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F 6a

**ADDENDUM TO COMMISSION PACKET
FOR
ENERGY, OCEAN RESOURCES, and
FEDERAL CONSISTENCY**

For Friday, June 17, 2011

Item No. F 6a

CD-063-10
Bureau of Indian Affairs

■ Correspondence

F 6a



Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525
Ph: (707) 487-9255 Fax: (707) 487-0930

Kara Brundin Miller
Chairperson

Agenda Number F6a
Application Number CD-063-10

Denise Padgette
Vice Chairperson

Position: In Favor of the Project

Loren Bommelyn
Council Secretary

June 8, 2011

Joel Bravo
Treasurer

California Coastal Commission
Attn: Larry Simon
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Marian Lopez
Council Member

SMITH RIVER RANCHERIA TESTIMONY FOR THE BARTLEY, BRIDGE, AND HASWELL PARCELS FEE-TO-TRUST PROJECT

Dr. Joseph
Giovannetti
Council Member

SUMMARY FACTS

Lenora Hall
Council Member

The Tribe and the CCC staff achieved a compromise on a reduced-intensity project plan

Russ Crabtree
Tribal
Administrator

Proposed housing density is consistent with surrounding density

The Project will set a positive precedent for growth

The Project will have a positive effect on aesthetics

The Project provides community-serving facilities

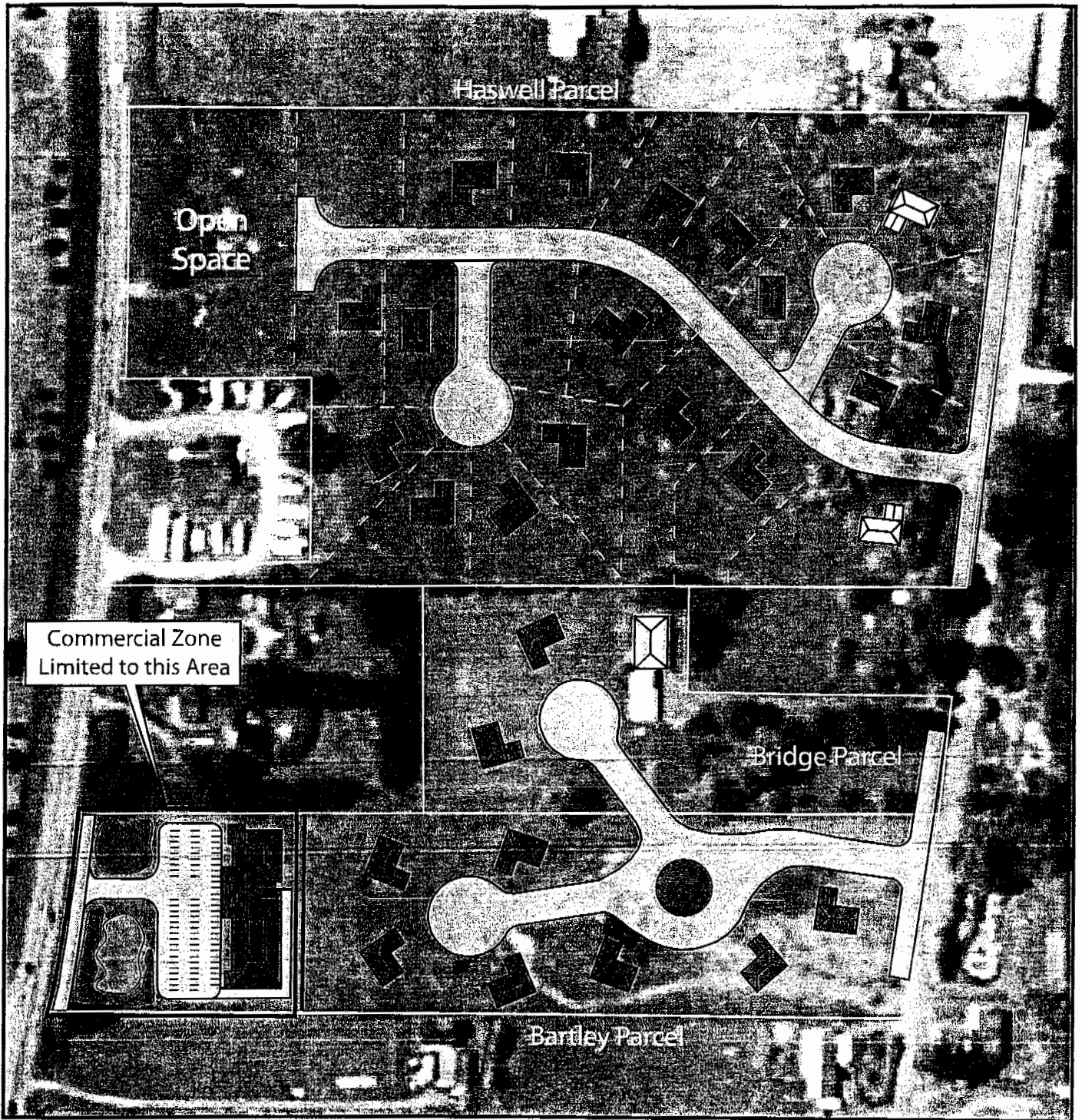
The Tribe has adequate land planning regulations in place

COMPROMISE AND REVISED SITE PLAN






The Tribe has acted in good faith and cooperation to address the concerns of the CCC staff. The Tribe has revised the project site plan to achieve the planning goals of both the CCC and the Tribe. This compromise demonstrates the Tribe's commitment to protection of the coast and to smart growth .

Briefly, the agreed upon revisions consist of the following:

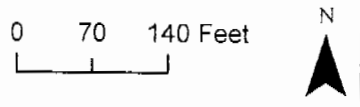
- Commercial / retail space to be situated as close to the existing commercial center of the town of Smith River; thus it will be contained on the Bartley Parcel
- The total commercial/retail space was reduced from 18,000 square feet to 15,000 square feet
- Commercial space removed on the Haswell Parcel, which lowered the housing density by 15%
- Tribal ordinance will codify and restrict landuses to the revised project description



Proposed Improvements

 Detention Basin / Wetland	 Existing Residence	 Road
 Landscape w/ Native Plants	 Proposed Residence or Retail Space	

0 70 140 Feet



Aerial Photo: USGS, 2005

Exhibit 1. Revised Site Plan

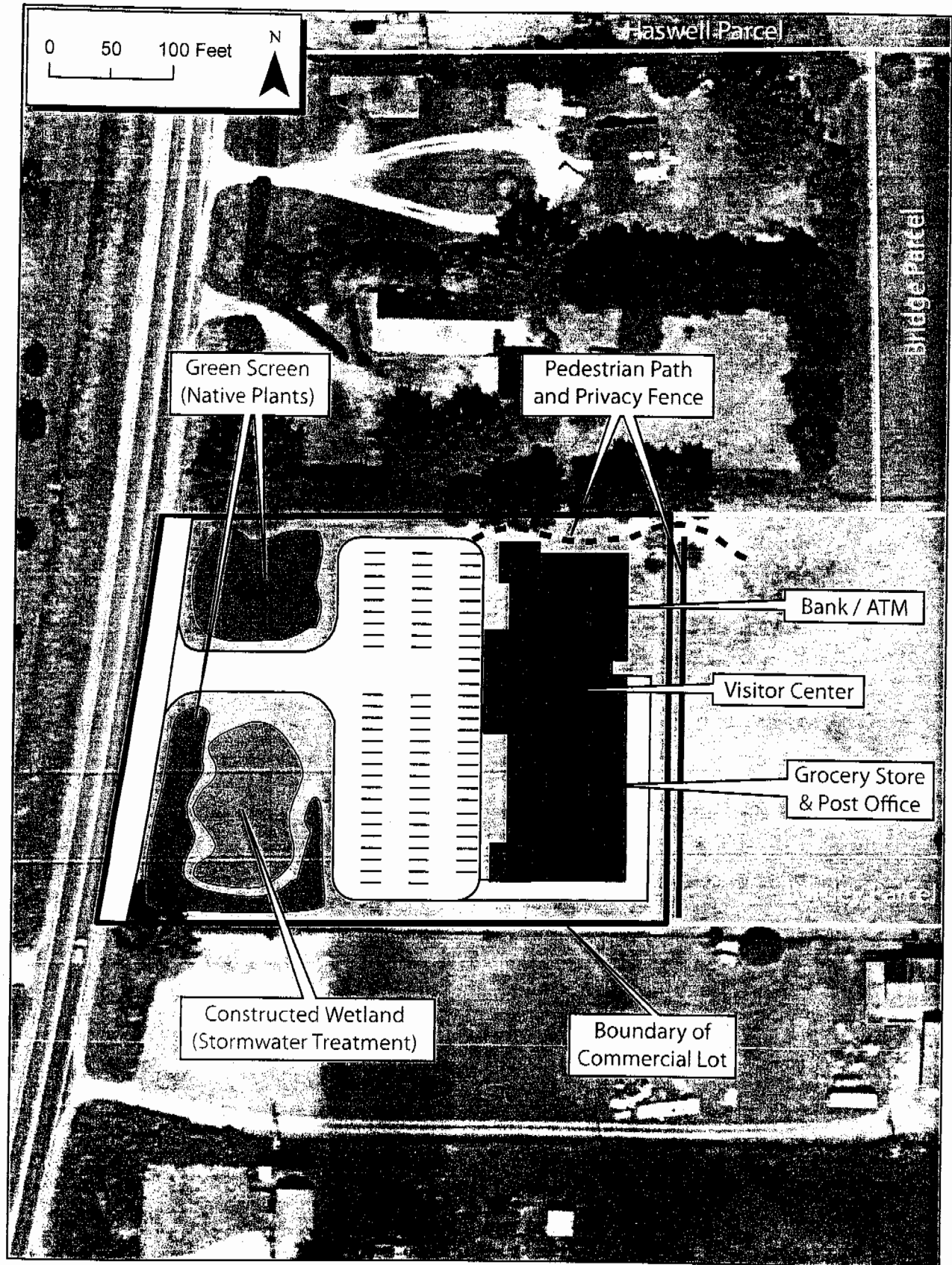


Exhibit 2. Diagram of Proposed Commercial Buildings and Landscape

THE PROPOSED LAND USE IS CONSISTENT WITH THE COASTAL ACT

Proposed housing density is consistent with the range of existing housing density:

- The proposed housing density is not the most intensive density in the vicinity
- Densities of 2 to 4 houses per acre are common
 - plus a trailer park (13.4 units per acre)

The County's primary reason for limiting building density is sewage disposal problems

- The Tribe spent \$ 5 million to build a municipal sewage treatment plant

Smith River Rancheria must provide housing for hundreds of its members !

- Zoning policies intended for vacation homes are inappropriate for Indian communities
- Density = Community
- the Bartley/Bridge/Haswell project a not-for-profit housing development

The proposed project clusters housing not to increase density to maximize profits for a developer, but to maximize community values. Clustering the homes encourages a "village" concept and encourages tribal community-building and cultural preservation.

