

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
PHONE (707) 445-7833  
FACSIMILE (707) 445-7877

MAILING ADDRESS:  
P. O. BOX 4908  
EUREKA, CA 95502-4908

RECORD PACKET COPY



# Th 20a

Filed: September 14, 2001  
49<sup>th</sup> Day: Waived  
Staff: Randall Stemler  
Staff Report: January 17, 2003  
Hearing Date: February 6, 2003  
Commission Action:

STAFF REPORT: APPEAL

DE NOVO HEARING

APPEAL NO.: **A-1-MEN-01-051**

APPLICANTS: **Gene A. and C. J. Meredith**

AGENTS: **Alan Block; Bud Kamb; Leventhal/Schlosser Associates**

LOCAL GOVERNMENT: **County of Mendocino**

DECISION: **Approval with Conditions**

PROJECT LOCATION: **At 17230 Ocean Drive, west of Highway One, approximately 3 miles south of Fort Bragg, Mendocino County (APN 017-330-10).**

PROJECT DESCRIPTION: **Construction of a 6,966-square-foot, two-story residence with an 886-square-foot attached garage, driveway, water supply system from existing well, septic system and landscaping.**

APPELLANTS: **Coastal Commissioners John Woolley and Mike Reilly.**

SUBSTANTIVE FILE: **1) Mendocino County CDP No. 12-2001; and**  
DOCUMENTS **2) Coastal Development Permit No. 1-89-028-A3;**  
**3) Mendocino County Local Coastal Program**

**STAFF NOTES:**

1. **Procedure**

On July 11, 2002, pursuant to Section 30625 of the Coastal Act and Section 13115 of the Title 14 of the California Code of Regulations, the Coastal Commission found that the appeal of the County of Mendocino's approval raised a substantial issue with respect to the grounds on which the appeal had been filed. As a result, the County's approval is no longer effective, and the Commission must consider the proposed project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the County's certified LCP and the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. **Commission Review of Related Permit Amendment**

This appeal is related to an amendment of a Commission permit that was recently considered by the Commission. At the January 8, 2003 meeting, the Commission approved with conditions Coastal Development Permit Amendment No. 1-89-028-A4 to change the previous location and configuration of the building envelope for the subject parcel originally established by the Commission in 1989. The reconfigured building envelope was proposed by the applicant to accommodate the amended house design revised for *de novo* review.

---

**SUMMARY OF STAFF RECOMMENDATION DE NOVO:**

**APPROVAL WITH CONDITIONS**

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the County of Mendocino certified LCP and the access policies of Chapter 3 of the Coastal Act.

Since the July hearing on the Substantial Issue determination, the applicants have amended their project description for purposes of the Commission's *de novo* review of the appeal to delete the previously proposed house design and substitute a new house design in its place.

The new project description as amended by the applicants proposes significant changes in the design of the residential development. The project approved by the County would have allowed construction of an 8,610-square-foot, two-story house to be built in an 18,000-square-foot building envelope located as close as 35 feet from the edge of the coastal bluff. The new amended house design proposes construction of a 6,966-square-foot, partial two-story residence

that would be located in a 10,000-square-foot building envelope located no closer than 50 feet from the edge of the coastal bluff. The newly proposed 120-foot-long, west-facing frontage to the ocean is 90 feet less than the 210-foot-long, west-facing façade of the previous County-approved design. The new design of the structure as currently proposed contains a significant reduction from the previously approved amount of window glass facing the ocean, especially for the upper level considering that the earlier design would mostly have been built as an elevated structure over the ground effectively placing nearly all of the living space on the second story. The height of the house now proposed by the applicants stands at 24 feet compared to the County-approved height of 28 feet. The applicants propose to paint the exterior stucco walls using four different earth-tone colors to create a varied palette that would blend with the surrounding forest environment. With the newly proposed changes from the County-approved design as discussed above, the potential for adverse visual impacts of the proposed development is greatly reduced. In addition, the related permit amendment for modifying the building envelope was conditioned to require an open space deed restriction over the forested area between the building envelope and the edge of the coastal bluff in order to ensure that the future home would be visually screened. The deed restriction also set limits on where appurtenant residential improvements could be located outside of the building envelope to further protect visual resources.

Staff is recommending ten special conditions to ensure the project's consistency with all applicable policies of the County's certified LCP. Special Condition No. 1 would impose restrictions on the choice of exterior building materials, colors, and lighting elements to ensure that the exterior appearance of the development is compatible with the project's surrounding. Special Condition No. 2 would require maintenance of trees in the open space area deed restricted under the related permit amendment to ensure that visual screening of the development is maintained during the life of the project. The location of the proposed utility shed must be moved to make it consistent with the siting limitations imposed by Permit Amendment No. 1-89-028-A4 and to protect visual resources. Special Condition No. 3 would require revised plans evidencing that the proposed utility shed would be built consistent with the Special Condition No. 9 of Coastal Development Permit Amendment No. 1-89-028-A4. Special Condition No. 4 would prohibit construction of future seawalls or shoreline protective devices, and require the landowner to remove any authorized development if it is deemed by a government agency as too dangerous to occupy. Additionally, if the bluff recedes to within 10 feet of the principal residence, a geotechnical investigation is required to assess the situation and recommend measures to be taken. Special Condition No. 5 would impose an assumption of risk, waiver of liability, and indemnity agreement to provide acknowledgement of the hazardous nature of the geologic conditions inherent at the site, to assume the risks of developing the property, and to require a waiver of any claim of damage or liability. Special Condition No. 6 would require erosion and sedimentation controls to protect ESHAs and their buffers from potential adverse impacts resulting from the proposed development activities. Special Condition No. 7 would require that landscaping plans be submitted for approval to ensure that no invasive exotics are included in the landscaping design. Special Condition No. 8 would require conformance to the design and construction plans contained in the geotechnical report to ensure that the recommendations contained in the geotechnical report are adhered to. Special Condition No. 9 would require conformance to any conditions imposed by the local government.

Staff recommends that the Commission find the project, as conditioned, is consistent with the policies contained in the County's certified LCP and the Coastal Act public access and recreation policies.

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

**Motion:**

I move that the Commission approve Coastal Development Permit No. A-1-MEN-01-043 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 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 Permit:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS: See attached.**

**III. SPECIAL CONDITIONS:**

**1. Design Restrictions**

A(1) All exterior siding of the approved structures on the site shall be composed of natural or natural appearing materials, and all siding and roofing of the approved structures shall be composed of materials of the colors proposed in the application or darker earth tone colors only. The copper roofing shall be uncoated and left to weather to a natural patina. The current owner or any future owner shall not repaint or stain the house or other approved structures with products that will lighten the color of the house or structures as approved. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare; and

A(2) All exterior lights, including any lights attached to the outside of the approved buildings or located along walkways, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

2. **Maintenance of Trees for Visual Screening of Development**

As trees die or are removed for any other purpose, all existing trees growing within the Area of Native Vegetation Open Space Deed Restriction area required by Special Condition No. 7 of the Coastal Development Permit Amendment No. 1-89-028-A4 that are removed, except for any trees growing within the portion of the open space area identified as a View Corridor by Special Condition No. 7 of Coastal Development Permit Amendment No. 1-89-028-A4, shall be replaced in-kind with native tree species throughout the life of the approved residential development, and in the same locations as they are currently growing.

3. **Revised Site Plan for Utility Shed**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval a revised site plan for the proposed utility shed indicating that (1) it will be constructed within the approved building envelope identified by Special Condition No. 9 of Coastal Development Permit Amendment No. 1-89-028-A4, (2) it will be constructed northeast of the building envelope and along the driveway, consistent with the requirements of Special Condition No. 9 of Coastal Development Permit Amendment No. 1-89-028-A4, or (3) it will be eliminated.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **No Future Bluff or Shoreline Protective Devices**

A(1). By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective devices shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-01-051, including, but not limited to, the residence, foundations, garage, driveway, or appurtenant residential development in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to

construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy No. 3.4-12 and Mendocino County Coastal Zoning Ordinance No. 20.500.020 (E)(1).

- A(2) By acceptance of this permit, the applicants further agrees, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, garage, foundations, and driveway, and other appurtenant residential development if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach or other tidelands before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- A(3) In the event the edge of the bluff recedes to within 10 feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.
- B. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-01-051**, the applicants 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 applicants' entire parcel. 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.

5. **Assumption of Risk, Waiver of Liability and Indemnity Agreement**

- A. By acceptance of this permit, the applicants acknowledge and agree: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicants and the property

that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicants' entire parcel. 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.

6. **Erosion and Sedimentation Control**

- A. **PRIOR TO THE COMMENCEMENT OF ANY APPROVED DEVELOPMENT ON THE PARCEL**, the permittee shall install a physical barrier consisting of bales of straw placed end to end—between any construction and (1) the edge of the area subject to the Mendocino coast paintbrush open space deed restriction required pursuant to Special Condition No. 8 of Coastal Development Permit Amendment No. 1-89-028-A4, and (2) the edge of the area subject to the riparian open space deed restriction required pursuant to Special Condition No. 1 of Coastal Development Permit No. 1-89-028. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period.
- B. On-site vegetation shall be maintained to the maximum extent possible during construction and any disturbed areas shall be replanted with native vegetation following project completion.
- C. All on-site debris stockpiles shall be covered and contained at all times.

7. **Landscaping Plans**

- A. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-01-051**, the applicants shall submit landscaping plans to the Executive Director for review and approval. The landscaping plans shall

substantially conform with the site plan as proposed, and shall indicate that no invasive exotic plants will be planted with any landscaping of the site.

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

**8. Conformance of the Design and Construction Plans to the Geotechnical Report**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the geotechnical report dated June 28, 2001 prepared by BACE Geotechnical Consultants. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**9. Conditions Imposed by Local Government**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

**10. Satisfaction of Prior to Issuance Conditions of CDP Amendment 1-89-028-A4**

**PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, applicant shall submit evidence, for the review and approval of the Executive Director, that all conditions of Coastal Development Permit Amendment 1-89-028-A4 that are required to be satisfied prior to issuance of that Coastal Development Permit have been satisfied.

**IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. Incorporation of Substantial Issue Findings**

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated June 27, 2002.

**B. Project History / Background**

The applicants propose to develop a single-family residence with an attached garage, and appurtenant structures including a utility shed, underground water tank, and under ground propane tank; driveway, water system from an existing well, septic system, landscaping, and exterior lighting at 17230 Ocean Drive, west of Highway One, approximately three miles south of Fort Bragg in Mendocino County.

On August 16, 2001, the Mendocino County Planning Commission approved with conditions Coastal Development Permit #12-2001 for an 8,610-square-foot, two-story residence with three separate elements connected by a 210-foot-long bridge/library; together with a driveway, well, septic system and landscaping. The building site approved by the County was located within a new building envelope modifying the Commission's approval of the original subdivision, even though the Commission had not yet approved a coastal development permit amendment. The subject site is in an area designated in the certified Mendocino County Land Use Plan as highly scenic. The height of the structure as approved by the County would have been 28 feet above the finished grade, with six passive ventilation chimneys, each 2 ½ feet by 8 ½ feet, rising an additional 9 feet higher than the roof line, for an effective height of thirty-seven (37) feet.

The County Planning Commission approved the project with nineteen conditions, attached as pages 4-7 of Exhibit No.10. The County Planning Commission action was not appealed at the local level to the Board of Supervisors. After the close of the local appeal period, the County issued a Notice of Final Action for Coastal Development Permit #12-2001 for construction of the residence. The Notice of Final Action was received by Commission staff on August 30, 2001 (Exhibit No.10). The project was appealed to the Coastal Commission by Coastal Commissioners John Woolley and Mike Reilly in a timely manner on September 14, 2001, within 10-working days after receipt by the Commission of the Notice of Final Local Action. The appeal cited inconsistencies between the approved development and the visual resource provisions of the certified LCP (Exhibit No.9). On September 17, 2001, staff requested all relevant documents and materials regarding the subject approval from the County; these materials were received on September 21, 2001. On October 11, 2001, the Commission opened and continued the appeal hearing. On October 29, 2001, prior to the 49<sup>th</sup> day after the appeal was filed, the applicant submitted a signed waiver of the requirements of Section 30621 that an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed.

On July 11, 2002, the Commission found that a substantial issue had been raised with regard to the consistency of the project as approved by the County with the provisions of certified LUP

Policies 3.5-1, 3.5-3 and Coastal Zoning Code Section 20.504.015 concerning protection of visual resources.

