOR ORIGINAL PERMIT (1 of 14)

### III. Special Conditions.

#### 1. Open Space Easement/Deed Restriction:

PRIOR TO THE 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, over the portions of the property identified on the attached Map Exhibit No. 6 identified as sensitive habitat and includes a 50' buffer area surrounding the sensitive habitat area. The open space restriction prohibits any removal of major vegetation, or the erection of structures of any type within the area designated for open space. The deed restriction shall be recorded free of prior liens and encumbrances except tax liens, shall be irrevocable, running from the date of recordation, and shall run with the land binding the landowner, and his/her heirs, assigns, and successors in interest to the subject property.

#### 2. Public Rights

By acceptance of Permit No. 1-89-28, the applicant agrees: (a) that the issuance of the permit and the completion of the development does not prejudice any subsequent assertion of any public rights of access to or along the shoreline, e.g., prescriptive rights or public trust; and (b) that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with any rights of public access to or along the shoreline acquired through use which may exist on the property.

#### 3. Revised Declaration of Covenants Conditions and Restrictions:

PRIOR TO THE ISSUANCE of the Coastal Development Permit, the applicant shall submit for Executive Director review and approval a revised version of the Covenants, Conditions and Restrictions for the proposed subdivision, prior to legal recordation of such CC&R's, that includes the following:

- a. All changes to the existing CC&R's as noted in attached Exhibit 9.
- b. An additional section to be added to the CC&R's requiring water conservation measures, including low-flow toilets, showerheads, and faucets, water-conserving appliances, drought tolerant landscaping and screening of satellite dishes.

#### 4. Vertical Beach Access:

PRIOR TO THE ISSUANCE of the Coastal Development Permit, the applicant and landowner shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for vertical public access and passive recreational use to the blufftop and beach. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

Such easement shall be located from Ocean Drive to the bluff edge and to the cove, following the northerly of the two access roads proposed as part of this development, as shown on Exhibit 4A. The easement shall be 25 feet in width, except that the easement shall include all of the sandy and rocky cove area identified on Exhibit 4A, from the base of the bluffs to the mean high tide line. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area.

The document shall be recorded free of prior liens and any other 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 California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

5. Pedestrian Access:

PRIOR TO THE ISSUANCE of the Coastal Development Permit, the applicant shall submit for Executive Director review and approval plans indicating the location of a pedestrian access through or adjacent to the proposed entrance gate on the more northerly of the two access roads proposed as part of this development. This access shall permit public pedestrian ingress and egress to the public access easement required in Special Condition No. 4.

6. Archaeological Resources.

The archaeological survey conducted on the subject site identified an archaeological site on the parcel (designated CA-MEN-1604). These resources shall be preserved for perpetuity and shall not be disturbed or altered in any way. The survey concluded that it is possible that additional archaeological resources may exist on the site, and that these resources might become evident during construction. If archaeological resources are discovered on the project site during construction authorized by this permit, all work that could damage or destroy these resources shall be suspended. The applicant shall then have a qualified archaeologist inspect the project site, determine the nature and significance of the archaeological materials, and, if he or she deems it necessary, develop appropriate mitigation measures using standards of the State Historic Preservation Office.

Should the qualified archaeologist determine that the mitigation measures are necessary, the applicant shall apply to the Commission for an amendment to Permit 1-89-28, requesting that the permit be amended to include the mitigation plan proposed by the qualified archaeologist. The plan shall provide for monitoring, evaluation, protection, and mitigation of archaeological resources on the project site. Should the archaeologist determine that no mitigation measures are necessary, work on the project site may be resumed.

III. Findings and Declarations:

The Commission hereby finds and declares:

1. Project Description:

The proposed development consists of a land division of 56.7 acres into five parcels of 8.6 acres, 10.6 acres, 11.1 acre, 12.5, and 13.9 acres; two roads; two entrance gates; and six wells. The subject site is located approximately 2 1/2 miles south of Fort Bragg, between Ocean Drive and the Pacific Ocean, situated on a blufftop. The western portions of the property have gently undulating topography that is terminated along the west by very steep beach bluff faces. A perennial spring surfaces near the center of the north portion of the property and feeds a narrow swale and freshwater marsh area extending from the spring to the bluff face near the northwest corner of the property. A number of sea caves are located below the bluffs. Vegetation consists of coastal prairie grasses and shrubs on the east and west portions of the property, with a band of mature maritime pine forest running generally from the north to the south through the center of the property.

