

**CALIFORNIA COASTAL COMMISSION**

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# W17c

Date Filed: October 15, 2011  
 49th Day: November 3, 2011  
 180<sup>th</sup> Day: February 13, 2012  
 Staff: Tamara L. Gedik  
 Staff Report: March 23, 2012  
 Hearing Date: April 11, 2012  
 Commission Action:

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: **1-81-187-A2**

APPLICANT: Roger Jordan

PROJECT LOCATION: A 4.5-acre parcel located on the west side of Highway One, approximately 12 miles north of Ft. Bragg, at 32700 North Highway One, Mendocino County (APN 015-370-09).

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 1,941-square-foot single- family residence with garage; and installation of a well, septic system & driveway.

DESCRIPTION OF AMENDMENT NO. 1 (1-81-187-E2A): Immaterial amendment to revise the floor plan and elevation for the single family residence

DESCRIPTION OF AMENDMENT NO. 2 (1-81-187-A1): Construction of a 638-square-foot guesthouse

DESCRIPTION OF PROPOSED AMENDMENT REQUEST: Modify permit granted for construction of an existing residence to (1) remodel and construct two additions (totaling 543 square feet in size) to the existing single family residence; (2) replace existing decks with new expanded stone patio; (3) add new outdoor trellis and fences; and (4) authorize after-the-fact plantings and changes to the approved landscaping plan that includes planting of trees in select locations.

LAND USE DESIGNATION: Agricultural, 60 Acre Minimum (AG-60)

ZONING DESIGNATION: Agricultural (AG-60)

SUMMARY OF STAFF RECOMMENDATION:

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The staff recommends that the Commission approve with conditions, the requested amendment to the coastal development permit originally granted for the construction of a single family residence to authorize new additions, remodeling, stone hardscaping, trellis and fence structures, and landscaping at the single-family residence on a blufftop parcel located 12 miles north of the City of Fort Bragg, at 32700 North Highway One, in Mendocino County.

The original permit approved in March, 1982, (CDP No. 1-81-187, Irwin) authorized the construction of a 15-foot-high, 1,941-square-foot single-family residence with a garage; well, septic system and driveway. The permit was approved with two (2) special conditions, one of which was intended to ensure the protection of visual resources. Special Condition No. 1 required the applicant to submit a visual subordination plan with five components prior to permit issuance, including among other items the submittal of a landscaping plan indicating the use of vegetation *other than trees*, so as to maintain the open rangeland character of the area. The Commission subsequently approved an immaterial amendment to revise the approved floor plan and elevation and later approved a material amendment to the permit (No. 1-81-187-A1, Cutino) in June, 1990 that authorized construction of a 638-square-foot guest house and that imposed one special condition limiting the guest house use and disallowing cooking or kitchen facilities. The current applicant purchased the property in May 2011.

The primary issue raised by the project as proposed to be amended is the protection of visual resources. The existing developments were constructed consistent with the approved plans. However, several native and ornamental trees have been planted on the property over the years, inconsistent with the visual subordination requirements specified in Special Condition No. 1 of the original approved permit. The current amendment request seeks to modify the permit granted for the existing residence to (1) remodel and construct two additions to the existing single family residence; (2) replace existing decks with a new expanded stone patio; (3) add a new outdoor trellis and fences; and (4) obtain after-the-fact authorization for plantings and changes to the approved landscaping plan that includes the planting of trees in select locations.

Commission staff has assessed the development from public vantage points as described further below and believes that as conditioned, use of native trees in select locations will keep the development as amended subordinate to the character of its setting and protect views from public vantage points along Highway One as required by the certified Mendocino County LCP, if certain conditions are attached. The special conditions recommended by staff would require: (a) conformance of the landscaping with the submitted landscaping plan dated March 12, 2012 (**Special Condition No. 6**); (b) that all future improvements to the approved development shall obtain coastal development permit authorization (**Special Condition No. 5**); (c) the use of dark earthtone building colors, non-glare materials, and shielded, downcast lighting (**Special Condition No. 11**); and (d) recordation of a deed restriction to inform property owners of the requirements to obtain permits for future development (**Special Condition No. 4**).

As conditioned, staff believes that the amended development is consistent with the policies of the certified Mendocino County LCP and recommends approval.

**The motion to adopt the staff recommendation of approval with conditions is found on page 5.**

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**STAFF NOTES:**

**1. Procedural Note**

Section 13166 of the California Code of Regulations states that the Executive Director shall reject an amendment request if: (a) it lessens or avoids the intent of the approved permit; unless (b) the applicant presents newly discovered material information, which he or she could not, with reasonable diligence, have discovered and produced before the permit was granted. In this case, the Executive Director has determined that although the tree planting aspects of the proposed amendment would lessen or avoid the intent of the original conditionally approved permit, the applicant has presented newly discovered information, which the applicant could not, with reasonable diligence, have discovered and produced before the permit was granted.

The Commission approved Coastal Development Permit No. 1-81-187 on March 3, 1982. The approved permit authorized the construction of a 1,941-square-foot single-family residence with garage; and installation of a well, septic system & driveway. The original permit was approved with a special condition to ensure the protection of visual resources. Special Condition No. 1 required the applicant to submit a visual subordination plan with five components prior to permit issuance, including: a) submittal of revised plans depicting the lowering of the house below the existing grade; b) placement of an eight-foot-high berm northeast of the house; c) use of a shake roof and natural colored wood siding; d) inclusion of a nightlighting plan; and e) submittal of a landscaping plan indicating the use of vegetation other than trees. The intent was to ensure the development as conditioned would preserve views of the ocean and be subordinate to the open grassland character of the highly scenic area where the development is located.

When the Commission approved the original permit, very few trees existed on or around the subject property except for some trees that existed on adjoining properties close to the highway. Therefore, the Commission determined that the use of planted trees to screen or otherwise reduce the visual impact of the single-family house that was proposed would not have been subordinate to the character of its setting as the trees themselves would have been out of character with the surroundings which consisted mainly of open grasslands. As noted, Special Condition No. 1 of the original permit required in part the submittal of a landscaping plan that did not include the use of trees. The proposed permit amendment would amend the approved development to authorize the planting of trees, including both a number of existing trees that were planted without authorization and a number of additional trees that the applicant would like to plant to help screen his view of development on neighboring property. The proposed planting of trees conflicts with the Commission's intent in approving the original permit to maintain views through the open grasslands of the subject property and subordinate the approved development with the character of its setting by prohibiting the use of trees in the landscaping plan for the development.

