

CALIFORNIA COASTAL COMMISSION

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Staff: Tamara L. Gedik
Staff Report: December 23, 2011
Hearing Date: January 12, 2012
Commission Action:

STAFF REPORT: PERMIT EXTENSION REQUEST

APPLICATION NO.: **1-83-158-E25**

APPLICANT: Antonio L. Savoca

PROJECT LOCATION: 30700 Coast Highway One South, north of Anchor Bay along the southern Mendocino County coast (APN 142-051-08).

PROJECT DESCRIPTION: Construction of a two-story, 24-foot-high, 4,239-square-foot single-family residence with a garage, driveway, septic system, and water storage tank.

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP; CDP File No. 1-83-158; Botanical Consult Submittal received August 15, 2011

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the extension **NOT** be granted because changed circumstances exist that affect the development's consistency with the natural resources policies of the Mendocino County certified LCP. The Executive Director recommends that the Commission find that changed circumstances exist for two reasons. First, prior to the applicant's commencement of development, Commission staff have discovered evidence that the rare coastal bluff morning-glory has established at the site, within 100 feet of the development. While a map was not provided showing the overlay of rare plant locations in relation to development, upon comparison of the original site plans with the map of rare plant locations, it appears that the development would be located within less than 50 feet of rare morning-glory plants. Second, prior to the applicant's commencement of development, Commission staff have discovered evidence that Northern Bishop Pine Forest, which is rare, highly imperiled, and of high priority

for inventory in the CA Natural Diversity Database¹, dominates the site and would have to be partially cleared to accommodate the approved development. Policy 3.1-7 of the certified Mendocino County LUP requires that a 100-foot-wide buffer be established between development and ESHA, which can only be reduced to a minimum of 50 feet under certain circumstances. Staff recommends that the Commission make a finding of changed circumstances, thereby denying the extension request. This finding will result in the application being heard as if it were a new application at a subsequent Commission meeting. In order to deny the extension request, at least three Commissioners must determine that there are changed circumstances that affect the development's consistency with the Mendocino County certified LCP or the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of denial of the permit extension request is found below.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION:

Staff recommends that the Commission find that there are changed circumstances that affect the consistency of the development with the natural resource policies of the Mendocino County certified LCP, and therefore deny the extension request.

Motion:

I move that the Commission find that there are changed circumstances that affect the consistency of the development approved in Coastal Development Permit No. 1-83-158 with the policies of the certified Mendocino County Local Coastal Program.

STAFF RECOMMENDATION OF CHANGED CIRCUMSTANCES:

Staff recommends a **YES** vote. An affirmative vote of three Commissioners is needed to deny the extension request and adopt the following resolution and findings.

RESOLUTION TO DENY THE PERMIT EXTENSION REQUEST:

The Commission hereby denies the request to extend the time in which development must commence under permit number 1-83-158 in order for the permit not to expire, on the grounds that there is sufficient evidence of changed circumstances that affect whether the development approved in this permit is consistent with the public access policies of the Coastal Act and the certified Mendocino County Local Coastal Program.

¹ CA Department of Fish & Game Biogeographic Data Branch. "Natural Communities — Background Information" accessed online December 14, 2011 at http://dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp

PROCEDURAL NOTES:

1. Standard of Review

The project was approved approximately 10 years 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 extension request, the Commission must decide whether there are changed circumstances that affect the consistency of the development with the certified LCP and the public access policies of the Coastal Act.

2. Commission Action on Permit Extension Requests.

In this case, the Executive Director has determined that, due to changed circumstances, the proposed development may not be consistent with the policies of the certified Mendocino County Local Coastal Program. Accordingly, the extension request is being reported to the Commission pursuant to Section 13169(d) of the regulations. Pursuant to Section 13169(d)(1) of the regulations, if three (3) Commissioners determine that there are changed circumstances that affect the consistency of the development with the public access policies of the Coastal Act or the policies of the certified Mendocino County Local Coastal Program, the extension request shall be denied and the application shall be set for a full public hearing as though it were a new application. If no such determination is made by three Commissioners, the permit will be extended for an additional one-year period from the most recent expiration date.

3. Applicant May Not Undertake Development During Pendency of Extension Request

When an applicant timely submits an application for a time extension prior to expiration of the permit, Section 13169(e) of the Commission's regulations provides an automatic extension of time for commencement of development until such time as the commission has acted upon the extension request. However, the Commission's regulations further require that the applicant shall not undertake development during the period of automatic extension that is provided for in Section 13169(e).

II. FINDINGS AND DECLARATIONS FOR DENIAL OF EXTENSION REQUEST:

The Commission hereby finds and declares:

A. Permit History and Site Description

On July 14, 1983, the Coastal Commission granted Coastal Development Permit No. 1-83-158 to Antonio Savoca for the construction of a two-story, 24-foot-high, 4,239 square foot single-family

residence with a garage, driveway, septic system, and water storage tank at 30700 Coast Highway One South, north of Anchor Bay along the southern Mendocino County coast.

The 2-acre subject site is a relatively flat forested parcel with a steep coastal bluff located west of Highway One south of Iverson Cove. The subject property is designated in the Coastal Land Use Plan and zoned in the Coastal Zoning Ordinance as Rural Residential – 5-acre minimum parcel size (RR-5). The trapezoidal-shaped property extends along approximately 95 linear feet of shoreline and averages approximately 400 feet deep from the bluff edge to Highway One. An offer to dedicate a lateral public access easement along the shoreline of the property at the base of the bluff was recorded in connection with a previously granted permit (1-83-76) that authorized the drilling of a domestic water well. The site is not designated as a highly scenic area and the dense vegetation on the site blocks views of the ocean from Highway One through the site.

The administrative permit was approved without special conditions (see Exhibit 3). The findings of the staff report indicate that with the previously granted offer to dedicate public access along the base of the bluff, the proposed project is consistent with the public access policies of the Coastal Act. The findings also indicated that with the proposed 53-foot setback from the edge of the bluff the project is consistent with the geologic hazard and visual resource policies of the Coastal Act.

No development has commenced at the site to date in reliance on Coastal Development Permit No. 1-83-158 as previously extended. Since issuance of the original permit in 1983, Coastal Development Permit No. 1-83-158 has been extended 24 times. Each year, the applicant has submitted his time extension request timely, prior to expiration of the extended permit. Each year Commission staff notified the applicant that a site visit would be necessary, and has visited the site prior to issuance of a permit extension to determine whether there were changed circumstances at the site. On May 13, 2010, the Commission received an application for another one-year extension of the permit. On July 26, 2010, Commission staff informed the applicant that a site visit would be necessary to evaluate whether there were changed circumstances at the site, but that the site visit would be delayed until the state budget was passed and travelling restrictions were relieved. Subsequently, Commission staff visited the subject site on November 15, 2010 and discovered what appeared to be an occurrence of the special status plant known as coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) growing near the northwestern portion of the property. As a result of this observation, the applicant was notified that additional botanical information would be necessary to verify the identity of the occurrences and to map their location in relation to the previously-approved development in order to enable the Executive Director to determine whether changed circumstances had occurred on the site.

B. ED Determination That Due to Changed Circumstances the Proposed Development May Not Be Consistent with the Certified LCP

Coastal bluff-morning glory has been discovered at the site prior to commencement of development under permit 1-83-158-E24. During the November 15, 2010 site visit, staff observed several occurrences of what appeared to be coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) growing near the northwestern portion of the property, and in a report

received at the Commission office on August 15, 2011, the consulting botanist confirmed the occurrences. Coastal bluff morning-glory is a perennial plant that usually grows on coastal dunes, scrub, and bluffs in Marin, Sonoma, and Mendocino Counties (CNPS 2003). The plant has no federal or state threatened or endangered status, but it has a California Rare Plant Rank (CRPR) of 1B.2 (plants considered rare, threatened, or endangered in California and elsewhere). Because of its relative rarity at the state level, and as discussed further below in Section C1, coastal bluff morning glory meets the rarity test for designation as environmentally sensitive habitat area (ESHA) under Coastal Act Section 30107.5.

