

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



# W9a

Date Filed:	September 25, 2006
49th Day:	November 13, 2006
180 <sup>th</sup> Day:	March 24, 2007
Staff:	Tiffany S. Tauber
Staff Report:	October 27, 2006
Hearing Date:	November 15, 2006
Commission Action:	

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.:	<b>A-1-MEN-01-051-A1</b>
APPLICANT:	<b>LOKE TAN (formerly Gene &amp; C.J. Meredith)</b>
AGENT:	Jim Conrad, Architect
PROJECT LOCATION:	At 17230 Ocean Drive, west of Highway One, approximately 3 miles south of Fort Bragg, Mendocino County (APN 017-330-10).
DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:	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.
DESCRIPTION OF AMENDMENT REQUEST:	Modify the design of the approved house resulting in a 6,933-square-foot, two-story, 26-foot-high residence with an 857-square-foot attached garage to be located entirely

within the previously approved building envelope, driveway, water supply system from existing well, septic system and utility shed.

GENERAL PLAN DESIGNATION: RR-5, (Rural Residential, 5-acre minimum)

ZONING DESIGNATION: RR-5, PD (Rural Residential, 5-acre minimum, Planned Development)

SUBSTANTIVE FILE DOCUMENTS: CDP No. A-1-MEN-01-051 (Meredith); CDP No. 1-89-028 (E.F.S Associates); CDP No. 1-89-028-A4 (Meredith); Mendocino County LCP

---

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission approve with conditions the requested amendment to the coastal development permit. On February 6, 2003, the Commission approved with conditions CDP No. A-1-MEN-01-051 (Meredith), *de novo*, authorizing the construction of a 6,966-square-foot, two-story residence with an 886-square-foot attached garage located in a 10,000-square-foot building envelope located no closer than 50 feet from the edge of the coastal bluff. The originally approved development also included a driveway, water supply system from existing well, septic system and landscaping. The subject site is located at 17230 Ocean Drive, west of Highway One, approximately 3 miles south of Fort Bragg, Mendocino County in a designated “highly scenic” area.

The parcel has since been sold to the current applicant, Loke Tan, who is proposing to amend the CDP to modify the design of the residence in a manner that would result in approximately the same floor area, but would increase the height of the residence from 24 feet to 26 feet. The proposed redesigned house would be located entirely within the previously approved building envelope. Additionally, the proposed redesigned house would be constructed of the same dark, earthtone exterior colors and materials as the originally approved house. The roof material is proposed to be revised from the originally approved copper roof to a clay barrel tile roof in shades of dark brown and terra cotta and the exterior finish would include some stone veneer.

The proposed amended residence would not result in additional or increased impacts to visual resources, geologic hazards, or environmentally sensitive habitat, as the residence (1) would be sited within the same previously approved geologic setback and would not encroach any closer to the bluff edge, (2) would not encroach within any previously

established ESHA buffers, and (3) would continue to be screened by an intervening forested area that is part of a deed restricted Area of Native Vegetation between the proposed development and the coastal bluff that would protect views toward the subject property from Jug Handle State Reserve.

The conditions imposed in the original permit are particular to the specific development plans approved at that time. Although the Commission has approved extension of this original permit and this permit was issued and remains valid, this original permit has not yet been vested. Staff recommends that a new set of special conditions particular to the new development plans as proposed in the permit amendment request be imposed that would replace the original special conditions if and when the applicant accepts the permit amendment. As the proposed amended development differs only architecturally from the originally approved development, staff recommends imposing nine special conditions that are very similar to the conditions attached to the original permit. These conditions would ensure that the redesigned residence is consistent with the visual resource protection, geologic hazards, water quality, and erosion and runoff control policies of the Mendocino County 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 related Coastal Development Permit No. 1-89-028-A4 as amended, granted for the subdivision that created the subject parcel and established the building envelope. This condition would 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. 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 prohibit use of specified rodenticides and planting of invasive exotic species as part of the landscaping. Special Condition No. 8 would require the design and construction plans to conform to the recommendations contained in the geotechnical report. Lastly, Special Condition No. 9 would require the applicant to record a deed restriction imposing the special conditions

of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property.

Staff recommends that the Commission find the project, as conditioned, is consistent with the Mendocino County LCP and the Coastal Act public access and recreation policies.

**The Motion to adopt the staff recommendation can be found on page 6.**

---

**STAFF NOTES:**

**1. Procedure and Background:**

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

Coastal Development Permit No. A-1-MEN-01-051 (Meredith) was approved for the construction of a 6,966-square-foot, two-story residence with an 886-square-foot attached garage located in a 10,000-square-foot building envelope located no closer than 50 feet from the edge of the coastal bluff, driveway, water supply system from existing well, septic system and landscaping.

The Commission approved this permit on February 6, 2003 with ten special conditions, including conditions: (1) restricting exterior colors to dark earthtones and the minimum necessary exterior lighting that is low wattage, non-reflective, shielded, and directionally cast downward; (2) requiring maintenance of trees in the open space area deed restricted pursuant to the coastal development permit for the subdivision as amended (CDP No. 1-89-028-A4) to ensure that visual screening of the development is maintained during the life of the project; (3) requiring 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; (4) prohibiting the construction of future seawalls or shoreline protective devices, and requiring the landowner to remove any authorized development if it is deemed by a government agency as too dangerous to occupy; (5) requiring 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; (6) requiring erosion and sedimentation controls to protect ESHAs and their buffers from potential adverse impacts resulting from the proposed development activities; (7) requiring that landscaping plans be submitted for approval to ensure that no invasive exotics are included in the landscaping design; (8) requiring the design and

construction plans to conform to the recommendations contained in the geotechnical report; (9) acknowledge that the Commission's action does not affect any conditions imposed by the local government pursuant to an authority other than the Coastal Act, and (10) requiring submittal of 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. After the Commission approved an extension of the permit, the original applicant (Meredith) satisfied the prior to permit issuance conditions and CDP No. A-1-MEN-01-051 was issued on April 13, 2006.

The current amendment request seeks to redesign the approved residence in a manner that would result in approximately the same floor area, but would increase the height of the residence from 24 feet to 26 feet. The proposed redesigned house would be located within the same footprint as the originally approved house. Additionally, the proposed redesigned house would be constructed of the same dark, earthtone exterior colors and materials as the originally approved house. The roof material is proposed to be revised from the originally approved copper roof to a clay barrel tile roof in shades of dark brown and terra cotta and the exterior finish would include some stone veneer.

Upon receipt of the amendment request, the Executive Director accepted the amendment request for filing on the basis that with conditions, the proposed modifications to the project could be made consistent with the applicable Mendocino County LCP policies and the public access policies of the Coastal Act, and would not lessen or avoid the intent of the Commission's prior action on the original permit (CDP No. A-1-MEN-01-051). The proposed amended design of the house would not adversely affect visual resources and would remain consistent with the visual resource protection policies of the LCP, as the proposed amended design would result in a residence of essentially the same total footprint located entirely within the previously approved building envelope. The two-foot increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed colors and materials continue to be dark earthtones that would be compatible would blend in hue and brightness with the surroundings. Moreover, the proposed amended development would not impact public access to the coast, as the house with its revised design would be located within the same footprint as the originally approved house.

The proposed amended design would not increase the risk of geologic hazards, as the amended residence would be located in the same location and maintain the same setback from the bluff as the Commission required for the originally approved project. However, because the design of the house would be different, the final construction and foundation plans would need to be reviewed by a licensed professional, as they were for the originally approved house, to ensure that the plans are consistent with the recommended design criteria of the geotechnical report prepared for the site. Therefore, staff recommends the Commission impose Special Condition No. 8 for the permit amendment to ensure that the final foundation and other plans of the new house design incorporate

the recommended design criteria of the geotechnical engineer, and that the project is built according to the approved plans. Staff also recommends the Commission impose Special Condition Nos. 4 and 5 prohibiting the construction of shoreline protective devices on the parcel and requiring 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, respectively. As conditioned, the proposed amendment would be consistent with the geologic hazard policies of the LCP and would not lessen the intent of the Commission's prior action on the original permit.

Finally, with the inclusion of recommended Special Condition No. 9, which would require the applicants to record a deed restriction for the amended development imposing all the special conditions imposed by the subject amendment as conditions, covenants, and restrictions against the property, future purchases of the property would continue to be informed of all of the coastal development permit requirements that pertain to the property. Therefore, for the reasons discussed above, the Executive Director has determined that the proposed amendment as conditioned, would not lessen the intent of the Commission's prior action on the original permit and has accepted the amendment for processing.

## **2. Standard of Review**

The original permit (A-1-MEN-01-051) was reviewed by the Commission *de novo*, on appeal of the County of Mendocino's prior action on the CDP, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective certification of an LCP, the standard of review for all coastal permits and permit amendments for developments located between the first public road and the sea is the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

---

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

### **Motion:**

I move that the Commission approve Coastal Development Permit Amendment No. A-1-MEN-01-051-A1 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 subject to conditions below, the proposed permit amendment and adopts the findings set forth below, on grounds that the development with the proposed amendment 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 amendment complies with the California Environmental Quality Act because all feasible mitigation measures and alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

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

To ensure that Permit Amendment No. A-1-MEN-01-051-A1 remains valid, the applicant must not allow the original permit (CDP No. A-1-MEN-01-051) to expire under the terms of Standard Condition No. 2 of the original permit by either (1) commencing development prior to expiration of the latest granted time extension, or by (2) applying to the Commission for further extensions of the original permit prior to expiration of the most recently granted time extension. In addition, pursuant to Standard Condition No. 2 of Permit Amendment No. A-1-MEN-01-051-A1, the applicant must apply for extensions of the permit amendment prior to the two year anniversary of the date on which the Commission voted on the application or expiration of the most recently granted time extension of the permit amendment unless development has commenced prior to expiration of the latest granted time extension.

**III. SPECIAL CONDITIONS:**

Special Condition Nos. 1 through 10 of the original permit (CDP No. A-1-MEN-01-051) are replaced by the following special conditions:

**1. Design Restrictions**

- A. 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 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

- B. 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 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 private 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 COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-01-051-A1**, 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. By acceptance of this permit, the applicant agrees, 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-A1, 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 applicant hereby waives, 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).

- B. By acceptance of this permit, the applicant 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.
- C. 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.

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

By acceptance of this permit, the applicant acknowledges and agrees: (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 applicant 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.

**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 Restrictions**

- A. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed demolition. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- B. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

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 COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-01-051-A1**, 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. **Deed Restriction**

**PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. A-1-MEN-01-051-A1**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the 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. **This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition No. 4 and Special Condition No. 5 of Coastal Development Permit No. A-1-MEN-01-051 approved on February 6, 2003, which deed restriction is recorded as Instrument No. 2006-04729 in the official records of Mendocino County.**

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

The Commission hereby finds and declares:

##### **1. Background and Site Description**

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 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 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 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 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 applicant's 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.

The original building envelope at the subject site 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. 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 maintained the originally approved building envelope at 10,000-square-feet, but reconfigured it from a 100-foot by 100-foot square, to a 125-foot by 80-foot rectangle, and reduced 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 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 approved permit amendment was also conditioned to avoid significant 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 below-ground facilities such as the water tank and propane tank proposed to be buried.

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 recently constructed one-story structure 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 Amendment Description**

The originally approved project includes the construction of a two-story, 24-foot-high, 6,966-square-foot single-family residence with an 886-square-foot attached garage, 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 project as originally approved also involves the removal of two dead trees and one live tree within the forested area between the building site and the edge of the bluff.