However, since the time the original permit was approved, additional trees have been planted on neighboring parcels south of the subject property in a continuation of a line of trees extending seaward from the highway. The growth of this new line of trees on the adjacent property fundamentally changed the character of the development's setting. Instead of open grasslands which afforded largely unimpeded views of the ocean along a long stretch of coastline, the open space surrounding the project sites has been bifurcated by the line of trees. While expansive open views of the coast remain, the trees (a) bifurcate the open space, (b) provide a backdrop of trees to the subject property as viewed from vantage points along Highway One to the north, and (c) provide a screen of the subject property as viewed from vantage points along Highway one to the south. The presence of this new line of trees means that the planting of trees on the subject property is no longer necessarily out of character with its setting, and a development that includes trees could conceivably be found to be subordinate to the character of its setting. At the time the original permit was approved, the applicant could not have known that the line of trees that fundamentally altered the character of the area and changed how development can be subordinated to the character of the surroundings would be planted in the future by others on the adjoining property along the property line. Therefore, the planting and subsequent growth of the line of trees on the adjoining property constitutes material information which the original applicant could not, with reasonable diligence, have discovered and produced before the permit was granted.

Therefore, the Executive Director has determined that although certain aspects of the proposed amendment would lessen or avoid the intent of the original conditionally approved permit, the applicant has presented newly discovered information, which the applicant could not, with reasonable diligence, have discovered and produced before the permit was granted. Therefore, the Executive Director accepted the amendment request for processing.

## **2. Standard of Review**

The project as previously amended was approved prior to certification of the Mendocino County Local Coastal Program. Therefore, the standard of review for the original permit application was the Coastal Act. The LCP was certified in 1992. The project site is located between the first public road and the sea. Pursuant to Section 30604 of the Coastal Act, after effective acceptance of a certified LCP, the standard of review for all coastal permits and permit amendments for developments located between the first public road and the sea is the certified LCP and the public access policies of the Coastal Act. Therefore, new development at the site is now subject to the Mendocino County LCP and the Coastal access and recreation policies of the Coastal Act. In its consideration of the coastal development permit amendment request, the Commission must evaluate the consistency of the development with the certified Mendocino County LCP and the public access policies of the Coastal Act.

## **3. Scope**

This staff report addresses only the coastal resource issues affected by the proposed permit amendment, provides recommended special conditions to reduce and mitigate significant impacts to coastal resources caused by the development as amended in order to achieve consistency with the LCP, and provides findings for conditional approval of the amended development. All other

analyses, findings, and conditions related to the originally permitted development as amended by CDP Amendment No. 1-81-187-A1, except as specifically affected by the current permit amendment request and addressed herein, remain as stated within the original permit approval adopted by the Commission on March 3, 1982 (Exhibit No. 13) and as amended on June 13, 1990 (Exhibit No. 14).

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

The staff recommends that the Commission adopt the following resolution:

**Motion:**

I move that the Commission approve Coastal Development Permit Amendment No. 1-81-187-A2 pursuant to the staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT AMENDMENT:**

The Commission hereby approves the coastal development permit amendment and adopts the findings set forth below on grounds that the development as with the proposed amendment, as conditioned, will be in conformity with the policies of the certified Mendocino County Local Coastal Program. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or 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.)**

**III. SPECIAL CONDITIONS:**

**Note:** The original permit (CDP No. 1-81-187) contains two (2) special conditions, both of which remain in full force and effect. In addition, Special Condition No. 1 of the previously-approved permit amendment (CDP Amendment No. 1-81-187-A1) remains in full force and effect. For the purposes of sequential numbering of previous and subsequent special conditions, the subject permit amendment (CDP Amendment No. 1-81-187-A2) recognizes the original numbering of Special Condition Nos. 1 and 2, and herein treats Special Condition No. 1 of CDP Amendment No. 1-81-187-A1 as Special Condition No. 3. Special Condition Nos. 4, 5, 6, 7, 8, 9, 10, 11, and 12 are additional new special conditions attached to CDP Amendment No. 1-81-187-A2. The new conditions are listed below. For comparison, the text of the original permit and amended permit conditions are included in Exhibit No. 13 on page 2 and Exhibit No. 14 on page 2, respectively, of the Exhibits.

4. **Deed Restriction**

**WITHIN 180 DAYS OF COMMISSION APPROVAL OF THIS COASTAL DEVELOPMENT AMENDMENT PERMIT, OR WITHIN SUCH ADDITIONAL TIME AS THE EXECUTIVE DIRECTOR MAY GRANT FOR GOOD CAUSE,** the applicant shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit as amended a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as amended as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit as amended. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit as amended shall continue to restrict the use and enjoyment of the subject property so long as either this permit as amended or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. **Future Development Restrictions**

This permit amendment is only for the development described in Coastal Development Permit Amendment No. 1-81-187-A2. Any future improvements to the single-family residence or other approved structures and/or landscaping will require a further permit amendment or a new coastal development permit.

6. **Landscaping Restrictions**

- A. All landscaping at the site including the removal of non-native trees and the planting of species in designated areas shall be consistent with the Amended Landscape Plan prepared by Benedetto Landscaping and dated March 12, 2012.
- B. The permittee shall undertake development in accordance with the Amended Landscape Plan prepared by Benedetto Landscaping and dated March 12, 2012. Any proposed changes to the March 12, 2012 landscaping plan shall be reported to the Executive Director. No changes to the March 12, 2012 landscaping plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- C. The applicant shall remove all non-native trees from the property as specified in the Amended Landscaping Plan prepared by Benedetto Landscaping and dated March 12, 2012 no later than October 15, 2012.
- D. No non-native plant species other than the locally non-native “Berkeley sedge” and “*Salvia leucophylla*” identified on the Amended Landscape Plan prepared by Benedetto Landscaping and dated March 12, 2012 shall be planted on the site. No

plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist within the development site. 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.

- E. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used.

**7. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (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.

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

- A. All final design and construction plans for the development authorized by CDP Amendment No. 1-81-187-A2 including foundations, grading, retaining walls, and drainage plans, shall be consistent with the recommendations contained in the December 20, 2011 Geologic Report prepared by Jim Glomb Geotechnical and Environmental Consulting, Inc, including, but not limited to the recommendations that (1) the building setback shall be at least 37 feet from the bluff edge; (2) during site development care should be taken to not divert or concentrate site drainage near the seacliff; and (3) existing native ground cover should be maintained on the sloping west portions of the site to reduce future erosion.
- B. The permittee shall undertake development in accordance with the final plans submitted September 23, 2011 as revised February 1, 2012. 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. No Future Bluff or Shoreline Protective Device**

By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect any of the development authorized pursuant to Coastal Development Permit No.