In addition to the coastal bluff morning-glory occurrences, the site is forested predominantly with Northern Bishop Pine (*Pinus muricata*). While Bishop Pine is itself not considered a rare species, the total assemblage of plant species in an area where Bishop pine occurs (i.e., the vegetation community alliance type) is treated as rare (see further discussion in Section C2 below). In addition, in December 2009 the Bishop pine alliance vegetation type was “elevated” in rank from G4/S3 (considered “apparently secure” at the global level- i.e., not rare) to G3/S3². This ranking is considered “vulnerable and at moderate risk of extinction” at the global and state levels, and highly imperiled³ and of high priority for inventory in the California Natural Diversity Database (CNDDB; VegCAMP 2010). Further, in recent years, many Northern Bishop pine forests in Mendocino County have been extensively compromised due to threats from Pitch pine canker and needle blight, in addition to threats from development.

As ESHA, coastal bluff morning-glory and Northern Bishop Pine Forest are subject to the resource protection policies of the Coastal Act and the Mendocino County certified LCP. Policy 3.1-7 of the certified Mendocino County LUP requires that a 100-foot-wide buffer be established between development and ESHA, which can be reduced to a minimum of 50 feet under certain circumstances. Based on staff’s November 15, 2010 site visit and supplemental information received from the consulting biologist on August 15, 2011, the Executive Director determined that the discovery of coastal bluff morning-glory and Northern Bishop Pine Forest ESHAs within 100 feet of the approved development constitute changed circumstances that may affect the project’s consistency with the resource protection policies of the certified Mendocino County LCP.

² In this case, the California Heritage (CNDDB) ranking of G3/S3 describes the global rank (G rank) and the state rank (S rank) for Northern Bishop pine forest in California as vulnerable and at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation.

³ http://dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp (accessed December 14, 2011)

C. **Changed Circumstances That Affect Consistency of Approved Development with the ESHA Protection Policies of the Mendocino County LCP**

Summary of Applicable LCP Provisions [emphasis added.]:

Environmentally Sensitive Habitat Areas (ESHA) are defined in Section 3.1 of the Mendocino County Land Use Plan (LUP) as follows:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Mendocino County Coastal Zoning Code (CZC) Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states the following (emphasis added):

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

LUP Policy 3.1-7 states the following (emphasis added):

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

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

CZC Section 20.496.020 “*Environmentally Sensitive Habitat and other Resource Areas—Development Criteria*” states the following (emphasis added):

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

*(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

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

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

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

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.*

*(c) **Susceptibility of Parcel to Erosion.** The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development*

will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.

(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...

(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

...

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological

and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) *Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*

(e) *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

(f) *Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*

(g) *Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*

(h) *Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*

(i) *Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*

(j) *Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

(k) *If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.*

LUP Policy 3.1-18 states the following:

Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.

Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet

guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.

CZC Section 20.532.095 “*Required Findings for all Coastal Development Permits*” states, in applicable part, the following (emphasis added):

(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:

(1) The proposed development is in conformity with the certified local coastal program;

...

(1) Coastal Bluff Morning-Glory ESHA

During the November 15, 2010 site visit, staff observed several occurrences of what appeared to be coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*) growing near the northwestern portion of the property. Coastal bluff morning-glory is a perennial plant that usually grows on coastal dunes, scrub, and bluffs in Marin, Sonoma, and Mendocino Counties (CNPS 2003). The plant has no federal or state threatened or endangered status, but it has a California Rare Plant Rank (CRPR) of 1B.2 (plants considered rare, threatened, or endangered in California and elsewhere). ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities.” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an area including plants or animals or their habitats **is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem**. Because of its relative rarity at the state level, coastal bluff morning glory meets the rarity test for designation as environmentally sensitive habitat area (ESHA) under Coastal Act Section 30107.5 and the definition of ESHA in Section 3.1 of the certified LUP.

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. The botanical consult letter received at the Commission’s North Coast District office on August 15, 2011 states, “The coastal bluff morning-glory is impacted by traffic, mowing, heavy erosion and heavy sedimentation, but is tolerant of light sedimentation.” The coastal bluff morning-glory plants occurring on the property could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop the proposed house, including grading, paving, building construction, foot trampling, etc., and could be further degraded by trampling from future occupants and domestic pets once

the site is built. Therefore, the coastal bluff morning-glory plants occurring on the project site meet the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

Another closely-related species of morning-glory known as climbing morning-glory (*Calystegia purpurata* ssp. *purpurata*) commonly occurs in similar habitats and is not considered sensitive. On March 2, 2011, Commission staff requested that the applicant submit the results of a seasonally-appropriate floristic survey of the subject parcel by a qualified botanist experienced in identification of both subspecies of morning-glory. In the Commission staff's letter to the applicant dated March 2, 2011, staff requested that if the qualified botanist confirms coastal bluff morning-glory occurs on the site, the report should include the following: (1) a thorough description, map, and an analysis of the species composition and distribution of ESHA (using the definitions of ESHA used in the Coastal Act and in the Commission's regulations) on the parcel in relation to the development; (2) identification of any impacts to sensitive species; (3) analysis and discussion of alternative plans for the residence and associated development that would avoid such impacts; and (4) recommendations for any needed buffer or other mitigation measures to avoid degradation of ESHA resources and ensure the development is compatible with the continuance of adjacent ESHA. The Commission staff's letter further indicated that if the botanical report adequately demonstrates that there is no ESHA within 100 feet of all elements of the approved development, the Executive Director will likely determine that there are no changed circumstances that would affect the consistency of the approved house with the certified LCP.

On August 15, 2011, the Commission received a botanical consult letter documenting the results of a site inspection conducted to address the requests of the Commission staff's March 2, 2011 letter. In the letter, the botanist indicated that three occurrences of *Calystegia purpurata* were located at the site. The occurrences were not in bloom although the survey was conducted during the floristically appropriate time of year. The botanist therefore relied upon vegetative characteristics of the plants to make her determination. The botanist indicated the following:

The northern population of *Calystegia purpurata* is most likely a hybrid, as it has the leaf shape closer to ssp. *purpurata*, but the weaker growth habit of ssp. *saxicola*. The southern and central populations have a rounder leaf shape more typical of ssp. *saxicola*, and even if not pure *Calystegia purpurata* ssp. *saxicola*, clearly carry mostly those genes, and in my opinion merit protection.

Therefore, Coastal bluff-morning glory has been discovered at the site prior to commencement of development pursuant to CDP No. 1-83-158-E24. It is not known when the coastal bluff morning-glory established on the site. Coastal bluff morning-glory reproduces by seed, which could exist dormant for years within the seed bank and be triggered to sprout under a range of circumstances (such as changes in precipitation levels, temperature, etc). For example, substantial rainfall has occurred on the north coast in the past two years, which may have stimulated growth of the morning-glory species at the site. In addition, there are known occurrences of this rare plant in the geographic vicinity, including but not limited to a site less than one mile north of the subject site that the Commission reviewed in 2007 (A-1-MEN-06-052), and several sites evaluated by the County and the Commission under various permits 5-7

miles south of the subject site, such that seed dispersal from nearby sites by wind or animal vectors is also likely. In two separate projects reviewed by the Commission in 2010 (A-1-MEN-05-037 and A-1-MEN-09-023), consulting botanists noted numbers of coastal bluff morning-glory plants had increased in the year following initial surveys at each site, thereby demonstrating the dynamic growth patterns of the plant. Lastly, in a biological evaluation submitted for a project currently under review by Commission staff (A-1-MEN-07-021-A1), the biologist notes that “the coastal bluff morning-glory population has increased in overall size and extent” since the biologist last visited the site in 2006, and the biologist additionally identified two “newly established” locations of coastal bluff morning-glory plant occurrences on the applicant’s site where they previously did not exist.

When the Coastal Commission granted CDP No. 1-83-158 on July 14, 1983, there was no indication that development of a single-family residence on the parcel would be constrained due to sensitive botanical resources. The coastal bluff morning-glory was not listed by the California Native Plant Society until January 2001, and since that time, coastal bluff morning-glory has become threatened by development, foot traffic, and non-native plants⁴.