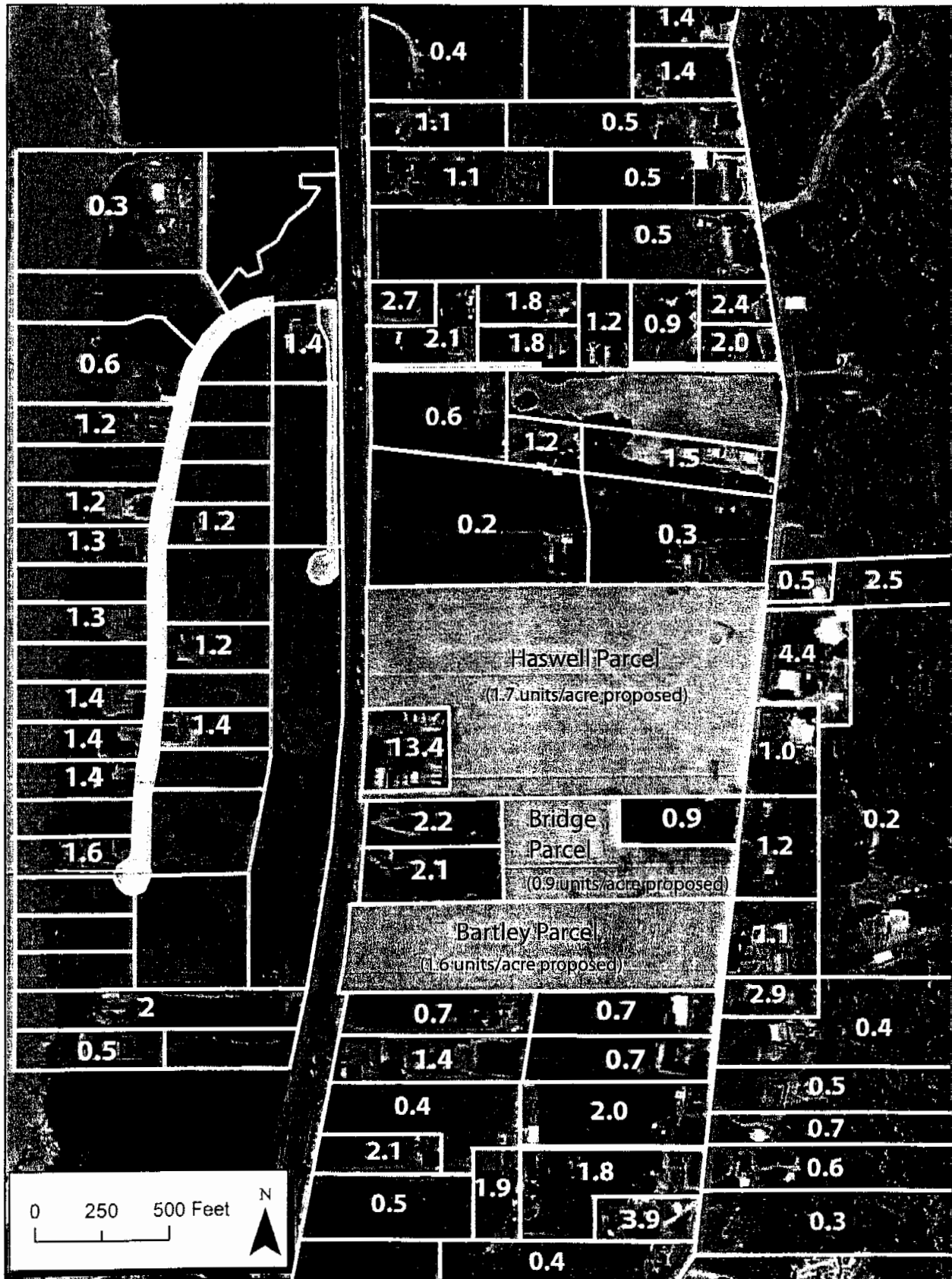


Figure 1. Housing Density in the Vicinity Varies from 0.2 to 13.4 units/acre

THE PROJECT PROVIDES COMMUNITY-SERVING FACILITIES

The proposed commercial space is dedicated to community-serving facilities such as:

Post Office

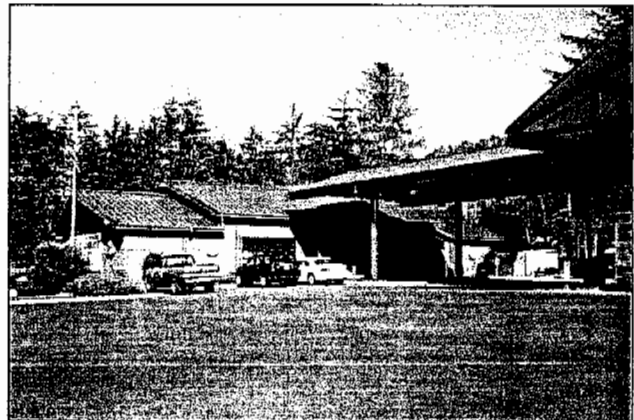
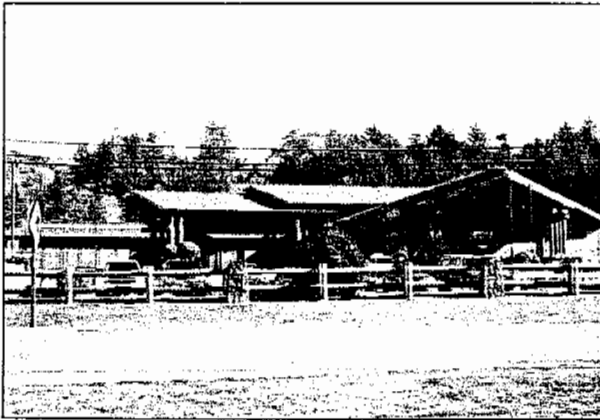
Visitors' center

Bank branch or ATM machine

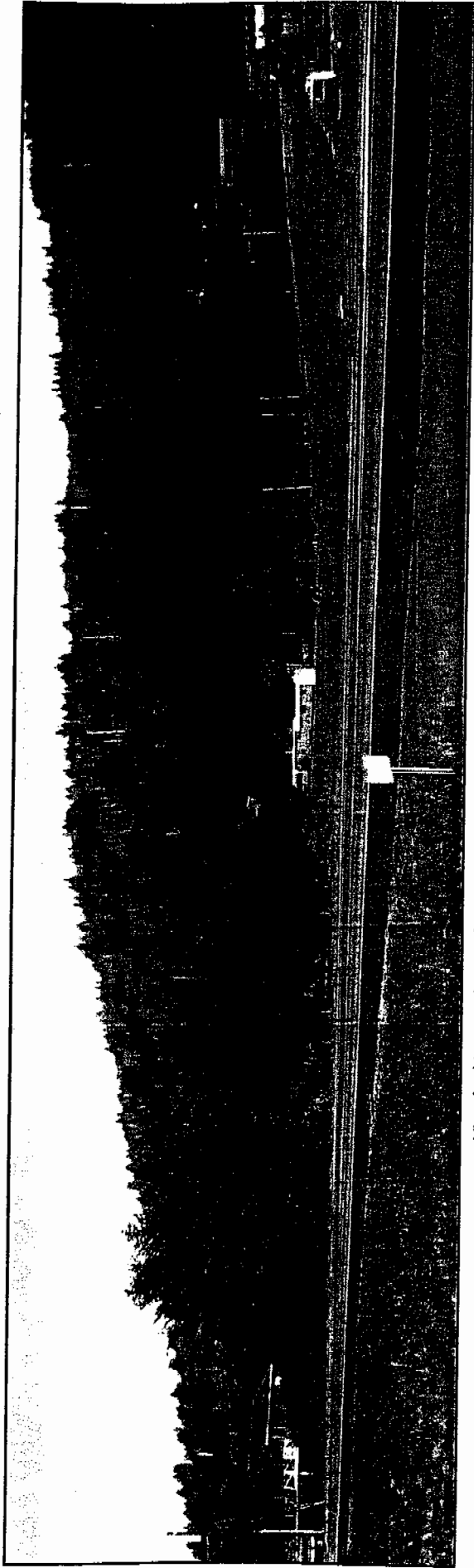
Convenience store

THE PROJECT WILL HAVE A POSITIVE EFFECT ON AESTHETICS OF THE REGION

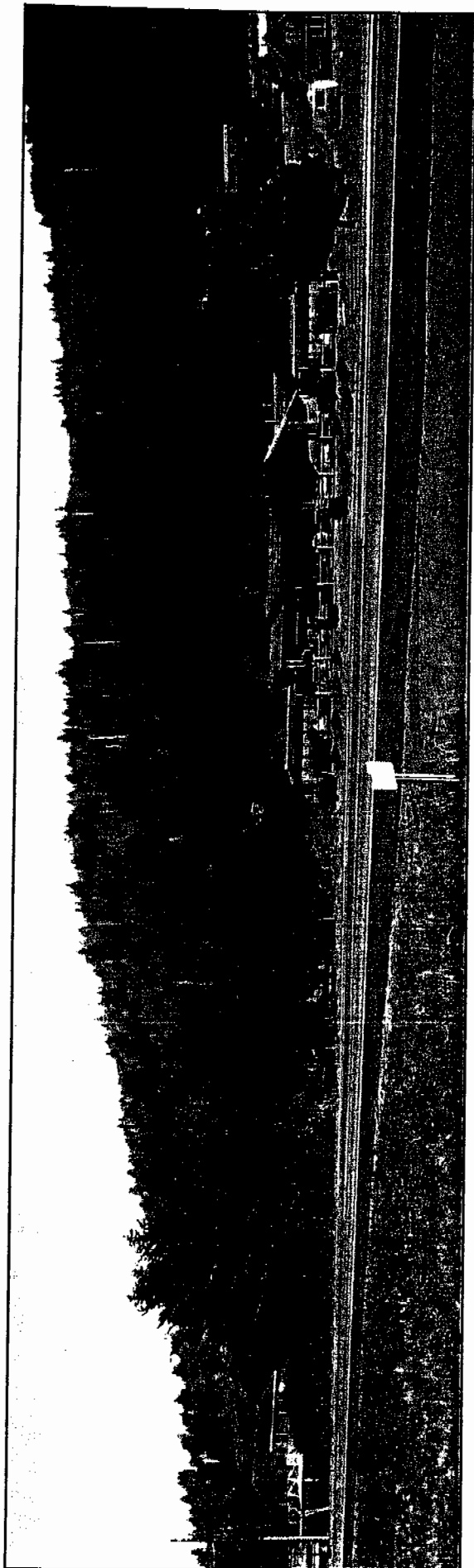
TRIBAL ARCHITECTURE DEFINES THE REGION



Examples of Tribal Architecture: "Lost Coast Lodge" Architectural Style



View looking northeast of Highway 101 corridor, then the Bartley Parcel, and the hills beyond.



View looking northeast of the same photo of the Bartley Parcel. An architectural rendering of the retail / commercial building and native landscaping has been added to the photo. Figure 2.

THE TRIBE HAS ADEQUATE LAND PLANNING REGULATIONS IN PLACE

The Tribe has policies and laws in place to promote orderly and responsible development

Smith River Rancheria Planning Elements:

- approved Master Plan and Zoning Map
- Tribal Land Ordinance 08-02 and Planning Board
- Mission: *Promotion of orderly and responsible development*
- New ordinance: Bartley/Bridge/Haswell Properties Specific Land Use Ordinance

SMITH RIVER RANCHERIA BARTLEY/BRIDGE/HASWELL PROPERTIES SPECIFIC LAND USE DESIGNATION ORDINANCE

The Smith River Rancheria ("Tribe") is a federally recognized Indian tribe eligible for all rights and privileges afforded to recognized Tribes. The Constitution of the Smith River Rancheria, as approved by the Bureau of Indian Affairs, establishes that the Smith River Rancheria Tribal Council ("Tribal Council") is the governing body of the Smith River Rancheria. The Tribal Council is empowered under the Constitution of the Smith River Rancheria, Article IV, Section 1, subsection (a) to represent the Tribe and act in all matters that concern the general welfare of the Tribe.

The Tribal Council is further empowered under the Constitution of the Smith River Rancheria, Article IV, section 1 subsections (f), (l) and (j) to protect and preserve the wildlife and natural resources of the Tribe's ancestral territory, to regulate hunting, fishing and trapping within the Tribe's ancestral territory, to manage and control land held by the Tribe and to exercise powers as needed to carry out these duties. Article IV, section 1, subsections (a), (o), and (p) vests the Tribal Council with both judicial authority and the authority to prescribe the rules and process for exercise of said authority; and the Tribe's Constitution, as approved of by the Bureau of Indian Affairs, further provides that the authority and jurisdiction of the Tribe shall extend to all land within the Tribe's ancestral territory.

Pursuant to the Tribe's Constitution and inherent sovereign powers, the Tribal Council hereby enacts this Ordinance which shall hereinafter be cited as the "Smith River Rancheria Bartley/Bridge/Haswell Specific Land Use Designation Ordinance" ("Ordinance").

§1. Findings and Purpose

The Smith River Rancheria finds and declares that: -

Section 1.1 Throughout the years, the Tribal Council has acquired lands within its ancestral territory to address the significant housing needs of its members. Once acquired, the Tribal Council commenced the trust application process to place the lands into trust, to be held by the federal government, for the benefit of the Tribe. The trust application for these parcels was submitted to the Bureau of Indian Affairs ("BIA") in 2009.