1-81-187-A2, in the event that any of the development authorized by CDP No. 1-81-187-A2 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 himself and all successors and assigns, any rights to construct such devices to protect any of the development authorized by CDP No. 1-81-187-A2 that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).

By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove any of the development authorized by CDP Amendment No. 1-81-187-A2 if any government agency has ordered that any of the structures are not to be occupied due to any of the hazards identified above. In the event that portions of any of the development authorized by CDP No. 1-81-187-A2 falls to the beach 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.

In the event the edge of the bluff recedes to within 10 feet of the any of the development authorized by CDP Amendment No. 1-81-187-A2 but no government agency has ordered that any of 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 any of the structures are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the developments authorized by CDP No. 1-81-187-A2, including but not limited to, removal or relocation of portions of any of the development authorized by CDP No. 1-81-187-A2. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that any of the development authorized by CDP No. 1-81-187-A2 is unsafe for use, 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 development authorized by CDP No. 1-81-187-A2.

**10. Best Management Practices and Construction Responsibilities**

The permittee shall comply with the following construction-related requirements:

- A. Rice straw bales, weed-free hay bales, coir rolls, and/or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants from the project site;
- B. All grading activity shall be limited to the dry season between April 15<sup>th</sup> and October 14<sup>th</sup>.

- C. If rainfall is forecast during the time construction activities are being performed, any exposed soil areas shall be promptly mulched or covered with plastic sheeting and secured with sand bagging or other appropriate materials before the onset of precipitation;
- D. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff.
- E. On-site vegetation shall be maintained to the maximum extent possible during construction activities;
- F. Any disturbed areas shall be replanted or seeded immediately with low-growing herbaceous native species following completion of construction; and
- G. Any and all excess excavated material and/or debris resulting from construction activities shall be removed from the project site within 10 days of project completion and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit.

**11. Design Restrictions**

- A. All exterior siding and roofing of the proposed structure shall be composed only of the colors proposed in this coastal development permit or darker earth-tone colors. 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 other approved structures without an amendment to this permit. In addition, to minimize glare no reflective glass, exterior finishings, or roofing materials are authorized by this permit.
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel and seaward of the bluff edge.

**12. Permit Expiration & Condition Compliance**

Because some of the proposed development has already commenced without the benefit of the necessary coastal development permit amendment, this coastal development permit amendment shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

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

The Commission hereby finds and declares:

##### **1. Site Description**

The subject 4.5-acre property is a gently-sloping bluff-top parcel located west of Highway One in a rural area situated approximately 3 miles south of the town of Westport, and 12 miles north of the City of Fort Bragg. The site ranges in elevation between 100 and 130 feet above sea level. The rectangular parcel is oriented perpendicular to the bluff; the northwestern parcel boundary extends along the bluff edge, and the southwestern parcel boundary extends inland to the south (Exhibit 2). The parcel is situated approximately 550 feet west of Highway One and is accessed via a driveway that extends through the adjacent parcels. Kibesillah Creek is located approximately 400 feet to the north on a neighboring parcel. The Mendocino County certified LCP designates the site as being within a highly scenic area.

The subject parcel and surrounding lands are comprised primarily of terrace grasslands with a strong component of introduced annual and perennial species. Few shrubs or trees occur in the vicinity, with the exception of riparian shrubs and trees growing along Kibesillah Creek, and windrows of ornamental trees (including Monterey and Leyland Cypress) planted on neighboring parcels both parallel and perpendicular to Highway One (See Exhibit Nos. 2 and 3). In addition, several native and ornamental trees have been planted in recent years on the subject property, as discussed further below.

Surrounding development in the area includes single-family residences on the two parcels immediately east of the subject property, and single-family residences on the two parcels immediately north of Kibesillah Creek. In addition, the parcel north of and adjacent to Kibesillah Creek is the site of Pacific Star Winery.

##### **2. Background and Project Amendment Description**

###### **Permit History**

The original permit application was approved by the Commission on March 3, 1982, and the permit (No. 1-81-187) was issued to G. Leroy and Louise Irwin in May of 1983. The approved permit authorized the construction of a 1,941-square-foot single-family residence with garage; and installation of a well, septic system & driveway. The approved development plans sited the residence and a deck 87 feet from the bluff edge.

The original permit was approved with two (2) special conditions to ensure the protection of visual resources and to acknowledge geologic hazards of the bluff-top site. Special Condition No. 1 required the applicant to submit a visual subordination plan with five components prior to permit issuance, including: a) submittal of revised plans depicting the lowering of the house below the existing grade; b) placement of an eight-foot-high berm northeast of the house; c) use of a shake roof and natural colored wood siding; d) inclusion of a nightlighting plan; and e) submittal of a landscaping plan indicating the use of vegetation other than trees. The intent was to ensure the development as conditioned would preserve views of the ocean and be subordinate to the open grassland character of the highly scenic area where the development is located.

Special Condition No. 2 required the applicant to record a deed restriction providing that the applicant acknowledges the geologic hazards associated with the site and assumes the liability from those hazards.

The permit was assigned to Rudolph Cutino in February 1986. On February 14, 1986, an immaterial amendment (CDP Amendment No. 1-81-187-E2A) was granted to authorize a revised floor plan and elevation for the single-family residence. The revised plan modified the orientation of the house such that the new orientation was located 100 feet from the bluff edge. On June 13, 1990, the Commission approved CDP Amendment No. 1-81-187-A that authorized the construction of a 638-square-foot guest house and included one (1) special condition. Special Condition No. 1 required the recordation of a deed restriction with provisions limiting the use of the guest house and disallowing the inclusion of kitchen or cooking facilities within the guest house. CDP Amendment No. 1-81-187-A was issued to Mr. Cutino in August 1990.