The current amendment request seeks to redesign the approved residence in a manner that would result in approximately the same floor area, but would increase the height of the residence from 24 feet to 26 feet. The proposed redesigned house would be located within the same footprint as the originally approved house. Additionally, the proposed redesigned house would be constructed of the same dark, earthtone exterior colors and materials as the originally approved house. The roof material is proposed to be revised from the originally approved copper roof to a clay barrel tile roof in shades of dark brown and terra cotta and the exterior finish would include some stone veneer. The proposed amendment also includes removal of the same three trees as the originally approved development.

## **3. 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 is 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 amended 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 to be amended would consist of a 26-foot-tall, two-story, 6,933-square-foot single-family residence, with an 857-square-foot attached garage and appurtenant structures including a utility shed, an underground water tank, an underground propane tank, driveway, installation of a water system from an existing well, and septic system. The 10,000-square-foot building envelope and the appurtenant structures proposed outside of the building envelope together represent less than 2% coverage of the 10.6-acre parcel consistent with the maximum 20% structural coverage standard for the zoning district.

The proposed amended 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 amended development is located in an area able to accommodate the proposed residential development, consistent with the applicable provisions of LUP Policy 3.9-1.

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

Therefore, the Commission finds that as conditioned, the amended 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.

#### 4. 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 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.

The original permit (CDP No. A-1-MEN-01-051) approved the construction of a two-story, 24-foot-high, 6,966-square-foot, two-story residence with an 886-square-foot attached garage located in a 10,000-square-foot building envelope located no closer than 50 feet from the edge of the coastal bluff, driveway, water supply system from existing well, septic system and landscaping. As discussed above, the proposed amended development consists of a 26-foot high, two-story, 6,933-square-foot single-family residence, with an 857-square-foot attached garage located within the same building envelope, and appurtenant structures including a utility shed, an underground water tank, an underground propane tank, driveway, installation of a water system from an existing well, and septic system.

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. As was the case with the originally approved residence, the proposed amended residence would be constructed entirely within 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 CDP No. 1-89-028-A4 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 the current amendment application, however, the utility shed would be located in a different location to the southeast of the building envelope as similarly proposed under the original permit. 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 as required in the original permit. 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 amended residential development is consistent with the requirements of LUP Policy 3.5-4.

The proposed amended residence would have a second story, as did the originally approved design, but would be increased in height from 24 feet to 26 feet, which exceeds the maximum number of stories by one and the maximum height allowed in highly scenic areas by eight 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 LCP. 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 recently constructed one-story structure 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 applicant's proposed house would be in character with other neighboring residential structures, and would not easily be within public view. Although the proposed amended development would rise 8 feet above the 18-foot limit imposed in highly scenic areas, the applicant's proposed amended 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 amended house would not be out of character with surrounding structures or adversely affect public views to the ocean, the amended development with its 26-foot-high second story 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 amended house conform to the LCP requirements that the colors and building materials blend in hue and brightness with their surroundings. The applicant proposes to utilize the same earthtone color palette as the originally approved residence for the exterior of the house. The proposed stucco colors include Benjamin Moore ® color chips described as a brownish-gold color labeled "morgan hill gold" and a tan color labeled "guesthouse." The proposed trim color is described as a chocolate brown color labeled "coconut grove." The applicant proposes to

amend the roof material from the originally approved copper roofing to a clay barrel tile roof in shades of dark brown and terra cotta. Additionally, the applicant proposes to utilize some stone veneer along partial areas of the exterior described. These natural, dark colored materials would blend with the dark green and brown shades of the surrounding Bishop pine forest, and together with the earthtone stucco colors as proposed, would 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). 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.

The Commission further finds that 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(B) 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 amended 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, the amended development will blend in hue and brightness with its surroundings. Third, as the amended house will be similar in height and bulk to surrounding structures, the amended development will blend with the developed portions of the landscape.

Development of the proposed amended 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 any necessary

coastal development permit authorization by the Commission. To ensure that trees that need to be removed to protect the proposed amended 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 as similarly required under the original permit. The condition requires that as trees die or are removed for any other purpose throughout the life of the approved residential development, specified 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.

Furthermore, the Commission attaches Special Condition No. 9, which requires the applicant to record and execute a deed restriction to impose the special conditions of this permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property. This condition will ensure that future purchasers of the property are informed of all of the coastal development permit requirements that pertain to the property, including design restrictions to ensure the protection of visual resources.

Therefore, for all of the above reasons, the Commission finds that the amended 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.

## **5. 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.*
- (c) *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.*
- (d) *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.*
- (e) *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.*
- (f) *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).*

...

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. The original subdivision permit required that the riparian ESHA and a 50-foot buffer around it be protected by an open space deed restriction. As discussed in the findings for the originally approved development, when the original 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 & 4.

As part of the Commission's review of Coastal Development Permit Amendment No. 1-89-028-A4, a supplemental biological evaluation substantiated that less than 100-foot buffers were 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 CDP No. 1-89-028 over the riparian ESHA on the property and its 50-foot buffer. The conditions of CDP No. 1-89-028 as amended by Permit Amendment No. 1-89-028-A4 remain in full force and effect. As proposed and conditioned, all of the development proposed under Permit Amendment No. A-1-MEN-01-051-A1 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 biological report prepared for the originally approved development evaluated the ESHA 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. The conclusion that the narrower buffers would be adequate to protect the ESHA was based in part on a 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 this 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 amended development, the Commission attaches Special Condition No. 6(A) as similarly required by the original permit. 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.

The applicant is not proposing any particular landscaping plan as part of the proposed amendment. However, the Commission finds that the ESHA could be adversely affected by the development if non-native, invasive plant species were introduced as part of future landscaping at the site. Introduced invasive exotic plant species could spread into the ESHA and displace native vegetation and rare plants, thereby disrupting the value and function of the ESHA. Therefore, to ensure that the ESHA is not adversely impacted by any future landscaping of the site, the Commission attaches Special Condition No. 7(A) that requires only native and/or non-invasive plant species be planted at the site.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential cumulative impact to environmentally sensitive wildlife species, the Commission attaches Special Condition No. 7(B) prohibiting the use of specified rodenticides on the property governed by CDP No. A-1-MEN-01-051-A1.

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 use of specified rodenticides and planting of invasive exotic species as part of the landscaping, the Commission finds that the amended development, as conditioned, 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.

## **6. 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 with small sea caves located along the base of the bluff face. As described above, the amended project proposes to construct a 26-foot-tall, two-story, 6,933-square-foot single-family residence, with an 857-square-foot attached garage and appurtenant structures including a utility shed, an underground water tank, an underground propane tank, driveway, installation of a water system from an existing well, and septic system.

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 Belinda Point subdivision 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 Commission approved Coastal Development Permit Amendment No. 1-89-028-A4 to modify the location and dimensions of the original 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 prepared by BASE Geotechnical Consultants 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. As discussed in the Commission's findings for the originally approved residence, 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 reviewed the BACE reports, visited the site, and met with the original applicants' geologist. After reviewing requested additional documentation concerning the analysis of aerial photos, the Commission staff geologist determined that the 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. 3). 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 CDP No. 1-89-028-A4 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. The current amendment request proposes no changes to the geologic setback previously approved by the Commission and the proposed amendment would place all of the amended development either within the previously approved building envelope or within locations outside of the building envelope that are no closer than 50 feet from the bluff edge. Therefore, the amended development would 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.

LUP Policy 3.4-1 states, in part, that geologic investigations for development in areas of known or potential geologic hazards shall determine if mitigation measures could stabilize the site. As noted above, 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. The CDP for the originally approved residence included a condition requiring all final design and construction plans, including foundations and grading drainage plans, be consistent with the recommendations contained in the geotechnical reports dated June 28, 2001, prepared by BACE Geotechnical Consultants, and that prior to issuance of the CDP, a licensed professional certify that the final plans are consistent with the above mentioned report. The condition also requires that the amended development be constructed consistent with the approved plans.



The original permittees (Meredith) submitted certified final design, and construction, foundation, grading, drainage, and erosion control plans, satisfying the special condition, and received the CDP for the original residential design in April 2006. The current proposed amendment would change the design of the residence, and final foundation and other construction plans for the new design were not submitted with the amendment request. Therefore, to ensure that the final construction plans for the revised house design adhere to the design criteria specified in the geotechnical reports, and that development is constructed consistent with the approved revised plans, the Commission imposes Special Condition No. 8 as a condition of this permit amendment. The condition requires all final design and construction plans for the amended development, including foundations, be consistent with the recommendations contained in the geotechnical reports dated June 28, 2001, prepared by BACE Geotechnical Consultants. As conditioned, the amended development will include the measures determined by the geologic investigation to be necessary to stabilize the site consistent with LUP Policy 3.4-1.

As was the case with the originally approved residence, the proposed amended residence 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 proposed amended 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. Information submitted by the original applicants' geologist 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. As discussed in the findings for the original approval, 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 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 amended 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.

The Commission finds that the amended development could not be approved as being consistent with Coastal Zoning Code Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it. Based upon the geologic report prepared for the site and the evaluation of the originally approved 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, the geologic report does not assure that shoreline protection will never be needed to protect the residence, could be found consistent with the certified LCP only if it is established that shoreline protective works will not be constructed in the future as proposed by the applicants. Thus, the Commission further finds that due to the inherently hazardous nature of the project site 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 the LCP requires that in the permitting of new development the need for shoreline protective devices shall not be engendered, it is necessary to attach Special Condition Nos. 4 and 5 to ensure that no future shoreline protective device will be constructed as proposed by the applicants.

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 applicant accepts 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 amended 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.

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, Special Condition No. 4 also 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.

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 applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant 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.

For the originally approved residence, the Commission attached Special Condition Nos. 4 and 5 similarly prohibiting the construction of shoreline protective devices on the parcel and requiring 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, respectively. Special Condition Nos. 4 and 5 attached to the originally permit required the previous applicants to execute and record deed restrictions imposing the requirements of these conditions. On March 14, 2006, the applicants for the originally approved development recorded a deed restriction on their property and submitted the deed restriction to the Commission, satisfying the above conditions. However, the conditions imposed in the original permit are particular to the specific development plans approved under the original permit. Therefore, the Commission imposes Special Condition No. 9, which requires the applicant to record a similar deed restriction for the amended project with its new development plans, to impose the special conditions of the permit amendment as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction required by Special Condition No. 9 will supersede and replace the deed restrictions recorded pursuant to Special Condition Nos. 4 and 5 of the original permit. The Commission finds that Special Condition No. 9 is required, in part, 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.

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. 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. However, 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. Because the project site is located within a highly scenic area, future improvements to the amended project will not be exempt from permit requirements pursuant to Section 30610(a). Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, future improvements to the amended 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 amended 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, because the amended development, as conditioned, 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 amended development consistent with the LCP geologic hazard policies.

## 7. 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 amended 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.

As discussed in the findings for the original permit, sedimentation impacts from runoff would be of greatest concern during construction. Construction of the proposed amended 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 amended 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 amended 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 amended 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.

## **8. 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. Since the time of the original permit approval, the access dedication has been accepted by the Mendocino Land Trust. 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 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 residential development at the site and other houses in the subdivision will have on public access, and since the proposed amended project will not interfere with any possible public prescriptive rights, the Commission finds that the proposed amended project is consistent with the coastal access policies of the Coastal Act and the County's LCP.

Therefore, the Commission finds that the amended development, as conditioned, does not have any significant 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.