F 6a

June 8, 2011

To: California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

From: Ronald Hibler

RE: CD-063-10 F6a

Dear Commission members,

You would think that at my age, I would stop being astonished at the shenanigans of a government run agency. I am in receipt of the latest Staff Recommendation on Consistency Determination, for Consistency Determination Number CD-063-10, edition number F6a. In this recommendation, the Commission Staff recommended a YES vote to the project. Imagine my surprise when after receiving edition numbers W25b, and Th6a, both recommending a NO vote, that after a non-publicized meeting with the appellant BIA, the previous NO vote recommendations changed to a YES vote recommendation. I oppose that YES vote for the reasons stated below and question the motives of the Commission's Staff in changing its stance on the matter from prior findings in which the staff recommended a NO vote.

In the draft of Staff Recommendation on Consistency Determination CD-063-10, edition W25b, and CD-063-10, edition Th 6a, the Staff recommendation was an unequivocal NO vote due in part to the following paragraphs taken from the text of each draft:

"Should all 26 SFRs be constructed, the effective parcel size in the residential development would appear to be significantly smaller than adjacent and nearby parcels in this area. The Commission believes this would establish an adverse precedent for future development of existing parcels, either by the Tribe in future fee-to-trust applications or by other property owners through changes to the County general plan and zoning ordinance. The introduction of commercial/retail/office development in this area would establish a similar adverse precedent. For these reasons, the proposed commercial/retail/office development along Highway 101 on the western edge of the project site, and the proposed density of the residential development across the balance of the project site - both of which would go forward should the subject parcels be taken into trust by the BIA for the Smith River Rancheria - are not consistent with the concentration of development and visual resource policies of the Coastal Act. The Commission must also examine the potential coastal zone effects of placing the subject parcel into federal trust status, and the subsequent elimination of state and local government land use and development regulatory controls. Currently, there is no absolute assurance that once the subject parcels are placed into federal trust status that the proposed residential housing and commercial/retail project would be implemented. In theory, any number of alternative projects could subsequently be proposed and developed for the project site and these would not be subject to local and state regulatory development controls, including coastal development permitting under the Del Norte County LCP and any potential permit appeal authority the Commission itself might have for a project on the subject parcels. The Commission would retain

its Coastal Zone Management Act federal consistency authority over the subject parcel once it is placed in federal trust status, but Commission review would only be triggered if a federal permit, authorization, or funding is needed for future proposed development on the parcel.”

The Staff went on to proffer a compromise on what development would be in accordance with the Coastal Act and garner a YES vote:

“ In order for the proposed trust transfer to be found consistent with these Coastal Act policies, the project would need to be modified as follows:

1. Revised Site Plan for Residential Development. *The Bureau of Indian Affairs will prepare a revised site plan for residential development on APNs 101-110-09, 101-110-06, and 101-110-27 for Smith River Rancheria that includes no more than eleven single family residences and associated accessways/driveways off Ocean View Drive. The revised site plan will not include commercial/retail/office space development on the subject parcels. The revised site plan will include landscape buffering along Highway 101 to minimize impacts to scenic visual resources. The revised site plan will retain all currently proposed SFR design standards; avoidance, minimization, and mitigation measures to protect coastal resources on the project site; and construction and post-construction best management practices.*

2. Agreement for Future Development. *The Bureau of Indian Affairs will modify the project to include adoption by Smith River Rancheria, and submittal to the Executive Director for his review and concurrence, Tribal Ordinances or other equivalent mechanisms CD-063-10 (Bureau of Indian Affairs) which: (1) restrict future development on the subject parcels (APNs 101-110-09, 101-110-06, and 101-110-27) to eleven single family residences; (2) include provisions that the ordinances will not be altered without authorization by the Commission; and (3) include a waiver of sovereign immunity. Absent such modifications, the Commission could not find the proposed project consistent with the concentration of development and scenic and visual resource policies of the CCMP (Coastal Act Sections 30250(a) and 30251).*

As noted above, the draft specifically states that the “Commission could not find the proposed project consistent with the concentration of development and scenic and visual resource policies of the CCMP (Coastal Act Sections 30250(a) and 30251.” The above further states that by allowing the property to be placed in federal trust status, “any number of alternative projects could subsequently be proposed and developed for the project site and these would not be subject to local and state regulatory development controls, including coastal development permitting under the Del Norte County LCP and any potential permit appeal authority the Commission itself might have for a project on the subject parcels.” For those and many other fair and untainted reasons, the Staff Recommendation was a NO vote. The Staff fairly and thoughtfully set forth another arrangement where the BIA could use the land in a manner in keeping with the mandate of the California Coastal Commission and the protection of the coastal environment.

After three (3) consecutive postponements of this matter before the Commission, and each recommendation was for a NO vote, I have been informed that tribe members and BIA staff met with Coastal Commission Staff. As a result of that conference, I have been informed that Commission members convinced the Staff to compromise its decision. The Staff then produced

version F6a of CD-063-10 with a hearing date of 6/17/2011. Suddenly the Staff recommendation was to drop all requirements and concerns and allow the BIA carte blanche in their wishes. Suddenly, the commission CAN find the proposed project consistent with the concentration of development and scenic and visual resource policies of the CCMP (Coastal Act Sections 30250(a) and 30251. Suddenly the concern that upon a YES vote, that *“any number of alternative projects could subsequently be proposed and developed for the project site and these would not be subject to local and state regulatory development controls, including coastal development permitting under the Del Norte County LCP and any potential permit appeal authority the Commission itself might have for a project on the subject parcels”* was of no concern at all. Suddenly all of the negative impacts that the urban sprawl of the SFR’s, the over densities and the blight of the addition of commercial properties along Highway 101, no longer were negative or detractive from the scenic character of the area or the recreational value of the area. As far as I know, the Coastal Act has not changed since the first Staff Recommendation of a NO vote on this matter. As far as I know, the persons analyzing the impact of this matter are the same who saw the impact as negative in prior analysis and recommended a NO vote on this matter. How is it that suddenly, after a private meeting with the BIA, the Sections stated as reasons why the project should not be approved, are now stated as reasons why the project should be approved?

As stated above directly from the Commission Staff Recommendation, *“Should all 26 SFRs be constructed, the effective parcel size in the residential development would appear to be significantly smaller than adjacent and nearby parcels in this area. The Commission believes this would establish an adverse precedent for future development of existing parcels, either by the Tribe in future fee-to-trust applications or by other property owners through changes to the County general plan and zoning ordinance. The introduction of commercial/retail/office development in this area would establish a similar adverse precedent.”* By approving this project, not just Smith River, but the entire State of California will be effected. How will the Commission deny requests by others when such a lax precedence has been set by approving this project. The effectiveness and relevance of the Coastal Commission and the Coastal Act will be severely diminished by its own hand with a YES vote in this matter.

As we move on to draft F6a, the Staff Recommendation is a YES vote for the plan with only one change. That change is a reduction in the square footage of the commercial element to be reduced by 3,000 square feet. The requirement for modifications to the plan as presented by the Staff to reduce the number of SFR’s has been dropped completely. The requirement of elimination of commercial/retail/office space development has been dropped completely. The need for landscape buffering along Highway 101 to minimize impacts to scenic visual resources has been dropped completely. The requirement that the approval of the revised project (eleven SFR’s only) include a waiver of sovereign immunity, in order to insure future compliance with Coastal Commission standards, was dropped and changed to read that the Coastal Commission would be able to only comment on any changes made by the tribe to said agreement.

The tribe has used housing density rates as a reason why their proposal should be approved. The tribe presents Exhibit 7 as proof of housing density. Who prepared this and why is the Coastal Commission using an unsubstantiated document, presented by the supplicant, as an accurate description of the area and housing densities? Exhibit 7 is self serving and should not be used as fact. However, even using the unsubstantiated Exhibit 7, I have totaled up the housing density per occupied lot on the exhibit provided to be 1.46 units/acre. This figure is skewed by a mobile home park which is supposed to be used by transient vacationers and not as a permanent residence. When the mobile home park is subtracted from the housing density in the area, per Exhibit 7, the housing density figure becomes 1.27 units/acre. The BIA is proposing 1.6 units/acre on the Bartley Parcel, and 1.7 units/acre on the Haswell Parcel, saying that these densities are near the average density of the area. This is a false statement in any regard, statistically speaking, even using their own unsubstantiated exhibit. Furthermore, on a lot by lot basis of one or two acres spread throughout the Smith River domain, an increase of a fraction of a unit per acre may not seem like much. But when that fraction is applied to 22.6 contiguous acres, as stated in the project, the visual difference is massive and will substantially change the rural ambiance of the area. Furthermore, Oceanview Drive is a simple two lane road that is so narrow that it has no shoulder. The proposed plan has no housing access directly to Highway 101. All traffic to the proposed 26 SFR's would have to use Oceanview Drive, in a concentrated area due to over density. There is no access to Highway 101 from North Indian Road, to the Oregon border (a span of over 2.5 miles). The increase in traffic on Oceanview Drive will be substantial. Existing home values will be negatively impacted due to the increase in urbanization and associated traffic and crime. All that the Coastal Commission is charged to protect will be abandoned and lost.

Furthermore, in the report, Coastal Commission Staff fails to take into consideration the wildlife of the area, specifically the elk herds. Documentation has been presented to the Commission that indicates housing densities that exceed the current standards of the area will greatly impact the migration and feeding of the elk herds. The project parcels are areas that the herd uses to feed and rest. The impact of losing that habitat will also affect the enjoyment of the visitors and residents of the area who pause to appreciate nature and the natural beauty of the area when the elk are present. Destroying the habitat by over populating the proposed parcels will forever negatively impact the area for all the citizens of Smith River and visitors alike. Again, everything the Coastal Commission stands for will be for not if this project is allowed to go forward.

It is my belief that the Coastal Commission's Staff Recommendation initial response to the project request by the BIA was honest and forthright, and in keeping with the Coastal Act, without undue or improper influence from any party. The initial response of a recommendation of a NO vote was a correct interpretation of the Coastal Act arrived at by an unbiased, uninfluenced, unextorted staff. It is unreasonable to believe that Commission Staff's initial interpretation of the Coastal Act was so flawed and incorrect that it could be capitulated to the extreme opposite of its original findings. The casual observer is only left to reasonably believe that the BIA or some voting Commissioner(s) has exerted some improper influence upon the Staff to convince Staff to change its recommendation.

Sadly, It is my opinion that the Staff Recommendation of the California Coastal Commission has been adulterated to take in the concerns and desires only of the BIA and not the entire people of the State of California for whom the Coastal Commission was set up to protect in the first place. We are one America, one California, and we should all be painted with the same brush, without favoritism or bias. If the Commission votes YES for this current proposal, the Commission will appear to have succumbed to the demands of the BIA for reasons that can only be suspect and will remain suspect for as long as the Commission continues to change the rules in the middle of the game without sufficient logical and legal cause. Any Coastal Commission member who votes to approve this proposal will forever be stained with suspicion for the manner in which it was passed. Any Coastal Commission member who votes to approve this proposal will diminish the Coastal Act and the effectiveness of the Commission in the future and will have dishonored their office and responsibilities to the people of the State of California. Be honorable. Vote NO on CD-063-10. (See attached seven (7) signatures of local residents supporting this opinion)

Ronald Hibler, Smith River, CA

Ronald Hibler 6-8-11

I support the forgoing statement by Ronald Hibler and urge the Commission to vote NO on CD-063-10.