The Commission has found, in past decisions on permit appeals that coastal bluff morning-glory and its habitat constitute an environmentally sensitive habitat area (ESHA). These past decisions include, but are not limited to decisions on three appeals of projects approved in the Gualala area in 2003 (A-MEN-03-029) and 2010 (A-1-MEN-05-037 and A-1-MEN-09-023), all for single-family residences. Additionally, the Commission found in 2010 (A-1-MEN-09-023) that portions of a site that contained what the consulting biologist described as common, rare, and “potential hybrid⁵.” morning-glory occurrences constituted ESHA because whether or not hybrid and common plants share the same habitat conditions as the rare coastal bluff morning-glory plants ignores the fact that rare coastal bluff morning-glory *did* occur throughout portions of the parcel; and therefore habitat was present that supports and is capable of supporting coastal bluff morning-glory habitat that is recognized as ESHA.

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development. The LCP policies identify specific uses permitted in wetland and riparian ESHAs, but do not specifically identify what uses are allowed within rare plant ESHA, and by extension, within the rare plant buffer.

Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. In addition to LUP Policy 3.1-7 and other LUP

⁴ California Native Plant Society (CNPS). 2011. Inventory of Rare and Endangered Plants (online edition, v8-01a). California Native Plant Society. Sacramento, CA. Accessed on Tuesday, December 13, 2011.

⁵ Another closely-related species of morning-glory known as climbing morning-glory (*Calystegia purpurata* ssp. *purpurata*) commonly occurs in similar habitats and is not considered sensitive; according to Hickman (1993), intergradation is common between *Calystegia* species.

policies governing the protection of ESHA, Section 30240 is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA.

Although local governments are responsible for drafting the precise content of their LCPs, the Coastal Act requires that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act. It can be presumed that the County was aware that the Coastal Act established the minimum standards and policies for local coastal programs and knew, that in drafting its local coastal program, it was constrained to incorporate the development restrictions of Section 30240(a) of the Coastal Act, including the restriction that only uses dependent on those resources shall be allowed in those areas. It can also be assumed that in certifying the Mendocino County LCP, the Commission understood and found that the LCP conformed to (i.e. incorporated) the minimum policies and standards of the Coastal Act, including the development restrictions of Section 30240(a).

As noted above, the narrative for the section of the Land Use Plan containing LUP policies governing the protection of ESHA includes Section 30240. In addition, the narrative contains statements that acknowledge the protections afforded by Section 30240 and the County's commitment to incorporate those protections into the LCP, including the following statements:

- “The Coastal Act mandates the preservation of significant natural resources and habitats;”
- “Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California;”
- This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Coastal Act Section 30240(a) states that ESHAs shall be protected against any significant

disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. In addition, Policy 3.1-7 of the certified Mendocino County LUP requires that a 100-foot-wide buffer be established between development and ESHA, which can be reduced to a minimum of 50 feet under certain circumstances. While an overlay map was not provided to show the relationship between morning-glory plants and the approved development, the map submitted by the botanist shows plants from within 7 feet of the bluff edge up to 96 feet inland from the bluff edge (the approved development locates the house 53 feet from the bluff edge). Additionally, the botanist suggested a reduced buffer of 50 feet between coastal bluff morning-glory and development would be adequate with implementation of mitigation measures that included an erosion control barrier (using either plastic or weed-free straw (or rice) bales), and avoidance.

The Commission finds that the evidence substantiating the occurrence of the rare coastal bluff morning-glory within 100 feet of the proposed development prior to the applicant's commencement of development under CDP 1-83-158-E24 constitutes a changed circumstance that affects the projects' consistency with the natural resource protection policies of the Mendocino County certified LCP.

(2) Northern Bishop Pine Forest ESHA

The August 15, 2011 letter received from the applicant's botanist describes the subject parcel as consisting predominantly of Bishop Pine with occasional Grand Fir and Tan-oak, and a sparse understory of grasses and coastal shrubs and perennials.

While Bishop pine (*Pinus muricata*) is itself not considered a rare species, the total assemblage of plant species in an area where Bishop pine occurs (i.e., the vegetation community type) is treated as rare, as explained below. Its range is restricted to coastal California and northern Baja (Mexico) at elevations less than 300 meters (Hickman 1993; Jepson Flora Project 2012 [v 1.0]⁶). In some areas the species grows in pure stands, while in other areas individuals or small populations of the species are intermixed with other dominant tree species such as tanoak (*Lithocarpus densiflorus*), beach pine (*Pinus contorta* ssp. *contorta*), Bolander pine (*Pinus contorta* ssp. *bolanderi*), Douglas-fir (*Pseudotsuga menziesii*), coast redwood (*Sequoia sempervirens*), Mendocino cypress (*Hesperocyparis pygmaea*⁷), and others.

Background on Northern Bishop Pine Forest Community Classification

"Northern Bishop Pine Forest" is a natural community originally defined by Holland (1986) and described, in part, as follows:

"...Typically dominated by pure stands of *Pinus muricata*, with cones that remain closed on the trees for many years. The seeds are released in large quantities and germinate freely following fires..." (Holland 1986).

⁶ Jepson Flora Project. 2012 (v. 1.0). *Jepson eFlora*, *Pinus muricata*, J. Haller & N. Vivrette, <http://ucjeps.berkeley.edu/IJM.html> [accessed December 14, 2011]

⁷ Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., http://ucjeps.berkeley.edu/about_ICPN.html). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

The California Natural Diversity Database (CNDDDB; December 2011 version) lists only a single documented occurrence of this community type in the Monterey area, although a disclaimer of the database program is that not all occurrences of a rare species or natural community are listed in the CNDDDB (only those that have been reported to the agency and logged in to the database to date are listed). Northern Bishop Pine Forest is ranked in the CNDDDB as G2/S2.2⁸ (CNDDDB 2011).

As background, the limited number of rare vegetation types that are listed in the CNDDDB (referred to as “natural communities”) are based on the Holland classification scheme, even though the science of vegetation classification has evolved and has been refined over the past two decades, and the Holland classification is no longer used as the state standard.

The currently accepted vegetation classification system for the state that is standardly used by CDFG, CNPS, and other state and federal agencies, organizations, and consultants for survey and planning purposes is *A Manual of California Vegetation* (MCV; Sawyer, Keeler-Wolf, and Evens 2009). Unlike Holland, this vegetation classification system is based on the standard National Vegetation Classification System (NVCS) and includes alliances (a floristically defined vegetation unit identified by its dominant and/or characteristic species) and associations (the finer level of classification beneath alliance). Although the CNDDDB still maintains records of some of the old Holland vegetation types, these types are no longer the accepted standard, and the CDFG Vegetation Classification and Mapping Program (VegCAMP) has published more recent vegetation lists for the state (September 2003, October 2007, December 2009, September 2010) based on a standardized vegetation classification system that is currently being developed for California (and which is consistent with the MCV classification system). Although the rare vegetation types under the state’s new vegetation classification system have not yet been added to the CNDDDB to replace the old Holland types (but eventually are planned to be), global and state rarity rankings have been assigned for various types on the recent VegCAMP lists.

On the most recent VegCAMP list (September 2010), there is no longer a “Northern Bishop Pine Forest” type, but instead there is a Bishop pine forest alliance and various Bishop pine associations. Unlike the G2/S2.2 rankings of the no-longer-recognized “Northern Bishop Pine Forest” natural community, on this list the currently accepted Bishop pine alliance vegetation type is ranked G3/S3⁹. This ranking is considered “vulnerable and at moderate risk of extinction” at the global and state levels. Additionally CDFG Biogeographic Data Branch indicates that for alliances with State ranks of S1-S3, all associations within them are also considered to be highly imperiled¹⁰ and of high priority for inventory in the CNDDDB (VegCAMP 2010).

⁸ G = Global ranking; S = State ranking. For each ranking, 2 = 6-20 occurrences OR 1,000-3,000 individuals OR 2,000-10,000 acres; 3 = 21-80 occurrences or 3,000-10,000 individuals OR 10,000-50,000 acres; 4 = Apparently secure / not rare; 0.2 = fairly endangered in California.

⁹ In this case, the California Heritage (CNDDDB) ranking of G3/S3 describes the global rank (G rank) and the state rank (S rank) for Northern Bishop pine forest in California as vulnerable and at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation.