## **9. 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 LCP and Coastal Act consistency 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 above, the amended development, as conditioned, is consistent with the policies of the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been required as permit amendment special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would

substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the amended development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**Exhibits:**

1. Regional Location Map
2. Vicinity Map
3. Originally Approved Site Plan
4. Proposed Amended Site Plan
5. Proposed Amended House Plans
6. Proposed Amended Elevations
7. CDP No. A-1-MEN-01-051 Staff Report
8. CDP No. 1-89-028-A4 Staff Report

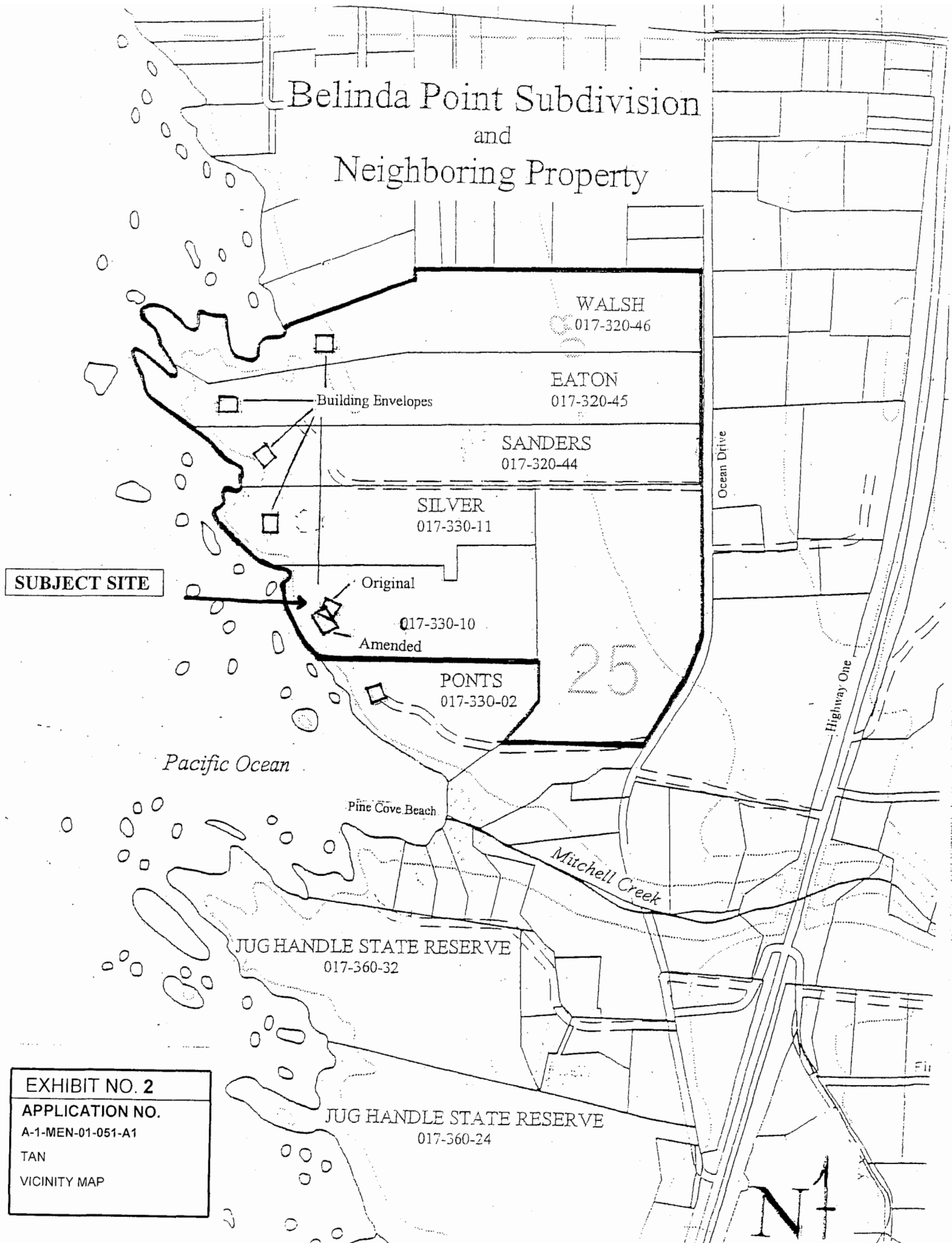
**ATTACHMENT A:**

Standard Conditions:

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



# Belinda Point Subdivision and Neighboring Property





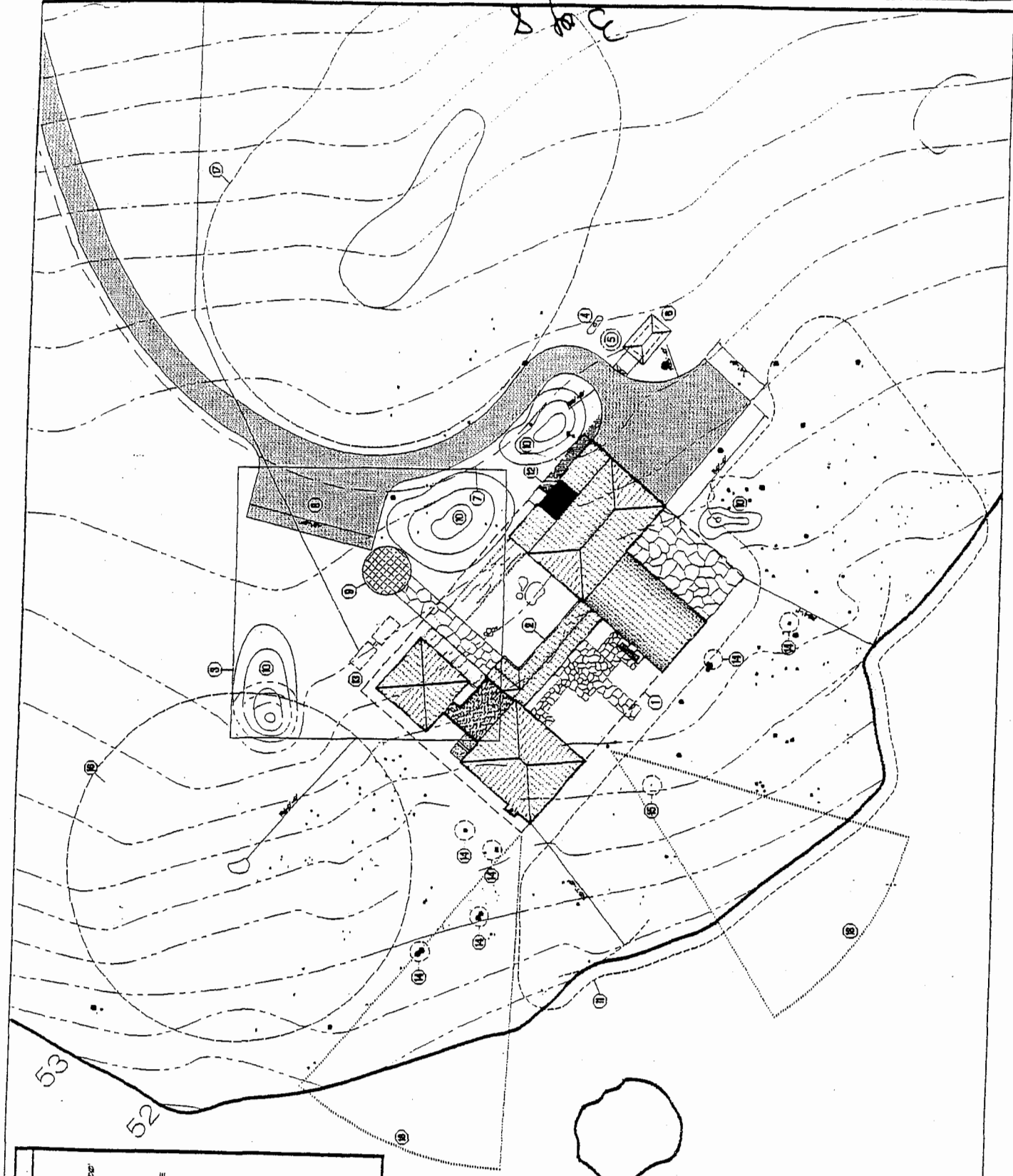
SITE PLAN

NEW RESIDENCE FOR  
M & K  
MEREDITH

DATE  
BY  
CHECKED  
APPROVED

PROJECT  
SHEET NO.  
DATE

A1



KEY NOTES

- 1 PROPOSED BUILDING ENVELOPE 150' X 150'
- 2 PROPOSED RESIDENCE
- 3 ORIGINAL BUILDING ENVELOPE 150' X 150'
- 4 UNDERGROUND PROPANE TANK
- 5 UNDERGROUND WATER STORAGE TANK
- 6 UTILITY SIED
- 7 UNDERGROUND UTILITIES TO RESIDENCE
- 8 GUEST PARKING
- 9 SIDE PLAZA AND MAIN PATH TO RESIDENCE
- 10 DECORATIVE BERTS
- 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 RETAINED
- 16 ENDANGERED PLANT AND BETADEX
- 17 VEGETATION CHANGE AND BETADEX
- 18 VIEW CORRIDOR

EXHIBIT NO. 3  
APPLICATION NO.

A-1-MEN-01-051-A1

TAN

ORIGINALLY APPROVED SITE  
PLAN (MEREDITH)



SITE PLAN

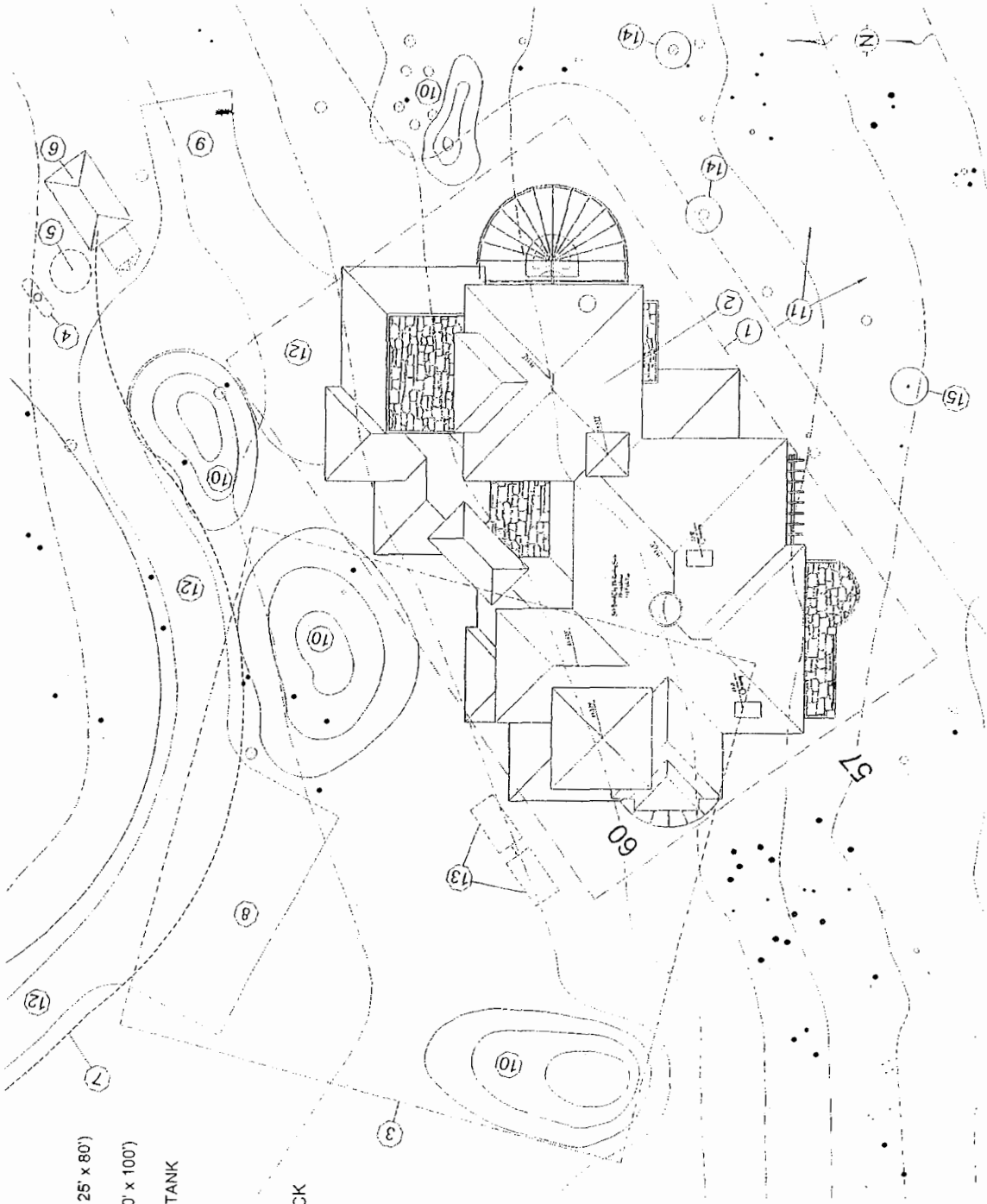
Revisions

Tan Residence  
17230 Ocean Drive  
Fort Myers, CA 9447



James Conrad Architect  
13505 So. Coast Hwy #201  
Laguna Beach, CA 92651  
(949) 497-0200 Office  
(949) 497-0258 Fax