Barbara J Neal 6/8/11
Barbara J Neal

Carol S. Blount June 8, 2011
CAROL S. BLOUNT

Nan Marie Wineinger June 9, 2011
NAN MARIE WINEINGER

Thomas P Farrell June 9 2011
Thomas P Farrell

Paul L Moran June 9, 2011
13760 OCEAN VIEW DRIVE

Harley L. Askew June 9, 2011
Harley L. Askew

D. N. Scott 6-9-2011
DAVIS N. SCOTT

~~Julia E. Otis June 9, 2011~~
JULIA E. OTIS

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE (415) 904-5200
 FAX (415) 904-5400
 TDD (415) 597-5885



F6a

STAFF RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-063-10
Staff:	LJS-SF
File Date:	12/10/2010
60 th Day:	2/8/2011
75 th Day:	2/23/2011
Extended to:	6/17/2011
Commission Meeting:	6/17/2011

FEDERAL AGENCY: **Bureau of Indian Affairs**

PROJECT
LOCATION:

Between Highway 101 and Ocean View Drive, three miles northwest of Smith River, Del Norte County (APNs 101-110-09, 101-110-06, and 101-110-27)(**Exhibits 1 and 2**)

PROJECT
DESCRIPTION:

Placement of three parcels totaling 22.6 acres into Federal trust status for use by the Smith River Rancheria, and development of 26 single family residences and 15,000 square feet of community-serving commercial/retail space.

SUBSTANTIVE
FILE DOCUMENTS:

See Page 19

STAFF RECOMMENDATION: Concurrence. Motion is on Page 6

EXECUTIVE SUMMARY

The Coastal Commission received a consistency determination from the Bureau of Indian Affairs (BIA) for the transfer of three parcels of land, totaling approximately 22.6 acres and currently owned in fee title by the Smith River Rancheria (Tribe), into federal trust status with the United States as trustee on behalf of the Tribe. The Tribe proposes to construct 26 single-family residences (SFR) on 19.1 acres and 15,000 square-feet of community-serving commercial/retail space on 1.7 acres of the 22.6-acre project site. The proposed SFRs would be single- or two-story buildings between 1,000 and 3,000 square-feet in floor-area size. The three subject parcels are not contiguous with the Rancheria's current trust lands to the south and are located on the east (inland) side of Highway 101 approximately one-half mile north of the center of the Rancheria, which itself is located three miles northwest of the town of Smith River in Del Norte County.

Existing residential development surrounding the project area (excepting a mobile home park adjacent to the Haswell parcel) ranges in density from 0.4 to 8.8 dwelling units per two acres. The proposed residential density for the subject parcels is equivalent to three dwelling units per two acres. While this exceeds the density that would be allowed under the LCP general plan and zoning ordinance for the parcels (one dwelling unit per two acres), it is similar to the current SFR development density of parcels in the project area. The proposed density of residential development on the subject parcels is similar to that of surrounding parcels, the vast majority of which are developed with SFRs. There are adequate Tribal and public utilities to serve the proposed developments, and there are no sensitive coastal resources on the parcels that would be adversely affected by their development.

The fee-to-trust transfer would provide for the introduction of a commercial/retail land use in a rural area of the coastal zone that is essentially devoid of such a use at the present time. The BIA and the Tribe have modified the proposed commercial/retail project by restricting such development to the western end of southern Bartley parcel and reducing the square-footage of the commercial element from 18,000 to 15,000 square-feet. The BIA and the Tribe also clarified that the commercial/retail project would be limited to community-serving businesses such as a grocery store, post office, bank, and visitor center, in an effort to serve the needs of the surrounding residential community. The proposed commercial development is designed at an appropriate scale to serve the well-documented need for additional Tribal housing on and adjacent to the Rancheria as well as the greater residential community north of Lopez Creek. The proposed residential development is consistent with the type and density of existing residential development in the project area, and the modified and reduced-sized commercial project represents a proper balance between a local, community-serving project and a project designed to serve a wider geographical area or which would provide duplicate commercial and retail services currently available in the center of the Rancheria or further south in Smith River.

The proposed commercial and residential structures would not block or adversely scenic public views along Highway 101, and would not generate significant adverse effects on scenic public views along Ocean View Drive. The proposed development would introduce additional single family residential structures across essentially vacant parcels but this would occur within a larger geographical area that is currently subdivided and developed with SFRs. The incorporation by

the tribe of residential architectural design standards will minimize visual resource impacts to public views along Ocean View Drive. Likewise, the proposed design of the commercial/retail center at the western end of the Bartley parcel will be consistent with other Tribal buildings that incorporate timber and stone elements to blend in with the landscape. The size and design of the proposed commercial/retail center, and its location just north of Lopez Creek at the southern end of the project area, will minimize any adverse effects on the developed rural landscape of the coastal zone between Lopez Creek and the Oregon border.

The Tribe's well-documented need and longstanding effort to increase the housing stock for Tribal members, and the Tribe's willingness to modify the proposed commercial/retail project to address the Commission's concerns over the introduction of such a land use in the project area, are sufficient reasons to determine that the proposed residential and commercial projects will in fact be the developments that will occur on the subject parcels after completion of the fee-to-trust transfer by the BIA, and that sufficient mechanisms are available to afford the Commission the ability to review any future development not currently contemplated. The proposal is consistent with the concentration of development, adequacy of public services, and visual resource protection policies of the California Coastal Management Program (Coastal Act Sections 30250(a) and 30251).

Plant and animal field surveys were conducted in 2006 and 2009 and concluded that the parcels contain only disturbed habitat types and that no listed species are present. In addition, portions of the parcels are mowed, graded, or urbanized with asphalt pavement, landscaping, and structure and utility placement. The proposed project would not adversely affect any environmentally sensitive habitat, includes design measures and buffer areas to avoid development near two mapped swales, and includes water quality protection and mitigation measures. The project is consistent with the water quality and environmentally sensitive habitat policies of the CCMP (Coastal Act Sections 30231 and 30240).

The project area is located within the ancestral lands of the Tolowa Indians. Field surveys of the project area conducted in 2005, 2006, and 2007 concluded that no historic properties, potentially eligible historic properties, archaeological resources, or cultural resources were located on the project site. The project includes response and mitigation measures should discovery of such resources occur during construction activities. The project will not adversely affect cultural resources and is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

STAFF SUMMARY AND RECOMMENDATION

I. PROJECT DESCRIPTION. The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the transfer of three parcels of land, totaling approximately 22.6 acres and currently owned in fee title by the Smith River Rancheria (Tribe), into federal trust status with the United States as trustee on behalf of the Tribe (**Exhibits 1 and 2**). Originally the Tribe proposed to construct 18,000 square-feet of commercial/retail space in five buildings on the Haswell and Bartley parcels. After considering comments made at the Commission's April

14, 2011, public hearing and after further discussions with Commission staff, the Tribe eliminated the northern commercial center from the Haswell parcel and reduced the overall size of the commercial project. After the subject parcels are placed into federal trust status, the Smith River Rancheria now proposes to construct 26 single family residences (SFR; three existing SFRs would remain as well) across the three parcels and 15,000 square-feet of community-serving commercial/retail space in a building on the western edge of the Bartley parcel fronting Highway 101 (**Exhibits 3 and 4**). Approximately 1.8 acres at the northwest corner of the Haswell parcel would be designated as open space. The subject properties are described as follows:

- Bartley Parcel: 6.0 acres, APN 101-110-09, currently vacant
- Bridge (a.k.a. Scott) Parcel: 3.41 acres, APN 101-110-06, currently one single-family home present
- Haswell Parcel: 13.18, APN 101-110-27, currently two single-family homes present

The three subject parcels are not contiguous with the Rancheria's current trust lands to the south. The parcels are located on the east (inland) side of Highway 101 approximately one-half mile north of the center of the Rancheria, which itself is located three miles northwest of the town of Smith River on the extreme northern California coast in Del Norte County. The parcels are bounded on the east by Ocean View Drive, which runs in a north-south direction east of and parallel to Highway 101 (**Exhibits 5 and 6**). The commercial/retail project building would be located on the west side of the Bartley parcel and would take vehicle access from Highway 101. Vehicle access to the 26 single-family residential structures (SFR) and the three existing SFRs would be from Ocean View Drive via two cul-de-sac drives, one serving the larger Haswell parcel and one serving the two southern parcels.

Seven SFRs are proposed for the Bartley parcel, two SFRs for the Bridge parcel (in addition to the one existing SFR), and 17 SFRs for the Haswell parcel (in addition to the two existing SFRs). The proposed SFRs would be single- or two-story buildings between 1,000 and 3,000 square-feet in floor-area size. The proposed commercial/retail building would provide space for community-serving businesses such as a grocery store, post office, bank, and visitor center. The BIA states that existing utility services in the area (e.g., water, electricity, natural gas/propane, communications) can adequately serve the proposed SFRs and commercial uses. Water would be supplied by either the Rancheria's water supply system or the Smith River Community Services District. All the proposed structures would be served by the Rancheria's newly constructed wastewater treatment system; the septic systems associated with the three existing SFRs on the Haswell and Bridge parcels would be retired and those SFRs connected to the wastewater treatment system. A stormwater detention basin (approximately 0.2 acres in size) would be constructed on the Bartley parcel to collect runoff from the parking lot serving the commercial development. Best management practices would be implemented during project construction to avoid adverse impacts to water quality, drainage, soils, air quality, and traffic.

The consistency determination includes a project *Environmental Assessment* (Natural Investigations Company, October 2010) which provides background information on the Rancheria:

The 190-acre Smith River Rancheria was established in 1908 as one of the three serving the Tolowa people. However, as part of the California Rancheria Act of 1958, the Smith River Rancheria was terminated. During the period of termination, the land that formerly comprised the Rancheria was allotted to individual members and as much as 40% of that land was sold to non-Indians. On December 15, 1983, the Tolowa Indians of the Smith River Rancheria was restored as a federally-recognized Indian tribe as a result of the Hardwick v. United States, a class-action suit involving 17 California Indian rancherias unlawfully terminated by the United States Bureau of Indian Affairs....

The Rancheria is a checkerboard configuration totaling 534 acres split between 45 different parcels with various trust and fee holdings. The Tribe operates a number of different facilities on Rancheria lands including administrative offices, the Lucky 7 Casino, Lucky 7 Fuel Mart, Howonquet Community Center/Headstart and Day Care Facility, elder housing, rental units, United Indian Health Services, and Community and Family Services.

The *Environmental Assessment* included an analysis of two alternatives to the proposed project and a discussion of alternatives that were eliminated from further consideration. The Reduced Intensity Alternative includes placing the three subject parcels into federal trust for the benefit of the Tribe but structural development would be reduced by approximately one-half:

. . . only 4 residential units would be developed on the Bartley parcel and no new residential units on the Bridge parcel. The commercial/retail space on the Bartley parcel would be reduced to 4,000 square feet. On the Haswell parcel, only 9 residential units would be developed, and the commercial/retail space would be reduced to 5,000 square feet.

Under the No-Action Alternative, the three parcels would not be placed into federal trust and the parcels would not be developed as described in the proposed or reduced intensity alternatives. Jurisdiction of the parcels would remain with Del Norte County and the Tribe could develop the parcels consistent with current County zoning.

The Environmental Assessment describes other project alternatives that were eliminated from further consideration by the Tribe:

The Tribe considered other locations for the development of tribal housing and commercial/retail. However, the Tribe does not own or control property that is sufficient in size and otherwise appropriate for the development of these land uses. Many other available properties, for example, do not have frontage on Highway 101; other available properties are located far outside of the Rancheria boundaries. As a result, no reasonable off-site alternatives have been identified or evaluated in greater detail in the EA.

The *Environmental Assessment* states that the proposed development project land uses:

. . . are not entirely consistent with the permitted uses of the current zoning. However, the proposed uses do not represent a significant change in planned land uses, because such land uses are not expected to result in significant conflicts with adjacent residences.

The current Del Norte County General Plan land use designation for the three parcels is Rural Residential – 1 dwelling unit per two acres (RR 1/2), and the current County zoning for the parcels is Rural Residential Agriculture (RRA-2) with a minimum parcel size of two acres. Except for a nearby mobile home park which has a density of 13.4 units per acre, residential housing density on parcels surrounding the project area currently ranges from 0.4 to 8.8 dwelling units per two acres (**Exhibit 7**). The proposed residential density for the three subject parcels (29 SFRs over 19.1 acres) is equivalent to 3.0 dwelling units per two acres. While this exceeds the density that would be allowed under the general plan and zoning ordinance for the parcels, it is similar to the current SFR development density of parcels in the project area. The proposed community-serving commercial/retail project would not be allowed under the general plan or zoning ordinance applicable to the subject parcels. Should the subject parcels be placed into federal trust status for the Smith River Rancheria, the parcels would no longer be subject to the County's general plan or zoning designation or to other state and local government land use and development regulatory controls.