¹⁰ http://dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp (accessed December 14, 2011)

Recent Threats and Decline of Northern Bishop Pine Forest ESHA

As previously described, many Northern Bishop pine forests in Mendocino County have been extensively compromised due to threats from Pitch pine canker (*Fusarium subglutinis* f. sp. *pini*) and needle blight caused by *Dothistromoa septospora*, in addition to threats from development. Recent conversations with Giusti¹¹ (December 12, 2011) and Sholars¹² (December 13, 2011) highlighted development threats that include cutting trees; limiting fire regimes; mowing saplings (thereby limiting recruitment); and planting locally non-native species like Monterey pine that facilitate establishment of pathogens fatal to Bishop pines. In a presentation to the California Forest Pest Council on November 16, 2011, Greg Giusti and Teresa Sholars suggested possible reasons for decline of Northern Bishop pine forests including even-aged stands, lack of fire, higher pathogen numbers, and development, among others. The decline of Northern Bishop Pine forests will also be presented as a topic at the upcoming California Native Plant Society Conference held January 10-14, 2012 in San Diego (personal communication, T. Sholars).

Northern Bishop Pine Forest is ESHA

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities.*” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an area including plants or animals or their habitats **is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem.** The CA Department of Fish and Game (CDFG) recognizes special status natural communities as communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects¹³. These communities may or may not contain special status species or their habitat. As described above, the CA Department of Fish and Game *List of California Terrestrial Natural Communities*¹⁴ ranks Bishop Pine forest community type

¹¹ *Ibid.* 4

¹² *Ibid.* 5

¹³ Department of Fish and Game. November 24, 2009. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Available online at http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf

¹⁴ <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>. The rare natural communities are asterisked on this list.

as “G3S3¹⁵,” highly imperiled, and of high priority for inventory in the CNDDDB. Because of its relative rarity at the state and global levels, Northern Bishop pine forest meets the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. As described in *A Manual of California Vegetation*, “Bishop pine is a closed-cone conifer that produces cones at 5-6 years of age; cones remain closed for several years and open after fire or on hot days.”¹⁶ The concentrations of Bishop pine trees on the subject parcel could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop the identified building site including grading, paving, building construction, foot trampling, etc. Additionally, the site is located in a designated high fire hazard area; California law (PRC 4291) requires property owners and/or occupants to create 100 feet of defensible space around homes and buildings, which would result in even greater clearance of Bishop pine forest around the building site. Such activities would fragment or otherwise demolish the habitat, reduce habitat size, increase opportunities for establishment of nonnative and invasive species, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Given these threats, the Northern Bishop pine forest meets the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

Mendocino County has increasingly recognized Northern Bishop Pine forest as ESHA. Recent County actions on local coastal development permit applications where the County considered Northern Bishop Pine Forest areas to be ESHA include, but are not limited to CDP 10-2008 (County staff report dated November 22, 2010); CDP 4-2009/CDV 1-2009 (County staff report dated August 27, 2009); and CDP 22-2009 (County staff report dated December 21, 2009). Similarly, in recent years the Commission has appealed projects where Northern Bishop Pine Forest was not protected consistent with the resource protection requirements of the Mendocino County LCP, including but not limited to Appeal Nos. A-1-MEN-10-022 in Elk; A-1-MEN-11-001 in Gualala; and most recently, A-1-MEN-11-045 in Gualala (all awaiting information from applicants for de novo review by the Commission).

As noted above, Coastal Act Section 30240(a) states that ESHAs shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. In addition, Policy 3.1-7 of the certified Mendocino County LUP requires that a 100-foot-wide buffer be established between development and ESHA, which can be reduced to a minimum of 50 feet under certain circumstances.

Therefore, the Commission finds that the evidence substantiating the occurrence of Northern Bishop Pine forest within 100 feet of the proposed development prior to the applicant’s

¹⁵ In this case, the California Heritage (CNDDDB) ranking of G3/S3 describes the global rank (G rank) and the state rank (S rank) for Northern Bishop pine forest in California as vulnerable and at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to extirpation.

¹⁶ Cope 1993e, in Sawyer et al. 2009. *A Manual of California Vegetation*, Second Edition. California Native Plant Society, Sacramento. 1300 pp.

commencement of development under CDP 1-83-158-E24 constitutes a changed circumstance that affects the projects' consistency with the natural resource protection policies of the Mendocino County certified LCP.

(3) Conclusion

Therefore, the Commission finds that the extension request must be denied. The proposed development shall be set for a full hearing of the Commission at a future Commission meeting.

D. Information Needed for Commission Review of Application if Changed Circumstances Found

Section 13169(d)(1) of the Commission's administrative regulations indicates that, following a determination of changed circumstances by three (3) commissioners, the extension shall be denied and upon receipt of the filing fee described in Section 13055(a) of the regulations and upon submittal of additional information necessary to evaluate the effect of the changed circumstances, the development shall be set for a full hearing of the Commission.

Additional information from the applicant is needed to evaluate the effect of the changed circumstances and to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

A principal issue in the review of the project at such a future hearing would be the consistency of the development with the ESHA protection policies of the certified LCP. As noted above, LUP Policy 3.1-7 and CZC Section 20.496 contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game and County Planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than 50 feet in width. Development permitted within a buffer area is required to be generally the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

The proposed development is located within Northern Bishop Pine forest ESHA itself and within 100-foot buffer for coastal bluff morning-glory ESHA. As currently designed, the development consists of a two-story, 24-foot tall, 4,239 square foot single-family residence with a garage (2,696 square feet of building ground coverage); a septic system; and 6,700 square feet of pavement coverage for a driveway and water storage tank.

LUP Policy 3.1-7 and CZC Section 20.496.020 require development permitted within a buffer area to be generally the same as those uses permitted in the adjacent ESHA, and shall be (1) sited and designed to prevent impacts which would significantly degrade such areas, (2) compatible with the continuance of the habitat, and (3) allowed only if no other feasible site is available on the parcel and mitigation is provided to replace any particular value of the buffer lost by the development.

1. Submittal of Current Biological Report

As discussed previously, the Commission's letter to the applicant dated March 2, 2011 requested that if the qualified botanist confirms coastal bluff morning-glory occurs on the site, the report should include the following: (1) a thorough description, map, and an analysis of the species composition and distribution of ESHA (using the definitions of ESHA used in the Coastal Act and in the Commission's regulations) on the parcel in relation to the development; (2) identification of any impacts to sensitive species; (3) analysis and discussion of alternative plans for the residence and associated development that would avoid such impacts; and (4) recommendations for any needed buffer or other mitigation measures to avoid degradation of ESHA resources and ensure the development is compatible with the continuance of adjacent ESHA. The submittal received from the botanist August 15, 2011 states that "this is not a complete botanical survey, but a consultation addressing specific concerns...of the California Coastal Commission..."

The botanical submittal includes a map showing the locations of *Calystegia* plants. However an overlay map was not provided to show the relationship between morning-glory plants and development. The submittal additionally does not include an analysis of alternative plans for the residence and associated development. Lastly, as described above, the site analysis did not include a complete botanical survey, and did not document locations of Northern Bishop Pine trees in relation to the residential site and all related developments.

Therefore, to determine the presence and extent of all potential sensitive plant community at the project site, a current botanical survey prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The survey should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all environmentally sensitive habitat areas (ESHA) identified by the survey that addresses Northern Bishop Pine Forest not previously identified as ESHA in addition to the previously-identified coastal bluff morning-glory ESHA; and (2) identification of any impacts to sensitive species. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a legible scale. All proposed developments should be superimposed on the map, and the map should depict 50-foot and 100-foot buffers between all ESHAs and proposed development.

2. Alternatives Analysis for Proposed Reduced ESHA buffers

As a residential use is not listed in the LCP as an allowable use within rare plant ESHA and the Coastal Act only allows resource dependent uses within an ESHA, feasible alternatives must be identified that can avoid ESHA and the minimum 50-foot ESHA buffers. In this instance, feasible measures exist that can result in direct avoidance of coastal bluff morning-glory ESHA and that can minimize impacts to Northern Bishop Pine forest ESHA. Avoidance and minimization measures that should be examined include reducing the footprint of the house and driveway, and siting the development farther from the bluff and closer to the road such that less Northern Bishop Pine forest habitat is impacted.