The Commission continued the *de novo* portion of the appeal hearing. The project was subsequently revised by the applicants.

**C. Project and Site Description**

**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 that 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 Nos.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. Each parcel was assigned an approved building envelope proposed by the applicants as part of the subdivision. The building envelopes were initially developed to address environmental concerns related to bluff setback policies, riparian and other sensitive habitat areas. An archaeological survey conducted in 1979 prior to the subdivision located a prehistoric site on one of the other parcels north of the subject property, and established a deed restricted open space to protect the archaeological resources located within the proposed subdivision. 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 applicant's 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 accessway 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.

On January 8, 2003, the Commission approved the related Coastal Development Permit Amendment Request No. 1-89-028-A4 to move and reconfigure the previously approved building envelope for the applicants' parcel to the southwest, closer to the bluff and within a grove of trees on the terrace. The approved permit amendment maintains the originally approved

building envelope at 10,000-square-feet, but reconfigures it from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle, and reduces the setback from the coastal bluff edge from 75 to 50 feet to accommodate the proposed house design. An open space deed restriction was placed on the forested area located between the building envelope and the coastal bluff edge to ensure that the future home would be visually screened. The approved permit amendment was also conditioned to avoid adverse impacts to the sensitive rare plant community by establishing a 60-foot, deed restricted buffer around the rare plant population. Future development of above ground structures on the parcel was limited by deed restriction to occur only in the approved building envelope. Exceptions to the requirement of locating future development to the building envelope were provided for the utility shed if located northeast of the building envelope along the driveway, and for belowground facilities such as the water tank and propane tank proposed to be buried.

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 fifty to sixty 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 original building envelope established in 1989 by approval of Coastal Development Permit No. 1-89-28 was located 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. Coastal Development Permit (CDP) No. 1-89-028-A4 moved the building envelope to the southwest, closer to the bluff and within a grove of trees on the terrace as further discussed below.

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 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. This rare plant population is located immediately to the west of the originally approved building envelope.

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 No. 2). As discussed above, the Commission placed a deed restriction on the forested area of native vegetation located between the building envelope and the coastal bluff edge to visually screen the development from public views from Jug Handle State Reserve. There are other residences in the view of the coastal bluff from Jug Handle State Reserve. On the parcel immediately south of the applicant's 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. The houses are generally scattered along the terrace about every 400-500 feet.

**2. Project Description**

As approved by the County, development of a 28-foot-high, 8,610-square-foot, 210-foot-long, two-story house with a substantial amount of window glass facing the ocean would have been constructed in an 18,000-square-foot building envelope located as close as 35 feet from the edge of the coastal bluff. No provisions were provided by the County approval for visual screening to protect visual resources as viewed from Jug Handle State Reserve. For purposes of the *de novo* review by the Commission, the applicant has submitted a revised project description and plans. The proposed amended design consists of a 6,966-square-foot single-family residence with an 886-square-foot attached garage, at a maximum height to average grade of 24 feet; appurtenant structures including a utility shed, underground water tank, and under ground propane tank; driveway, water system from an existing well, septic system, landscaping, and exterior lighting. The newly proposed changes include a reduction in the height of the residence from the County-approved 28-foot height, to 24 feet; a reduction in the County-approved square-footage of 8,610-square-feet to 6,966-square-feet; a reduction in the County-approved length of the house façade facing Jug Handle State Reserve from 210-lineal-feet to 120-lineal-feet; a reduction in the amount of the residence the County approved that would be two-story; a reduction in the quantity of window glass that the County approved; and an increase in the coastal bluff setback from the County-approved 35-foot setback to 50 feet. In addition, the applicants proposed establishing deed restricted view corridors to further protect visual resources.

**D. Planning and Locating New Development**

**LCP Provisions**

LUP Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

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. Coastal Zoning Code Chapter 20.376 establishes the prescriptive standards for development within Rural Residential (RR) zoning districts. Single family residences are a principally permitted use in the RR zoning district. The minimum parcel size is 5 acres, pursuant to CZC Section 20.376.020(C). Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to CZC Sections 20.376.030 and 20.376.035, respectively. Unless a further increase in height were found to not affect public views or be out of character with surrounding development, the maximum building height allowed is 18 feet above natural grade. CZC Section 20.376.065 sets a maximum of 20% structural coverage on RR lots of less than two acres in size.

### Discussion

The proposed single-family residence would be constructed within an existing developed residential subdivision known as the Belinda Point Subdivision. The proposed use would be consistent with the rural residential zoning for the site. As discussed above, the development as proposed would consist of a 24-foot-tall, two-story, 6,966-square-foot single-family residence, with an 886-square-foot attached garage; appurtenant structures including a utility shed, an underground water tank, an underground propane tank; driveway, installation of a water system from an existing well, installation of a septic system, landscaping, and exterior lighting. The 10,000-square-foot building envelope and the appurtenant structures proposed outside of the building envelope together represent about 2% coverage of the 10.6-acre parcel consistent with the maximum 20% structural coverage standard for the zoning district.

The proposed development would be served by an existing well. Sewage would be processed by a proposed septic system that has been approved by the Mendocino County Department of Public Health's Division of Environmental Health. Development of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots meeting minimum parcel size standards established for the property under the certified LCP were addressed at the time the LCP was certified. Therefore, as conditioned, the proposed development is located in an area able to accommodate the proposed development, consistent with the applicable provisions of LUP Policy 3.9-1.

As discussed below, the proposed development has been conditioned to include mitigation measures, which will minimize all adverse environmental impacts.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1 3.8-1, and with Zoning Code Sections 20.376 as the development will be located in a developed area, there will be adequate services on the site to serve the proposed development, and the project will not contribute to adverse cumulative impacts on highway capacity, scenic values, or other coastal resources.

E. Visual Resources

LCP Provisions

LUP Policy 3.5-1 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.*

LUP Policy 3.5-3 states, in applicable part:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any 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 affect public views to the ocean or be out of character with surrounding structures... New development should be with visual resource policies and shall not be allowed if new development should be subordinate to natural setting and minimize reflective surfaces...*

---

Note 1: LUP Map No. 14 designates all of the area west of Highway One in the immediate vicinity of the applicants' parcel as highly scenic.

Note 2: Coastal Zoning Ordinance 20.504.015(A)(2) reiterates this section of coastline as being a "highly scenic area."

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; ...*

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 states:

*The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Coastal Zoning Ordinance Section 20.504.015(C) states, in applicable part:

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

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to 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 shall be selected to blend in hue and brightness with their surroundings.*

...

*(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 an alternative site exists;*

*(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*

*(c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*

*(d) Design development to be in scale with rural character of the area.*

...

*(10) Tree planting to screen buildings shall be encouraged, however new development shall not allow trees to interfere with coastal/ocean views from public areas.*

...

*(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible.*

### Discussion

Policy 3.5-1 of the County's LUP provides for the protection of the scenic and visual qualities of the coast, requiring permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the character of surrounding areas. Policy 3.5-3 states that new development west of Highway One in designated "highly scenic areas" should be subordinate to the natural setting. Policy 3.5-4 states that buildings that must be sited within a highly scenic area shall be sited in or near the edge of a wooded area rather than on a ridge or in the middle of open areas if an alternative site exists and utilize natural landforms or artificial berms to minimize visual impacts. Policy 3.5-5 states that tree planting to screen buildings be encouraged. The County's Coastal Zoning Ordinance Section 20.504.010 states that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of landforms, and to be visually compatible with the character of surrounding areas. Additional Coastal Zoning Code sections reiterate LUP policies. Specifically, Coastal Zoning Ordinance Section 20.504.015(C)(1) requires that new development in highly scenic areas protect coastal views from public areas including roads and trails. Section 20.504.015(C)(2) of the Zoning Code and LUP Policy 3.5-3 limit building height to 18 feet and one story respectively for parcels located west of Highway One in designated highly scenic areas, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Coastal Zoning Ordinance Section 20.504.015(C)(3) requires that new development be subordinate to the natural setting and minimize reflective surfaces and requires that in highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

The subject site is a blufftop parcel on a coastal terrace located west of Highway One and Ocean Drive in an area designated as "highly scenic" under the Mendocino County LCP. As noted previously, the building envelopes for the five Belinda Point Subdivision parcels, including the subject parcel, were delineated to address geologic concerns related to bluff setback policies, riparian and other sensitive habitat areas, and archaeological resources located on the project site;

as well as to protect views from Ocean Drive, and from public recreational access trails along the northern boundary of the subdivision, and other areas of historic public use. In its approval of Coastal Development Permit Amendment No. 1-89-028-A4, the Commission also acted to protect views from Jug Handle State Reserve, a public park across an embayment off the subject site at the mouth of Mitchell Creek, by requiring the reconfigured building envelope to be positioned behind a protected forested area that would screen views of the future house from the Reserve and by limiting where future appurtenant residential development that would be allowed outside of the building envelope could be placed on the property.

As discussed above, the development as proposed would consist of a 24-foot-tall, two-story, 6,966-square-foot single-family residence, with an 886-square-foot attached garage; appurtenant structures including a utility shed, an underground water tank, an underground propane tank; driveway, installation of a water system from an existing well, installation of a septic system, landscaping, and exterior lighting.

LUP Policy 3.5-4 states that buildings located within areas designated highly scenic shall be sited in or near the edge of a wooded area rather than in open areas and utilize natural landforms and artificial berms to screen development. 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 proposed house would be constructed in the building envelope approved by Coastal Development Permit Amendment No. 1-89-028-A4, which was conditioned to require a deed restricted Area of Native Vegetation between the proposed development and the coastal bluff to serve as a permanent visual screen protecting views toward the subject property from Jug Handle State Reserve. With one exception, Coastal Development Permit Amendment No. 1-89-028-A4 limited all future appurtenant residential development allowed outside of the building envelope to driveways and parking areas and below ground utility improvements, all of which would be difficult or impossible to see from Jug Handle State Reserve. The exception is an above-ground utility shed to house utility generators and water system controls. Special Condition No. 9 of the permit amendment allowed such a facility to be built outside of the building envelope, but only in a location northeast of the building envelope and along the driveway to ensure that the existing forested area seaward of the building envelope would also act to screen the utility shed from view from Jug Handle State Reserve, consistent with LUP Policy 3.5-4. As proposed under Appeal No. A-1-MEN-01-051, however, the utility shed would be located in a different location to the southeast of the building envelope. The proposed location is far enough to the southeast that it would not be completely screened from view from Jug Handle State Reserve by the forested area seaward of the building envelope protected by the open space deed restriction as future development in the building envelope itself would. Therefore, to ensure that the proposed utility shed would be located near a wooded area that would screen the shed from public view in a manner consistent with LUP Policy 3.5-4, and to ensure consistency with the provision of Special Condition No. 9 of Coastal Development Permit Amendment No. 1-89-028-A4, the Commission attaches Special Condition No. 3. This condition requires that the applicant submit a revised site plan for the proposed utility shed for the review and approval of the Executive Director that either (1) relocates the shed to an area within the building envelope, (2) relocates the shed to a location northeast of the building

envelope and along the driveway consistent with Special Condition No. 9 of Coastal Development Permit Amendment No. 1-89-028-A4, or (3) eliminates the shed. As conditioned, the proposed residential development is consistent with the requirements of LUP Policy 3.5-4.