The subject parcel is designated in the Mendocino County LUP as Rural Residential-5, Planned Unit Development (Rural Residential-2, Planned Unit Development), meaning that there may be one parcel for every 5 acres, or one parcel for every 2 acres with proof of water. The Planned Unit Development designation seeks to ensure maximum preservation of open space, protection of views from public roads, and resource protection. The subject parcel is located in an area that is designated in the LUP as being "highly scenic."

Subsequent to the Commission hearing on this permit, the Commission has approved an immaterial amendment to substitute an access easement along the northerly of the two access roads proposed as part of this development instead of the originally approved access easement along the southerly access road.

2. Development:

Section 30250(a) of the Coastal Act states that:

(a) 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. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

The subject parcel is located within the urban boundary of Fort Bragg, and is therefore not subject to the Coastal Act's rural land division criteria. Mendocino County Department of Environmental Health has confirmed that there is adequate water and septic capability on the proposed parcels. The proposed project, therefore, as conditioned, is consistent with Section 30250(a) of the Coastal Act.

3. Public Access:

Coastal Act Sections 30210 through 30212 require the provision of maximum public access opportunities.

Section 30210 states:

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

Section 30211 states:

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

Section 30212 states:

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

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

(2) adequate access exists nearby, or,

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

Policy 3.6-27 of the Mendocino County LUP also states that where there is evidence of historic public use and the potential for the existence of prescriptive rights, an access easement shall be required as a condition of permit approval.

### Site/Project Description

The subject site is located on a blufftop lot west of Highway One, between Ocean Drive and the Pacific Ocean. The proposed development includes a five-way land division, two roads, two entrance gates, and six wells. One proposed road is an existing dirt road that runs across the southern edge of the parcel. The other proposed road runs near the northern edge of the parcel. Entrance gates are proposed at the eastern end of both roads. The gate on the private drive (northern end of parcel) will be a 5-foot-high, 20-foot-wide electric gate; the gate on the main drive (southern end of property) will be 5 feet high and 30 feet wide. The stone pillars will be 6 1/2 feet high.

Although the LUP does not designate this site for public access, the Commission finds that there is not adequate public access nearby, as per Coastal Act Section 30212. There is existing public beach access at the Mendocino Coast Botanical Gardens, located approximately 3/4-mile to the north (north of Digger Creek), but there is a fee to enter the gardens. There is also private beach access via a paved trail from the Pine Beach Inn, which is less than 1/4-mile to the south; two lot owners adjacent to the Inn have made offers to dedicate public accessways, but they have not yet been accepted and consequently are not open and available for public use.

### Prescriptive Rights

The Commission finds that there is clear, substantial evidence supporting the conclusion that a portion of the subject property has been impliedly dedicated to the public for purposes of recreational and beach access, a right which the Commission must protect under Section 30211 of the Coastal Act. Both on-site staff inspections and examination of aerial photographs of the area reveal that the subject parcel contains trails leading from Ocean Drive to the coastal bluffs and the sandy and rocky cove near the northern edge of the parcel, and along the blufftop (See Exhibit 3). There is one particular trail that runs along the northerly edge of the subject parcel, in the general location of the proposed rock road, that is worn several inches into the grass and shows clear evidence of repeated historic use. Another main access route follows the existing dirt road that runs near the southern edge of the parcel, and continues west to the bluffs. A number of additional trails cross the bluffs themselves. Staff has reviewed aerial photographs taken in 1986, 1978 and 1970, and each of these photos reveals evidence of trails across the subject parcel.