II. FEDERAL AGENCY'S CONSISTENCY DETERMINATION. The BIA has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

III. STAFF RECOMMENDATION.

The staff recommends that the Commission take the following action:

Motion: I move that the Commission **concur** with the BIA's consistency determination CD-063-10 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Determination:

The Commission hereby **concurs** with the consistency determination made by the BIA for the proposed project, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

IV. Findings and Declarations:

The Commission finds and declares as follows:

A. Concentration of Development/Scenic and Visual Resources. The Coastal Act provides the following:

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The BIA proposes to place three parcels into federal trust status for the benefit of Smith River Rancheria. Originally the Tribe proposed to construct 18,000 square-feet of commercial/retail space in five buildings on the Haswell and Bartley parcels. After considering comments made at the Commission's April 14, 2011, public hearing and after further discussions with Commission staff, the Tribe eliminated the northern commercial center from the Haswell parcel and reduced the overall size of the commercial project. After the subject parcels are placed into federal trust status, the Smith River Rancheria now proposes to construct 26 single family residences (SFR; three existing SFRs would remain as well) across the three parcels and 15,000 square-feet of community-serving commercial/retail space in a building on the western edge of the Bartley parcel fronting Highway 101.

The subject parcels owned in fee title by the Smith River Rancheria are currently subject to the development policies of the North Coastal Subarea – Area 1 Planning Unit of the Del Norte County Local Coastal Program (LCP). The project *Environmental Assessment* states that the current Del Norte County General Plan and LCP land use plan land use designation for the three parcels is Rural Residential - 1 dwelling unit per two acres (RR 1/2):

Rural Residential (RR) – This category is intended to maintain the character of rural areas and minimize the services required by smaller lot development. The primary use of these lands is single-family residential (one unit per specified minimum parcel). Uses permitted within residential areas include single-family residences, the keeping of horses for use by the owner, light agricultural activities, and accessory buildings appropriate to residential uses (Del Norte County General Plan, Coastal Element, pg. 330).

The *Environmental Assessment* next states that the Del Norte County zoning designation and the LCP implementation plan designation for all three parcels is “Rural Residential Agriculture” (RRA-2; a minimum parcel size of two acres) and includes this excerpt from the County Zoning Ordinance:

Rural Residential (RRA) – This district classification is designed for the orderly development of rural homesites in the one to five acre category, to encourage a suitable environment for family life for those who desire rural residential land. Since there is a limited area within the county which is suitable for rural residential land, this district is intended to protect rural residential uses against encroachment by other uses which may be in conflict therewith (Del Norte County Code Section 21.17.010). Principal permitted uses include: one-family residences, animal husbandry, and agricultural uses (Del Norte County Code Section 21.17.020).

Section 21.17.010 goes on to state that:

The provisions of this section, therefore, shall be liberally interpreted to apply to rural residential and agricultural pursuits and related services, to the end that no other use shall be permitted and no regulation shall be deemed or construed to interfere with any normal accessory use conducted in conjunction therewith. It is the intention of this section to prevent the further subdividing of rural residential land into lot sizes which might threaten the rural quality of areas zoned RRA and changes of zone from RRA to another classification are to be made only where such uses are in accord with the General Plan or an adopted specific plan.

The project area is located within the Ocean View Drive specific area of the LCP, which extends from the Oregon state line southward past the project site and down to the mouth of the Smith River. The LCP states that residential development is rural in character and concentrated in the southern portion, eastern midpoint, at Gilbert Creek, and at the state line. Intensive agriculture is concentrated between Highway 101 and Ocean View Drive in the northern area and limited small parcel hobby farming occurs on larger rural residential lots across the area. Existing residential development surrounding the project area (excepting a mobile home park adjacent to the Haswell parcel) ranges in density from 0.4 to 8.8 dwelling units per two acres. The proposed residential density for the subject parcels is equivalent to three dwelling units per two acres. While this exceeds the density that would be allowed under the general plan and zoning ordinance for the parcels (one dwelling unit per two acres), it is similar to the current SFR development density of parcels in the project area (**Exhibit 7**).

However, because the Commission is reviewing the proposed trust transfer and subsequent development plan through a federal consistency determination, the standard of review is the Chapter 3 policies of the Coastal Act and not the aforementioned policies of the Del Norte County LCP. Because this LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance to the Commission as it examines the project's consistency with the development and visual resource policies of Sections 30250(a) and 30251 of the Coastal Act. However, the LCP is not the legal standard of review, and thus, the "one residential unit per two acres" provision of the LCP for the Rural Residential lands in the project area is treated as guidance.

After the April 14, 2011, Commission hearing and at the request of the Commission staff, the Tribe submitted to the Commission and the BIA elements of its 2008 five-year strategic plan, a 2006 map illustrating a ten-year list of future projects for the Rancheria, a 2006 land use zoning map of the Rancheria, and additional information on the need and justification for the proposed residential and commercial development on the subject parcels (**Exhibits 8-10**). Regarding its strategic planning, the Tribe noted that it has:

. . . approved a Strategic Plan and Master Plan of tribal lands. Both of these documents are outdated (2006 and 2008) and we are in the process of updating them as several key components have changed. While the subject property is identified in all three documents, obviously some of the proposed projects on other parcels have changed. Please keep this in mind as you review the attached maps. What is important is that the Tribe does have a process in determining the best uses of land and that we have always identified these parcels of residential development. All projects have to go through an internal planning process prior to the Tribe approving them and as such, priorities and needs and proposed uses change over time

The Tribe informed the Commission staff that approximately 165 members are currently in need of housing and that in order for the Tribe to meet that demand, it must plan for and develop housing at locations and at densities that will encourage a village concept, tribal community-building, and cultural preservation. At the Commission staff's request, the Tribe submitted additional justification for the density of the proposed housing and for the location of the proposed commercial/retail center:

- The Tribe has over 1,400 members yet only 148 acres of the Tribe's original Rancheria are held in Federal trust status on behalf of the Tribe. The remaining portion is a combination of allotments to Tribal members and private property held by non-Tribal members. The proposed housing density would therefore alleviate some of the demand for housing for tribal members.
- The existing character of this rural area is a mixture of residential structures at densities generally between one and two units per acre. The proposed project would generate a residential density of 1.5 units per acre.

- The proposed SFRs would be located adjacent to existing residences, the majority of adjacent parcels are already developed with SFRs, and utilities are sufficient to serve the proposed residential and commercial development. All buildings will be served by the Tribe's existing wastewater treatment system.
- The Rancheria is a checkerboard configuration totaling 534 acres split between 45 different parcels with various trust and fee holdings. It investigated placing the proposed commercial development closer to the center of the Rancheria and its administrative offices, casino, fuel mart, and social services facilities but was unable to identify appropriate properties that could accommodate the proposed development.
- The Tribe considered other locations for the housing and commercial developments but it does not own or control property that is sufficient in size and otherwise appropriate for these proposed land uses; other commercially-zoned parcels that the tribe owns are master-planned for other Tribal functions (e.g., health center, elder housing). To address Coastal Commission concerns, the Tribe eliminated the proposed commercial uses on the northern-most parcel and proposed to restrict such uses to the Bartley parcel, along Highway 101 at the southern end of the project area closest to the Rancheria proper.
- The Tribe believes that the proposed housing development and community-serving commercial/retail projects are complementary, are appropriately scaled to the surrounding area, and will provide needed services to Tribal members and non-Tribal residents in the Smith River Rancheria.

To concur with the BIA's proposed fee-to-trust transfer and the subsequent residential and commercial development to be implemented by the Tribe, the Commission must determine that these actions are consistent with the development policies of Section 30250(a) of the Coastal Act. The BIA stated in its Environmental Assessment for the project that the proposed residential and commercial development would not result in significant adverse conflicts with adjacent land uses, would be located adjacent to existing residential development of similar density, and that the majority of adjacent parcels are currently developed. The BIA concluded that the reasons for restricting development in this area related to the adequacy of public services available to serve the development have been addressed by the construction of the Tribe's wastewater treatment plant and the capacity of other public utilities to serve the proposed developments, and that the project would not adversely affect coastal resources on or adjacent to the three subject parcels.

The Commission agrees that the proposed density of residential development on the subject parcels is similar to that of surrounding parcels, the vast majority of which are developed with SFRs. The Commission also agrees that there are adequate Tribal and public utilities to serve the proposed developments, and that there are no sensitive coastal resources on the parcels that would be adversely affected by their development. The Commission is left then to consider the proposed commercial development on the Bartley parcel. The fee-to-trust transfer would provide for the introduction of a commercial/retail land use in a rural area of the coastal zone that is essentially devoid of such a use at the present time.

Lopez Creek currently serves as a natural boundary between: (1) the commercial, administrative/government, and residential development found on the Tribe's trust and fee lands within the Rancheria boundary, and other private development near the Smith River to the south; and (2) the more rural residential and agricultural lands to the north and extending to the Oregon border (**Exhibits 11 and 12**). The proposed development by the Tribe that would occur subsequent to the fee-to-trust transfer of the subject parcels to the BIA would alter the pattern of rural residential development in this area of the coastal zone.

The Commission notes that the BIA and the Tribe have modified the proposed commercial/retail project by restricting such development to the western end of southern Bartley parcel and reducing the square-footage of the commercial element from 18,000 to 15,000 square-feet. The BIA and the Tribe also clarified that the commercial/retail project would be limited to community-serving businesses such as a grocery store, post office, bank, and visitor center, in an effort to serve the needs of the surrounding residential community. However, this small facility would also serve the visiting public and under Coastal Act Section 30222 has priority over other types of commercial development. The Commission believes that approving even limited commercial development north of Lopez Creek carries some risk of setting an adverse precedent for future commercial development between Lopez Creek and the Oregon border. However, the Commission also believes that the proposed commercial development is designed at an appropriate scale to serve the well-documented need for additional Tribal housing on and adjacent to the Rancheria as well as the greater residential community north of Lopez Creek.

While the Commission acknowledges that the previous approval of the Tribe's new wastewater treatment facility came with the understanding that it would be sized to accommodate future development of Tribal properties in the area, it also recognizes the letters of concern from several nearby residents about the scale of the proposed residential and commercial development (**Exhibit 13**). The Commission also received a letter supporting the project (**Exhibit 14**). However, the Commission believes that the proposed residential development is consistent with the type and density of existing residential development in the project area, and that the modified and reduced-sized commercial project represents a proper balance between a local, community-serving project and a project designed to serve a wider geographical area or which would provide duplicate commercial and retail services currently available in the center of the Rancheria or further south in Smith River.

The Commission must also determine that the proposed fee-to-trust transfer and the subsequent residential and commercial development are consistent with the visual resource policies of Section 30251 of the Coastal Act. Interconnected with the intensity and concentration of development policy issues is the potential effect of the proposed residential and commercial development on the type and quality of public views of the coastal zone along the Highway 101 corridor. The Visual Resources Inventory of the Del Norte County LCP describes the viewshed characteristics in the proximity of the three subject parcels as follows:

The visual resources between Pyramid Point and the Oregon border are dominated by ocean vistas and related scenery such as offshore rocks, sea cliffs, coastal vegetation and

marine life. Views of upland topography and forestlands, together with agricultural land uses, are also available within the regional viewshed.

Both Highway 101 and Ocean View Drive are important scenic corridors offering open and fairly continuous panoramas of marine and upland resources.

Additionally, the visual inventory map for the “Oregon Border to the Mouth of the Smith River” segment identifies the frontages of the parcels along both Highway 101 and Ocean View Drive as being within “view corridors.”

The BIA’s consistency determination states that:

The dominant features in the project area viewshed are the Highway 101 corridor, residences and trailer parks, the forested hills to the east, and the ocean horizon to the west . . . The project parcels border a local coastal plan visual resource inventory area – “Oregon border to the mouth of the Smith River”, which designates view corridors on the entire Ocean View Drive and State Route 101 north of Indian Road to the Oregon border (Del Norte County 1983) . . . From the perspective of motorists traveling on U.S. 101, the views of the Project Area from this highway corridor are considered short-term in nature, due to the high travel speeds of the motorists, and the proposed buildings do not block the view of the ocean because they are on the landward side of US 101.