The proposed house would have a partial second story and a maximum building height of 24 feet, which exceeds the maximum number of stories by one and the maximum height allowed in highly scenic areas by six feet. However, LUP Policy 3.5-3 and Coastal Zoning Code Section 20.504.015(C)(2) provide that these maximum number of stories and height limitations may be exceeded, to a maximum height of 28 feet, if the increase in height would not affect public views to the ocean or be out of character with surrounding structures. As described above, the project site is situated on a forested terrace located 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. 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. There are other residences within the view of the coastal bluff from Jug Handle State Reserve. The houses are generally scattered along the terrace about every 400-500 feet. 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. On the parcel immediately south of the applicants' property is a partial two-story structure partly screened by trees. Further south in areas outside of the Belinda Point Subdivision there are additional homes visible from Jug Handle State Reserve, many of which include partial or full second stories. As many of the nearby homes have partial or full second stories, the applicants' proposed house would be in character with other neighboring residential structures, and would not easily be within public view. Although the proposed development would rise 6 feet above the 18-foot limit imposed in highly scenic areas, the applicants' proposed house, while not completely invisible, would be substantially hidden behind an area of native, forested vegetation protected by a deed restriction imposed in Coastal Development Amendment No. 1-89-028-A4, intended to protect public views from Jug Handle State Reserve. Therefore, as the proposed house would not be out of character with surrounding structures or adversely affect public views to the ocean, the proposed development with its partial second story and 24-foot height is consistent with the provisions of LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(C) that allow structures to exceed one story and 18 feet in height provided that an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

Coastal Zoning Code Section 20.504.015(C)(3) requires that new development minimize reflective surfaces and requires that in highly scenic areas, building materials, including siding and roofing materials shall be selected to blend in hue and brightness with the surroundings. The view of the surroundings of the subject property from Jug Handle State Reserve to the northeast and north along the shoreline is dramatic. 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. The open space deed restriction imposed in Permit Amendment 1-89-028-A4 over the forested area between the building envelope and the bluff edge will ensure that the forested area will largely screen the proposed house from view. However, some portions of the house will still be visible through the trees from some locations along the Jug Handle headland. Therefore, it is important that the proposed house conform to the LCP requirements that the colors and building materials blend in hue and brightness with their surroundings. The applicants have proposed a mix of specific colors for use on the stucco exterior of the proposed residence with the strategy of creating "a varied palette of earth tones that will be more likely to blend in with the surrounding forest environment than a single uniform color." The proposed colors include: a brownish-gold color labeled "morgan hill gold" (Benjamin Moore ® color chip number 026-3B-189); a tan color labeled "guesthouse" (Benjamin Moore ® color chip number 127-4B-1120); a brick color labeled "spanish red" (Benjamin Moore ® color chip number 011-4B-1301); and a chocolate color labeled "coconut grove" (Benjamin Moore ® color chip number 122-4B-1029). The applicants propose that the copper roofing that would be used "will be uncoated 16-ounce copper that will be left to weather to a natural patina." This natural corroded-copper color would blend with the greenish-blue ocean waters and the dark green shades of the Bishop pine forest, and together with the earthtone stucco colors as proposed, blend in hue and brightness with their surroundings consistent with CZC Section 20.504.015(C)(3). To ensure that only this palette of colors or darker earth tone colors that would also blend in hue and brightness with the surroundings are utilized during the life of the project, the Commission attaches Special Condition No. 1(A)(1). This condition requires all siding and roofing of the proposed structures to be composed of materials utilizing only the proposed color scheme or darker earth tone colors.

Exterior lighting is proposed for illuminating the residence, utility shed, driveway, and front walkway. If lighting were directionally cast outward from the development site it would contrast with the surroundings and violate the hue and brightness provisions of Coastal Zoning Ordinance Section 20.504.015(C)(3). Therefore, to ensure consistency with CZC Section 20.504.015(C)(3), Special Condition No.1 A(2) also requires that window glass be non-reflective and exterior lighting be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

Several aspects of the project as proposed and conditioned will ensure that the development will be subordinate to the character of its setting as required by LUP Policies 3.5-3 and Coastal Zoning Code Section 20.504.015(C), as described above. First, all above-ground structures will be located within the building envelope or elsewhere on the property where they will be effectively screened from view from Jug Handle State Reserve by the forested area on the property protected by the open space deed restriction required in Coastal Development Permit Amendment No. 1-89-028-A4. Second, by limiting building material colors and materials and

lighting as required by Special Condition No. 1 of this authorization, the development will blend in hue and brightness with its surroundings. Third, as the house will be similar in height and bulk to surrounding structures, the development will blend with the developed portions of the landscape. Development of the proposed house in the building envelope adjacent to the deed restricted Area of Native Vegetation located between the approved building envelope and the coastal bluff will require that certain trees and tree limbs within the protected forested area that die will need to be removed, potentially compromising the value of the forested area in screening the development. California Department of Forestry and Fire Protection regulations require that all dead and dying trees or tree limbs within 30 feet of a structure on the North Coast be removed. Special condition No. 7 of Coastal Development Permit Amendment No. 1-89-028-A4 allows for the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space, provided such tree removal and limbing is first granted coastal development permit authorization by the Commission. To ensure that trees that need to be removed to protect the proposed development are replaced and the integrity of the visual screen provided by the open space deed restricted area is maintained, the Commission attaches Special Condition No. 2. The condition requires that as trees die or are removed for any other purpose throughout the life of the approved residential development, all existing trees growing within the deed restricted Area of Native Vegetation located southwest of the building envelope approved by Coastal Permit Amendment No. 1-89-028-A4 that are removed be replaced in-kind with native species in the same general locations as they are currently growing. As conditioned, the forested area within the open space area between the building envelope and bluff edge will be maintained as a healthy and effective visual screen protecting public views of the site from Jug Handle State Reserve ensuring the development over time will remain consistent with the requirements of LUP Policy 3.5-3 and Coastal Zoning Code Section 20.504.015(C) that development in highly scenic area be subordinate to the character of its setting.

Therefore, for all of the above reasons, the Commission finds that the proposed development as conditioned will protect public views, is subordinate to the character of its setting, and is consistent with the visual resource protection provisions of the certified LCP.

**F. Environmentally Sensitive Habitat Areas**

**LCP Provisions**

LUP Policy 3.1-7 in applicable part states:

*“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....*

LUP Policy 3.1-10 states:

*“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 20.496.020 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;*

(ii) *An assessment of the short-term and long-term adaptability of various species to human disturbance;*

(iii) *An assessment of the impact and activity levels of the proposed development on the resource.*

*Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

- (c) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*
  - (d) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*
  - (e) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*
  - (g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.*
- (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:...*

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;*

*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

The certified LCP policies require that ESHA be protected with buffers from new development. At the time of the original subdivision approval, a riparian ESHA was discovered just west of the center of Parcel 1, as depicted on Exhibit Nos. 3 and 4. The original subdivision permit required that the riparian ESHA and a 50-foot buffer around it be protected by an open space deed restriction. When the applicant applied to the County for a coastal development permit to construct a house, a new botanical survey was completed for the subject property that discovered a population of Mendocino coast paintbrush existing on the property near the bluff edge northwest of the building envelope, as depicted on Exhibit Nos. 3 and 4.

As part of the Commission's review of Coastal Development Permit Amendment Request No. 1-89-028-A4, the applicants had provided a supplemental biological evaluation that substantiated 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 California Department of Fish and Game was consulted and agreed to reductions of the two ESHA buffers below the minimum standard of 100 feet. LUP Policy 3.1-7 and Coastal 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 from 100 feet to not less than 50 feet. In its action to approve CDP Amendment No. 1-89-028-A4, the Commission determined that the 60-foot buffer around the Mendocino coast paintbrush habitat and the 50-foot buffer around the riparian habitat would be adequate to protect the ESHA from the impacts of future development and would be consistent with the LCP. Special Condition No. 8 of Coastal Development Permit Amendment No. 1-89-028-A4 imposed an open space deed restriction over the Mendocino coast paintbrush habitat and the recommended 60-foot buffer. In addition, Special Condition No. 9 of CDP Amendment No. 1-89-028-A4 required all future development on the parcel to be located outside of both the open space deed restriction imposed by Special Condition No. 8 over the Mendocino coast paintbrush habitat and its buffer and the open space deed restriction imposed by Special Condition No. 1 of original permit 1-89-028 over the riparian ESHA on the property and its 50-foot buffer. Special Condition No. 10 of this permit requires that prior to issuance of this permit, the applicant shall submit evidence that all conditions of Coastal Development Permit Amendment 1-89-028-A4 that are required to be satisfied prior to issuance of that Coastal Development Permit have been satisfied. As proposed and conditioned, all of the development proposed under Appeal No. A-1-MEN-01-051 would be located outside of the deed restricted areas consistent with LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020.

The applicants' consultant, Dr. Gordon McBride, performed the supplemental evaluation of the buffer widths, and considered the seven criteria of CZC Section 20.496.020(A)(1)(a) through (g) in arriving at recommendations for the two ESHA areas. Dr. McBride's determination that the narrower buffers would be adequate to protect the ESHA is based in part, on his recommendation that a physical construction barrier, such as a row of straw bales laid end to end, be installed during construction between the area of earth disturbance and the edge of the ESHA to avoid sedimentation impacts to the habitat. Special Condition No. 9 of the approved Coastal Development Permit Amendment No. 1-89-028-A4 requires that such a barrier be installed during future residential development to ensure that Dr. McBride's recommendation is carried out and that the ESHA buffers will be adequate to protect the rare plant and riparian habitats. To ensure that such a barrier is installed to protect the ESHA on the site from the impacts of construction of the proposed development, the Commission attaches Special Condition No. 6(A). The special condition requires that prior to commencement of construction, a physical barrier consisting of straw bales be placed end to end between any construction and the edge of the ESHA open space areas required by Permit No. 1-89-028 as amended.

Landscaping of the residential development is proposed. To ensure that no invasive exotic vegetation is planted at the site that could spread into the ESHAs and adversely impact the protected plant habitats, the Commission imposes Special Condition No.7. The condition requires the applicants to submit landscaping plans prior to issuance of the permit for the review and approval of the Executive Director that show that no invasive exotic plants will be planted with the landscaping of the site.

As conditioned to (1) establish adequate buffers to protect the rare plant and riparian ESHAs, (2) require that straw bales be placed end to end between the ESHA buffers and development activities, and (3) prohibit invasive exotic species from being planted as part of the landscaping, the Commission finds that the project will protect the ESHA on the property consistent with LUP Policies 3.1-7 and 3.1-10 and with Coastal Zoning Code Sections 20.496.010, 20.496.020, and 20.496.035.

**G. Geologic Hazards and Site Stability**

**LCP Provisions**

LUP Policy 3.4-1 states the following in applicable part:

*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps, the County shall require a geologic investigation and report, prior to development to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site...*

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) state that:

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

*Setback (meters) = Structure life (years) x Retreat rate (meters/year)*

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

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

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

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

Section 20.500.015(A) of the Coastal Zoning Code states in applicable part:

- (1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*
- (2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and bluff top lots and areas delineated on the hazards maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

Section 20.500.010 of the Coastal Zoning Code 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.*

Section 20.500.020(B) of the Coastal Zoning Code states that:

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

#### Discussion

The subject parcel is a bluff top parcel that overlooks the ocean. The bluff slopes are variable in steepness and are generally 50-60 feet high. Small sea caves can be found along the base of the bluff face.

Mendocino County LUP Policy 3.4-7 requires that new structures be set back a sufficient distance from the edge of the bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years) and the setback be of sufficient distance to eliminate the need for shoreline protection devices. The original building envelope approved in 1989 for the applicants' Belinda Point Subdivision parcel established a 75-foot setback from the bluff

edge as recommended by the preliminary geotechnical report prepared for the subdivision. The preliminary geotechnical report 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 applicants were granted Coastal Development Permit Amendment No. 1-89-028-A4 to modify the location and dimensions of the previous building envelope. The approved amendment changed the building envelope from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle and located it west of the original placement, but no closer than 50 feet from the bluff edge. The amendment request was accompanied by updated geotechnical reports dated February 12, 2001 and June 28, 2001. These geotechnical reports not only reviewed current geologic conditions to update the available information about geologic hazards affecting the site, but the reports also contained a site specific analysis of bluff retreat occurring at the project site, and provided conclusions and recommendations regarding the geologic suitability of the site for the proposed development. 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. The report determined that the setback from the coastal bluff could be reduced to 33 feet, and contained recommendations related to site grading, foundation support, seismic design criteria, concrete slabs-on-grade, and site drainage. 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 the 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 No.8). Consistent with this recommendation, the relocated building envelope approved by Coastal Development Permit Amendment No. 1-89-028-A4 is no closer than 50 feet from the bluff edge. Special Condition No. 9 of the amendment also requires that all future development allowable outside of the building envelope must be located no closer than 39 feet from the bluff edge and must be developed consistent with the recommendations of the geotechnical report. All of the proposed development would occur either within the building envelope or within locations outside of the building envelope that are no closer than 50 feet from the bluff edge. Therefore, the proposed development will be set back a sufficient distance from the bluff edge to provide for a 75-year design life of the development consistent with LUP Policy 3.4-7.

As noted, the June 28, 2001 geotechnical report contained a series of recommendations to ensure that residential development of the site does not contribute to geologic hazards. The recommendations include measures related to: (1) site grading, dealing with grading and soil compaction specifications; (2) foundation support, dealing with specifications for drilled pier and grade beam design; (3) seismic design criteria appropriate for the site; (4) procedures for placing concrete slabs-on-grade; and (5) site drainage for surface flows and subsurface seepage. To

ensure that the applicants adhere to the recommendations suggested in their consultant's geotechnical report, and that the development does not contribute to geologic hazards, the Commission attaches Special Condition No. 8. The special condition requires all final design and construction plans, including foundations, grading and drainage plans to be consistent with the recommendations contained in the geotechnical report dated June 28, 2001 prepared by BACE Geotechnical Consultants.