In addition, approximately three dozen letters have been submitted (See Exhibit 8) from a number of persons who live in the area, stating that there has been historic and continuous use of this parcel for public access for at least the last 35 to 40 years. In addition to neighbors, persons from all over the Fort Bragg area have stated that they have used these trails. In some cases, neighbors stated that the trails had been used by the public for more than 60 to 80 years. Several of these letters refer to both main trails to the coast, and most of the letters also state that there has been no attempt to stop public use of the property until the last year or two. The letters also refer to the cove area, which is used for fishing, abalone hunting, shell-collecting, etc.

The preceding information supports the Commission's findings that the public has used the parcel for public coastal access for a minimum of 35 years, that this area has been impliedly dedicated to the public, and must therefore be protected against interference from development. The proposed entrance gates would create such an interference, and would prohibit the continued use of the historic access trails via a physical impediment to pedestrian access. The proposed development, therefore, is not consistent with Coastal Act Sections 30210, 30211, and 302212, as existing, longstanding public access through the subject site will be prevented by the proposed development.

#### Cumulative Impacts

Section 30250(a) of the Coastal Act requires that new development not have significant adverse effects either individually or cumulatively on coastal resources. As this proposed project will increase the density fivefold on this site, the effects upon coastal resources must be evaluated.

The proposed land division will increase the density of residential development on this property by four units. Under the current configuration and present land use plan designation, one residential structure could be constructed on the 56 acre parcel. In addition, the submitted CC&R's will allow each new parcel to include a guest cottage for visitor use. Furthermore, the LUP does not at this time regulate the use of single-family homes as vacation rentals to be let to non-residents.

Therefore, four additional residences and appurtenant structures will be constructed, with an accompanying increase in impacts to highway capacity, coastal resources, and access and recreational facilities. The proposed project does not include methods by which to mitigate those impacts. Thus, as buildout of the area occurs, there will be limited ability to provide for coastal access and recreation to meet increased demands, as one of the last remaining access points in this geographic area would not be available for public use. It is found, therefore, that the public would bear a significant loss as a major access point would be impeded by new development, and that would result in greater use of other accessways in the area which might contribute to significant environmental degradation resulting from additional public use.

One of the Commission's major concerns during its review of the Mendocino County Land Use Plan in 1985 was the County-proposed densities, which would allow a potential increase of 3400 residential units throughout the County's coastal zone. The cumulative impact of such an increase on traffic, natural resources, availability of public services, and consistency with the average parcel size requirements of the Coastal Act were reviewed by the Commission, resulting in suggested modifications (ultimately accepted by the County) that decreased potential units by 1500, or by 44% of the previously proposed total.

The diversity and relatively unspoiled character of the Mendocino coast encourage visitors year-round. Tourism is a major industry in the county, and beach and recreation facilities are heavily used, particularly in summer. The LUP notes that on a peak summer weekend day, when all accommodations are filled, there could be 2,600 visitor parties on the Mendocino coast. Many coastal motels, inns, and hotels are reserved in advance and booked throughout the summer. Campgrounds near Mendocino and Fort Bragg are full during the peak season. If the proposed project were approved without provision of public access, there would be a significant impact on use of the recreational facilities of the area, which are already at peak use in the summer, when this project is viewed in conjunction with the other land divisions which the LUP would allow. To approve the proposed project without provision of public access would therefore be inconsistent with Coastal Act Section 30250(a).

### Conclusion

As detailed above, the Commission finds that there is clear evidence of prescriptive rights on the subject parcel, on the vertical trails to the coast, along the blufftop, and on the rocky and sandy beach. Section 30211 of the Coastal Act requires that these areas be protected for continued public use. Section 30212 of the Coastal Act requires that new development provide public access. Section 30250(a) of the Coastal Act requires that new development not have significant adverse effects, either cumulatively or individually, on coastal resources. In addition, Policy 3.6-27 of the Mendocino County LUP states that where there is evidence of historic public use and the potential for the existence of prescriptive rights, an access easement shall be required as a condition of permit approval. As the proposed subdivision does not contain any public access provisions nor does it protect historic use areas, it is inconsistent with these sections of the Coastal Act.