The *Environmental Assessment* for the project states that:

Implementation of the Proposed Action could have a potentially significant impact on visual resources because it involves changes to the land form, removal of trees, and placement of office/retail centers [sic] and housing units, and because various policies protect visual resources in the region. The State’s California Scenic Highway Program and the County’s Scenic Highways Element of the General Plan are both intended to preserve and protect scenic highway corridors from changes that would diminish the aesthetic value of lands adjacent to highways.

Notwithstanding the proposed construction of commercial/retail development along the east side of Highway 101, the consistency determination concludes that:

The Tribe intends that this Proposed Action will be as compatible as possible to existing State and County visual resource requirements. Toward this end, adequate design measures are included to avoid visual/aesthetic effects to neighboring properties. The office/retail building design and architecture will be similar to other Tribal facilities, where the exterior design will blend into the natural environment, and use such elements as green metal roofing, post and beam architecture, and cedar-shake siding. Other design features include minimal alteration of natural landforms, underground utility placement (or least conspicuous placement); limited use of signage; shielding of lighting; and emphasis on native species for landscaping. Because of mitigation incorporated into the project’s design, no adverse effects on visual resources from Project implementation are

anticipated. Because the Proposed Action considers and protects, to the degree possible, the scenic and visual qualities of the coastal area, it is consistent with the visual resources element of the LCP.

The proposed fee-to-trust transfer and subsequent commercial development would introduce commercial structural elements into the Highway 101 viewshed that are currently found only adjacent to the Oregon state line, to the south of the project site at the center of the Rancheria, and further south adjacent to the mouth of the Smith River. Moving north along Highway 101 from the mouth of the Smith River, the traveler passes through a visitor-serving commercial zone stretching from the Ship Ashore resort area, through the Rancheria and its administrative office buildings, and up to the Tribe's Lucky 7 casino complex just south of Lopez Creek (**Exhibits 2 and 11**). Once north of Lopez Creek, the area transitions to a low-density rural residential and agricultural area with open views to the west and north of the Pelican Beach shoreline and the northern Smith River coastal terrace up to the Oregon state line (**Exhibit 12**). With the exception of the White Rock Resort at the very northern end of this stretch, there are currently no highway frontage commercial uses in this area.

However, the Commission finds that the proposed community-serving commercial/retail development along Highway 101 on the western edge of the project site, and the proposed density of the residential development across the balance of the project site are consistent with the visual resource policies of the Coastal Act. The proposed commercial and residential structures would not block or adversely scenic public views along Highway 101, and would not generate significant adverse effects on scenic public views along Ocean View Drive. The proposed development would introduce additional single family residential structures across essentially vacant parcels but this would occur within a larger geographical area that is currently subdivided and developed with SFRs. The incorporation by the tribe of residential architectural design standards will minimize visual resource impacts to public views along Ocean View Drive. Likewise, the proposed design of the commercial/retail center at the western end of the Bartley parcel will be consistent with other Tribal buildings that incorporate timber and stone elements to blend in with the landscape. The size and design of the proposed commercial/retail center, and its location just north of Lopez Creek at the southern end of the project area, will minimize any adverse effects on the developed rural landscape of the coastal zone between Lopez Creek and the Oregon border (**Exhibits 15 and 16**).

The Commission must also examine the potential coastal zone effects of placing the subject parcel into federal trust status, and the subsequent elimination of state and local government land use and development regulatory controls. As with all fee-to-trust transfers, there is no absolute assurance that once parcels are placed into federal trust status that the proposed development projects associated with the transfer would be implemented. For the proposed project, in theory any number of alternative projects could subsequently be proposed and developed for the subject parcels and these would not be subject to local and state regulatory development controls, including coastal development permitting under the Del Norte County LCP and any potential permit appeal authority the Commission itself might have for a project on the subject parcels. The Commission would retain its Coastal Zone Management Act federal consistency authority over the subject parcel once it is placed in federal trust status, but Commission review would

only be triggered if a federal permit, authorization, or funding is needed for future proposed development on the parcel, or if a federal agency itself was proposing the development.

The Commission has historically expressed concerns during its review of proposed transfers of parcels to federal trust status over the need to obtain assurances that any future development plans for parcels placed in trust will undergo federal consistency review to the extent provided for in the NOAA federal consistency regulations. (See CD-054-05, Bureau of Indian Affairs, placement of Martin Ranch parcel into trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort and Casino, Del Norte County.) The Commission staff discussed these concerns regarding the subject project with the Tribe and the Tribe in turn articulated its concerns over surrendering any of its sovereignty. The tribe noted that the proposed development projects that would occur subsequent to the fee-to-trust transfer would receive federal funding (and be subject to a NEPA review), which could provide the Commission with an additional opportunity to review the development for consistency with the Coastal Act. In addition, the Tribe provided the Commission with a copy of its May 16, 2011, *Draft Specific Land Use Designation Ordinance* for the Bartley/Bridge/Haswell properties (**Exhibit 17**). The draft Tribal Ordinance designates specific land uses within each parcel as proposed by the Tribe and as submitted to the Coastal Commission as the modified development project contained in the BIA's consistency determination. The draft Tribal Ordinance includes a land use designation map for the parcels and a process for amending the map:

- 1. Any amendments to the Land Use Designation Map that are not consistent with the uses as outlined in Section 2.3 will be presented to the California Coastal Commission for comment within thirty (30) calendar days prior to Tribal Council adopting the proposed amendment.*
- 2. The Commission may submit written comments to the Tribal Council for consideration when considering amendments to the Plan, and Commission may request to be placed on the agenda at the Tribal Council meeting when Plan amendments are being considered. The Tribe shall make a good faith effort to take into consideration any concerns the Commission may have with respect to the Plan amendments.*
- 3. Nothing in this Ordinance shall grant to the State or the California Coastal Commission any jurisdiction over the Tribe.*

The Commission has previously found that not all fee-to-trust transfers require a Tribe to: (1) ensure that Tribal land use ordinances not be altered without Commission authorization, and (2) include a waiver or limited waiver or sovereign immunity. The Commission has found that proposed trust transfers and subsequent development should be evaluated on their individual merits and their potential for coastal zone effects when determining the need for incorporating waivers of sovereign immunity or other legal instruments into a BIA consistency determination. In the proposed fee-to-trust transfer, the Commission concludes that the Tribe's well-documented need and longstanding effort to increase the housing stock for Tribal members, and the Tribe's willingness to modify the proposed commercial/retail project to address the Commission's concerns over the introduction of such a land use in the project area, are sufficient reasons to determine that the proposed residential and commercial projects will in fact be the developments that will occur on the subject parcels after completion of the fee-to-trust transfer

by the BIA, and that sufficient mechanisms are available to afford the Commission the ability to review any future development not currently contemplated. The Commission therefore concludes that, as modified, the proposal is consistent with the concentration of development, adequacy of public services, and visual resource protection policies of the California Coastal Management Program (CCMP; Coastal Act Sections 30250(a) and 30251).

B. Water Quality and Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240.

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

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

The *Environmental Assessment* for the proposed project states that all three parcels have seen some level of historic grading, no significant water features occur on any of the subject parcels, and the parcels are not located within a 100-year or 500-year flood zone. Vegetation and animal field surveys were conducted in 2006 and 2009 and concluded that the subject parcels contain only disturbed habitat types (annual grassland/pasture, developed/ruderal, and urban forest) and that no listed species are present. In addition, portions of the parcels are mowed, graded, or urbanized with asphalt pavement, landscaping, and structure and utility placement (**Exhibit 18**).

The *Environmental Assessment* reports that a jurisdictional waters delineation was performed in July 2010 (**Exhibit 19**). This delineation concluded that no isolated wetlands are on the Haswell parcel, and describes the following swale features on the Bridge and Bartley parcels:

- *Bridge Parcel: a seasonal wetland, an earthen ditch, 15 feet in length, average width of 3 feet, 45 square feet (0.001 acre). This earthen ditch receives runoff from road surfaces and uplands, and impounds it long enough to sustain hydrophytes and for hydric soils to develop. However, flow from this seasonal pool then flows westward and diffuses into a*

pasture of annual grasses. Any indications of a channel or concentrated flow are lost in the pasture, and hydrophytes are absent.

- *Bartley Parcel: an ephemeral wetland, an earthen ditch, 60 feet in length, average width of 2 feet, 120 square feet (0.002 acre). This earthen ditch receives runoff from road surfaces and uplands, and impounds it long enough to sustain hydrophytes and for hydric soils to develop. This wet ditch then flows southward 400 feet, where it joins with a northbound ditch, then flows under Highway 101 via a 48" plastic corrugated pipe, then flows into a grated drain and drop inlet, which then takes this runoff westward 700 feet via a buried pipe under a pasture, which then discharges to the beach (Pacific Ocean).*

The proposed development could potentially affect the two aforementioned seasonal swales on the Bridge and Bartley parcels. In addition to the water quality protection measures discussed above, the consistency determination states that the project design was modified to avoid these features by creating a 75-foot development-free buffer zone and moving all project structures and paved surfaces outside of this zone.

The *Environmental Assessment* states that the proposed development of the subject parcels would involve major grading, excavation, and stockpiling, that such disturbance can increase erosion by water and wind, and could create a potentially significant impact upon receiving waterbodies and adjacent lands. Because the construction footprint is larger than one acre,

. . . such construction is regulated by the Clean Water Act under the National Pollution Discharge Elimination System. The Tribe and its designated general contractor must enroll under the USEPA's General Storm Water Discharge Permit for Construction Activities (No. CAR10000IF) prior to initiation of construction. In conjunction with enrollment under this Permit, A Storm Water Pollution Prevention Plan, Erosion Control Plan, and a Hazardous Materials Management/Spill Response plan must be created and implemented during construction to avoid or minimize the potential for erosion, sedimentation, or accidental release of hazardous materials. Construction Best Management Practices are also required. Implementation of these measures would reduce potential construction-related impacts to water quality to a less than significant level.

Potential impacts on water quality after completion of the proposed residential and commercial development is also examined in the *Environmental Assessment*:

Development of the Proposed Action could adversely impact surface water resources by increasing impermeable surfaces, which could result in increases in stormwater volume and velocity that could add incrementally to flood hazards or channel instability downstream. On both the Haswell parcel and the Bartley parcel, stormwater detention basins would be constructed, each approximately 0.2 acres in size. These detention facilities would ensure that post-Project stormwater flows would equal pre-Project flows.

During operation of the Proposed Action, parking lots and access roads would collect petroleum products and other pollutants that are typically concentrated in paved areas and

then transported to receiving water bodies during storm events. This is a potentially significant water quality impact. Mitigation measures have been identified in Section 5.0 to ensure that surface waters would not be adversely affected. Measures include the development and maintenance of vegetated buffers and swales that biologically attenuate pollutants, locating impervious surfaces as far away from natural drainages as possible, and installing and maintaining grease/oil water separators, or media filters to capture and filter stormwater pollutants.

As noted previously, the revised project description eliminated the proposed commercial development on the Haswell parcel. As a result, the associated stormwater detention basin will not be constructed on this parcel and instead the northwestern corner of the parcel will be designated as open space.

All the proposed structures would be connected to the Rancheria's new wastewater treatment facility:

. . . a Membrane Bioreactor (MBR) facility that produces a high quality effluent that meets California Department of Health standards for the reuse of tertiary treated wastewater (Title 22). The treated effluent is disposed through a new leachfield pursuant to Waste Discharge Requirements set by the North Coast Regional Water Quality Control Board

In addition, the septic systems associated with the three existing SFRs on the Haswell and Bridge parcels would be retired and these SFRs would be connected to the wastewater treatment system. The Commission agrees with the BIA that the proposed project would not adversely affect any environmentally sensitive habitat, includes design measures and buffer areas to avoid development near two mapped swales, and includes water quality protection and mitigation measures. Therefore, the Commission finds that the project is consistent with the water quality and environmentally sensitive habitat policies of the CCMP (Coastal Act Sections 30231 and 30240).