The Commission also attaches Special Condition No. 4, which prohibits the construction of shoreline protective devices on the parcel and requires that the landowner provide a geotechnical investigation and remove the house and its foundation if bluff retreat reaches the point where the structure is threatened, and that the applicants accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are consistent with LUP Policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Ordinance, which state that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and 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. The Commission finds that the proposed development could not be approved as being consistent with Zoning Code Section 20.500.010 if projected bluff retreat would affect the proposed house and necessitate construction of a seawall to protect it.

The applicants are proposing to construct a new house. The house will be located on a coastal terrace 50 to 60 feet in height that is eroding and underlain by sea caves. Thus, the house would be located in an area of high geologic hazard. The new development can only be found consistent with the above-referenced provisions if the risks to life and property from the geologic hazards are minimized and if a protective device would not be needed in the future. The applicants have submitted information from a geologist which states that if the new development is set back 33 feet from the bluff edge, the development would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life. Similarly, the Commission finds that a 6-foot setback measured from the blufftop projection of any underlying sea caves must also be applied to the areas on the parcel underlain by sea caves so structures would be further safe-guarded from geologic hazards associated with catastrophic or incremental collapse of the materials above the sea caves.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is appropriate at all on any given blufftop site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989 the Commission approved the construction of a new house on a vacant blufftop parcel (Permit 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the blufftop parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984 the Commission approved construction of new house on a vacant blufftop lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Bennett home at 265 Pacific Avenue, Solana Beach (San Diego County). In 1995, the Commission approved a request to construct a substantial addition to an existing blufftop home (Permit 6-95-23). The minimum setback for the area is normally 40 feet. However, the applicants agreed to waive future rights to shore/bluff protection if they were allowed to construct 25 feet from bluff edge based on a favorable geotechnical report. The Commission approved the request on May 11, 1995. In 1998, a substantial bluff failure occurred, and an emergency permit was issued for a seawall. The follow-up regular permit (#6-99-56) was approved by Commission on May 12, 1999. On August 18, 1999, the Commission approved additional seawall and upper bluff work on this and several other properties (Permit #6-99-100).
- The McAllister duplex at 574 Neptune Avenue, Encinitas (San Diego County). In 1988, the Commission approved a request to construct a duplex on a vacant blufftop lot (Permit #6-88-515) based on a favorable geotechnical report. By October 1999, failure of the bluff on the adjoining property to the south had spread to the bluff fronting 574 Neptune. An application is pending for upper bluff protection (Permit #6-99-114-G).
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a blufftop project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot blufftop setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize blufftop protective works.

The Commission notes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

The BACE geotechnical report states that their geological and engineering services and review of the proposed development were performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities, stating, "[n]o other warranty, either expressed or implied, is provided as to the conclusions and professional advice presented in the report." This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding both at the margins and underneath the landform, and that the proposed new development will be subject to geologic hazard and may someday require a bluff or shoreline protective device, inconsistent with Zoning Code Section 20.500.010. Based upon the geologic report prepared by the applicants and the evaluation of the project by the Commission's staff geologist, the Commission finds that the risks of geologic hazard are minimized if the residence is set back 33 feet from the bluff edge and an additional 6 feet from the back wall of any underlying sea caves for a total of 39 feet.

However, given that the risk cannot be eliminated and the geologic report does not assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed residence is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this lot, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 4 requiring a deed restriction prohibiting the construction of seawalls and Special Condition No. 5 requiring a deed restriction waiving liability.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the house or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No.4 A(2), which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from

landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 4 is required to ensure that the proposed development is consistent with the LCP and that recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a seawall could be constructed to protect the development.

Additionally, the Commission attaches Special Condition No. 5, which requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicants have chosen to implement the project despite these risks, the applicants must assume the risks. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the condition ensures that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

The Commission notes that Section 30610(a) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

However, in this case because the project site is located within a highly scenic area, future improvements to the approved project will not be exempt from permit requirements pursuant to Section 30610(a). Section 30610(a) requires the Commission to specify by regulation those classes of development, which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effect. For example, installing a landscape irrigation system on a blufftop property in a manner that leads to saturation of the bluff could increase the potential for landslides or catastrophic bluff failure.

In addition, installing a sizable accessory structure for additional parking, storage, or other uses normally associated with a single-family home in a manner that does not provide for the collection, conveyance, and discharge of roof runoff to areas away from the bluff edge could potentially exacerbate bluff erosion at the subject site. Moreover, Section 13250(b)(1) indicates that improvements to a single-family structure in an area designated as highly scenic in a certified land use plan involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the entire subject property is within an area designated in the certified

Mendocino Land Use Plan as highly scenic. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future improvements to the approved development would not be exempt from coastal development permit requirements and the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-7, 3.4-8, 3.4-9, 3.4-12, and Zoning Code Sections 20.500.010 and 20.500.020, as the development will not result in the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

#### H. Water Quality

##### LCP Provisions

LUP Policy 3.1-25 states:

*The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.*

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

- (A) *Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
- (B) *To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
- (C) *Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*
- (D) *Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection.*

Discussion

LUP Policy 3.1-25 calls for the protection of the biological productivity of coastal waters. Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of environmentally sensitive areas and off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation.

As discussed above, the subject parcel is located on a coastal terrace that slopes gently to the west and south toward the coastal bluff. Therefore, runoff originating from the development site would generally drain toward the bluff edge. Sediment and other pollutants entrained in runoff from the development that reaches the ocean and any intervening ESHA between the development site and the bluff would contribute to degradation of the quality of marine waters and the sensitive habitat. Features of the project site will act to prevent runoff from the completed development from reaching ocean waters and the ESHA after all construction activities have stopped and disturbed areas have revegetated. The parcel 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 building envelope is located a distance of 50 feet from the edge of the coastal bluff. All of the development will be located either within the building envelope, in close proximity of the building envelope and 50 feet away from the coastal bluff, or further inland of the building envelope. As conditioned by Coastal Development Permit Amendment 1-89-028-A4, an open space deed restriction has been placed on the area of native vegetation located as shown in Exhibit No.4, between the building envelope and the location of all other approved development and the edge of the coastal bluff. Although established primarily to screen views of the development from Jug Handle State Reserve, the deed restricted Area of Native Vegetation would also serve as a vegetative buffer, greatly reducing the potential that runoff from the completed development would affect ocean waters. The ground under the forested area is thick with leaf litter and forest-debris mulch. This thick layer of forest duff and the understory and ground cover vegetation would act as an infiltration system, trapping water that runs off from impervious surfaces of the completed development before it leaves the property.

Sedimentation impacts from runoff would be of greatest concern during construction. Construction of the proposed development would disturb a large area of vegetation that would expose soil to erosion and entrainment in runoff, particularly during the rainy season. Consistent with CZC Section 20.492.020(B), Special Condition No. 6 has been imposed to minimize erosion and sedimentation impacts from construction. Special Condition No. 6 requires that on-site vegetation be maintained to the maximum extent possible during construction, and any disturbed areas be replanted with native vegetation following project completion. In addition, Special Condition No. 6 requires the installation of a physical barrier consisting of straw bales

placed end to end between any construction and the environmentally sensitive habitat areas on the site. Furthermore, Special Condition No. 6 also requires that all on-site stockpiles of construction debris be covered and contained to prevent polluted water runoff.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining an effective vegetated infiltration buffer between development activities and the coastal bluff; (2) maintaining on-site vegetation to the maximum extent possible; (3) replanting any disturbed areas with native vegetation following project completion; and (4) covering and containing debris stockpiles at all times. Furthermore, the Commission finds that the proposed development as conditioned is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained because storm water runoff from the proposed development would be controlled on site by infiltration into vegetated areas and the project would not have significant adverse effects on water quality or the biological productivity of nearby coastal waters.

#### **I. Public Access and Recreation**

##### Coastal Act Access Policies

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

##### LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. Policy 3.6-27 states that development shall not interfere with the public's right of access to the sea either acquired by the public at large, by court decree, or where evidence of historic public use indicates the potential existence of prescriptive rights of public access. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject parcel is located west of Highway One and sits atop a coastal bluff. At the time of subdivision, the Commission required the recordation of an offer to dedicate to a public agency or private association an easement for vertical public access and passive recreational use to the blufftop and beach to offset the burden the proposed subdivision and the residential development that it would facilitate would have on public access. The access dedication has not yet been accepted, but is being actively pursued. Although the Commission found evidence of possible public prescriptive rights on the property when it approved the subdivision, none of the areas where it was determined that the prescriptive rights may exist are found within the building site for the proposed development. Since public access has already been provided for in the vicinity of the subject property in anticipation of the impacts that the currently proposed house and other future houses in the subdivision will have on public access, and since the proposed project will not interfere with any possible public prescriptive rights, the Commission finds that the proposed project is consistent with the coastal access policies of the Coastal Act and the County's LCP.

Therefore, the Commission finds that the proposed development does not have any adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212 as there already exists a recorded offer to dedicate a public access easement north of the subject parcel.

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

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the County of Mendocino LCP and the access and recreation policies of the Coastal Act. 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

**A-1-MEN-01-051**

**Gene A. and C. J. Meredith**

**Page 37**

significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**V. EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Site Plans
4. Open Space Areas
5. Photo of Forested Terrace
6. Projected View Corridors
7. ESHA Buffer Analysis
8. Staff Geologist's Letter
9. Appeal
10. Notice of Final Action