In order to protect impliedly dedicated rights of access and use, provide new access, and mitigate the cumulative impact from the development, the Commission must require dedication of a vertical access trail, as well as the sandy and rocky beach. In addition, as there is substantial evidence that prescriptive rights exist, the Commission must require that the applicant not interfere with existing public use of the trails. This will protect existing access and enhance the recreational experience and thus will provide additional public recreational opportunities that will mitigate the cumulative impacts created by this subdivision. In addition, the Commission requires that pedestrian access be created through or adjacent to the proposed entrance gate of the northerly road, which would otherwise cause a physical impediment to continued use of the existing access trails. The Commission finds that it is appropriate to require a dedication of an access trail at the subdivision stage, when an increase in density is being proposed.

At the time of the vote for the proposed project, the Commission approved a vertical access easement dedication along the southerly access road, leading to the cul de sac, and then out to the point and the cove. The Commission has since approved an immaterial amendment that substitutes for this approved access a dedication for an access trail along the northerly of the two access

5. Environmentally Sensitive Habitat Areas:

Also important in evaluating the impacts of a land division is the question of environmentally sensitive habitat areas that may exist on the subject parcel.

Section 30240 of the Coastal Act states that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30231 of the Coastal Act states that:

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

Further, Policy 3.1-7 of the Mendocino County LUP states that a buffer area shall be established adjacent to all environmentally sensitive habitat areas in order to protect them from significant degradation from future development.

A botanical survey identified the rare and endangered plant Castilleja latifolia spp. mendocinensis (Mendocino coast paintbrush) as possibly occurring on the near-vertical faces of the ocean bluffs. Another rare and endangered plant species, Campanula californica (swamp harebell) was found to occur near the creek that flows through the north-center of the property toward the bluffs. In addition, several swales in the western half of the site include patches of riparian vegetation, including alders, ferns, berries, sedges, and rushes. A marshy area is found at the west end of a swale running to the northwest corner of the site.

roads, leading to the point and the cove. As this access route follows almost exactly the pedestrian access trail that has been historically used for many years, and meets the intent of the Commission's condition that vertical access be provided to the point and to the cove, the Commission finds that this northerly access dedication is acceptable.

As so conditioned to provide vertical access and beach access at the cove, as well as being conditioned that existing public rights of access cannot be impeded, the public's rights are protected and the proposed project is consistent with Coastal Act Sections 30210, 30211, and 30212, as public access will be provided, and development will not interfere with the public's right of access to the sea where acquired through use.

#### 4. Visual Resources:

The subject property is located in an area designated by the Mendocino County Land Use Plan as "highly scenic," as portions of the parcel are visible from the first public road nearest the sea. Coastal Act Section 30251 states in part that:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, the Mendocino County LUP contains policies that address development within highly scenic areas. Policy 3.5-3 states that all proposed divisions of land within "highly scenic" areas shall be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcels could not be consistent with visual policies. Furthermore, the land use plan designation for the subject parcel is Planned Unit Development, which seeks to ensure maximum preservation of open space, protection of views from public roads, and resource protection.

In order to ensure maximum preservation of open space and to protect the views from Ocean Drive, the public road nearest the sea, as well as from the areas of historic public use, building envelopes have been delineated on the County-approved tentative Subdivision Map. The County has required these building envelopes in order that the project will be consistent with the Planned Unit Development designation that applies to this property. The building envelopes for the proposed land division are not visible from the road, as they are all located near the western edge of the subject parcel.

Therefore, the proposed project is consistent with Coastal Act Section 30251 and with the Mendocino County LUP.

The building envelopes, wells, water lines, septic systems, and proposed roads have been sited to avoid all areas containing sensitive habitat. In order to ensure protection of these sensitive habitat areas by not allowing any future development in these areas, Special Condition No. 1 requires the recordation of a deed restriction for an open space easement over the portions of the subject parcel identified as containing sensitive habitat. This ensures that the sensitive habitat areas will be protected from disturbance, as no development is permitted in or near these areas. The Commission finds that the requirement of the recordation of an open space easement at the subdivision stage is appropriate, so that potential buyers and developers of the land will be aware of the existence of such open space easements and the associated development restrictions within these areas.