C. Cultural Resources. Section 30244 of the Coastal Act provides:

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

The project area is located within the ancestral lands of the Tolowa Indians. The *Environmental Assessment* examines the presence and significance of cultural and historical resources on the subject parcels, and states that available archival literature and primary records were reviewed in an effort to locate and identify any previously documented information on the project area. These search efforts indicated that portions of the project area were previously surveyed and that no historic, cultural, or archaeological resources were identified. However, a significant Tolowa village site and cemetery were documented within one-half mile of the project site. Field surveys of the project area conducted in 2005, 2006, and 2007; no subsurface testing was

undertaken. This work concluded that no historic properties, potentially eligible historic properties, archaeological resources, or cultural resources were located in the project area.

The *Environmental Assessment* next examined the potential impact on cultural resources from the proposed project:

Significant portions of the three Project parcels have been disturbed by previous development and grading, thereby reducing the potential for cultural resources to remain on the Project Area. However, previously unknown cultural resources could be present within the project area with no surface manifestation. Potential cultural resources that could exist within the project APE [area of potential effect] include shell midden deposits, firecracked rock, objects or features associated with traditional Tolowa occupation and use of the area, and historic objects or features associated with historic land use and agriculture. Destruction of cultural resources due to construction activities would be a potentially significant impact.

The *Environmental Assessment* concludes with the following proposed mitigation measures to protect cultural resources:

During Project construction, ground disturbing activities could uncover previously unidentified cultural resources – a potentially significant impact. Any inadvertent discovery of any historic resources in future project implementation is subject to the requirements of 36 CFR 800.13 (post-review discoveries). Any such discovery will require the immediate cessation of all construction activities, and the notification of the Smith River Rancheria THPO [Tribal Historic Preservation Officer] and the designated official archaeologist for the BIA. Appropriate mitigation, as recommended by the THPO and/or archaeologist, shall be implemented.

Pursuant to Native American Graves Protection and Repatriation Act of 1990, if skeletal remains or bones of unknown origin are found during construction, all work will stop in the vicinity of the find and the County Coroner will be contacted immediately. If the remains are determined to be Native American, the coroner should notify the THPO, who will then notify the person that is the most likely descendant. The most likely descendent will work with the Tribe or contractor to develop a program for re-internment of the human remains and any associated artifacts. No additional work will take place within the immediate vicinity of the find until the identified appropriate actions have been implemented. Implementation of these mitigation measures would reduce ground disturbing impacts to a less than significant level.

The Commission concurs with the BIA that the subject parcels do not contain significant cultural resources and that protections for an unanticipated discovery of such resources would be implemented during project construction. Therefore, the Commission finds that the proposed project will not adversely affect cultural resources and is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

Substantive File Documents:

1. *Smith River Rancheria: Bartley, Bridge, and Haswell Parcels Fee-to-Trust Project Environmental Assessment*, October 2010 (Natural Investigations Company)
2. CD-077-06 (Bureau of Indian Affairs, placement of five-acre parcel into Federal trust for Big Lagoon Rancheria, and development of three single-family residences on the parcel, Humboldt County)
3. CD-054-05 (Bureau of Indian Affairs, placement of Martin Ranch parcel into Federal trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort and Casino, Del Norte County)
4. ND-037-02 and ND-069-02 (Bureau of Indian Affairs, placement of six parcels near Requa into trust status for the Yurok Tribe, Del Norte County)
5. ND-064-00 (Bureau of Indian Affairs, placement of four parcels into trust status for the Smith River Rancheria, Del Norte County)
6. ND-035-00 (Bureau of Indian Affairs, placement of five parcels into trust status for the Smith River Rancheria, Del Norte County)
7. ND-060-99 (Bureau of Indian Affairs, placement of one parcel into trust status for the Smith River Rancheria, Del Norte County)
8. Del Norte County Local Coastal Program: North Coastal Subarea – Area 1 Planning Unit
9. *Smith River Rancheria Environmental Programs: Wastewater Treatment, Disposal, and Reuse Assessment*, May 2002 (Winzler and Kelly Consulting Engineers)
10. *Smith River Rancheria Wastewater Treatment and Disposal Project*, February 15, 2008 (Winzler and Kelly Consulting Engineers)
11. NoFLA 1-DNC-08-099 (County of Del Norte, Coastal Variance V0803C and Coastal Use Permit UP0818C for Smith River Rancheria Offsite Wastewater Disposal System)
12. Smith River Rancheria Strategic Planning Documents, November 2006 through May 2008.
13. Smith River Rancheria, Revised Project Description and Justification for Bartley, Bridge, and Haswell Parcels Fee-to-Trust Project, May 17, 2011.
14. Smith River Rancheria, Draft Specific Land Use Designation Ordinance for Bartley, Bridge, and Haswell Parcels Fee-to-Trust Project, May 16, 2011.

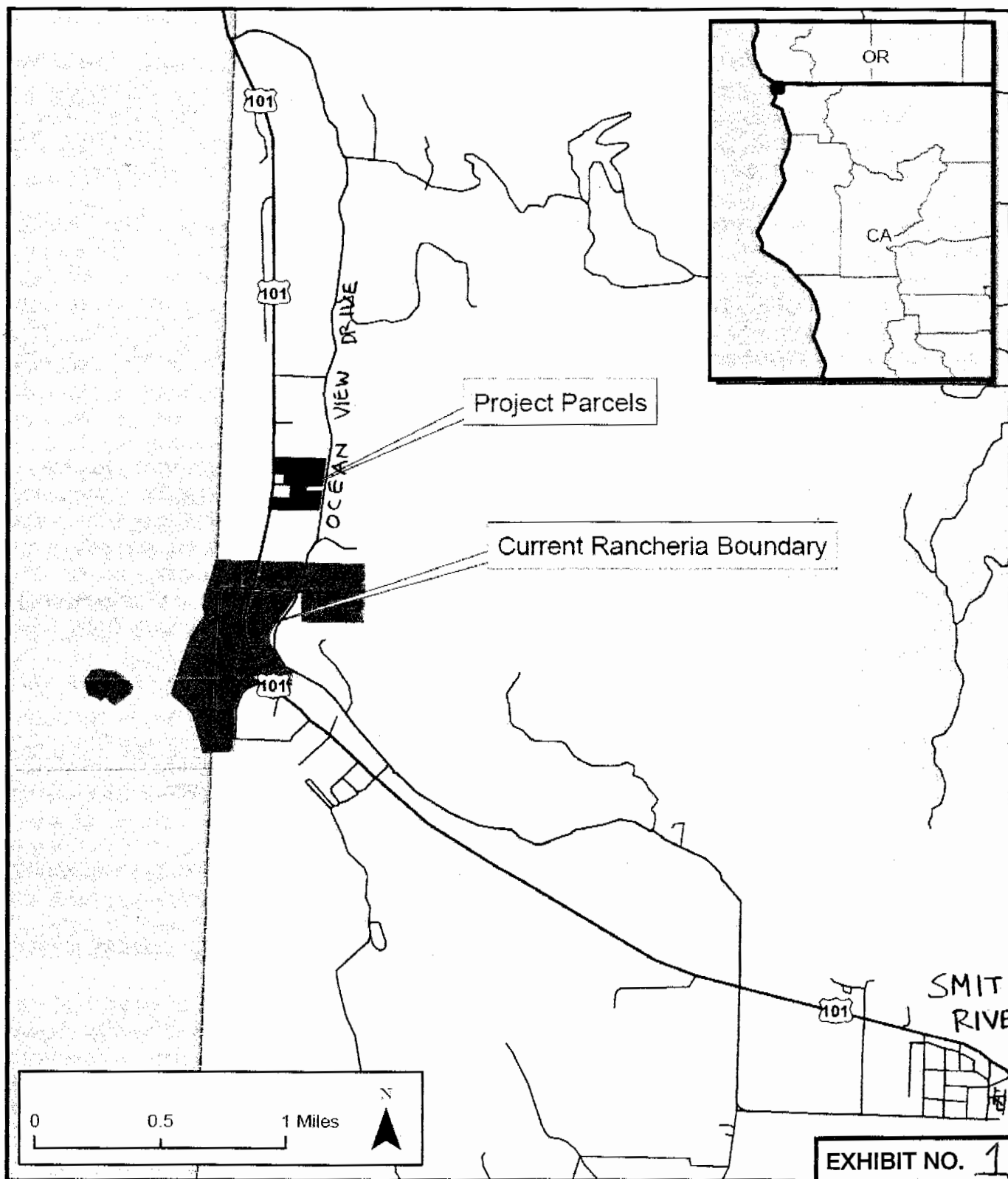
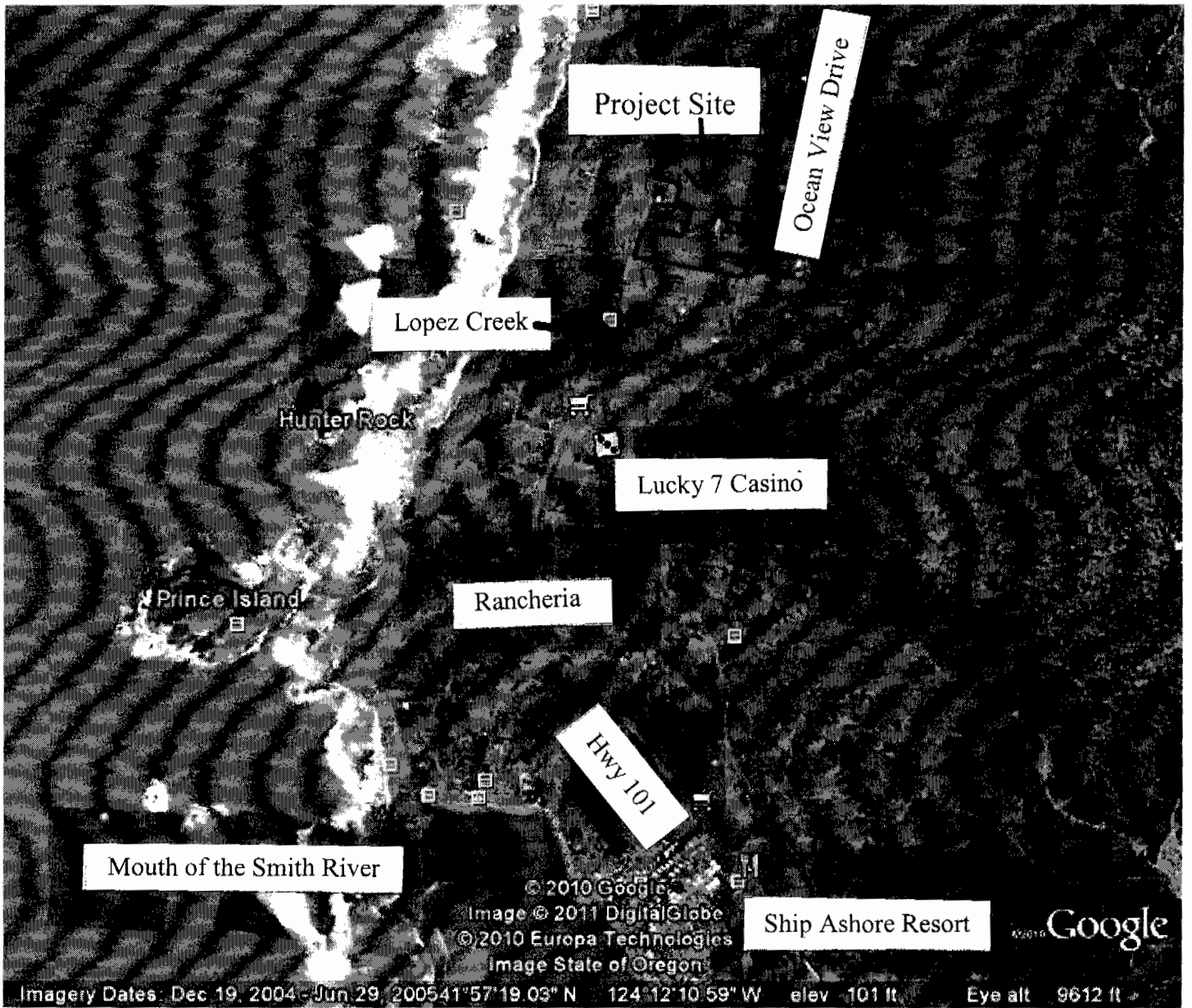