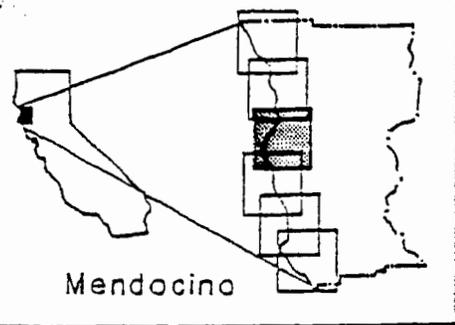
ATTACHMENT A

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

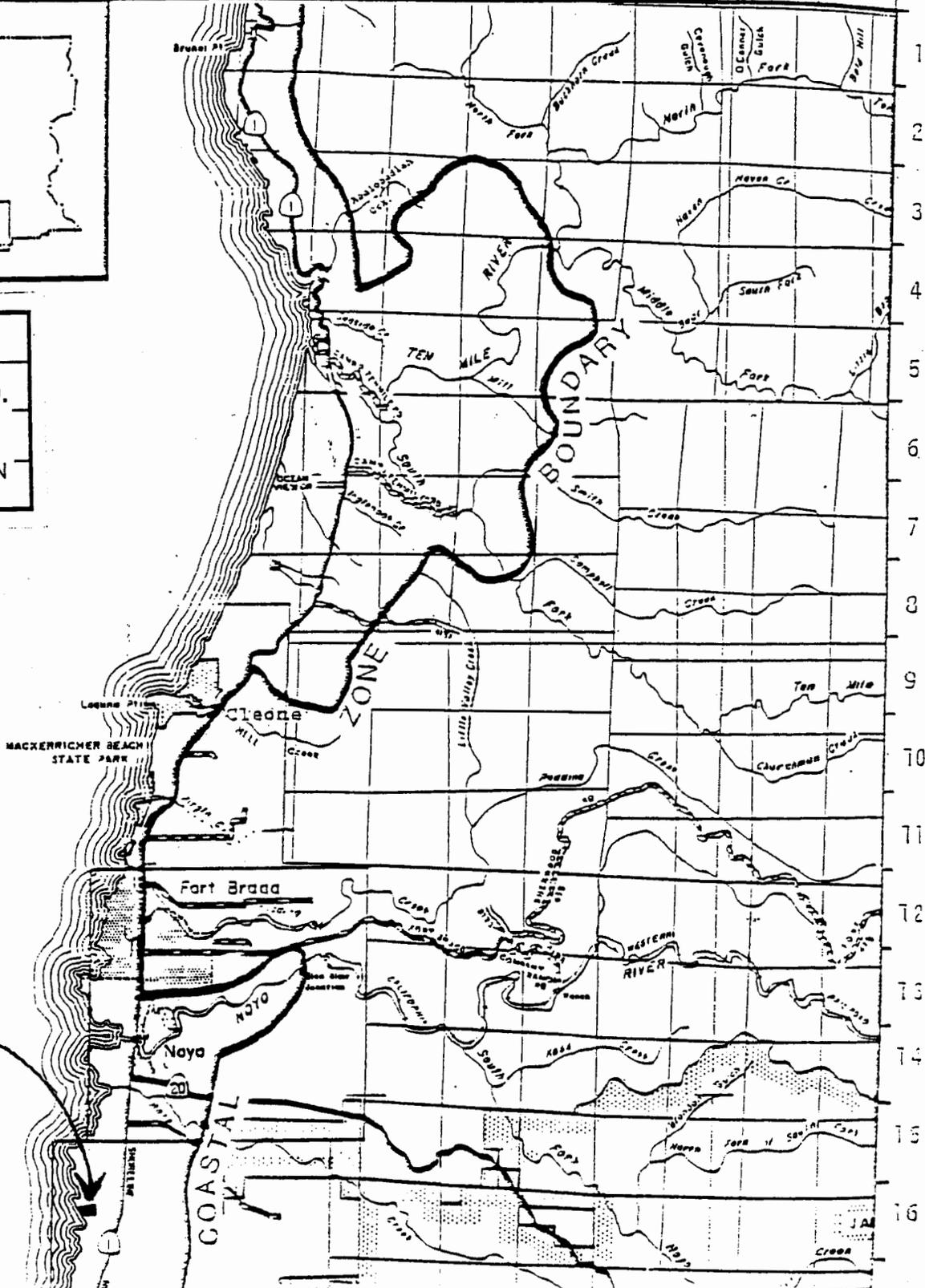


A B C D E F G H I J K L M N O



Mendocino

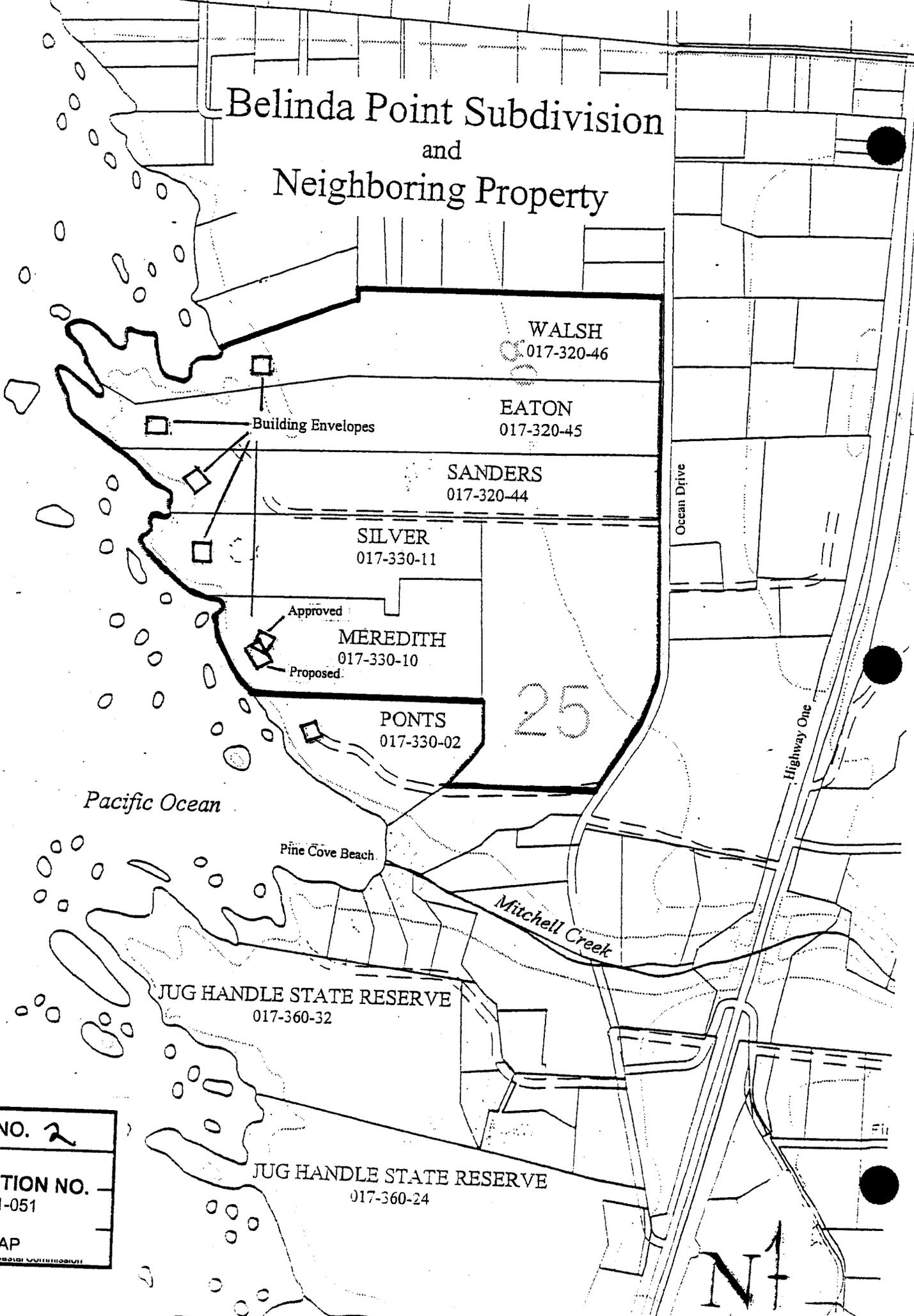
EXHIBIT NO. 1  
APPLICATION NO. A-1-MEN-01-051  
MEREDITH REGIONAL LOCATION MAP



*Project Site*



# Belinda Point Subdivision and Neighboring Property



WALSH  
017-320-46

EATON  
017-320-45

SANDERS  
017-320-44

SILVER  
017-330-11

Approved  
MEREDITH  
017-330-10  
Proposed

PONTES  
017-330-02

JUG HANDLE STATE RESERVE  
017-360-32

JUG HANDLE STATE RESERVE  
017-360-24

25

Pacific Ocean

Pine Cove Beach

Mitchell Creek

Ocean Drive

Highway One



EXHIBIT NO. 2

APPLICATION NO.  
A-1-MEN-01-051  
MEREDITH  
VICINITY MAP



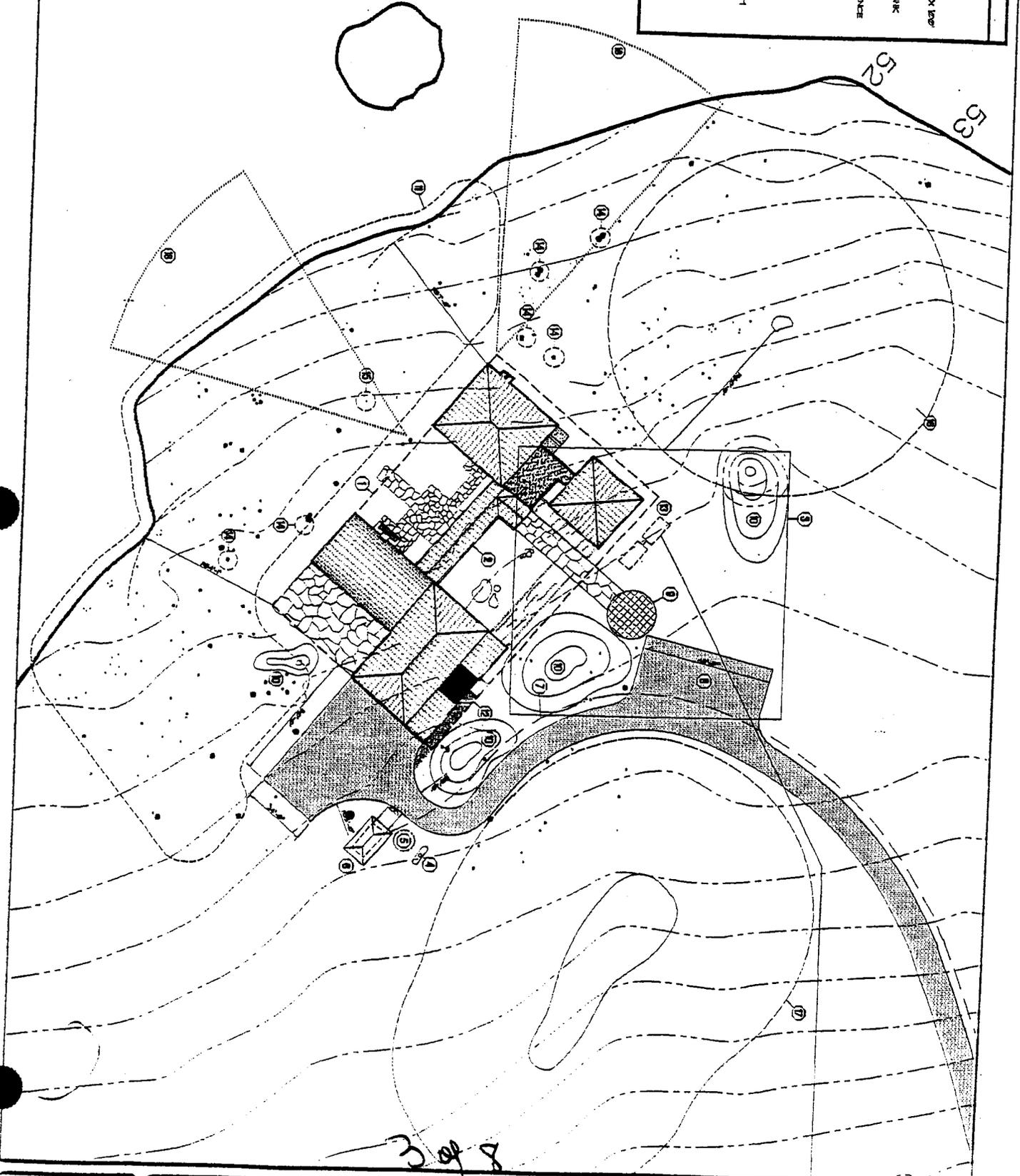
## A1.1 KEY NOTES

- 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

**KEY NOTES**

- ① PROPOSED BUILDING ENVELOPE 55' X 60'
- ② PROPOSED RESIDENCE
- ③ ORIGINAL BUILDING ENVELOPE 100' X 100'
- ④ UNDERPAVED DRIVEWAY TANK
- ⑤ UNDERGROUND WATER STORAGE TANK
- ⑥ UTILITY SIED
- ⑦ UNDERGROUND UTILITIES TO RESIDENCE
- ⑧ GUEST PARKING
- ⑨ SIDE WALK AND HAN PATH TO RESIDENCE
- ⑩ DECORATIVE BERRIS
- ⑪ AREA OF NATIVE VEGETATION
- ⑫ CONCRETE WALKWAY
- ⑬ TANK AND PUMP FOR SEPTIC SYSTEM
- ⑭ LIVE TREES TO BE RETAINED
- ⑮ ENDANGERED PLANT AND RETRACK
- ⑯ VEGETATION CHANGE AND RETRACK
- ⑰ VIEW CORRIDOR

**SITE PLAN**



3 of 4

ALP  
 1/2" = 1'-0"  
 1/4" = 1'-0"  
 1/8" = 1'-0"

DDDDDDDD  
 1/2" = 1'-0"  
 1/4" = 1'-0"  
 1/8" = 1'-0"