In addition to the permit actions undertaken by the Commission, Mendocino County has issued two separate coastal development permits to Mr. Cutino for the subject parcel. On May 23, 1996, Mendocino County approved CDP No. 11-96 that authorized construction of an 18-foot-tall, 1,408-square-foot garage, workshop, and storage building with a full bathroom. The permit was approved with three special conditions related to septic requirements, building use limitations, and visual resources. On August 22, 2002, the County approved CDP No. 42-02 that authorized the following developments: 1) enlargement of the existing patio by 272 square feet; 2) removal and rebuilding of retaining wall 8 feet northeast of its current location; 3) construction of 28 lineal feet of 3-foot-high fencing and trellis with 3 exterior lights positioned above the retaining wall; and 4) movement of approximately 30 cubic yards of soil to accommodate developments. The County permit as approved included two special conditions: Special Condition No. 1 required in part that disturbed areas “be re-vegetated with compatible native ground cover or grasses to blend with the coastal terrace;” and Special Condition No. 2 imposed restrictions relating to the septic tank and leach field.

#### Deviations from Original Coastal Development Permit

The applicant purchased the subject parcel in May 2011. During a site visit in November 2011, Commission staff observed several well-established ornamental and native trees on the site, in addition to several newly-planted ornamental and native trees. Special Condition No. 1 of the original coastal development permit (CDP No. 1-81-187) required in part the submittal of a landscaping plan “indicating the use of vegetation other than trees” as part of the required visual subordination plan in order to retain the open grassland character of the site. Commission staff informed the new owner of this requirement in a letter dated December 2, 2011. In response to the Commission’s notification of the issue and as part of the subject coastal development permit amendment, the applicant is requesting after-the-fact authorization for a portion of the deviations in the landscaping from the original permit approval that were undertaken both prior to and subsequent to their ownership of the property. The applicant proposes to remove all existing non-native trees from the property, replace some non-native trees with lower-growing native trees, and plant some additional trees as discussed in detail under “Visual Resources” below.

Permit Amendment Description

The proposed amendment request seeks approval to modify the permit to: (1) remodel and construct two additions to the existing single family residence totaling 543 square feet in area; (2) replace existing decks with a new expanded stone patio; (3) add new outdoor trellis and fences; and (4) authorize after-the-fact plantings and changes to the approved landscaping plan that includes planting of trees in select locations. The applicant seeks to maintain some trees on the parcel to screen views of the winery to the north, and to screen from view development on neighboring parcels. The proposed remodel includes two additions to the residence, one on the southeastern side, and one on the northwestern side of the house (See Exhibit Nos. 6 and 9). The additions are designed to provide additional useable space with right-angle corners in this uniquely-angled house. The house additions will be at the same elevations as the existing house and will use natural earthtone materials (redwood fascia and siding with “canyon brown” semi-transparent stain, and black composition shingle roofing). The additions to the residence will provide 543 square feet of additional living space, for a total footprint for the house (including garage) of 2,729 square feet. In addition, the remodel includes a new roof over the living room to provide a vaulted ceiling in the living room. The resulting height of the elevated living room will be 16 feet from the lowest grade, instead of the existing height of 15 feet above the lowest grade. The resulting developments remain set back approximately 100 feet from the bluff edge.

**3. Visual Resources**

Summary of LCP Policies

Section 30251 of the Coastal Act has been specifically incorporated into **LUP Policy 3.5-1** of the Mendocino LCP and states in part (emphasis added):

...

*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** of the certified LUP states as follows, in applicable part (emphasis added):

*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.*

...

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision...*

*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.*

**Section 20.504.015** ("Highly Scenic Areas") of the certified Coastal Zoning Code (CZC) states as follows, in applicable part (emphasis added):

*(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) The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision...*

*(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.*

...

*(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.*

...

*(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.*

...

**LUP Policy 3.5-4** states the following (emphasis added):

*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 as follows, in applicable part (emphasis added):

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. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

...

**LUP Policy 3.5-15** states in applicable part (emphasis added):

Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible.

**CZC Section 20.504.035** (“Exterior Lighting Restrictions”) states as follows, in applicable part (emphasis added):

(A) Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.

(1) No light or light standard shall be erected in a manner that exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property whichever is the lesser.

(2) Where possible, all lights, whether installed for security, safety or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.

(3) Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.

(4) Minor additions to existing night lighting for safety purposes shall be exempt from a coastal development permit.

(5) No lights shall be installed so that they distract motorists.

Project Consistency with Applicable LCP Provisions:

In its approval of the original coastal development permit that authorized the single-family residence, the Commission found that the development of the residence on a highly-visible gently-sloping bluff-top grassland terrace would be made subordinate to the character of its setting by placement of the house behind a small knoll on the terrace; lowering the foundation eight feet below the knoll; use of excavated soils to create an eight-foot-high berm; use of natural-colored wood siding; and use of a landscaping plan with vegetation other than trees. The Commission found these measures helped to protect coastal views and subordinate the home to the natural setting. The original permit was approved with two (2) special conditions to ensure the protection of visual resources and to acknowledge geologic hazards of the bluff-top site. Special Condition No. 1 required the applicant to submit a visual subordination plan with five components prior to permit issuance, including: a) submittal of revised plans depicting the lowering of the house below the existing grade; b) placement of an eight-foot-high berm northeast of the house; c) use of a shake roof and natural colored wood siding; d) inclusion of a nightlighting plan; and e) submittal of a landscaping plan indicating the use of vegetation other than trees. Special Condition No. 2 required the applicant to record a deed restriction providing that the applicant acknowledges the geologic hazards associated with the site and assumes the liability from these hazards.

In its approval of CDP Amendment No. 1-81-187-A1 that authorized construction of a guest house, the Commission found that as the guest house was: (a) the same height as the existing home but 1/3 the size, scale and bulk of the residence; (b) would be constructed using the same natural materials as the original home; and (c) would be located near the residence, the guest house would not further impact public views and would be visually compatible with the home. The Commission additionally found that the location of the development almost ¼ mile west of and below the line of sight from Highway One and adjacent to the small knoll, along with the presence of the row of large Monterey cypress trees paralleling the west side of Highway One for nearly one-half mile, collectively helped to further mitigate the visibility of any structures to the west as viewed from either north or south along the coast.