Drawn by: J. Conrad	Date: 10/19/11
Checked by: J. Conrad	Date: 10/19/11
Project: TAN	Sheet: 1 of 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 GUEST PARKING
  - 9 DRIVEWAY TURNAROUND
  - 10 DECORATIVE EARTHEN BERMS
  - 11 VEGETATION CHANGE & SETBACK
  - 12 PROPOSED DRIVEWAY
  - 13 SEPTIC TANK & PUMP
  - 14 DEAD TREE TO BE REMOVED
  - 15 LIVE TREE TO BE REMOVED
  - 16 SEPTIC REPLACEMENT

**EXHIBIT NO. 4**  
**APPLICATION NO.**  
 A-1-MEN-01-051-A1  
 TAN  
 PROPOSED AMENDED SITE  
 PLAN

**Site Plan**  
 Area of Site = 477,763 SqFt  
 Area of Buildable Site = 10,191 SqFt  
 Building Site Coverage = 5,289 SqFt  
 Percentage of Building Site Coverage = 1.10%

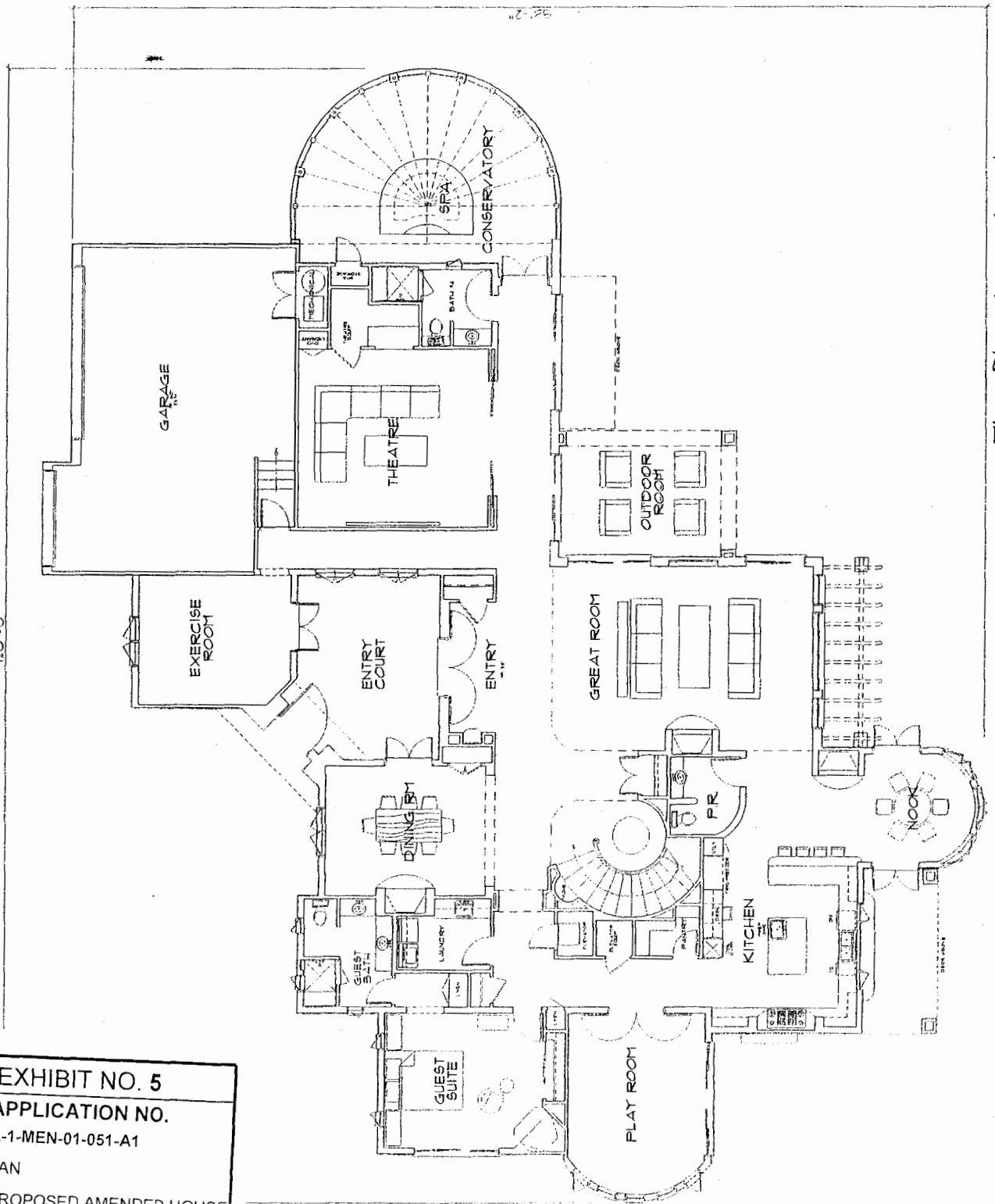
Revisions

**Tan Residence**  
 17230 Ocean Drive  
 Fort Bragg, CA 95437



**James Conrad Architect**  
 1350 So Coast Hwy #201  
 Laguna Beach, CA 92651  
 (949) 497-0200 Office  
 (949) 497-0258 Fax

Drawn By	Checked By
Designed By	Reviewed By
Project No.	Scale
Sheet #	Sheet #
Δ-3	Δ-3



Floor Plan - Lower Level  
 Δ-3

**EXHIBIT NO. 5**  
**APPLICATION NO.**  
 A-1-MEN-01-051-A1  
 TAN  
 PROPOSED AMENDED HOUSE  
 PLANS (1 of 3)



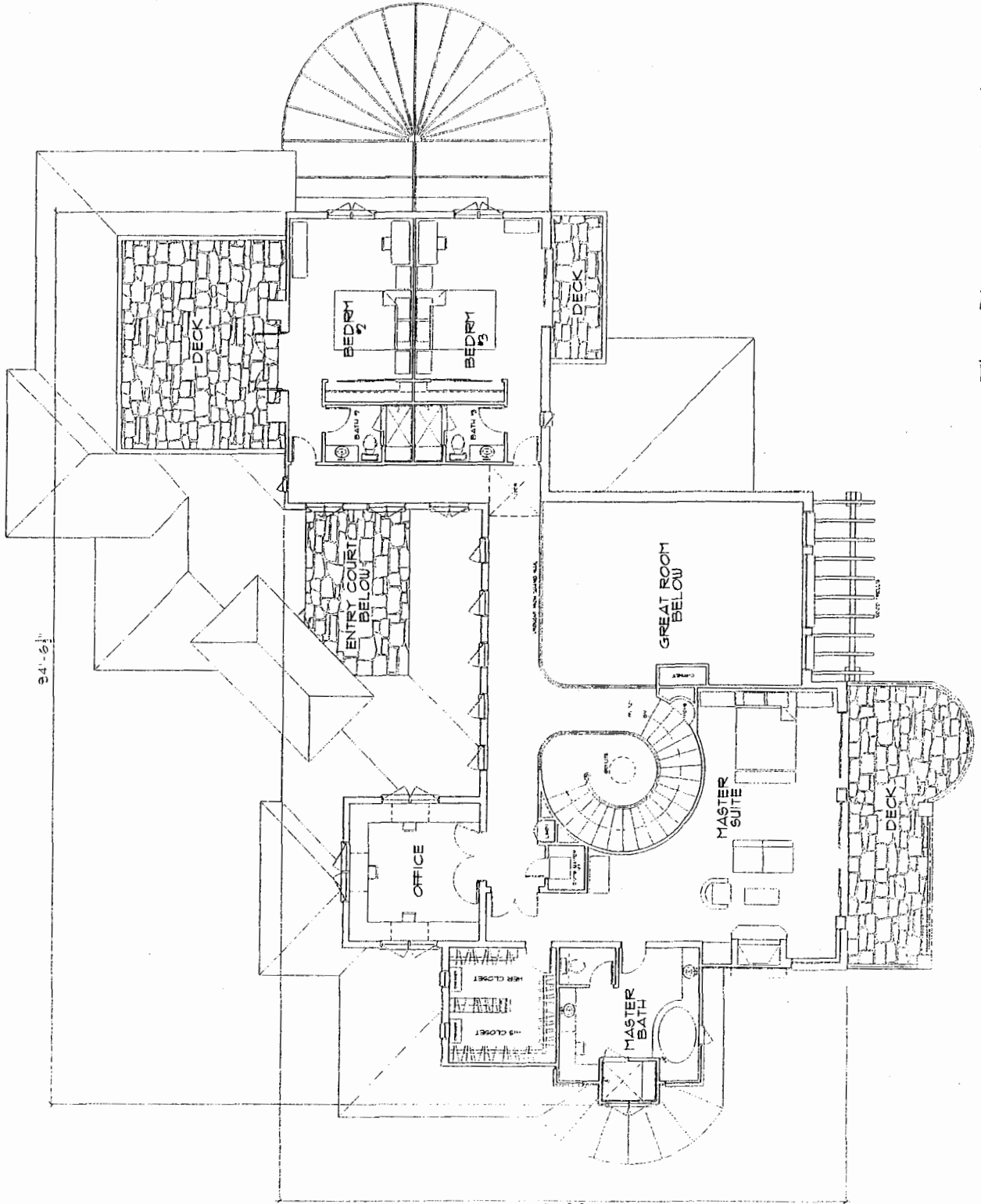
Revisions

Tan Residence  
1/230 Ocean Drive  
Fort Bragg, CA 94737



James Conrad Architect  
1550 So. Coast Hwy #201  
Laguna Beach, CA 92651  
(949) 497-0200 Office  
(949) 497-0288 Fax

Drawn By	Checked By
Date	Date
Scale	Scale
Project	Project
Sheet #	Sheet #
A-4	A-4