New Residence for  
**Gene & Kille**  
**MEREDITH**  
 20000 Drive

SITE PLAN



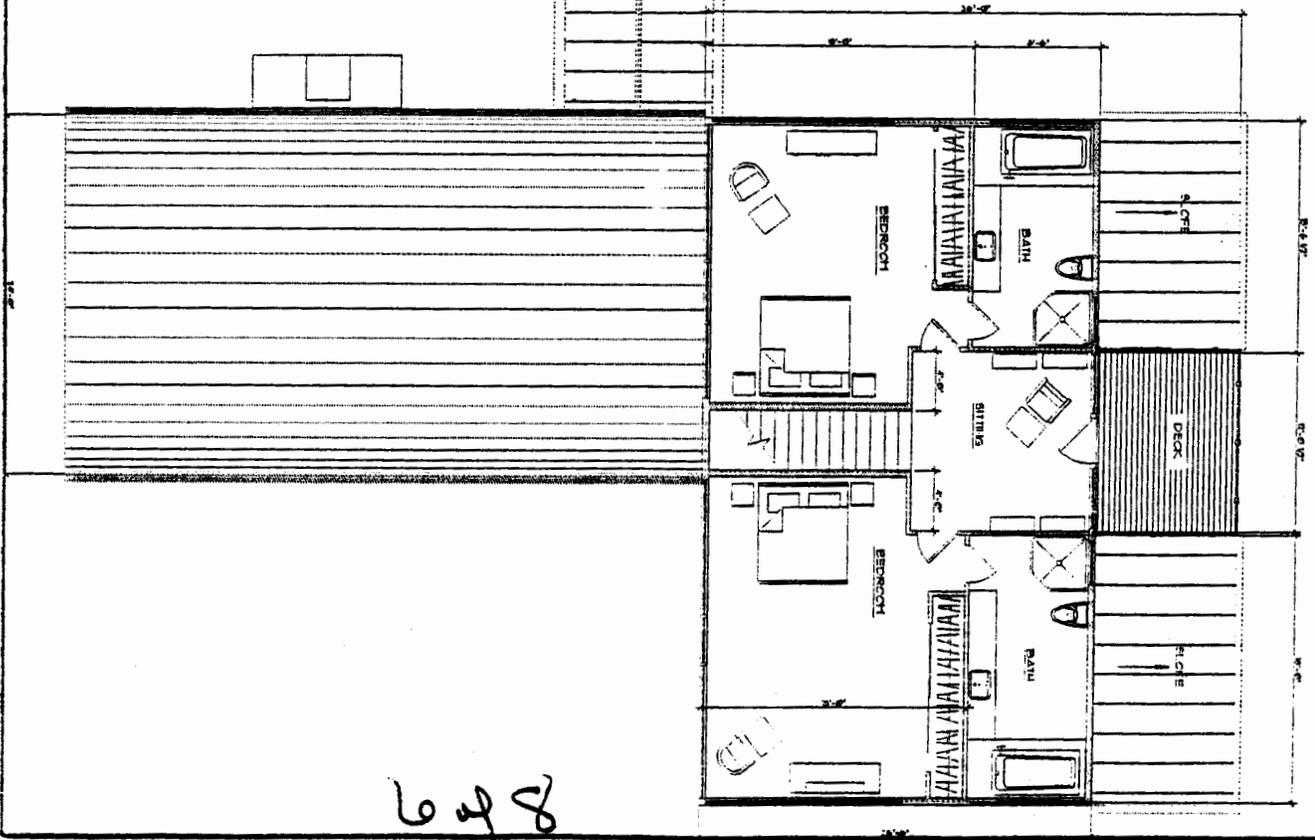
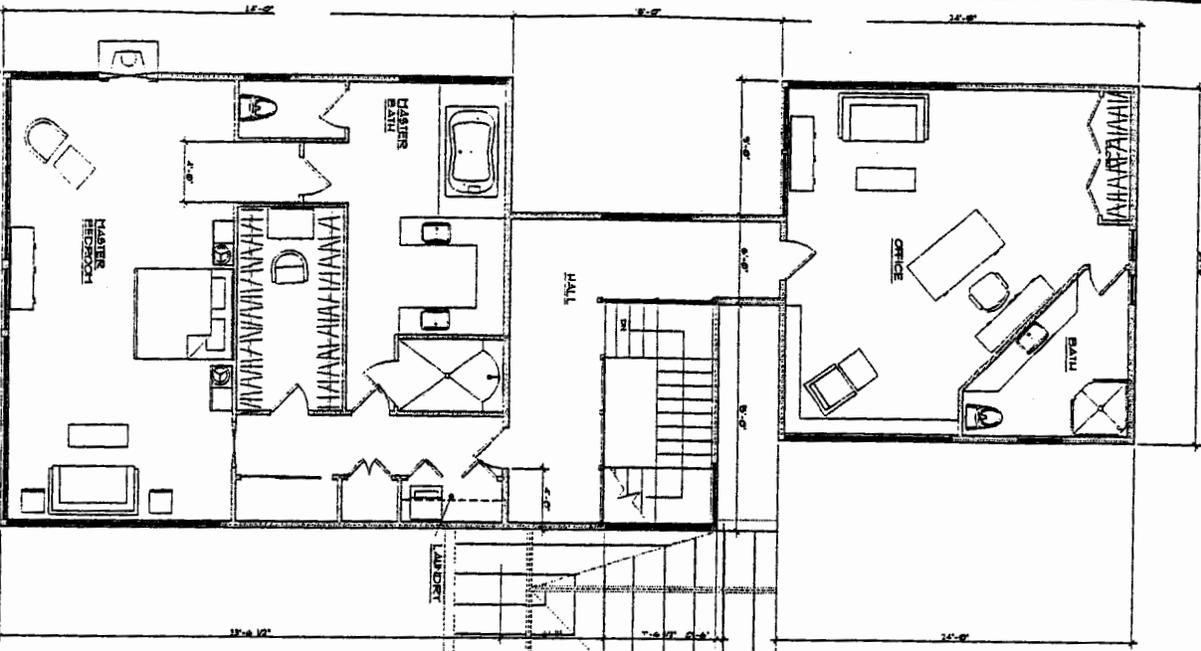
## A1.2 KEY NOTES

- 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

448

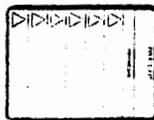


UPPER LEVEL PLAN



648

A2.2



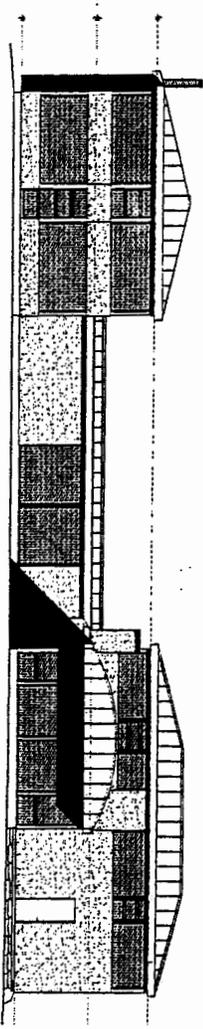
New Residence for  
**Gene & Kittle**  
**MEREDITH**  
 Ocean Drive  
 Fort Bragg California 95407

UPPER LEVEL PLAN

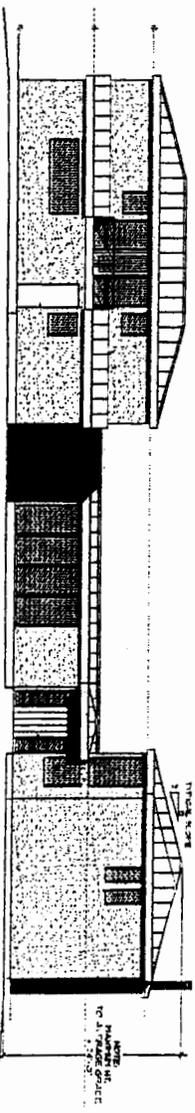
SEVENTHAL SCHLOSSER ARCHITECTS  
 LICENSED ARCHITECTS AND REGISTERED LANDSCAPE ARCHITECTS  
 1000 S. MARKET STREET, SUITE 200, FORT BRAGG, CALIFORNIA 95407  
 PHONE: (707) 768-1000 FAX: (707) 768-1001

# ELEVATIONS

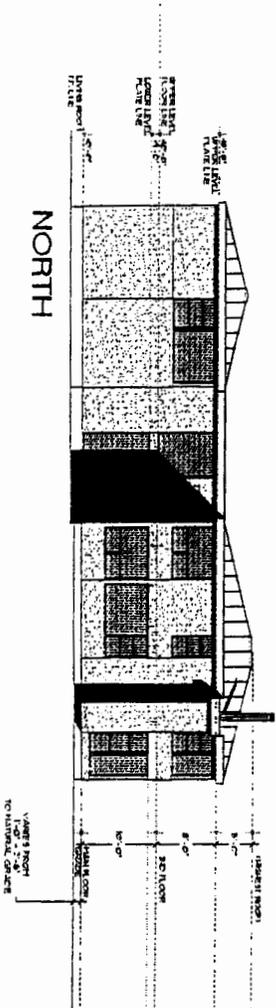
WEST



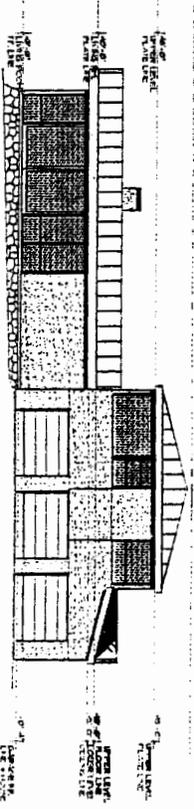
EAST



NORTH



SOUTH



742

A3.1

REVISIONS

NO.	DATE	DESCRIPTION

New Residence for  
Gene & Kittle  
**MEREDITH**  
Ocean Drive  
Fort Bragg California 95437

ELEVATIONS

JEVENTHAL, SCHLOSSER, ARCHITECTS  
1000 UNIVERSITY AVENUE, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94103  
PHONE (415) 774-0000 FAX (415) 774-0001



ENVIRONMENTAL SCIENCE AND DESIGN  
10000 Wilshire Blvd., Suite 1000  
Beverly Hills, CA 90210  
Tel: 310-277-1000  
Fax: 310-277-1001  
www.esandd.com

SITE PLAN

New Residence for  
**Gene & Keri**  
**MEREDITH**  
Ocean Drive  
Fort Bragg California 95437