In addition, Special Condition No. 3 requires revision of the CC&R's, stating that no development, vegetation removal for agricultural use, large animals or livestock animals, or disturbance are permitted in the sensitive habitat areas that occur on the subject parcel. The proposed development, as conditioned, is therefore consistent with Coastal Act Section 30231 and 30240.

6. Archaeological Resources:

Section 30244 of the Coastal Act states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

An archaeological survey conducted in 1979 determined that there is a prehistoric site located on the subject parcel (state-listed as CA-MEN-1604), consisting of the remains of a temporary encampment for food processing, occupied seasonally by the Northern Pomo Indians. In addition, the survey states that there is a possibility that buried cultural resources may be discovered during grading or trenching.

Special Condition No. 1 requires the recordation of a deed restriction for an open space easement over the portions of the subject property within a sensitive habitat area. The archaeological site discovered on the subject parcel lies within the area that will be protected by an open space easement. No development, therefore, will be permitted in the area of the archaeological site.

To further protect archaeological resources, Special Condition No. 6 states that should any cultural resources be discovered during construction, all work shall cease and an archaeologist shall be consulted to propose and carry out appropriate mitigative action. As conditioned, therefore, the proposed development is consistent with Coastal Act Section 30244 as archaeological resources will be protected.

It should be noted that the archaeological survey also discovered an area of historic remains, designated CA-MEN-2038H, on the subject property. This site consists of the remains of two barns and early 1870's house, and a partly-filled mine shaft. The area of the structures as well as some of the surrounding land was used in the filming of the movie "Johnny Belinda." As the Coastal Act does not require the protection of "historic" sites, the Commission makes no finding as to the status of their protection.

#### 7. Geologic Hazards

Coastal Act Section 30253 states in part that

New development shall:

- (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 subject property is located on a blufftop parcel that overlooks the ocean. The bluffs are eroded and there are a number of seacaves along the western edge of the parcel. A geologic report concluded that the building envelopes should be set back a minimum of 75 feet from the edge of the bluff, and this has been done. This will ensure that no construction will take place in any portion of the subject property where development might result in erosion, geologic instability, or destruction of the site or surrounding area, or require any protective devices that might substantially alter natural landforms. The proposed project, therefore, is consistent with Coastal Act Section 30253.

#### 8. Water Supply and Sewage Disposal

Of particular importance to the evaluation of the cumulative effects of a land division in Mendocino County is the question of available water and the suitability of the soils for installation of a septic system.

Section 30250(a) of the Coastal Act states in part that:

- (a) 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.

Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow...

In addition, Policy 3.8-7 of the LUP states that land divisions creating new parcels shall be approved only where either a community sewage disposal system with available capacity exists or where a satisfactory site for a sewage system exists. Policy 3.8-9 states that approval of the creation of any new parcels shall be contingent upon an adequate water supply that will accommodate the proposed parcels and will not adversely affect the groundwater table of contiguous or surrounding areas.

County Environmental Health has determined, as a result of soils testing and a hydrological survey, that the proposed new parcels are suitable for accommodating septic systems, and that sufficient water resources exist to support the proposed new parcels. Therefore, the Commission finds that the proposed land division is consistent with Coastal Act Sections 30250(a) and 30231, and with Policies 3.8-7 and 3.8-9 of the LUP.

9. Mendocino County LUP/Prejudice to LCP:

Section 30604 of the Coastal Act authorizes permit issuance if the project is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, is consistent with Chapter 3 policies of the Coastal Act as discussed above, and thus will not prejudice local government's ability to implement a certifiable LCP.

10. CEQA:

The project, as conditioned, does not have a significant adverse effect on the environment, within the meaning of CEQA. The project has been mitigated as discussed above to ensure consistency with the Coastal Act.

## ATTACHMENT A

### Standard Conditions

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