Floor Plan - Upper Level  
2,900 Sq Ft

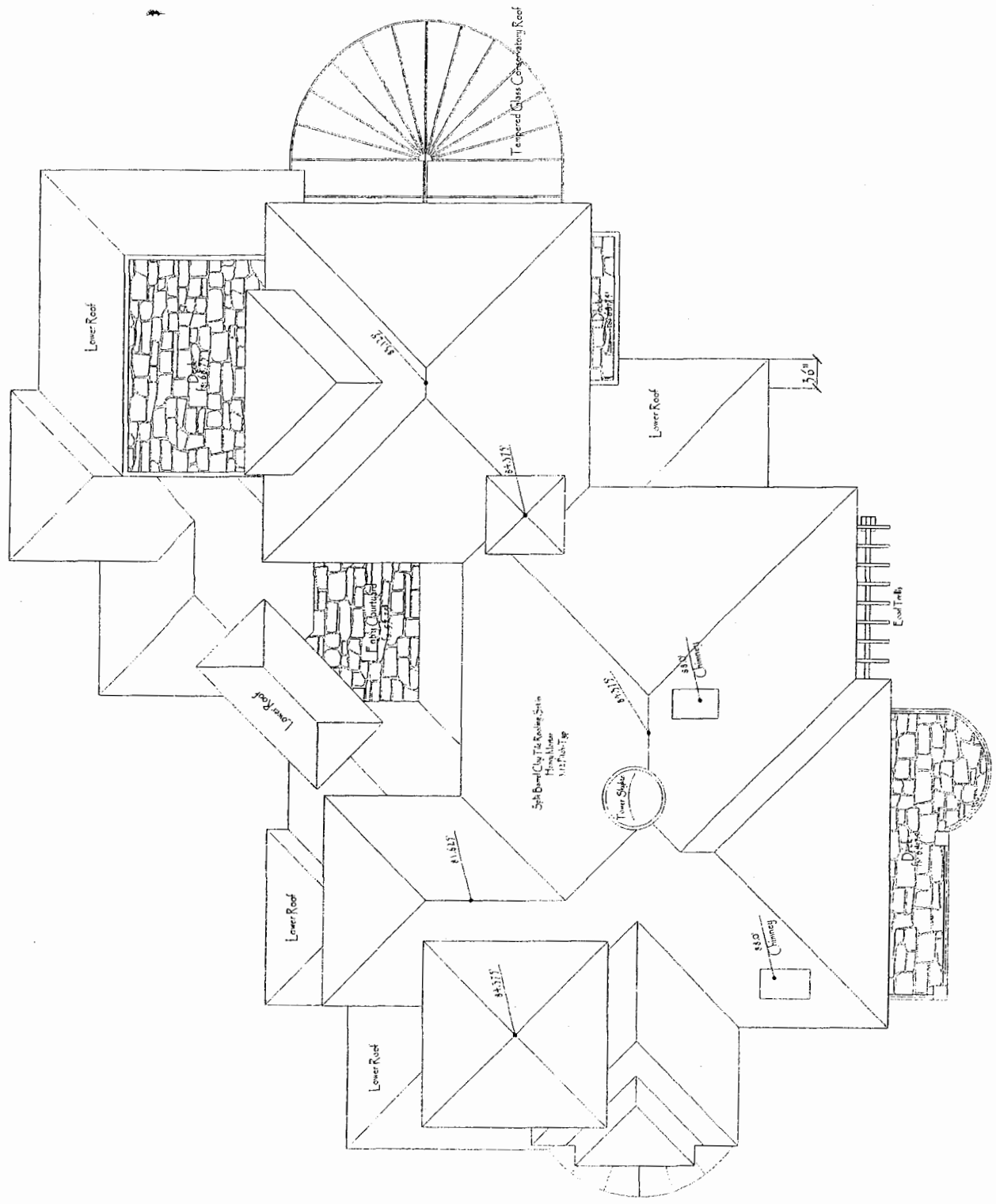
Revisions

**Tan Residence**  
 17250 Ocean Drive  
 Fort Bragg, CA 94747



**James Conrad Architect**  
 1330 So. Coast Hwy #201  
 Laguna Beach, CA 92651  
 (949) 497-0200 Office  
 (949) 497-0238 Fax  
 www.jamesconradarchitect.com

Drawn By	12/28/07
Checked By	12/28/07
Date	12/28/07
Scale	1/8" = 1'-0"
Sheet #	1 of 1



Roof Plan

343

EXHIBIT NO. 6  
 APPLICATION NO.  
 A-1-MEN-01-051-A1  
 TAN  
 PROPOSED AMENDED  
 ELEVATIONS (1 of 2)

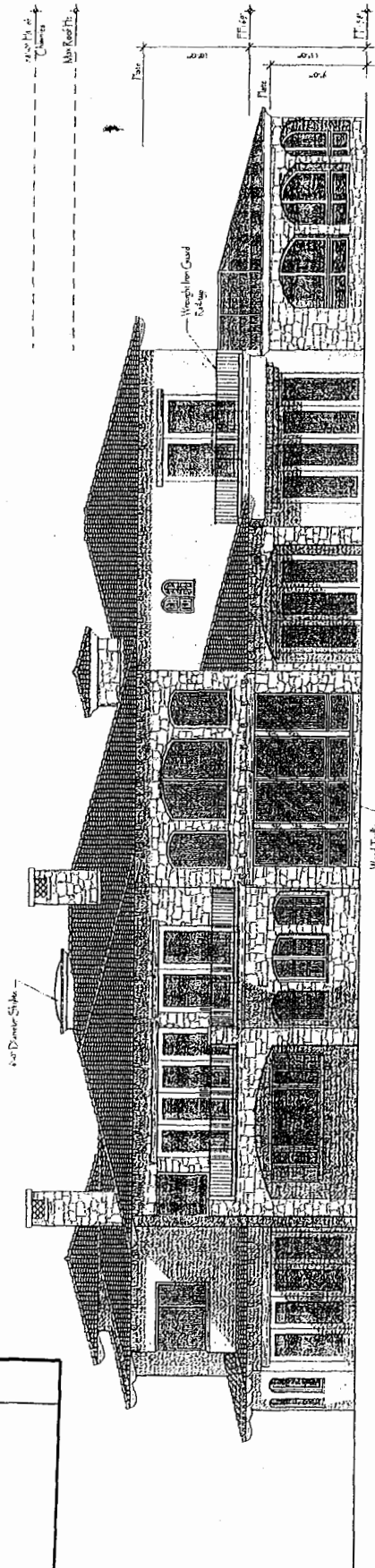
Revisions

**Tan Residence**  
 1173 Constance Lane  
 Laguna Beach, CA 92651  
 (949) 497-0288 Fax

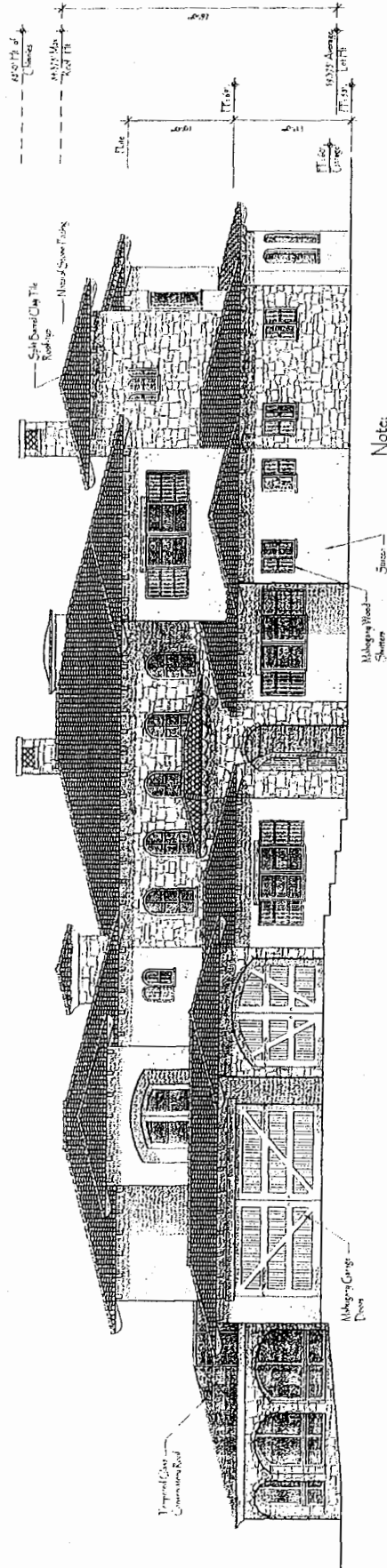


**James Conrad A. Architect**  
 1390 So. Coast Hwy #201  
 Laguna Beach, CA 92651  
 (949) 497-0200 Office  
 (949) 497-0288 Fax  
 www.conradarchitect.com

Drawn By:	James Conrad A.
Date:	5/1/05
Scale:	1/4" = 1'-0"
Project:	Tan Residence
Sheet:	A-1

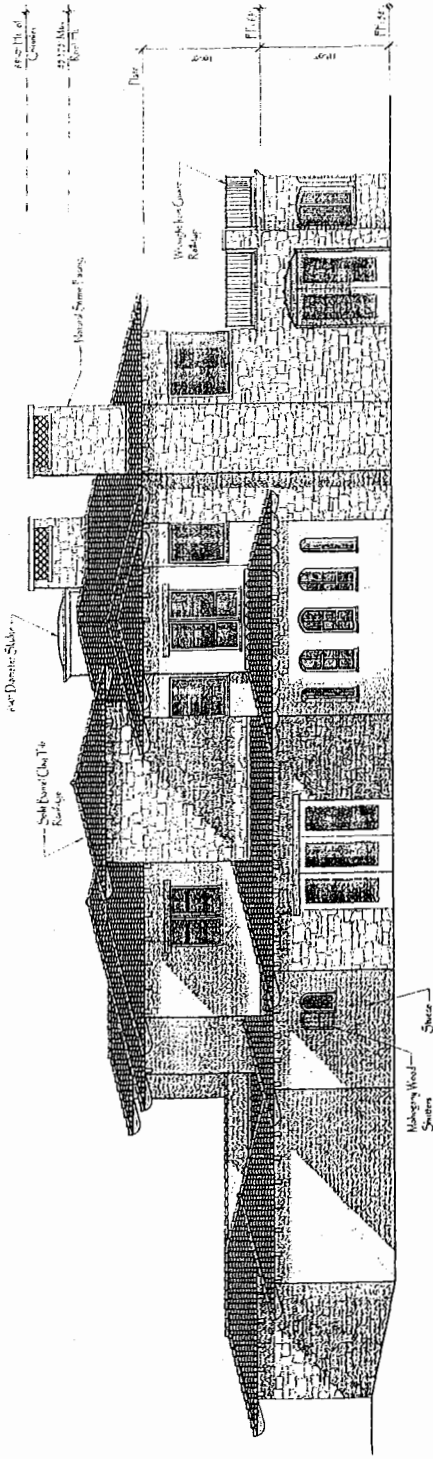


South (Ocean View) Elevation

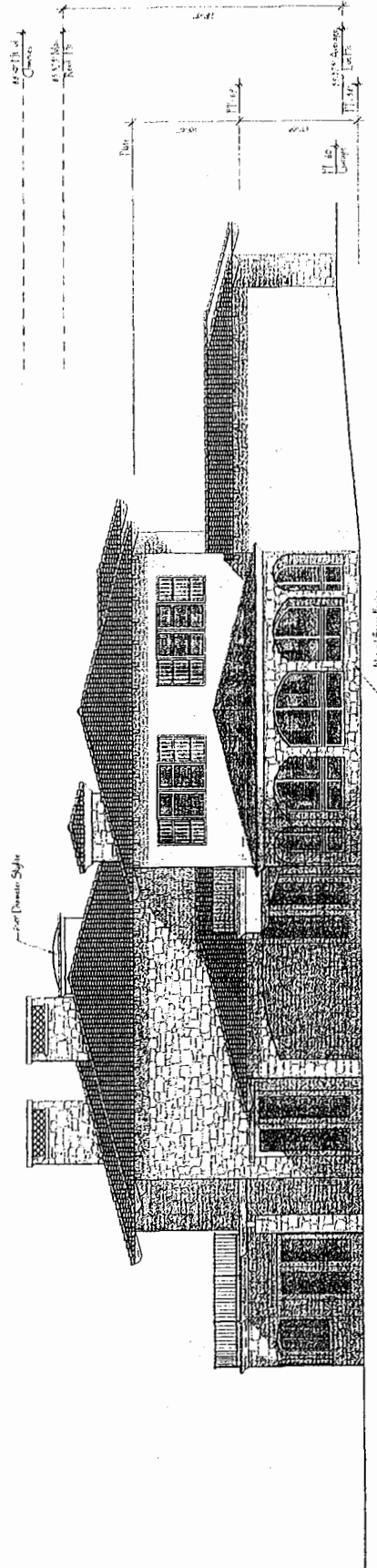


North (Entry) Elevation

- Notes:
1. Water Proof Decking w/ Membrane Dual Membrane System or Approved Equal
  2. Class 'A' Split Barrel Clay Tile Roofing Set in Heavy Mortar.
  3. All Exposed Roof Flashing to be 24 Gauge Copper, Flashed & Counter Flashed.
  4. Install Copper Gutters and Down Spouts & Discharge into Area Drains.
  5. Provide 2" Roof & Deck Drains w/ 4" Copper Overflow, Sumpers 12" Above Low Point of Deck Surface.
  6. Ceilings to be Equipped w/ an Approved Smoke Detector.
  7. Roof Overhangs & the Underside of Decks to be Constructed of Noncombustible Materials or heavy Timbers w/ no Openings in the Eaves.