NO. 1	DATE
NO. 2	DATE
NO. 3	DATE
NO. 4	DATE
NO. 5	DATE
NO. 6	DATE
NO. 7	DATE
NO. 8	DATE
NO. 9	DATE
NO. 10	DATE

**A1.2**

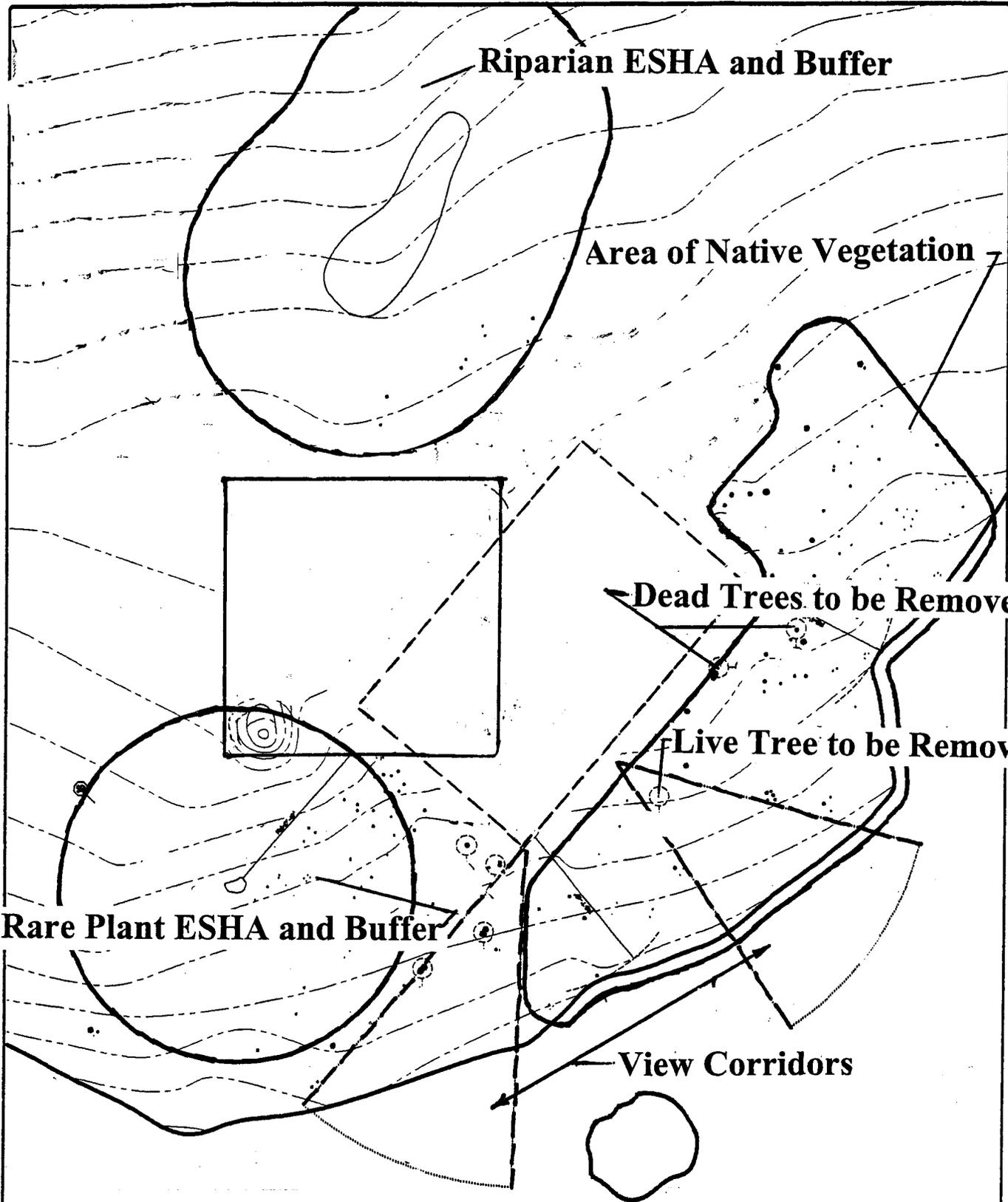


EXHIBIT NO. **4**

APPLICATION NO.  
A-1-MEN-01-051

MEREDITH  
OPEN SPACE AREAS

 **SITE PLAN**

EXHIBIT NO. 5

APPLICATION NO.  
A-1-MEN-01-051  
MEREDITH  
PHOTO OF FORESTED  
TERRACE

PROPOSED  
BUILDING  
ENVELOPE  
↔



A - NORTH COAST VIEW FROM THE GUNN HANDEL STATE RESERVE

EXHIBIT NO. 6  
APPLICATION NO.  
A-1-MEN-01-051  
MEREDITH  
PROJECTED VIEW  
CORRIDORS

Coastal Headlands  
of  
Jug Handle State Reserve

Pine  
Cove  
Beach

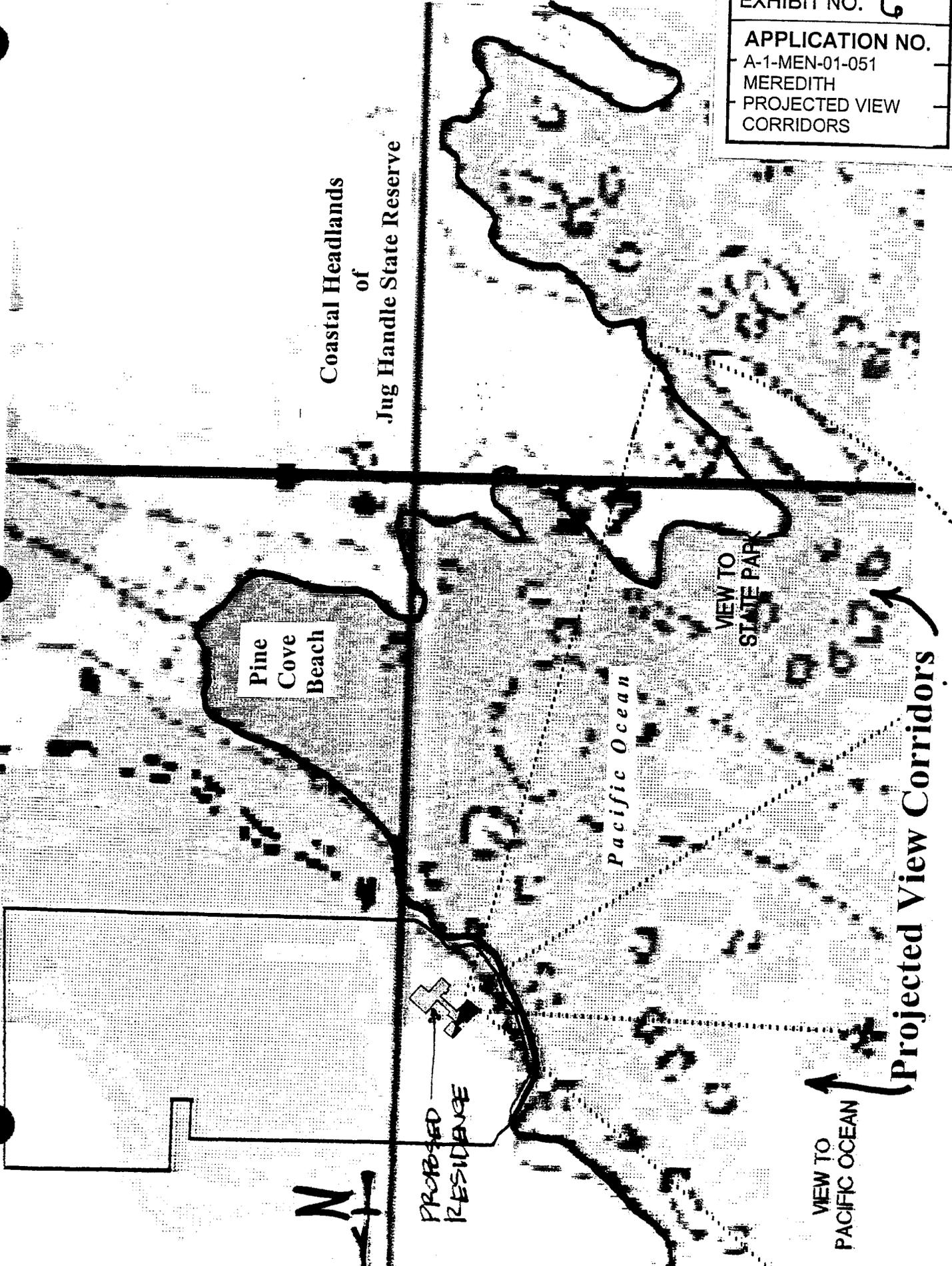
VIEW TO  
STATE PARK

Pacific Ocean

Projected View Corridors

PROPOSED  
RESIDENCE

VIEW TO  
PACIFIC OCEAN



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

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-01-051 MERIDITH 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.

294

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

4 of 4

## 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. 8

APPLICATION NO.

A-1-MEN-01-051

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 Johnson", with a long horizontal flourish extending to the right.

Mark Johnson, Ph.D., CEG

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
PHONE (707) 445-7833  
FACSIMILE (707) 445-7877

MAILING ADDRESS:  
P. O. BOX 4908  
EUREKA, CA 95502-4908



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form

RECEIVED  
SEP 14 2001

SECTION I. Appellant(s)

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

CALIFORNIA  
COASTAL COMMISSION

Commissioner Mike Reilly

John Woolley

County of Sonoma

Board of Supervisors

575 Administration Drive. Room 100

825 5<sup>th</sup> Street

Santa Rosa, CA 95403-2887

Eureka, CA 95501-1153

(707) 565-2241

(707) 476-2393

SECTION II. Decision Being Appealed

1. Name of local/port government: The County of Mendocino

2. Brief description of development being appealed: Coastal Development Permit for a 8,610 square foot, two story residence with three separate elements connected by a 210 foot long bridge/library; together with a driveway, well, septic system and landscaping

3. Development's location (street address, assessor's parcel no., cross-street, etc.): 17230 Ocean Drive, Fort Bragg (Mendocino County)  
APN 017-330-10

4. Description of decision being appealed

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: CDP 12-2001 & MS 44-1988/2001

c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-01-051

DATE FILED: 9/14/01

DISTRICT: North Coast

EXHIBIT NO. <u>9</u>
APPLICATION NO. _____
A-1-MEN-01-051
MEREDITH
APPEAL (1 of 7)

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

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

- a.  Planning director/Zoning Administrator      c.  Planning Commission
- b.  City Council/Board of Supervisors      d.  Other \_\_\_\_\_

6. Date of local government's decision: 8/16/2001

7. Local government's file number (if any): MS 44-1988/2001 and

CDP #12-2001

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Gene A. and C. J. Meredith

110 Frederick Street

Santa Cruz, CA 95062

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

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

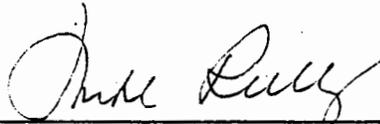
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

\_\_\_\_\_  
See Attachment A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

SECTION V. Certification

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



\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date 9/14/01

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

Section VI. Agent Authorization

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

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

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

See Attachment A

---

---

---

---

---

---

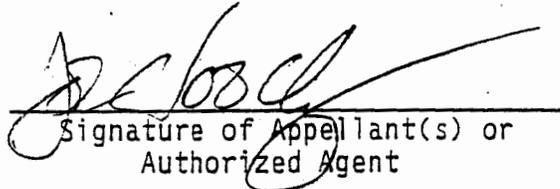
---

---

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

SECTION V. Certification

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

  
Signature of Appellant(s) or  
Authorized Agent

Date 9/14/01

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

Section VI. Agent Authorization

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

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

## ATTACHMENT A

### Reasons for Appeal

The approval of Coastal Development Permit Application No. 12-2001 by Mendocino County is inconsistent with the certified Local Coastal Program (LCP), and raises substantial issues regarding visual resources.

### VISUAL RESOURCES

The approval of the coastal development permit by Mendocino County encompasses property within a highly scenic area designation, and is in conflict with visual resource policies and standards contained in the Mendocino LCP, including, but not limited to Policies 3.5-1, 3.5-3, and Coastal Zoning Ordinance Section 20.504.015.

### Policies

Policy 3.5-1 states in applicable part, *"The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a protected 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 states in applicable part, *"The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any 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..."*

Coastal Zoning Ordinance Section 20.504.015 states in applicable part, *"(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."*

### Discussion

The County of Mendocino approved Coastal Development Permit # 12-2001 for an 8,610 square foot, two story residence with three separate elements connected by a 210-foot-long bridge/library; together with a driveway, well, septic system and landscaping. The proposed residence would consist of three distinct elements connected by an elevated bridge/library. The largest element, at the southerly end of the structure, would include the two-story living quarters, a three-car garage, an exercise room, and a utility yard. Eighty feet to the north, connected at the upper level by the bridge/library, would be a two-story bedroom and office unit. Ten feet further north would be a two-story office and mechanical unit, also connected by the bridge. At both ends of the structure the bridge would become a cantilevered deck, extending 20 feet out from the building. The entire approved structure measures 210 feet north to south, and 110 feet east to west. Along the west elevation, the three elements would each rise 28 feet above the finished grade. Six passive ventilation chimneys, each 2 ½ feet by 8 ½ feet, two at each unit, would rise an additional nine feet higher. To the east, the roof of the garage, exercise room and utility court would slope down to approximately two feet above grade. The building has a substantial amount of window area, most of it along the westerly side.

The project as approved by the County would have significant impact on visual resources. The parcel is located within an area designated as "highly scenic" in the Coastal Plan. The parcel is visible from a headland of Jug Handle State Reserve just south of Mitchell Creek, and the approved project places new development prominently within view from this public park location.

The limitations contained in LUP Policy 3.5-3 and Coastal Zone Ordinance 20.504.015 (2) allow structures to exceed one story and eighteen (18) feet in height *only* after finding such variance would not affect public views to the ocean or be out of character with surrounding structures. No findings were adopted that explain why a twenty-eight (28) foot high two-story structure is allowed to be built in a highly scenic area within view from public parkland. Some of the buildings on neighboring parcels are one-story structures and others have partial second stories. However, the second story of the project as approved by the County is much larger than the ground floor, and is in excess of one-story in height, two-hundred and ten (210) feet long, and would have a substantial amount of southwest facing glass surface greatly exceeding the proportion of glass on the partial second stories of the other structures. Therefore, the second story of the project as approved by the County is out of character with surrounding structures, inconsistent with the provisions of LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(2) that only allow structures with more than a single story and greater than eighteen (18) feet in height when the development *would not be out of character with surrounding*

*structures.* Furthermore, as noted previously the location of the house as approved by the County would be prominent from Jug Handle State Reserve. The view towards the house site from the State Reserve looks towards ocean waters within the small bay that is a large inlet separating the Jug Handle State Reserve headland from the shoreline of the subject blufftop parcel. The backdrop of this public view of the ocean is currently a narrow open coastal terrace and dense Bishop Pine forest. The house would be superimposed against this backdrop in a manner that would leave the structure only partially screened by trees. In addition, numerous trees within the existing viewshed would need to be removed to accommodate the approximately 8,600-square-foot-house. The project as approved by the County affects public views to the ocean, and therefore is inconsistent with the provisions of LUP Policy 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(2) that only allow structures with more than a single story and greater than eighteen (18) feet in height when the development *would not affect public views to the ocean.*

The project as approved by the County would not be subordinate to the character of its setting as required by LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015 (3). The character of the subject viewshed is of ocean, bluff, coastal terrace, woodlands and a few widely scattered houses of modest size. As noted above, the structure would superimpose—against a view of coastal terrace and woodland—an exceptionally large structure of a highly unusual design and of maximum height. As approved, the project would be partially screened by trees. However, the project as approved is not subject to any condition requiring that if any of the screening trees die that they be replaced, or that the applicant be required to apply for authorization to remove trees. Thus, there is no guarantee that trees that provide any screening of the structure will continue to exist in the future, and thus no guarantee that the structure will remain even partially screened. Furthermore, the large amount of glass in the southwest exposure will cause glare to viewers from the State Reserve. Therefore, the project as approved by the County is inconsistent with LUP Policy 3.5-1 and Coastal Zoning Ordinance Section 20.504.015 (3) as it will not be subordinate to the character of its setting and will not minimize reflective surfaces.