As described above, several native and ornamental trees have been planted on the property, inconsistent with the visual subordination requirements specified in Special Condition No. 1 of the original approved permit. Specifically, Special Condition No. 1 required in part the submittal of a landscaping plan prior to issuance of the permit, that indicated the use of vegetation “other than trees.” The approved landscaping plan depicted the use of low juniper shrubs in response to this requirement. In contrast, several native shore pines (*Pinus contorta* var. *contorta*) have been planted along the driveway; near the guest house and garage; along the northwestern property boundary; and near the northeastern property boundary. In addition, non-native ornamental Leyland cypress (*Cupressocyparis leylandii*) and Monterey cypress<sup>1</sup> (*Hesperocyparis*<sup>2</sup> *macrocarpa*) have been planted on the berm northeast of the house and at the driveway entrance

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<sup>1</sup> Native in California only to natural populations on or near the Monterey Peninsula

<sup>2</sup> Current taxonomic name; formerly recognized as the genus *Cupressus*.

along the northeastern property line. A review of 1987 and 1993 aerial imagery available for the site<sup>3</sup> shows several of the trees present on the site in 1993 but absent from the site in 1987 (See Exhibit 3). Additional trees were planted in subsequent years, including several native and ornamental non-native trees planted by the applicant subsequent to his purchase of the property in May 2011.

In December 2011 after a visit to the site, Commission staff informed the new property owner of the conflict with the landscape subordination requirements of the original permit. As a result, the applicant has submitted a landscaping plan dated March 12, 2012 that proposes to remove the non-native trees (which can achieve heights greater than 100 feet) and retain the native shore pine trees (which typically grow to less than 50 feet tall). The applicant also proposes to replace some non-native trees with additional plantings of shore pines. The applicant has submitted photos documenting the current site conditions and a visual analysis using storey poles and photo simulation to depict the effect of retaining and planting additional native shore pines at the site (See Exhibit 12). The applicant seeks to maintain some trees on the parcel to screen views of the winery to the north, and to screen from view development on neighboring parcels.

#### Siting and Design

The current amendment request seeks to modify the permits granted for the existing residence by (1) remodeling and including additions to the existing single family residence; (2) replacing existing decks with new expanded stone patio; (3) adding a new outdoor trellis and fences; and (4) obtaining after-the-fact authorization for plantings and changes to the approved landscaping plan that includes the planting of trees in select locations. The house additions will be at the same elevations as the existing house and will use natural earthtone materials (redwood fascia and siding with “canyon brown” semi-transparent stain, and black composition shingle roofing).

Commission staff has assessed the proposed modification to the development from public vantage points on varying occasions. Because the original 15-foot-tall residence and guest house were constructed eight feet below grade, the originally-approved development as previously amended is below the line of sight from Highway One. The current amendment request includes a proposal as part of the remodel to modify the roofline of the existing living room to create a vaulted ceiling that will change the elevation at the peak of the roof to 16 feet from the lowest grade. Because the living room is sited on the northwestern side of the house, and the change in height affects less than 4 linear feet of roofline at its widest profile view, the Commission does not believe that the increase in elevation of the living room to 16 feet from the lowest grade will be visible from Highway One.

The remodel includes two additions to the residence, one on the southeastern side, and one on the northwestern side of the house. The additions are designed to provide additional useable space with right-angle corners in this uniquely-angled house. The additions to the residence will provide 543 square feet of additional living space, for a total footprint for the house (including garage) of 2,729 square feet. The house additions will be at the same elevations as the existing

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<sup>3</sup> Accessed March 2012 online at CaliforniaCoastal Records Project, <http://www.californiacoastline.org>. Image Nos. 8717060 and 199300173006

house and will use natural earthtone materials (redwood fascia and siding with “canyon brown” semi-transparent stain, and black composition shingle roofing).

Therefore, the Commission finds that the siting and design of the house as modified will be subordinate to the character of its setting.

#### Placement of Trees

When the Commission approved the original permit, very few trees existed on or around the subject property except for some trees that existed on adjoining properties close to the highway. Therefore, the Commission determined that the use of planted trees to screen or otherwise reduce the visual impact of the single-family house that was proposed would not have been subordinate to the character of its setting as the trees themselves would have been out of character with the surroundings which consisted mainly of open grasslands. As noted, Special Condition No. 1 of the original permit required in part the submittal of a landscaping plan that did not include the use of trees. The permit amendment would amend the approved development to authorize the planting of trees, including both a number of existing trees that were planted without authorization and a number of additional trees that the applicant would like to plant to help screen his view of development on neighboring property. The proposed planting of trees conflicts with the Commission’s intent in approving the original permit to maintain views through the open grasslands of the subject property and subordinate the approved development with the character of its setting by prohibiting the use of trees in the landscaping plan for the development.

However, since the time the original permit was approved, additional trees have been planted on neighboring parcels south of the subject property in a continuation of a line of trees extending seaward from the highway. The growth of this new line of trees on the adjacent property fundamentally changed the character of the development’s setting. Instead of open grasslands which afforded largely unimpeded views of the ocean along a long stretch of coastline, the open space surrounding the project sites has been bifurcated by the line of trees. While expansive open views of the coast remain, the trees (a) bifurcate the open space, (b) provide a backdrop of trees to the subject property as viewed from vantage points along Highway One to the north, and (c) provide a screen of the subject property as viewed from vantage points along Highway one to the south. The presence of this new line of trees means that the planting of trees on the subject property is no longer necessarily out of character with its setting, and a development that includes trees could conceivably be found to be subordinate to the character of its setting.

In 1996, Mendocino County approved construction of an 18-foot tall, 1,408-square-foot combination garage, workshop, and storage building at the site, but did not require the building to be constructed below grade. The roofline of this structure projects above the horizon. The existing trees planted near this building will serve to subordinate and screen this structure over time.

The applicant has submitted a visual analysis showing the visual effects of the proposed planting of trees on the property. Based on this analysis and the Commission staff’s on-site assessment of the visual impacts of the development as amended, the Commission staff has determined that the retention of native shore pines and planting of additional native trees in select locations on the

applicant's property as proposed will be subordinate to the character of the amended development's setting because in most instances the trees will be backdropped by the larger trees on the neighboring property. In addition, from a distance, trees planted along the applicant's northwestern property line appear to visually follow the same tree line as those occurring on the neighboring property to the south, although these native species will not grow to the same heights as the non-natives planted on the neighboring property (See Exhibit 11 page 2 and Exhibit 12 page 3).

In contrast, the non-native ornamental Leyland cypress that were planted years ago without authorization and which are now proposed to be removed from the berm northeast of the house are not subordinate to the character of the setting and also block relatively more blue water view than the other native shore pine trees planted and proposed for the site and which do not grow as tall as the non-native species. Similarly, other Leyland cypress trees and Monterey cypress trees recently planted on the site, including but not limited to those planted at the driveway entrance along the northeastern property line and along the northwestern property line, are anticipated to substantially block ocean views as they grow to heights that can exceed 100 feet at maturity. Therefore, the applicant has proposed to remove all non-native trees at the site. Special Condition No. 6C has been imposed to require that all non-native trees are removed from the site by October 15, 2012.