East Elevation



West Elevation

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



# 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: APPEALDE NOVO HEARING**EXHIBIT NO. 7****APPLICATION NO.**

A-1-MEN-01-051-A1

TAN

STAFF REPORT CDP NO.

A-1-MEN-01-051 (1 of 38)

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*

- (4) 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 sensitive 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 runoff, 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 it's 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 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.

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-01-051-A1

TAN

STAFF REPORT CDP NO.

1-89-028-A4 (1 of 38)



# W 20a

Staff:	Randall Stemler
Staff Report:	February 14, 2003
Hearing on Rev. Findings:	March 5, 2003
Commission Action on Findings:	

STAFF REPORT: REVISED FINDINGS

APPLICATION NO.:	1-89-028-A4
APPLICANTS:	GENE A. & C. J. MEREDITH
APPLICANTS' AGENTS:	Alan Block; Leventhal/Schlosser Associates; Bud Kamb
PROJECT LOCATION:	17230 Ocean Drive, Fort Bragg, Mendocino County (APN 017-330-10)
COMMISSION ACTION:	Approval with conditions
COMMISSIONERS ON THE PREVAILING SIDE	Commissioners Burke, Desser, Dettloff, Hart, Kruer, Nava, Allgood, Potter, Albert, Woolley, and Chairman Reilly
DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:	Division of a 56.7-acre parcel into five parcels of 8.6 acres, 10.6 acres, 11.1 are, 12.5 acres, and 13.9 acres, each with designated building envelopes; plus the construction of one paved roadway and one rocked roadway, two entrance gates, and six wells

DESCRIPTION OF

AMENDMENT REQUEST:

Change the existing location and configuration of the building envelope for the 10.6-acre parcel at the southern end of the subdivision at 17230 Ocean Drive, Fort Bragg, Mendocino County. The new configuration would be a 125-foot by 80-foot rectangle retaining the 10,000 square foot size of the originally approved building envelope located a minimum of 50 feet from the coastal bluff edge

GENERAL PLAN DESIGNATION:

Rural Residential – 5, Planned Unit Development  
(Rural Residential – 2, Planned Unit Development)

ZONING DESIGNATION:

Residential Estates (R-E)

LOCAL APPROVALS RECEIVED:

Mendocino County Minor Subdivision Approval  
Modification and LCP Consistency Review

SUBSTANTIVE FILE DOCUMENTS:

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

---

**STAFF NOTES:**

1. Background and Procedure

The Commission held a public hearing and approved the permit amendment at the meeting of January 8, 2003. The adopted conditions and findings differ slightly from those contained in the written staff recommendation dated December 20, 2002. An addendum to the written staff recommendation was prepared for the January 8, 2003 meeting that included (1) a correction to the resolution to approve the permit amendment; (2) various revisions to Special Condition Nos. 7, 8, 9 and 10; (3) changes to the visual resource finding to supplement the discussion of the need for Special Condition No. 9, which sets limits on the placement of future residential development on the parcel in order to bring the project into consistency with the visual resource policies of the certified LCP; and (4) minor corrections to the environmentally sensitive habitat area finding. At the public hearing, the staff further revised its written recommendation to modify the requirements of Special Condition No. 9 related to the future development of a proposed utility shed on the property. The changes would allow such a shed to be developed outside the building envelope, but only if it were located northeast of the building envelope and along the driveway and conformed with other limitations precluding development within required open space areas and requiring the use of erosion and sedimentation controls during construction.

The Commission adopted the staff recommendation as modified by the addendum and as further revised by staff at the hearing. Since the Commission's action on the project differed from staff's original written recommendation dated December 20, 2002, staff has prepared the following set of revised findings for the Commission's consideration as the needed findings to support its action on the permit amendment. The changes from the original staff report include (1) the changes to Special Condition Nos. 7, 8, 9, and 10 beginning on page 4, (2) various changes to the visual resource finding beginning on Page 11, and (3) minor changes to the environmentally sensitive habitat area finding beginning on Page 19.

The Commission will hold a public hearing and vote on the revised findings at its March 5, 2003 meeting. The purpose of the hearing is to consider whether the revised findings accurately reflect the Commission's previous action and not to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly. The following conditions and findings were adopted by the Commission on January 8, 2003 upon conclusion of the public hearing.

2. Standard of Review

The Coastal Commission effectively certified Mendocino County's LCP in October of 1992. Pursuant to Section 30604 of the Coastal Act, after effective certification of an LCP, the standard of review for all coastal development permits and coastal development permit amendments for development located between the first public road and the sea is the certified LCP and the public access policies of the Coastal Act.

---

I. MOTION AND RESOLUTION

MOTION, STAFF RECOMMENDATION AND RESOLUTION TO ADOPT REVISED FINDINGS:

The staff recommends that the Commission adopt the revised findings in Section IV below, in support of the Commission's action on January 8, 2003, approving the project with conditions. The proper motion is:

**Motion:**

I move that the Commission adopt the revised findings dated February 14, 2003 in support of the Commission's action on January 8, 2003 approving Coastal Development Permit Amendment No. 1-89-028-A4 with conditions.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. Pursuant to Section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members from the prevailing side present at the January 8, 2003 Commission hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action on the permit are eligible to vote. See the listing of eligible Commissioners on Page 1.

**Resolution to Adopt Revised Findings:**

The Commission hereby adopts the findings set forth below for Coastal Development Permit Amendment No. 1-89-028-A4 on the ground that the findings support the Commission's decision made on January 8, 2003 and accurately reflect the reasons for it.

**II. STANDARD CONDITIONS:** (See Attachment A)

**III. SPECIAL CONDITIONS:**

**NOTE:** Special Condition Nos. 7, 8, 9, and 10 are new conditions attached to the permit amendment. Special Condition Nos. 1-6 are unchanged from the original permit and remain in full effect.

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

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

1. Removal of three (3) specific trees within the Area of Native Vegetation as depicted by notations in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-A4; removal of any new trees that grow within the portion of the open space area identified as a View Corridor in Exhibit 5 of the staff report prepared for Amendment No. 1-89-028-A4; and the removal of non-native vegetation.

**AND**

2. The following development and activities, if granted coastal development authorization by the Coastal Commission:

Tree limbing and the removal of dead trees or other vegetation as required by fire management law for maintaining defensible space; reforestation with native species

or non-invasive exotic species to replace dead or dying trees or trees removed for any other purpose, installation of berms for visual screening or landscaping, and drainage improvements.

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

**AMENDMENT NO. 1-89-028-A4**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the entire parcel governed by this permit and a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit 5 attached to the staff report prepared for Amendment No. 1-89-028-A4. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

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

1. Removal of non-native vegetation.

**AND**

2. The following development and activities, if granted coastal coastal development permit authorization by the Coastal Commission:

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

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

**AMENDMENT NO. 1-89-028-A4**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the entire parcel governed by this permit and a formal legal description and graphic depiction of the portion of the subject property affected by this condition,

as generally described above and shown on Exhibit 5 attached to the staff report prepared for Amendment No. 1-89-028-A4. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**9. Future Residential Development.**

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



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

4. Best management practices shall be utilized during construction of such development to prevent adverse impacts on environmentally sensitive habitat areas from polluted runoff.
  5. No invasive exotic vegetation shall be planted.
- C. An above ground utility shed to house utility generator facilities may be developed outside the building envelope only if the shed is located northeast of the building envelope and along the driveway and subject to the following requirements and any additional requirements imposed in the coastal development permit granted for such development:
1. All such development shall be consistent with all the requirements of this permit, including but not limited to: (1) Special Condition No. 1 of the original permit, Open Space Easement/Deed Restriction; (2) Special Condition No. 7, Area of Native Vegetation Open Space Deed Restriction; and (3) Special Condition No. 8, Mendocino Coastal Paintbrush Open Space Deed Restriction;
  2. All such development shall be setback at least 39 feet from the bluff edge and shall otherwise be developed consistent with the recommendations of the geotechnical report entitled, "Geotechnical Investigation, Proposed Meredith Residence, Parcel 1, A.P. No. 017-330-10, Ocean Drive, Belinda Point Minor Subdivision, Mendocino County, California," prepared by Brunsing Associates, Inc., and dated June 28, 2001.
  3. Best management practices shall be utilized during construction of such development to prevent adverse impacts on environmentally sensitive habitat areas from polluted runoff.
  4. No invasive exotic vegetation shall be planted.

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

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

prepared for Amendment No. 1-89-028-A4. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**10. Consistent Subdivision Map Act Approvals**

**A. Revised Exhibit Map**

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

**AMENDMENT NO. 1-89-028-A4**, the applicants shall submit, for the review and approval of the Executive Director, a copy of the revised exhibit map for Parcel 1 of Belinda Point Subdivision that has been reviewed and approved by the Director of the Mendocino County Department of Planning and Building Services. The revised exhibit map shall show the approved change in building envelope, the 50- foot setback from the edge of the coastal bluff, and the approved buffer areas surrounding areas of environmentally sensitive habitat. The revised exhibit map shall be consistent with all terms and conditions of Coastal Development Permit Amendment No. 1-89-028-A4. Any proposed changes to the approved revised exhibit map shall be reported to the Executive Director. No changes to the approved revised exhibit map shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

The Commission hereby finds and declares:

**1. Project Setting:**

The subject property is a 10.6-acre bluff top parcel located within the Belinda Point Subdivision about three miles south of Fort Bragg, Mendocino County. The parcel is the most southerly of the 5 lots in the subdivision, which range in size from about 9 acres to about 14 acres. The project site is located west of Ocean Drive, and south of Pacific Way, at 17230 Ocean Drive (Exhibit 1 and 2).