An alternatives analysis must be provided that addresses the feasibility of different building site and access alternatives for the site, including alternatives and combinations of alternatives that

would avoid or minimize encroachment into rare plant and plant community ESHAs and ESHA buffers, and the “no project” alternative. Alternative building site and related access road locations should be evaluated that would avoid or minimize encroachment into ESHAs and ESHA buffers. Furthermore, different building envelope sizes should be evaluated, including smaller envelopes that would rely on a multi-story building design. The alternatives analysis should include: (1) a detailed description of each alternative and combination of alternatives; (2) what access improvements would be needed for each alternative (e.g., amount of grading and filling, equipment staging areas, etc.); (3) an analysis of ESHA impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of encroachment into rare plant or plant community ESHA, etc.); and (4) mitigation measures proposed for each alternative to minimize impacts to natural resources and sensitive habitats.

3. Revised ESHA Buffer Analysis

CZC Section 20.496.010 defines ESHA and includes “habitats of rare and endangered plants and animals.” Therefore, as ESHA, rare species habitats are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed. Furthermore, CZC 20.496.020 (A)(1)(f) specifies that where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

Therefore, if the alternatives analysis required under Item 2 above demonstrates there are no feasible alternatives that do not encroach into 100-foot buffer areas, a buffer analysis shall be provided for each alternative that includes a determination of adequate buffers as prescribed in Coastal Zoning Code 20.496.020(A)(1)(a-g) and should depict buffers in relation to proposed development on a map. The revised buffer analysis should include: (1) a thorough evaluation of the potential impacts and disturbance to ESHAs as a result of all elements of the proposed development; and (2) a discussion of any recommended mitigation measures to ensure that the development would be sited and designed in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the ESHA. Additionally, consultation and agreement by DFG that a protective buffer of less than 100 feet as determined pursuant to CZC 20.496.020 is adequate to protect the ESHA resource is required if development would occur within 100 feet of any delineated ESHA.

4. Submittal of Evidence of Adequate Water Supply and Sewer Capacity

Requirements for evidence of adequate water and sewer services have changed since the project was first approved in 1983. The Mendocino County LCP was certified in 1992. LUP Policy 3.8-1 requires that the adequacy of water and sewage services, among other factors, be evaluated when coastal development permit applications are granted or modified.

Additionally, LUP Policy 3.9-1, and Coastal Zoning Code (CZC) Section 20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a coastal development permit. The Mendocino Coastal Groundwater study recommends that proof of water be provided for development in Critical Water Resource Areas, including the area where the subject property is located.

It is unclear whether the water well referenced in the original 1983 permit 1-83-158 and approved under permit 1-83-76 was ever drilled. Regardless of whether or not the well currently exists, it is possible that the productivity of a well can decline over time, particularly if the well has been inactive for the past 25 years. Alternatively, the source of water at a well site that has not yet been drilled may have diminished over time. Lastly, depending on the outcome of information provided in Items 1-3 above, it may be necessary to relocate the siting of a well. Therefore, current evidence of an adequate water supply should be provided. This evidence can consist of a dry-summer-month hydrological study involving the drilling of a test water well(s) or other demonstration of proof of water to determine whether adequate water will be available to serve future development on the property, consistent with the certified LCP.

In terms of septic capacity, LUP Policy 3.8-1 as referenced above requires that the adequacy of water and sewage services, among other factors, be evaluated when coastal development permit applications are granted or modified. Additionally, LUP Policy 3.9-1, and Coastal Zoning Code (CZC) Section 20.532.095 require that the approving authority consider whether an adequate sewage capacity exists to serve proposed development before approving a coastal development permit. Therefore, evidence must be provided that demonstrates an adequate septic site exists to serve the proposed development.

5. Evidence of Lot Legality

Evidence of the legality of the parcel is needed to determine the legal development potential of the subject property. This analysis must include, but is not limited to, the following:

1. The historic chain of title for the affected parcel (APN 142-051-08) as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the applicant;
2. Information to establish lot legality for all APNs both on and adjacent to the site, held by the landowner in common contiguous ownership, including APN 142-051-08. Such information shall include copies of Certificates of Compliance and information demonstrating whether the real property in question complies with the provisions of the Subdivision Map Act and the local ordinances enacted pursuant thereto; and

3. For all property owned by the applicant, including all property on and adjacent to the site in common contiguous ownership, please indicate by overlay on a legal parcel map the location of all morning-glory and Bishop Pine forest located on the site.

6. Information Needed to Evaluate Project Consistency with Coastal Act Section 30010

It is possible that a development site does not exist that entirely avoids Northern Bishop Pine forest ESHA and that maintains a 50-foot minimum ESHA buffer, inconsistent with the use limitations of the certified LCP, including its references to 30240, and including LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4). If such impacts cannot be avoided, these policies mandate that the project be denied. However, if the Commission determines that it must allow a reasonable development on the subject property to avoid an unconstitutional taking of the applicant's property without payment of just compensation, then application of Coastal Act Section 30010 would overcome the presumption of denial. In this latter situation, the Commission would need to consider modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.¹⁷

If the project cannot be found consistent with the ESHA resource policies of the certified Mendocino County LCP, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. In order to make that evaluation, the Commission would need additional information from the applicants concerning the applicants' reasonable investment-backed expectations to make such determinations prior to holding a *de novo* hearing on the project as described below.

Therefore, depending on the outcome of the information requested above, the landowner(s) of the property that is the subject of the current CDP No. 1-83-158-E25 may be required to provide additional information to enable the Commission to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. Upon receipt and review of the requested information above, Commission staff will notify the applicant whether the following specific information is required for the property that is subject to the current CDP No. 1-83-158-E25 as well as all property in common contiguous ownership, *i.e.* any immediately adjacent property also owned by the applicant:

- a. When the property was acquired, and from whom;
- b. The purchase price paid for the property;
- c. The fair market value of the property at the time it was acquired and the basis upon which fair market value was derived;

¹⁷ For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA, even though it was not resource-dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

- d. Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).
- e. At the time the property was purchased, or at any subsequent time, whether the project been subject to any development restriction(s) (e.g., restrictive covenants, open space easements, etc.), other than the land use designations referred to in the preceding question;
- f. Whether the size or use of the property changed in any way since it was purchased. If so, identify the nature of the change, the circumstances and the relative date(s);
- g. Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it, and the relevant date(s), sales price(s), rent assessed, and the nature of the portion or interest sold or leased;
- h. A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.);
- i. The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property;
- j. The costs associated with ownership of the property on an annualized basis for the last five calendar years. These costs should include, but not necessarily be limited to, the following:
 - property taxes
 - property assessments
 - debt service, including mortgage and interest costs
 - operation and management costs;
- k. Whether apart from any rent received from leasing all or a portion of the property (see question #7 above), current or past use of the property generates any income. If the answer is yes, the amount of generated income on an annualized basis for the past five calendar years and a description of the use(s) that generates or has generated such income.

7. Submittal of County Parcel and House Size Data for Surrounding Permitted Developments

As discussed above, if the project cannot be found consistent with the ESHA resource policies of the certified Mendocino County LCP, the Commission will need to evaluate whether an alternative proposal could be approved, and if not, whether denial of the project would result in an unconstitutional taking of private property for public use. If development on the site must be approved to avoid an unconstitutional taking of private property for public use, the Commission

must evaluate whether the size of the proposed development is consistent with the natural resource policies of the Mendocino County certified LCP. Depending upon the outcome of the information requested above, the Commission may need to assess whether the applicant had a reasonable expectation to build a house and related development at the building footprint size that is currently proposed, given the average and largest sizes of surrounding homes in the immediate area at the time of purchase of the parcel.