To ensure that the landscaping remains subordinate to the character of the surrounding area, the Commission attaches Special Condition No. 6 that requires in part conformance of the landscaping with the submitted landscaping plan dated March 12, 2012, and that further requires any changes in the landscaping design shall require an amendment to the coastal development permit unless the Executive Director determines that an amendment is not necessary. Therefore, the Commission finds that the retention of native shore pines on site, combined with the removal of non-native ornamental trees, will continue to achieve the visual subordination of the developments on the site as intended in the originally-approved coastal development permit as previously amended.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, gophers, 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 pose 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 potential significant adverse impact of rodenticide use to other environmentally sensitive wildlife species, the Commission has included as Special Condition No. 6E a prohibition against the use of any rodenticides or herbicides on the property governed by CDP No. 1-81-187-A2 as amended.

Special Condition No. 11 has been added to ensure that the development as amended uses the colors proposed in this coastal development permit amendment application or darker earth-tone colors, and to prohibit the current owner or any future owner from modifying the colors or materials to a lighter color without a further amendment to this permit. Special Condition No. 11

additionally requires the use of non-glare materials and shielded, downcast lighting. Furthermore, Special Condition No. 5 requires that all future improvements to the approved development shall obtain coastal additional development permit authorization to ensure that future improvements will not be sited or designed in a manner that would result in adverse visual impacts. Moreover, Special Condition No. 4 requires the recordation of a deed restriction to inform property owners of the requirements to obtain permits for future development. Therefore, the Commission finds that the amended development as conditioned will protect views from public vantage points along Highway One and will be subordinate to the character of its setting.

Therefore, the Commission finds that as conditioned, the amended development is consistent with the visual resource protection policies of the Mendocino County certified LCP, including but not limited to LUP Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-5, and Coastal Zoning Code Sections 20.504.010 and 20.504.015 as it continues to be subordinate to the character of its setting.

#### **4. Stormwater Runoff**

##### 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 20.492.015 sets erosion control standards and states in part:

*(A) The erosion rate shall not exceed the natural or existing level before development.*

*(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*

*(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation...*

*(D) Mechanical or vegetative techniques to control erosion may be used where possible or necessary providing that they are fully discussed in the approved development plan.*

*(E) To control erosion, development shall not be allowed on slopes over thirty (30) percent unless adequate evidence from a registered civil engineer or recognized authority is given that no increase in erosion will occur... [emphases added]*

CZC Section 20.492.020 sets 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. [emphasis added.]*

CZC Section 20.492.025 sets runoff standards and states in applicable part:

- (A) *Water flows in excess of natural flows resulting from project development shall be mitigated...*
- (C) *The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy dissipators [sic].*
- (D) *Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.*
- (E) *Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes... [emphasis added]*

### Discussion

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. As discussed above, the subject site is located on a grassy marine terrace that gently slopes downward towards the bluff that forms the northwestern parcel boundary. Runoff originating from the development site that is allowed to drain off the site could contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters, including downstream marine waters. The applicant has proposed use of silt fencing with specifications included as part of a submitted grading plan.

Sedimentation impacts from runoff would be of the greatest concern during and immediately after construction associated with grading and fill activities for the construction of the residential additions and landscape hardscaping (i.e., stone patio, terraces, etc.).

Therefore, Special Condition No. 10 requires the use of best management practices in part that during construction including requirements that: (1) silt fencing, rice straw or weed-free hay bales be installed to contain runoff from construction and demolition areas; (2) best management practices be effective at controlling sediment and surface runoff during the rainy season; (3) excess excavated material and/or debris shall be removed from the project site and disposed of at a disposal site outside the coastal zone; (4) on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff; and (5) any disturbed areas be replanted with native plants obtained from local stock immediately following project completion.

The Commission finds that as conditioned, the amended development is consistent with CZC Sections 20.492.015 and 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) using hay bales to control runoff during construction, and (4) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the amended development as conditioned to require these measures to control sedimentation from storm water runoff from the site is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained.

## **5. Geologic Hazards**

### **LCP Policies and Standards**

LUP Policy 3.4-1 states:

*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. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.*

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 geologists report.*

LUP Policy 3.4-8 states:

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

LUP Policy 3.4-9 states:

*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.*

LUP Policy 3.4-10 states the following (emphasis added):

*No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.*

LUP Policy 3.4-12 states the following (emphasis added):

*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 or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following*

*full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means.*

Mendocino County Coastal Zoning Code (CZC) Section 20.500.010 states the following (emphasis added):

*(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone 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. (Ord. No. 3785 (part), adopted 1991)*

Section 20.500.015 of the Coastal Zoning Code states:

**(A) Determination of Hazard Areas.**

**(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 blufftop lots and areas delineated on the hazard 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.*

**(B) Mitigation Required.** *Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall*

*certify that the required mitigation measures are incorporated into the development.  
(Ord. No. 3785 (part), adopted 1991)*

Sec. 20.500.020, “Geologic Hazards - Siting and Land Use Restrictions,” states in applicable part (emphasis added):

**(A) Faults.**

*(1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.*

*(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.*

**(B) Bluffs.**

*(1) New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

*Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.*

*(2) Drought tolerant vegetation shall be required within the blufftop setback.  
(3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

**(D) Landslides.**

*(1) New development shall avoid, where feasible, existing and prehistoric landslides. Development in areas where landslides cannot be avoided shall also provide for stabilization measures such as retaining walls, drainage improvements and the like. These measures shall only be allowed following a full environmental, geologic and engineering review pursuant to Chapter 20.532 and upon a finding that no feasible, less environmentally damaging alternative is available.*

*(E) Erosion.*

*(1) 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. Environmental geologic and engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.*

Discussion

As described above, the proposed amendment includes constructing two additions to the existing single-family residence, one on the southeastern side, and one on the northwestern side of the house (totaling 543 square feet), and replacing existing decking with stone hardscaping. The parcel is part of a marine terrace that gently slopes downward towards the bluff that forms the northwestern parcel boundary.

A geologic report was prepared December 20, 2011 by Engineering Geologist Jim Glomb for the subject site. The report describes the existing residence as completed in 1986 and the original development plans showing a setback distance of 105 feet from the bluff edge to the residence as correlating with stereo pairs review of 1996 aerial photos. The report documents signs of recent slumping of seacliff terrace deposits and field measurements that show a current distance of 98 feet between the residence and the bluff edge. The report also documents the presence of four sea caves on adjacent properties as close as 145 feet to the existing residence and 158 feet to the planned addition.