The subject parcel is undeveloped except for an existing water well on the property. The property is zoned Rural Residential, Five Acres Minimum, Planned Development (RR:L-5:PD). Within the Rural Residential Zone, a single-family residence is a permitted use, subject to approval of a coastal development permit. The Belinda Point subdivision was originally approved by the Commission pursuant to Coastal Development Permit No. 1-89-028, which was granted to E.F.S. Associates on June 13, 1989 (Exhibit 10). Each parcel has an approved

building envelope proposed by the applicants as part of the subdivision (Exhibit 2). The building envelopes were initially developed to address environmental concerns related to bluff setback policies, riparian and other sensitive habitat areas, as well as archaeological resources located on the project site. In addition, conditions of the coastal development permit required that Environmentally Sensitive Habitat Areas (ESHA) on the property be deed restricted as open space. The majority of the deed restricted ESHA is located on the four parcels to the north of the applicants' property, with a small patch of protected riparian ESHA located on the applicants' parcel immediately to the east of the defined building envelope. Furthermore, an offer to dedicate a vertical public access way to a cove from Ocean Drive across the subdivision properties was required to be recorded in a location along the northerly boundary of the subdivision, well to the north of the applicants' property. The parcels are served by two common driveways extending from Ocean Drive toward the shoreline, along alignments that are north of the applicants' parcel. All of the subdivision parcels were proposed to be served by wells and septic systems.

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

The subject parcel contains environmentally sensitive habitat areas. As noted previously, a riparian ESHA with a 50-foot buffer located immediately east of the building envelope was required to be deed restricted as open space as part of the original subdivision approval. In addition, a population of the rare plant *Castilleja latifolia* spp. *mendocinensis* (Mendocino coast paintbrush) was discovered during a botanical survey performed for the proposed development by Dr. Gordon McBride in 2001.

The property is located two parcels to the north of the mouth of Mitchell Creek, within an area designated "Highly Scenic" in the Coastal Plan. Although the parcel is not visible from Highway One or other public roads, the parcel is visible from the publicly visited Jug Handle State Reserve headland to the southwest, across the small bay that forms the ocean inlet of Mitchell Creek (Exhibit 2). There are other residences in the view of the coastal bluff from Jug Handle State Reserve. On the parcel immediately south of the applicants' property is a partial two-story structure partly screened by trees. On the parcel immediately to the north is a one-story structure currently under construction, and north of it another single-story house, both of which are located

in open grassland with no natural screening available. Although other houses can be seen from Jug Handle State Reserve, the viewscape from the park property along this stretch of coast is dominated by views of Pine Cove Beach located within the embayment at the mouth of Mitchell Creek, the dramatic coastal bluffs, and the forested bluff-top terrace (Exhibit 2 and Exhibit 6). The houses are generally scattered along the terrace about every 400-500 feet.

## **2. Project Amendment Description**

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

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

The configuration of the proposed revised building envelope is shown in Exhibit 2, Page 3 of Exhibit 3, and Exhibit 5. The applicants indicate that the purpose of moving and reconfiguring the building envelope is to enable the future home to be built on the site to take advantage of the scenic whitewater and blue water views to the northwest and west through specific view corridors as shown on the plans. The view corridors have been purposely designed to protect views from Jug Handle State Reserve, and maintain screening vegetation in front of the building envelope.

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

### 3. Visual Resources

The subject property is located in an area designated by the Mendocino County Land Use Plan as "highly scenic." The property is also within view of Jug Handle State Reserve, a State park open to the public that includes a promontory extending into the ocean across a cove from the shoreline of the subject property (Exhibit 2 and Exhibit 4). The development was originally approved by the Commission in 1989, prior to certification of the Mendocino County LCP. The standard of review for the project at that time was the policies of Chapter 3 of the Coastal Act. The Coastal Commission effectively certified the Mendocino County LCP in 1992 and thus, the standard of review for the permit amendment is the certified LCP and the public access policies of the Coastal Act. Applicable LUP Policies and Coastal Zoning Ordinance Standards regarding the protection of visual resources from the impacts of new development are as follows:

#### LCP Policies

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

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

Policy 3.5-3 in applicable part states:

*"The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

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

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

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

LUP Policy 3.5-4 states in applicable part:

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

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

LUP Policy 3.5-5 states, in applicable part:

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

Coastal Zoning Ordinance Section 20.504.010 – Purpose.

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

Coastal Zoning Ordinance Section 20.504.015 – Highly Scenic Areas.

- (A) *The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:*
- ...
- (2) *Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*
- ...
- (C) *Development Criteria.*

- (1) *Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*
- (2) *In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*
- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*
- (4) *All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.*
- (5) *Buildings and building groups that must be sited in highly scenic areas shall be sited: (a) Near the toe of a slope; (b) Below rather than on a ridge; and (c) In or near a wooded area*
- ...
- (7) *Minimize visual impacts of development on terraces by the following criteria: (a) avoiding development, other than farm buildings, in large open areas if alternative site exists; (b) minimize the number of structures and cluster them near existing vegetation, natural landforms, or artificial berms; (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline.” and (d) design development to be in scale with rural character of the area.*

**Discussion:**

**Visual Setting:**

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

The property is located two parcels to the north of the mouth of Mitchell Creek, within an area designated “Highly Scenic” in the Land Use Plan (LUP). Pursuant to LUP Policy 3.5-3 and CZC

Section 20.504.015(A)(2), the Highly Scenic Area designation covers all those areas west of Highway One between the Ten Mile River estuary south to the Navarro River with noted mapped exceptions. LUP Map No.14 does not exclude the subject property or any of the Belinda Point area from the highly scenic designation.

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

There are other residences within this view northeast and north from Jug Handle State Reserve. On the parcel immediately south of the applicants' property is a partial two-story structure partly screened by trees. Farther to the south, the viewer on the blufftop at Jug Handle State Reserve can see several other one and two story structures. The house on the parcel due east of the vantage points on the bluff top of Jug Handle State Reserve dominates the view of this group of houses south of the applicants' site, both because of its closer proximity, and because of the structure's unusual central tower or cupola structure with a pyramid-shaped roof (Exhibit 6). This house was built prior to the Coastal Initiative and therefore was not subject to coastal development permit requirements. On the parcel immediately to the north is a one-story structure currently under construction, and north of it another single-story house, both of which are located in open grassland with no natural screening available. Although other houses can be seen from Jug Handle State Reserve, the visual character of the viewscape from the park property is dominated by the open waters of the cove, the dramatic coastal bluffs, and the forested bluff-top terrace. The houses are scattered along the terrace about every 400-500 feet, generally small in stature (with the exception of the closest house which appears large because of its proximity and its tall pyramidal shaped tower) and are muted in appearance by the backdrop of pine trees that rise above the homes.

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

The visual policies of the certified Mendocino County LCP are extensive and detailed as evidenced by the listing in the previous section of this finding of the subset of those policies that



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

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

**Compatible with the Character of Surrounding Areas and Subordinate to the Natural Setting:**

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

Although the proposed relocation of the building envelope would result in the future development of a house that would require removal of a portion of the pine forest on the terrace visible from Jug Handle State Reserve, the major portion of the pine forest would remain, and the house would still be substantially shielded from public views by the trees that would remain.

Page 3 of Exhibit 3 and Exhibit 5 depict the proposed relocated building envelope superimposed against a diagram showing the existing trees. The trees are shown as dots that range in size to reflect the relative sizes of the trees in each location. The exhibit shows that numerous existing trees sufficient to screen a future home would remain between the proposed building envelope and the edge of the coastal bluff on the side facing Jug Handle State Reserve. However, establishing a building envelope that comes to within 50 feet of a bluff edge where there are magnificent ocean and coastal views would likely encourage occupants of any home built there to try to take advantage of those views by clearing and limbing trees that would otherwise block these views from the structure's windows. Because the view that would be gained by any permissible tree limbing and vegetation clearance would look out at the headland where Jug

Jug Handle State Reserve is located, such limbing and vegetation clearance would conversely further expand views of the house from Jug Handle State Reserve. In addition, because of the pine forest's proximity to the future house, future residents may desire to locate other landscaping improvements associated with single-family residences in this location, which could also lead to tree cutting and limbing that would adversely affect views. Thus, the combination of direct displacement of forest trees by future development of residential structures within the proposed relocated building envelope, and the potential for further removal of limbs and vegetation between the building envelope and the bluff edge by future occupants of residential structures built within the proposed relocated building envelope would result in the removal of a significant portion of the pine forest that is a major element of the natural setting as viewed from public vantage points at Jug Handle State Reserve. Therefore, the Commission attaches Special Condition No. 7 requiring the recordation of an open space deed restriction to prohibit any future development and the removal of any trees or parts of trees or other vegetation in the area west of the proposed building envelope depicted as the Area of Native Vegetation on Exhibit 5. To accommodate the applicants' desire to gain additional ocean views by moving the building envelope as proposed closer to the bluff edge while still retaining sufficient tree cover to protect views of the site from Jug Handle State Reserve, the condition allows for the removal of trees and tree limbs within a cone-shaped view corridor within the open space area as shown on Exhibit 5. An additional view corridor is identified outside of the open space area.

The two proposed view corridors have been purposely designed to substantially limit public views of the house from Jug Handle State Reserve by selecting angles that are, for the most part, out of alignment with views from public areas. The northern-most view corridor would provide views to the west and northwest, where there is no opportunity to view the subject parcel from Jug Handle State Park. The southern-most view corridor would provide views to the southwest with limited opportunity from Jug Handle State Reserve to see a very small portion of the subject parcel where the northwest corner of the proposed house would be located (Exhibit 4 and Exhibit 5). Even this limited view would be screened by trees and shrubbery protected from removal by deed restriction. Views from watercraft at sea would be afforded only fleeting glimpses of development located within the proposed building envelope. Because the view corridors are designed as cones rather than swaths of cleared vegetation, the view from the subject parcel toward the ocean would be like looking through a keyhole, while the public view back toward the subject parcel would be of a forested marine terrace (Exhibit 6).

By imposing the requirement as a deed restriction, future buyers of the property will be informed through title reports secured during purchase of the property that the grove of trees between the home site and the bluff must be protected in the manner specified. As conditioned, the proposed amendment would protect public views from Jug Handle State Reserve from future development within the building envelope by protecting a key portion of the natural setting as viewed from Jug Handle State Reserve.

The proposed amendment would allow for future appurtenant development to occur outside of the revised building envelope, specifically, the applicants intend to install as part of the

development proposed in Permit Appeal No. A-1-MEN-01-051 a septic system, a water system including an underground water storage tank, an underground propane tank, underground utilities, a driveway, parking areas and walkways, and landscaping features such as decorative berms. The applicants also propose to construct a generator/utility shed outside of the proposed building envelope. While future structures buried underground would not be visible from Jug Handle State Reserve or from other public vantage points, placement of aboveground structures outside of the building envelope would not necessarily be screened from view of Jug Handle State Reserve by the trees contained within the native vegetation open space area protected by Special Condition No. 7, and therefore would affect the visual character in a way that would not be subordinate. To ensure that only belowground development that would be subordinate to the character of the setting would be allowed, Special Condition 9 is attached to limit future development to only those structures that 1) would be constructed belowground, or 2) that would be developed within the revised building envelope. The condition makes one exception to these limitations for construction of the generator/utility shed that the applicants indicate they would like to build in the future. As the generator facility to be contained within the shed would be noisy, it would not be desirable to locate the shed within the building envelope in close proximity to the residence. Special Condition No. 9 allows for such a generator/utility shed to be constructed if it is located northeast of the building envelope and along the driveway where the structure would be shielded from view of Jug Handle State Reserve to the southwest by the structures that would be placed in the building envelope, and by the trees that would be retained in the deed restricted Area of Native Vegetation. As conditioned, future development of the site would be consistent with this rural coastal setting where homes are scattered relatively far apart and the visual character is established mostly by the natural features of the site including the cove, the rugged bluff face, and the pine forest that envelopes the terrace.