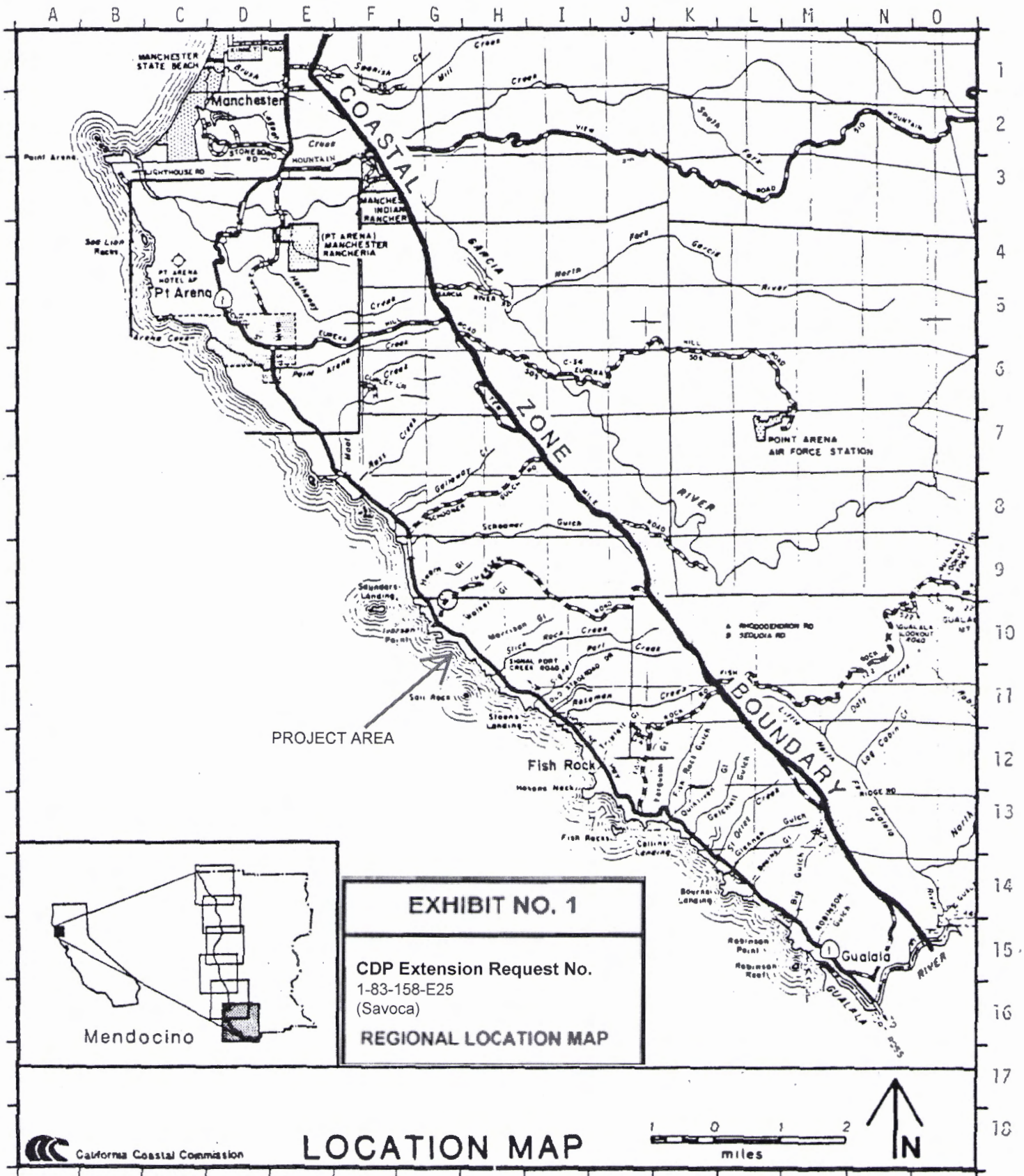
Therefore, the applicant must submit County records (typically obtained from the Office of the Tax Assessor and/or Planning and Building Services) that document total house ground cover square footage and garage ground cover square footage of other developed residential lots within the area surrounding the subject parcel that were present at the time of purchase of the subject parcel. The data shall be provided for all similarly-sized bluff-top parcels west of Highway One with a zoning designation of RR 5 or RR5(2) that occur within one mile of the subject property, and must include, but shall not be limited to the following:

- a. Assessor's Parcel Number;
- b. Parcel Physical Address;
- c. Parcel Owner Name;
- d. Whether the development is single-story or 2-story;
- e. Parcel size, in acres and square feet;
- f. Total house size, in square feet (including square footage of a second story, if applicable);
- g. Total garage size, in square feet (including square footage of a second story, if applicable);
- h. Total ground cover square footage (i.e., size of development footprints, excluding lofts and/or second stories) for house, garage, and related developments (e.g., decks, driveway, etc.); and
- i. Coastal development and building permit numbers for each parcel.

After our office has received the filing fee and information listed above, and determined that the information is complete, the applicant will be notified as to when the proposed development has been scheduled for a full hearing before the Commission.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Coastal Records Project Image
4. CDP No. 1-83-158
5. Site Plan Approved Under CDP No. 1-83-158
6. Botanical Consult Received August 15, 2011



County of Mendocino

EXHIBIT NO. 2

CDP Extension Request No.
1-83-158-E25
(Savoca)

VICINITY MAP / AERIAL
PHOTO





2009 AERIAL IMAGE OF SAVOCA PARCEL, APN 142-151-08

(boundary lines approximate) Image source: California Coastal Records Project, Image 200904448

EXHIBIT NO. 3

**CDP Extension Request
No. 1-83-158-E25
(Savoca)**

**COASTAL RECORDS
PROJECT AERIAL IMAGE**

CALIFORNIA COASTAL
NORTH COAST DISTRICT1656 UNION STREET, ROOM 150
P.O. BOX 4946
EUREKA, CALIFORNIA 95501
(707) 443-1623

EXHIBIT NO. 4

CDP Extension Request
No. 1-83-158-E25
SAVOCA
CDP NO. 1-83-158
(1 of 4)FILED: June 15, 1983
49th DAY: August 3, 1983
180th DAY: December 13, 1983
STAFF REPORT: June 23, 1983
MEETING OF: July 13-15, 1983
STAFF: George Kalisik/LPEDITED BY: *BF*STAFF REPORTADMINISTRATIVE ITEM

PERMIT NUMBER: 1-83-158

APPLICANT: Antonio Savoca

AGENT: Richard H. Perkins

PROJECT LOCATION: 30700 Highway One, Iverson Cove, Mendocino County.

PROJECT DESCRIPTION: Construction of a two-story, 4,239 square foot single family residence with garage, septic system, and water storage tank on a bluff top parcel.

LOT AREA 2 acres

ZONING Upland Residential 1 du/acre

BLDG. COVERAGE 2,696 square feet

LCP PLAN DESIGNATION Rural Residential - 2

PAVEMENT COVERAGE 6,700 square feet

PROJECT DENSITY 1 du/2 acres

LANDSCAPE COVERAGE 0

HEIGHT ABOVE FIN. GRADE 24 feet

LOCAL APPROVALS RECEIVED Mendocino County Planning and Health Departments

EXECUTIVE DIRECTOR'S DETERMINATION. Pursuant to PRC Sec. 30624, the Executive Director hereby issues a permit for the proposed development, subject to Standard Conditions adopted by the Commission and Special Conditions below, on the grounds that, as conditioned, the development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

ADDITIONAL FINDINGS:

1. Public Access - The applicant's parcel is located between the sea and the first public road and opportunities for public lateral access exist along the shoreline at the base of the coastal bluff. A lateral access easement along the shoreline portion of the parcel has been recorded in connection with a previously granted permit (1-83-76), and the current project is, therefore, consistent with the public access provisions of the 1976 Coastal Act.
2. Bluff Top Development - The applicant's parcel consists of a relatively flat bluff top which descends steeply to the shoreline below. The proposed residence will be sited a minimum of 53 feet from the bluff edge. The applicant's consulting geologist has indicated that unless conditions change, the site is free from potentially dangerous geologic conditions. The setback as proposed is also considered adequate to protect views from the beach area at and near Iverson Cove. The proposed project is, therefore, consistent with the provisions of the 1976 Coastal Act requiring minimization of hazards and protection of visual resources.

STANDARD CONDITIONS: See Attachment 2

SPECIAL CONDITIONS: None

CALIFORNIA COASTAL COMMISSION



NORTH COAST DISTRICT
1650 UNION STREET, ROOM 150
F.O. BOX 1046
EMERYVILLE, CALIFORNIA 94601
(907) 443-1323

COASTAL DEVELOPMENT PERMIT

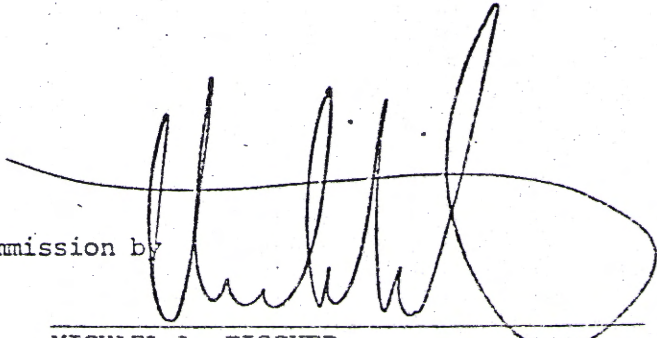
No. 1-83-158Page 1 of 2On July 14, 1983, the California Coastal Commission granted toAntonio Savoca

this permit for the development described below, subject to the attached
Standard and Special conditions.