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020 require that a site for new development remain stable for the development's expected economic life, which is defined as 75 years. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. In the report, Mr. Glomb estimates the bluff retreat rate as 0.47 feet per year for the 75-year economic life expectancy of the development, and recommends a minimum building setback of at least 37 feet from the top of the seacliff. The proposed developments maintain the existing distance of 98 feet from the bluff edge. Mark Johnsson, Ph.D., the Commission's staff geologist, has reviewed the December 20, 2011 geologic report prepared by Mr. Glomb and has concluded that given the distance of the proposed developments from the bluff edge, the development as proposed will be stable for an economic life of 75 years.

The geologic report includes three recommendations for development at the site, specifying that (1) the building setback shall be at least 37 feet from the bluff edge; (2) during site development care should be taken to not divert or concentrate site drainage near the seacliff; and (3) existing

native ground cover should be maintained on the sloping west portions of the site to reduce future erosion. The applicant is proposing to construct development that would be located on a high uplifted marine terrace bluff top that is actively eroding. Consequently, the development would be located in an area of high geologic hazard. However, new development can only be found consistent with LUP Policy 3.4-7, and CZC Section 20.500.010(A) if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. The applicant has submitted information from a registered engineering geologist which states that the site is geotechnically suitable for the planned residential construction.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top 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 bluff top 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 bluff top 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 Nino 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 a new house on a vacant bluff top 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 bluff top 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 bluff top setback. An emergency coastal

development permit (Permit #5-93-254-G) was later issued to authorize bluff top protective works.

The Commission emphasizes 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.

Although the project has been evaluated and designed in a manner to minimize the risk of geologic hazards, and although the Commission is requiring with Special Condition No. 8 that the applicant adhere to all recommended specifications to minimize potential geologic hazards, some risk of geologic hazard still remains. This risk is reflected in the December 20, 2011 geotechnical report submitted by Jim Glomb Geotechnical and Environmental Consulting, Inc., which references various “limitations” of the analysis. This geotechnical report states that the services consist of professional opinions and conclusions developed by a certified engineering geologist in accordance with generally-accepted engineering geologic and geotechnical engineering principles and practices. The report further states, “...*This warranty is in lieu of all other warranties, either expressed or implied.*” 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, and that the proposed new development will be subject to geologic hazard and could potentially someday require a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7, CZC Section 20.500.010(A), and CZC Section 20.500.020(B). The Commission finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7, CZC Section 20.500.010(A), and CZC Section 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Based upon the geologic report prepared by the applicants’ geologist, the Commission finds that the risks of geologic hazard are minimized if development is sited and designed according to the setback and construction recommendations and conditions of this permit amendment. However, given that the risk cannot be eliminated and the geologic report cannot assure that shoreline protection will never be needed to protect the residence, the Commission finds that the proposed development is consistent with the Mendocino County 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 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. 9 to ensure that no future shoreline protective device will be constructed to protect the proposed new development.

Special Condition No. 9 prohibits the construction of shoreline protective devices on the parcel to protect any of the development approved by Permit No. 1-81-187-A2 and requires that the landowner provide a geotechnical investigation and remove the proposed improvements associated with the development approved by Permit No. 1-81-187-A2 if bluff retreat reaches the point where this development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site.

These requirements are necessary for compliance with CZC Section 20.500.010(A), which states 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 CZC Section 20.500.010(A) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 9 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, Special Condition No. 4 requires the applicants to record a deed restriction to impose the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. This special condition is required, in part, to ensure that the development is consistent with the Coastal Act and to 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 protective device could be constructed to protect the approved development and will ensure that future owners of the property will be informed of the Commission's immunity from liability, and the indemnity afforded the Commission.

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. 9 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 any of the development approved by Permit No. 1-81-187-A2 should the bluff retreat reach the point where a government agency has ordered that these facilities not be used.

As conditioned, the proposed amended development will not contribute significantly to the creation of any geologic hazards and will not have adverse impacts on slope stability or cause erosion. However, the Commission notes that future minor incidental development normally associated with single family residences such as additions to the residence, construction of outbuildings, decks and patios, or installation of additional landscaped areas could be sited and designed in a manner that could compromise geologic stability, leading to significant adverse impacts to the site and surrounding area. Many of these kinds of development are normally exempt from the need to obtain a coastal development permit under Section 30610(a) of the Coastal Act. Thus, unless the Commission specifies in advance, the Commission would not normally be able to review such development to ensure that geologic hazards are avoided.

The Commission further 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, 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. Section 13250(b)(1) indicates that improvements to a single-family structure in an area within 50 feet of the edge of a coastal bluff and/or within a designated highly scenic area involve a risk of adverse environmental effect and therefore are not exempt. The subject property is within a designated highly scenic area. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, Special Condition No. 5 expressly requires all future improvements to the approved development to obtain a coastal development permit so 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 an adverse environmental impact. As discussed above, Special Condition No. 4 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 4 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

Conclusion

The Commission thus finds that the proposed amended development, as conditioned, is consistent with the policies of the LCP regarding geologic hazards, including LUP Policy 3.4-7, and CZC Sections 20.500.010(A), 20.500.015, and 20.500.020 since the amended development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, (2) will not have adverse impacts on the stability of the coastal bluff or on erosion, and (3) will not require the construction of shoreline protective works. Only as conditioned is the proposed amended development consistent with the LCP.

**6. Public Access**

Summary of Applicable Coastal Act and LCP Provisions:

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 certified 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.

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.

Project Consistency with Applicable Coastal Act and LCP Provisions:

Although the proposed amended development is located between the first public road and the sea, the project will not adversely affect public access. There are no trails that provide shoreline access for the public within the vicinity of the project that will be affected by the proposed project. Furthermore, the proposed project will not create any new demand for public access or otherwise create any additional burdens on public access. Lastly, an improved Caltrans rest area on Kibesillah Hill is located ¼ mile to the north which provides for substantial public access.

Therefore, the Commission finds that the amended development does not have any significant adverse effect on public access, and that the amended development as proposed without new

public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214 and the public access policies of the County's certified LCP.