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

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

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

As described earlier, the subject property is located on a coastal terrace near Jug Handle State Reserve, a public park along the shoreline. The setbacks required by LUP Policy 3.5-4 and CZC 20.504.015(C)(7)(c) are distinct from setbacks required for geologic reasons and are necessary to

provide visual screening. In this instance, the original coastal development permit for the subdivision established a 75-foot setback from the bluff edge for all of the building envelopes. Although this setback was established primarily for geologic hazard concerns, the 75-foot setback did serve to help separate and screen future development within the building envelope on the subject property from the nearby Jug Handle State Reserve. As discussed above, significant visual screening is retained by protecting intervening forested area. Although the proposed permit amendment to relocate the building envelope would reduce the existing 75-foot setback to 50 feet, it would retain a significant number of trees between the proposed development and the coastal bluff that would serve to effectively screen future development within the building envelope from Jug Handle State Reserve to reduce its visual impact.

The development with the proposed amendment would allow for future appurtenant development to occur outside of the revised building envelope. Special Condition 9 is attached to limit development outside of the building envelope. Among other limitations, Special Condition 9 requires that all future residential development be set back from the coastal bluff at least 39 feet to ensure that the development is protected from bluff retreat during the life of the development. This 39-foot setback will also serve to protect visual resources consistent with the requirements of LUP Policies 3.5-4, and Coastal Zoning Code Section 20.504.015(C)(7)(c). Therefore, the Commission finds that the development with the proposed permit amendment is consistent with the provisions of Coastal Zoning Ordinance Section 20.504.015(C)(7)(c) that require that visual impacts of development on terraces should be minimized by providing bluff setbacks for development adjacent to or near public areas along the shoreline.

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

The permit amendment request is consistent with the provisions of LUP Policies 3.5-1 and Coastal Zoning Code Section 20.504.010 and 20.504.015(C)(1) that require new development to protect views to and along the coast from public areas including parks. Jug Handle State Reserve is a state park located across the cove from the subject property. As discussed previously, the trails on the headland at Jug Handle State Reserve afford dramatic coastal views, including the view to the northeast and north along the shoreline where the subject property is located. This view includes blue water and whitewater views of the cove, the rugged coastal bluffs, and the pine forest that envelopes most of the terrace. The proposed permit amendment would move the building envelope (within which future development of a house and/or other aboveground structures could occur) closer to the coastal bluff. However, as conditioned, a visual screen of trees would be left to block prominent views of future development from Jug Handle State Reserve. The proposed amendment would allow for future appurtenant development to occur outside of the revised building envelope. To ensure that such future development outside of the building envelope does not have significant adverse effects on coastal views from Jug Handle State Reserve, Special Condition 9 limits future residential development outside of the building envelope to development that is set back from the coastal bluff at least 39 feet and does not include aboveground structures except for a generator/utility shed that may be constructed at a site located northeast of the building envelope and along the driveway where it would be

screened from view of Jug Handle State Reserve by future development within the building envelope and the forest area within the deed restricted Area of Native Vegetation. These limitations would shield appurtenant residential development outside of the building envelope from view of Jug Handle State Reserve with trees and groundcover. Thus, relocating the building envelope on the subject property as proposed and as conditioned would protect views to and along this scenic coastal area. Therefore, the proposed permit amendment as conditioned would be consistent with the provisions of LUP Policies 3.5-1 and Coastal Zoning Code Section 20.504.010 and 20.504.015(C)(1) that require new development to protect views to and along scenic coastal areas from public areas, including parks.

#### **Conformance to Other Visual Policies:**

The development with the proposed amendment is consistent with the other visual policies of the certified LCP. LUP Policy 3.5-1 states that new development shall minimize the alteration of landforms. Moving the building envelope as proposed would not require extensive alteration of relatively flat landforms, because the amendment would simply move the building envelope from one part of the terrace to another. To protect views, Special Condition 9 requires that future residential development outside of the building envelope not include aboveground structures, and be set back from the coastal bluff at least 39 feet, with the exception that a generator/utility shed may be constructed at a site located northeast of the building envelope and along the driveway. Although this limitation would necessitate some degree of excavation and grading to bury certain appurtenant residential development, such future development would occur in a manner that would substantially retain natural contours, and not significantly alter the coastal terrace landform. Therefore, the development with the proposed amendment is consistent with the landform alteration policies of LUP Policy 3.5-1. LUP Policy 3.5-4 states in applicable part that buildings and building groups that must be sited within the highly scenic area shall be sited in or near the edge of a wooded area. The relocated building envelope would be relocated to be within a Bishop pine forest. Therefore, the development with the proposed amendment is consistent with the siting provisions of LUP Policy 3.5-4.

#### **4. Environmentally Sensitive Habitat Areas:**

##### **LCP Policies:**

- 3.1-7 *"A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than*

*50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

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

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

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

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

*"Purpose.*

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

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

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

*"ESHA- Development Application Procedures*

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

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

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

*"ESHA- Development Criteria*

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



(1) *Width.*

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

(a) *Biological Significance of Adjacent Lands.*

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

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

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

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

(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.*



- (c) *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.
  - (d) *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.
  - (e) *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.
  - (f) *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:*
  - (a) *Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
  - (b) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
  - (c) *Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*
  - (d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*
  - (e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*
  - (f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*
  - (g) *Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*

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

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

*“Riparian Corridors and other Riparian Resource Areas.*

- (A) *No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:*
  - (1) *Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);*
  - (2) *Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;*
  - (3) *Existing agricultural operations;*

*(4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.*

*(B) Requirements for development in riparian habitat areas are as follows:*

*(1) The development shall not significantly disrupt the habitat the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;*

*(2) No other feasible, less environmentally sensitive alternative exists;*

*(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;*

*(4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent. ”*

### **Discussion:**

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

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

Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) sets forth specific standards to be considered when determining the width of a buffer. These standards include: (a) an assessment of the biological significance of adjacent lands and the degree to which they are functionally

related to wetland resources, (b) the sensitivity of species to disturbance such that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development, (c) the susceptibility of the parcel to erosion determined from an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel, (d) the use of natural topographic features to locate development so that hills and bluffs adjacent to ESHA's can be used to buffer habitat areas, (e) use of existing cultural features such as roads and dikes to buffer habitat areas, (f) lot configuration and location of existing development such that buildings are a uniform distance from the habitat area, and provision for additional mitigation if the distance is less than 100 feet, and (g) the type and scale of development proposed.

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

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

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

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

(a) Biological Significance of Adjacent Lands

Dr. McBride notes a significant functional relationship between Mendocino coast paintbrush and plant species growing in adjacent areas. The Mendocino coast paintbrush has a parasitic or hemiparasitic relationship with salal. He points out that the paintbrush population is growing in reasonable proximity to salal, and "...if the parasitic or hemiparasitic relationship is true, the host plant is present in the immediate vicinity and the symbiotic status is not in jeopardy." He goes on to state: "The only other functional relationship that I am aware of between the Mendocino paintbrush and other organisms is that of potential pollinators. The floral structure of the Mendocino paintbrush flower would suggest the plant is hummingbird pollinated." Since a 50-foot buffer (or any buffer less than 100 feet) would not inhibit hummingbird access, the proposed buffer would be adequate. In fact, the presence of a domestic residence with other potential flowering ornamental plants often attracts hummingbirds and provides them additional sustenance, which would work to the advantage of the Mendocino paintbrush.

(b) Sensitivity of Species to Disturbance

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

(c) Susceptibility of Parcel to Erosion

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

(d) Use of Natural Topographic Features to Locate Development

Dr. McBride evaluated natural topographic features located on the property in recommending the rare plant buffer. He states that there are no natural topographic features (hills, bluffs,

etc.) on the site that would be of use in determining the recommended buffer 50-foot for the Mendocino paintbrush population.

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

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

(f) Lot Configuration and Location of Existing Development

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

(g) Type and Scale of Development

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

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

Those factors that support the establishment of a 50-foot buffer as adequate to protect the population of Mendocino coast paintbrush identified on the subject parcel include (1) the presence of salal within the proposed buffer area would assure that the suspected symbiotic relationship between the Mendocino coast paintbrush and the salal would not be jeopardized at this site, (2) the fact that a 50-foot buffer would not inhibit potential pollinators such as

hummingbirds, and may actually better attract hummingbirds by providing additional flowering plants in the form of landscaping closer to the habitat area, (3) the lack of sensitivity of the rare plant population to human activities aside from direct impact, and (4) the fact that the erosion hazard for the soil type existing at the site is slight. No factors have been identified that suggest a buffer of 50 feet would not be adequate.

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

As stated above, staff of the California Department of Fish and Game (DFG) has reviewed the rare plant buffer width analysis, and determined that the recommended 60-foot buffer would be an acceptable buffer for this particular project (Exhibit No. 8). DFG noted that the paintbrush population, as determined and flagged by the botanical consultant, "...would be adequately protected with a sixty-foot no-development buffer between the perennial flower population and a proposed house development footprint."

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

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

As mentioned above, in 1989 when the original permit was granted, the subject property was known to contain one riparian ESHA to the east of the existing building envelope. This ESHA was protected in the original permit through the imposition of an open space deed restriction over



the ESHA itself and a 50-foot buffer surrounding the ESHA. Since that time, in 2001 Dr. McBride, the applicants' biologist, discovered the rare plant population of Mendocino coast paintbrush. However, unlike the riparian ESHA and its 50-foot buffer, this rare plant ESHA and recommended 60-foot buffer are not currently protected by open space deed restriction. Therefore, the Commission attaches Special Condition No. 8 requiring the recordation of an open space deed restriction to prohibit any future development, ground disturbance or disruption of the area currently identified as supporting the rare plant population of Mendocino coast paintbrush (*Castilleja latifolia mendocinensis*) and a protective buffer of 60-feet around the population of Mendocino coast paintbrush as depicted by the Rare Plant ESHA and Buffer area on Exhibit 5. By imposing the requirement as a deed restriction, future buyers of the property will be informed through title reports secured during purchase of the property that the rare plant ESHA must be protected in the manner specified.

### Riparian ESHA

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

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

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

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

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

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

edge of the proposed 50-foot buffer to minimize and mitigate the slight chance of adverse impact due to soil erosion and maintain the integrity of the buffer area and the riparian habitat.

(d) Use of Natural Topographic Features to Locate Development

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

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

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

(f) Lot Configuration and Location of Existing Development

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

(g) Type and Scale of Development

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

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

Those factors that support the establishment of a 50-foot buffer as adequate to protect the identified riparian habitat on the subject parcel include (1) the fact that the soil erosion hazard at

the site is slight, and (2) the minimal value of the habitat and resulting low capability to support invertebrates, amphibians, reptiles, birds, or mammals. No factors have been identified that suggest a buffer of 50 feet would not be adequate.

When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the riparian buffer as provided by Dr. McBride sufficiently demonstrates that no significant adverse impacts will result from the 50-foot recommended buffer width.

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

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

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

Therefore, the Commission finds that the proposed permit amendment as conditioned is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between future development on a parcel and existing ESHA because the proposed amendment would establish buffer widths based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020 (A) (1) (a) through (g). Furthermore, the Commission finds that the proposed permit amendment as conditioned is consistent with the

provisions of LUP Policy 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 (A) (1) for reducing the minimum buffer below 100 feet because evidence has been provided that all the necessary criteria for reducing the buffer to a width less than 100 feet have been satisfied.

**5. Geologic Hazards and New Development:**

**LCP Policies:**

LUP Policy 3.4-7 states:

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

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

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

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

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

LUP 3.4-9 states that:

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

Zoning Code Section 20.500.010 states that development shall:

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

Zoning Code Section 20.500.020(B) states:

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

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

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

### **Discussion:**

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

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

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

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

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

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

The Commission incorporates its findings on conformity with LCP policies and the public access and recreation policies of the Coastal Act at this point as if set forth in full. As discussed above, the development with the proposed amendment has been conditioned to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project with the proposed amendment that were received prior to preparation of the staff report. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the development with the proposed

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

**Exhibits:**

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

**ATTACHMENT A:**

STANDARD CONDITIONS

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