Construction of a two-story, 4,239 sq. ft. single family residence
with garage, septic system, and water storage tank on a bluff top parcel.

A.P.#142-051-08

Issued on behalf of the California Coastal Commission by


MICHAEL L. FISCHER
Executive Director
and
RICHARD G. RAYBURN
District Director

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of
this permit and agrees to abide by all terms and
conditions thereof.

Date

Signature of Permittee

Coast 11: 7/31

2 of 4

COASTAL DEVELOPMENT PERMIT NO.

Page 2 of 2

STANDARD CONDITIONS:

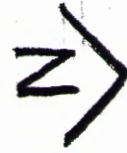
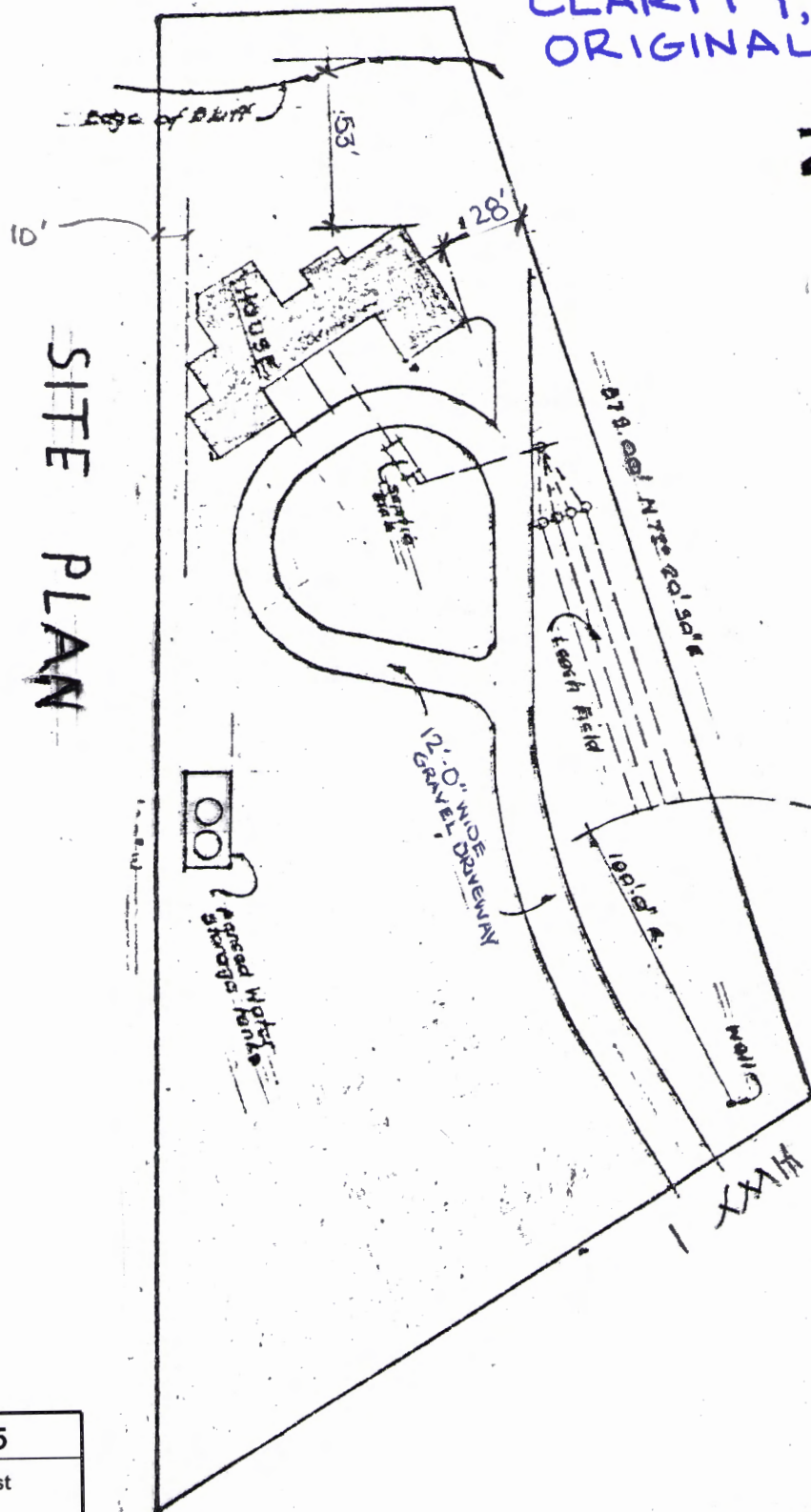
1. Notice of Receipt and Acknowledgement. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration.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

SPECIAL CONDITIONS:

None

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NOT TO SCALE. NOTE: SETBACK
NUMBERS RETOUCED FOR
CLARITY, FROM
ORIGINAL PLANS.



SITE PLAN

GUALALA

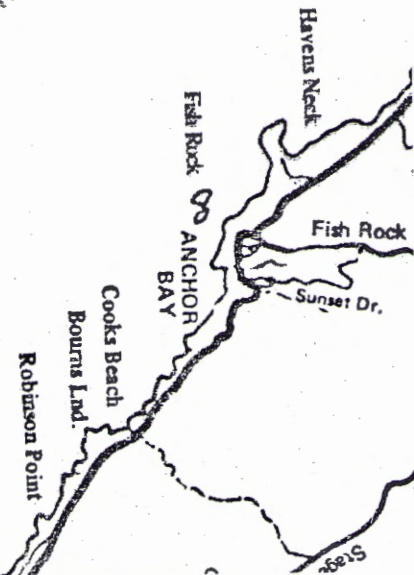


EXHIBIT NO. 5

CDP Extension Request
No. 1-83-158-E25
SAVOCA
SITE PLAN APPROVED
UNDER CDP NO. 1-83-158
(ENLARGED)

Botanical consult for:

Antonio Savoca
7971 Valderrama Ct.
Gainesville, Virginia 20155
phone # (703) 754-3374
fax # (703) 754-8799

RECEIVED

AUG 15 2011

CALIFORNIA
COASTAL COMMISSION

For APN 142-051-008 at:

30700 Hwy.1
Iverson Cove
Mendocino Co.
Calif.
Coastal Development Permit # 1-83-158-E25

By:

Alison Gardner
Box 838
Albion
CA 95410
(707) 937-5201

EXHIBIT NO. 6

CDP Extension Request
No. 1-83-158-E25
SAVOCA
BOTANICAL CONSULT
RECEIVED AUGUST 15, 2011
(1 of 5)

Field work done on July 26, 2011; 1 ½ hrs. spent in field.

Introduction:

This is not a complete botanical survey, but a consultation addressing specific concerns in a letter from Tamara Gedik (Coastal Program Analyst) of the California Coastal Commission, sent on March 2, 2011 to Mr. Savoca.

Description of Parcel:

The east end of the parcel runs along Hwy.1, 255', from mile post 9.13 to m.p. 9.21. It slopes down sharply from the edge of the highway and quickly levels out. The sides taper in towards the west, and also slant to the north, creating a long trapezoid with a 95' bluff edge. Except for the eastern edge, the parcel is very close to level, and I would foresee minimal erosion problems. The dominant vegetation on the parcel is Bishop Pine, with occasional Grand Fir and Tan-oak. The understory is minimal because of the shade from the mature forest.

Findings:

I visited the parcel on July 26th, hoping to find the morning glories in bloom. They were neither blooming nor budded, so my identification is based solely on leaf shape and growth habit. If it is requested, I could revisit the site in late Aug. or Sept. hoping to find blooms, but as

they are in forest and receive very little sun, I would expect them to bloom rarely.