**7. Alleged Violation**

Although certain development has allegedly taken place at the project site inconsistent with the special condition requirements of the approved coastal development permit (e.g., the planting of trees that the underlying CDP disallowed), and without the benefit of a coastal development permit amendment, consideration of the application by the Commission has been based solely upon the amended development's conformance with the Mendocino County certified Local Coastal Program. Approval of this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

**8. 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 requirement 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 the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act and Local Coastal Program consistency at this point as if set forth in full. As discussed above, the proposed amended development has been conditioned to be consistent with the policies of the certified Mendocino County Local Coastal Program. The 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 specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**Exhibits:**

1. Regional Location Map
2. Aerial Vicinity Map
3. Coastal Records Project Images
4. Site Plan as Approved by CDP No. 1-81-187-E2A (overlaid atop original site and landscape plan approved by CDP No. 1-81-187)
5. Existing Site and Floor Plans
6. Proposed Plans
7. Exterior Elevation as Approved by CDP No. 1-81-187-E2A (overlaid atop elevation plan approved by CDP No. 1-81-187)
8. Existing Development Elevations
9. Proposed Development Elevations
10. Proposed Landscaping Plan
11. Photos of Development from Highway 1
12. Vegetation Visual Analysis submitted by applicant
13. Staff report for CDP No. 1-81-187
14. Staff report for CDP No. 1-81-187-A1

**Substantive File Documents:**

1. Mendocino County CDP No. 11-96
2. Mendocino County CDP No. 42-02
3. Mendocino County Local Coastal Program
4. December 20, 2011 Geologic Report

**APPENDIX A**

**STANDARD CONDITIONS:**

**1. Notice of Receipt & Acknowledgement**

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. Interpretation**

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

**3. Assignment**

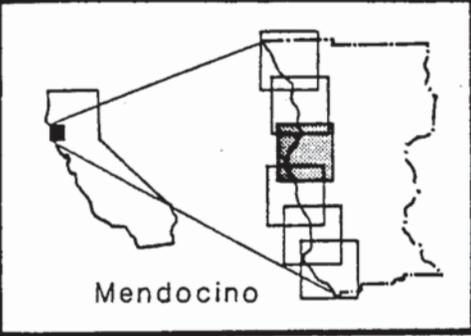
The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**4. Terms & 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.

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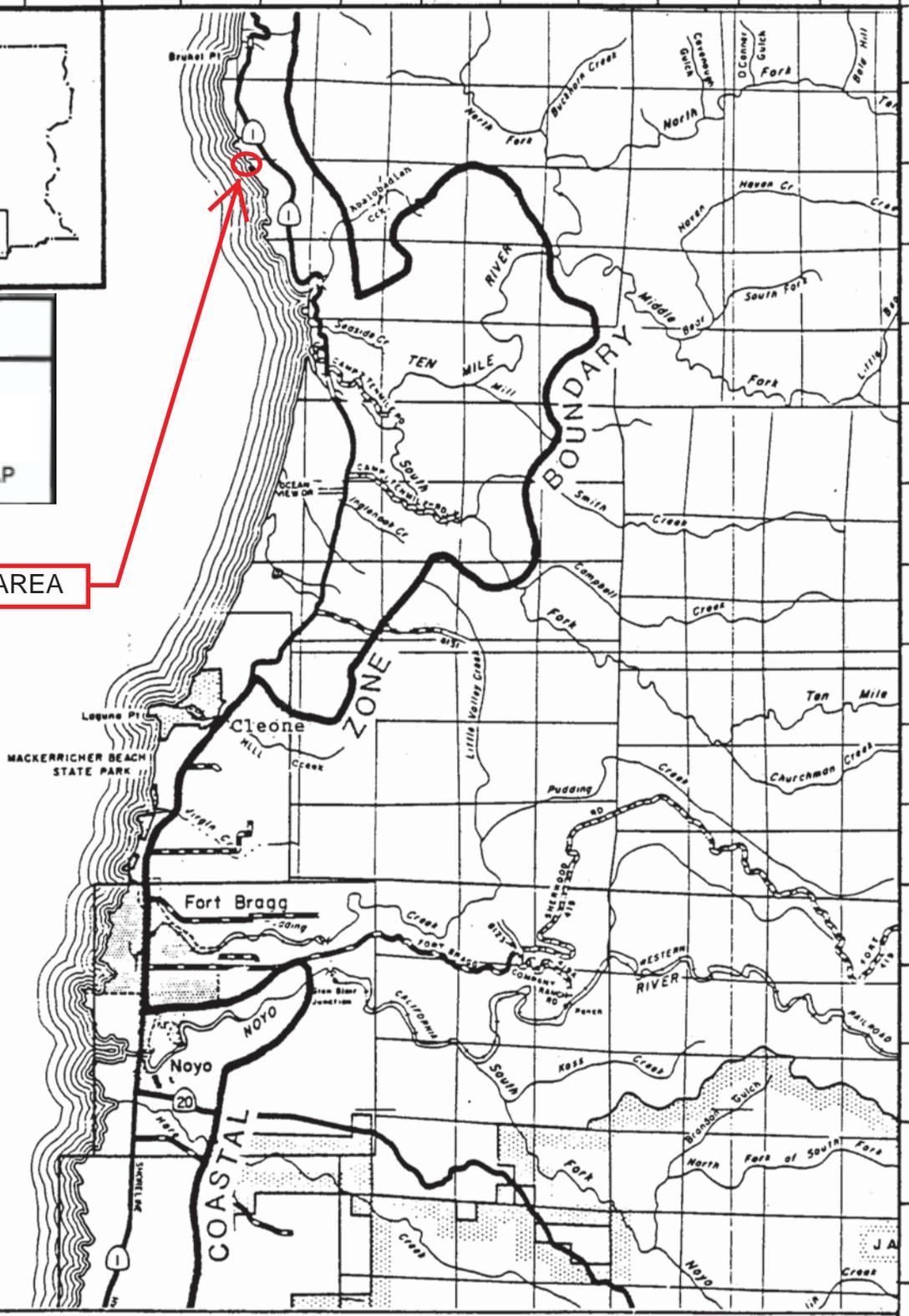


Mendocino

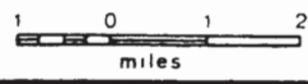
EXHIBIT NO. 1

APPLICATION NO.  
1-81-187-A2  
(Jordan)  
REGIONAL LOCATION MAP

PROJECT AREA



LOCATION MAP



County of Mendocino

EXHIBIT NO. 2

PERMIT NO.

1-81-187-A2

(Jordan)

VICINITY MAP / AERIAL PHOTO



Subject Parcel



1,400 700 0 1,400 Feet