### CONCLUSION

The Commission finds that the project as approved by the County, is inconsistent with, and raises substantial issues, with respect to its conformance with LCP standards and policies and Coastal Act policies pertaining to visual resource protection.



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
 501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR  
 Telephone 707-463-4281  
 FAX 707-463-5709  
 pbs@co.mendocino.ca.us  
 www.co.mendocino.ca.us/planning

1-MEN-01-132

**RECEIVED**  
 AUG 30 2001  
 CALIFORNIA  
 COASTAL COMMISSION

August 27, 2001

**NOTICE OF FINAL ACTION**

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

**CASE#:** MS 44-1988/2001 and #CDP 12-2001

**DATE FILED:** 01/05/2001

**OWNER:** GENE A. AND C.J. MEREDITH

**AGENT:** BUD KAMB

**REQUEST:** Modification of conditions of Minor Subdivision #MS 44-88 to enlarge the building envelope on Parcel 1 from 10,000 square feet to 18,000 square feet, reduce the bluff setback from 75 feet to 35 feet, and reduce the tree removal setback along the south parcel boundary from 150 feet to 70 feet; and also Coastal Development Permit for a 8,610 square foot, two story residence with three separate elements connected by a 210 foot long bridge/library; together with a driveway, well, septic system and landscaping.

**LOCATION:** In the Coastal Zone, approximately 3 miles south of Fort Bragg, 150± feet west of Ocean Drive, 200± feet south of Pacific Way; Parcel 1 of Belinda Point Subdivision; AP# 017-330-10.

**PROJECT COORDINATOR:** Charles Hudson

**ACTION TAKEN:**

The Planning Commission, on August 16, 2001, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

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

**Attachments**

cc: Gene and Kitty Meredith  
 Bud Kamb  
 Coastal Commission  
 Assessor

<b>EXHIBIT NO. 10</b>
<b>APPLICATION NO.</b>
A-1-MEN-01-051
MEREDITH
NOTICE OF FINAL
ACTION (1 of 7)

MENDOCINO COUNTY PLANNING COMMISSION  
DRAFT MINUTES  
AUGUST 16, 2001

6C. MS 44-1988/2001 and CDP 12-2001 – CHAPMAN/MEREDITH – South of Fort Bragg

Request: Modification of conditions of Minor Subdivision #MS 44-88 to enlarge the building envelope on Parcel 1 from 10,000 square feet to 18,000 square feet, reduce the bluff setback from 75 feet to 35 feet, and reduce the tree removal setback along the south parcel boundary from 150 feet to 70 feet; and also Coastal Development Permit for a 8,610 square foot, two story residence with three separate elements connected by a 210 foot long bridge/library; together with a driveway, well, septic system and landscaping.

Mr. Hudson reviewed the staff report. Commissioner Barth noted that the map in the staff report is not legible and Mr. Hudson reviewed another map of the project site and identified the location of the Mendocino coast paintbrush.

In response to Commissioner Lipmanson, Mr. Hudson stated that staff is recommending denial of the application based primarily on the size of the proposed house, the long westerly frontage and locating the structure closer to the bluff than is consistent with goals and policies of the Coastal Plan. Mr. Hudson explained that the Coastal Plan calls for a single story or 18-foot tall structure. He described the view of the proposed house from Jug Handle State Park headland. Mr. Falleri expanded on staff's recommendation for denial of the application and explained that approval of large structures will set a precedent for action on subsequent residences. Mr. Falleri described other structures in the area and action by the Coastal Permit Administrator on residences in the area. Mr. Hudson stated, in response to Commissioner Lipmanson, that staff did not request information from the applicant justifying the need for a house of the proposed size. Also, in response to Commissioner Lipmanson, Mr. Hudson stated that the retreat rate is 1.75 inches per year and the applicants are requesting a 35-foot setback. The Local Coastal Program requires a 75-year life span for bluff retreat.

In response to Commissioner Nelson, Mr. Hudson stated that it is unlikely that this property could be subdivided given the environmental constraints on the site. Also in response to Commissioner Nelson, Mr. Hudson stated that second units are not allowed in the coastal zone. The CC&R's prohibit further division.

Commissioner Barth commented that she viewed this site from Jug Handle State Park. She described the site and surrounding development and stated that the views depicted in the photographs circulated to the Commission show the area fairly well.

Mr. Bud Kamb, representing the application, discussed the history of development and subdivision in the area. Mr. Kamb stated, because no plans were available at the time of subdivision for structures, the building envelopes were established in the center of the parcel. There were no specific studies done in establishing the building envelopes. Mr. Kamb described surrounding development and views from public locations. It was his opinion that the proposed residence will not impact views from public locations. Plans of the proposed structure were viewed by State Parks and they have no concerns. Mr. Kamb also pointed out that no opposition has been raised regarding the proposed modification and coastal development permit for the residence.

In response to Commissioner Lipmanson, both Mr. Kamb and Commissioner Barth stated that the ranger who reviewed the proposed residence has been in this area for many years and resides in the area. Commissioner Barth estimated that he has been in the area for over 10 years and is familiar with the issues.

The public hearing was declared open and subsequently closed when no one came forward to address the commission.

Chairman McCowen voiced concerns with aesthetic impacts from the proposed structure. He stated that the proposed structure is not in keeping with the character of the area. He also stated that he could not support moving the building envelope and residence closer to the bluff.

Commissioner Barth disagreed and commented that she feels that the house is in character with other structures built in the coastal zone. The proposed structure will be screened from public locations by the trees and given the natural material being used in the construction, the residence will be in character with the area.

Commissioner Lipmanson commented that he could not make the findings required by CEQA relating to visual impacts. In addition, he had concerns with the location of the residence in relation to the bluff. The fact that the structure is screened does not justify allowing bigger and bigger residences in the area. He stated that he could support a smaller structure with additional screening. He also had concerns regarding visual impacts from the ocean itself.

The Commission briefly discussed the unconventional design of the structure, with Commissioner Lipmanson explaining that his concerns are not relating to the unconventional design but more toward the size of the structure.

Chairman McCowen stated that he could not support the reduced bluff setback and visual screening.

Commissioner Nelson stated that, given the Department of Parks and Recreation comments, he could support the proposed structure.

In response to Commissioner Calvert, Mr. Bowman, project architect, reviewed photographs and drawings of the site, describing the proposed structure, setbacks and screening. He described vegetation on the site which resulted in the proposed design of the structure.

Discussion followed by the Commission regarding the appropriate setback, aesthetics, views from public locations, size and scale of the proposed structure and existing structures, and protection of the Mendocino coast paintbrush. Mr. Falleri explained that the code is clear that a 50-foot minimum setback is required from an environmentally sensitive habitat.

Upon motion by Commissioner Barth, seconded by Commissioner Calvert and carried by the following roll call vote, IT IS ORDERED that the Planning Commission adopts a Negative Declaration and approves the modification of #MS 44-88 and approves Coastal Development Permit #CDP 12-2001 making the following findings and subject to the following conditions of approval:

**General Plan Consistency Finding:** The Planning Commission finds that the proposed project is consistent with applicable goals and policies of the General Plan with the inclusion of the conditions of approval.

**Environmental Findings:** The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

**Department of Fish and Game Findings:** The Planning Commission has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing development on the subject parcel and surrounding parcels, the project will not have any adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Commission has rebutted the presumption set forth in subdivision (d) of Section 753.5.

**Coastal Development Permit Findings:** The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

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

**Project Findings:** The Planning Commission, making the above findings, approves the modification of #MS 44-88 and approves #CDP 12-2001 subject to the following conditions of approval.

**CONDITIONS OF APPROVAL:**

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$25.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to August 31, 2001. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. Failure of the applicant to make use of this permit

within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.

2. The application for the building permit for the proposed residence shall include plans and specifications sufficient to demonstrate that the recommendations for erosion control and prevention contained in the BACE Geotechnical Investigation, dated June 28, 2001, will be implemented.
3. The application for the building permit for the proposed residence shall include plans and specifications sufficient to demonstrate that the recommendations for bluff setback and foundation design contained in the BACE Geotechnical Investigation, dated June 28, 2001, will be implemented.
4. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator that shall provide that:
  - a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazard and landowner assumes the risk from such hazards;
  - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;
  - c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
  - d. The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
  - e. The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
5. The application for the building permit for the proposed residence shall include plans and specifications sufficient to demonstrate that runoff from development on the site will be directed to a disposal point consistent with the recommendations in the BACE Geotechnical Investigation, dated June 28, 2001.

6. A revised exhibit map for Parcel 1 of #MS 44-88 shall be prepared showing the following information:
  - a. The location of the Mendocino coast paintbrush community identified by Dr. Gordon McBride, together with a minimum 50 foot buffer area measured from the outside edge of the environmentally sensitive habitat area. The revised exhibit map shall note that no development other than that permitted under Section 20.496.020(A)(4) shall be allowed within the buffer area.
  - b. The approximate extent of the area of riparian vegetation located east of the proposed building site, as identified on the exhibit map submitted with #MS 44-88, together with a minimum 50 foot buffer. (If supported by written documentation, it may be possible to find that a reduced setback, or a determination that no environmentally sensitive habitat area exists, is consistent with Coastal Plan Policies.)
  - c. The revised location of the building envelope, outside of any environmentally sensitive habitat buffer areas.
7. Prior to beginning any construction on the site, construction fencing shall be installed at the outer limit of the 50 foot buffer area, sufficient to prevent construction activities from encroaching within the buffer areas required around the locations of the Mendocino coast paintbrush and the riparian area shown on the revised exhibit map.
8. To the maximum extent practicable, the applicant shall incorporate the five recommendations contained in the report prepared by John Phillips, dated December 7, 2000, into design and construction of the proposed residence, with the objective of minimizing adverse impact on the trees in the vicinity of the construction site.
9. Only dead or hazardous trees shall be removed from the areas west and south of the residence
10. Prior to issuance of a building permit for the residence, the applicant shall provide evidence of compliance with California Department of Forestry and Fire Protection requirements for tree removal.
11. Lighting fixtures, both interior and exterior, shall be designed, located and/or shielded so that only reflected non-glaring light is visible beyond the project parcel boundaries. The application for the building permit shall include lighting information or specifications sufficient to demonstrate compliance with this condition. Compliance with this condition shall be achieved prior to the final inspection by the Building Inspection Division, and shall be maintained for the duration of this permit.
12. Prior to issuance of a building permit for the proposed residence, the applicant shall submit to the Department of Planning and Building Services a letter or other evidence that any requirements of the California Coastal Commission pertaining to the modification of the conditions of #MS 44-88 and Coastal Permit No. 1-89-28 have been satisfactorily completed.
13. The developer shall comply with all requirements of the California Department of Forestry and Fire Protection, CDF File No. 219-01, dated April 26, 2001, or with other alternatives acceptable to the Department, and with the requirements of the Fort Bragg Rural Fire District. Written verification shall be submitted to the Department of Planning and Building Services that all requirements of the two departments have been satisfied prior to final building inspection signoff.

14. In the event that archaeological or paleontological resources are encountered during construction of the project, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
15. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
16. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.
17. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
18. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following:
  - a. That the permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which the permit was granted have been violated.
  - c. That the use for which the permit was granted is being conducted so as to be detrimental to the public health, welfare or safety or to be a nuisance.
  - d. That a final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

19. This permit is issued without a legal determination having been made upon the number, size or shape of the parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

AYES: Nelson, Little, Calvert, Barth

NOES: Lipmanson, McCowen

ABSENT: Berry

Commissioner Little stated that he concurs with some of the comments made by Commissioner Lipmanson. He stated that there has been a major change in the coastal area over the years.

Chairman McCowen commented that the illustrations clearly show that the proposed structure will be visually obtrusive.