I found three populations of *Calystegia purpurata* on the parcel. I located all three on the enclosed vegetation map. Although *Calystegia purpurata* ssp. *purpurata* generally blooms earlier than *Calystegia purpurata* ssp. *saxicola*, there is some overlap in the bloom time and they are known to hybridize. There is a precedent in Mendocino County on a parcel on the Albion headlands just south of the Albion river, due to a botanical survey less than 10 years ago by Gordon McBride, not to protect the *Calystegia purpurata* if it is hybridized and has characteristics intermediate to the two species. The northern population of *Calystegia purpurata* is most likely a hybrid, as it has the leaf shape closer to ssp. *purpurata*, but the weaker growth habit of ssp. *saxicola*. The southern and central populations have a rounder leaf shape more typical of ssp. *saxicola*, and even if not pure *Calystegia purpurata* ssp. *saxicola*, clearly carry mostly those genes, and in my opinion merit protection.

Species Composition within the ESHA of the *Calystegia*:

The dominant plant species is Bishop pine with a sparse understory of grasses and coastal shrubs and perennials. The following species list is for within the ESHA in which the *Calystegia purpurata* ssp. *saxicola* is growing.

Binomial	Common name
<i>Abies grandis</i>	grand fir
<i>Achillea millefolium</i>	yarrow
<i>Agrostis hallii</i>	Hall's bentgrass
<i>Anthoxanthum odoratum</i>	sweet vernal grass
<i>Baccharis pilularis</i> ssp. <i>consanguineum</i>	coyote bush
<i>Brodiaea terrestris</i>	brodiaea
<i>Bromus carinatus</i>	California brome
<i>Calystegia purpurata</i> ssp. <i>saxicola</i>	coastal bluff morning glory
<i>Cirsium vulgare</i>	bull thistle
<i>Elymus glaucus</i>	blue wild-rye
<i>Erechtites arguta</i>	Australian fireweed
<i>Erigeron glaucus</i>	seaside daisy
<i>Eriophyllum staechadifolium</i>	lizard tail
<i>Galium californicum</i>	California bedstraw

<i>Garrya elliptica</i>	silk tassel bush
<i>Gnaphalium purpureum</i>	cudweed
<i>Goodyera oblongata</i>	rattlesnake orchid
<i>Heterotheca sessiliflora ssp. bolanderi</i>	golden aster
<i>Holcus lanatus</i>	velvet grass
<i>Hypochoeris radicata</i>	coast dandelion
<i>Iris douglasiana</i>	Douglas iris
<i>Lessingia filaginifolia ssp. californica</i>	California aster
<i>Linum bienne</i>	blue flax
<i>Lithocarpus densiflorus</i>	tan oak
<i>Lonicera hispidula</i>	twining honeysuckle
<i>Pinus muricata</i>	bishop pine
<i>Pipera elongata</i>	rein orchid
<i>Plantago lanceolata</i>	common plantain
<i>Polygala californica</i>	California milkwort
<i>Pteridium aquilinum var. pubescens</i>	bracken fern
<i>Rubus ursinus</i>	California blackberry
<i>Rumex acetosella</i>	sheep sorrel
<i>Sanicula crassicaulis</i>	snakeroot
<i>Satureja douglasii</i>	yerba buena
<i>Sonchus oleraceus</i>	smooth sow thistle
<i>Stachys rigida</i>	horse mint
<i>Vaccinium ovatum</i>	black huckleberry

Possible Impacts to *Calytstegia purpurata ssp. saxicola* and Avoidance of such Impacts:

The coastal bluff morning glory is impacted by traffic, mowing, heavy erosion and heavy sedimentation, but is tolerant of light sedimentation. The act of building a home, so long as the home is not located where the plants are growing, or where building supplies or soil will be piled

on it, or where workers will walk on it should not have a significant impact on the plants. A more significant impact would be traffic, mowing or landscaping during future habitation of the proposed home.

I would suggest that as the parcel is nearly flat and will have little problem with erosion and sedimentation, and as the parcel is small, that a 50' buffer zone with a soil barrier, either plastic or straw bales, would be adequate to protect the plants during the building process. If straw bales are used, they should be wheat, oat or rice, rather than local grasses, to avoid introducing any more invasive European grasses. I would also suggest that the landowners and any future tenants or landowners be made aware of the areas in which the plant is growing, so that they can avoid walking on, mowing or planting in those areas. If these precautions are taken, there should be no adverse impacts on the coastal bluff morning glories.

Vegetation Map

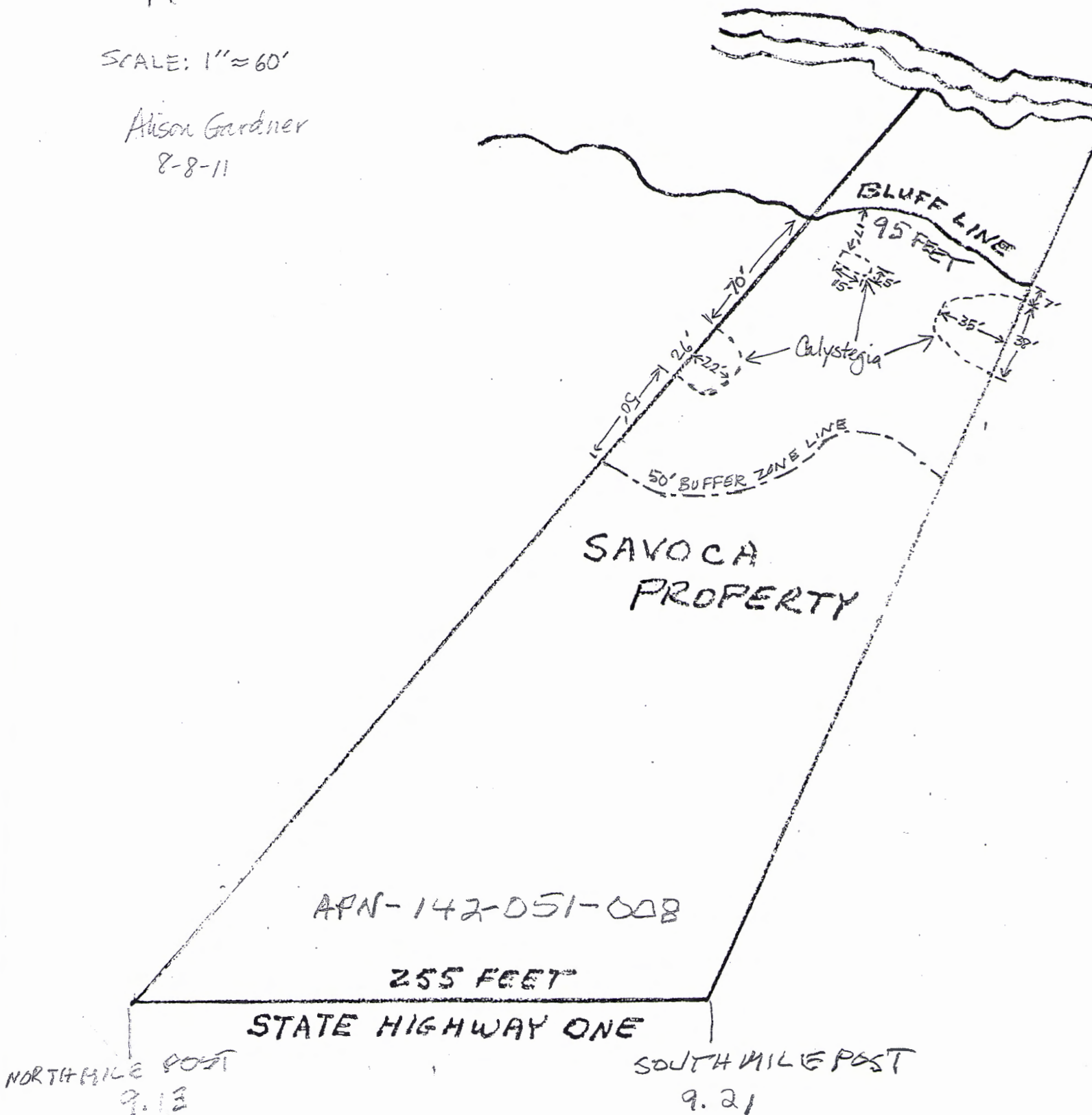
N →

SCALE: 1" = 60'

Alison Gardner

8-8-11

PACIFIC OCEAN



5 of 5