Figure 1-1. Location of Project Area

EXHIBIT NO. 1
APPLICATION NO.
CD-063-10



Aerial view from mouth of the Smith River north to Project Site

EXHIBIT NO. 2
APPLICATION NO.
CD-063-10

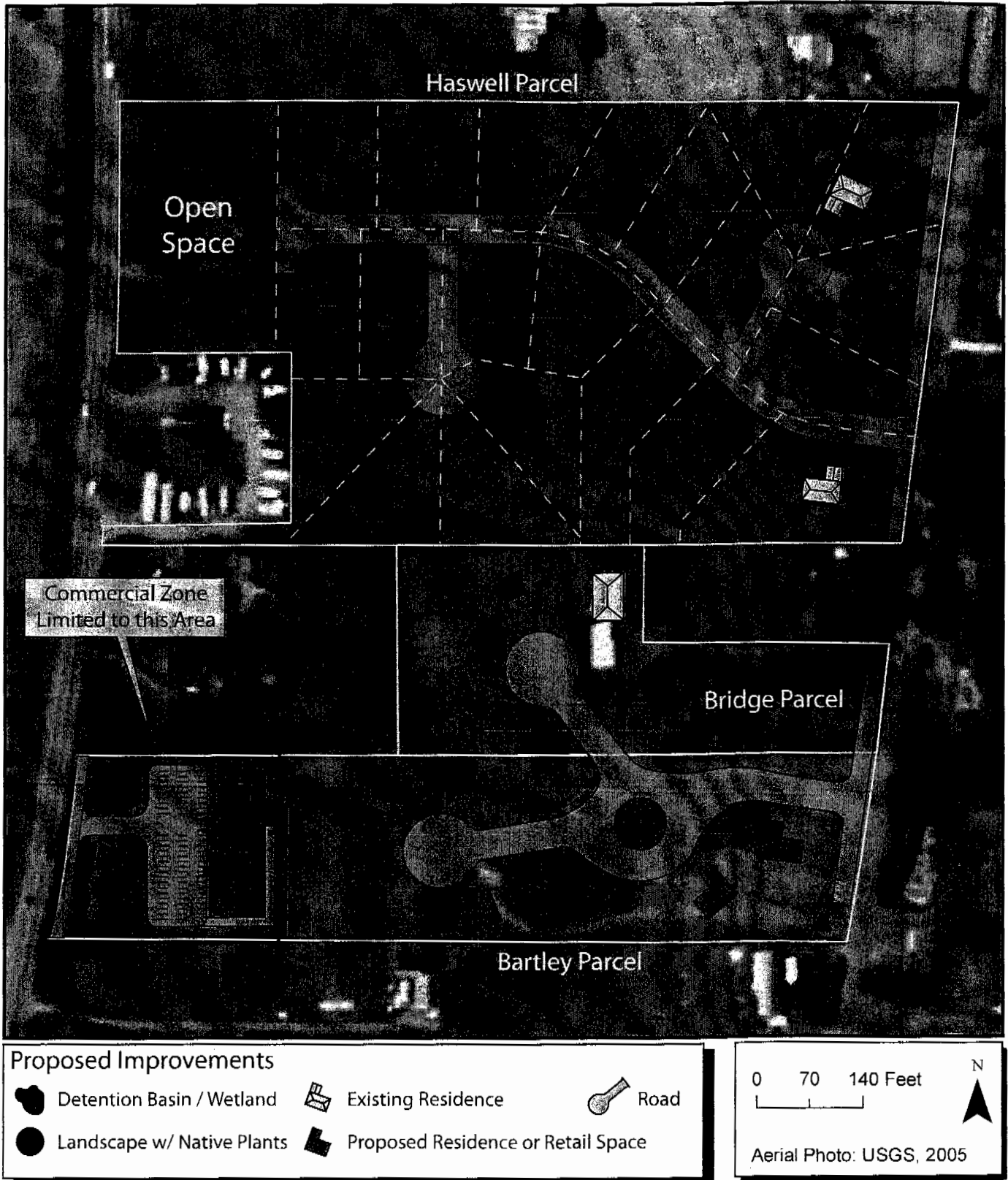


Exhibit 1. Revised Site Plan

EXHIBIT NO. 3
APPLICATION NO.
CD-063-10

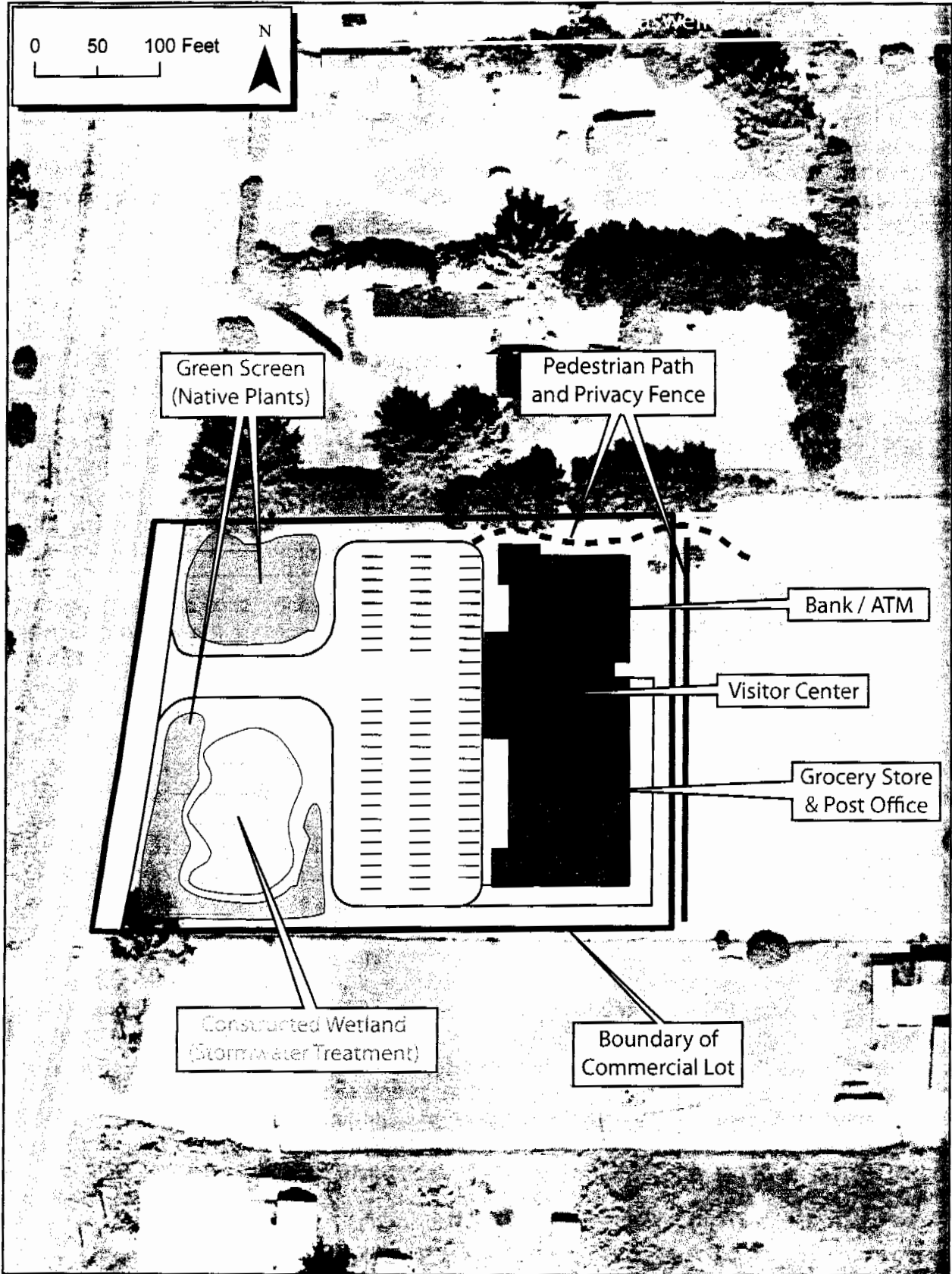
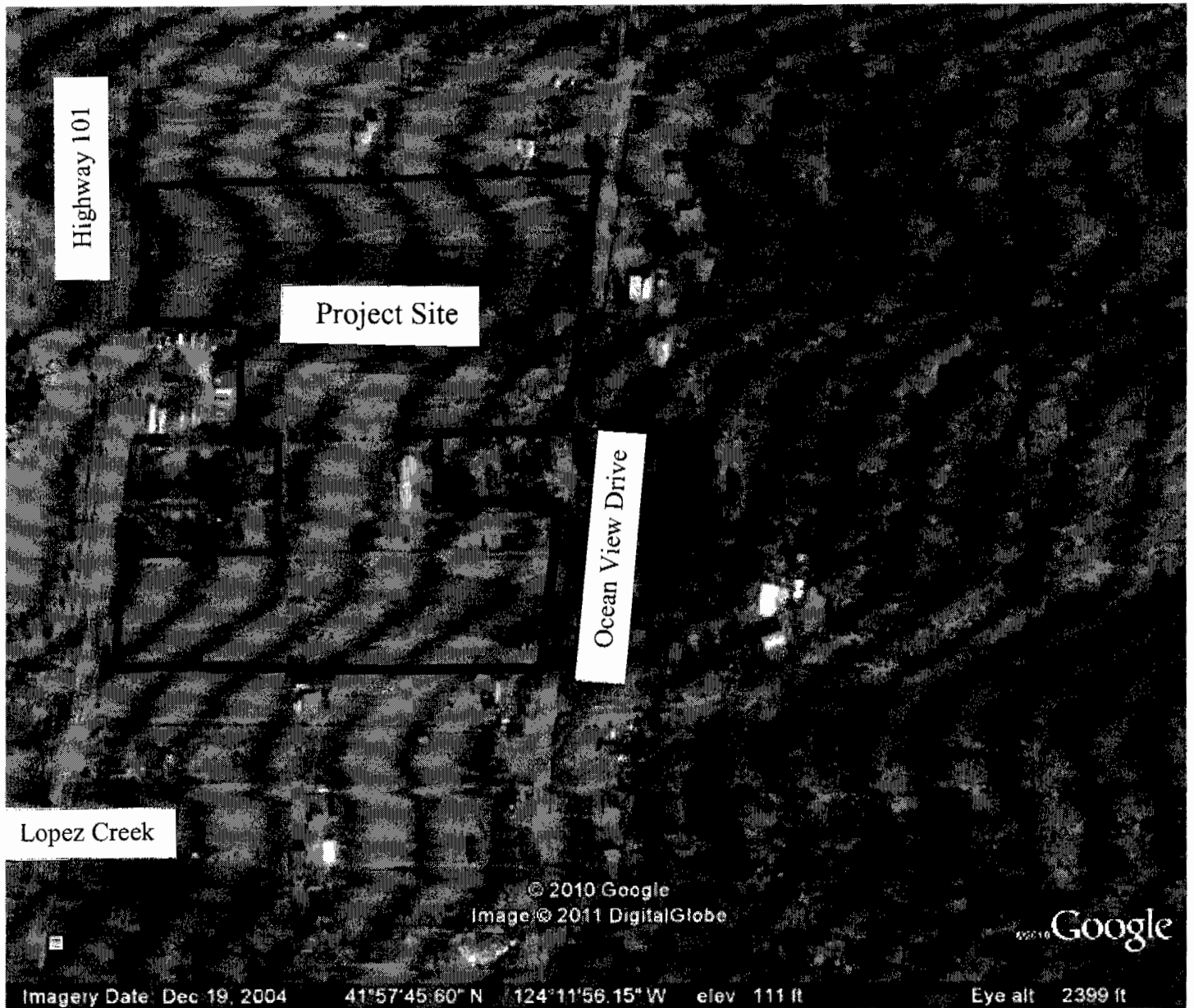


Exhibit 2. Diagram of Proposed Commercial Buildings and Landscape

EXHIBIT NO. 4
APPLICATION NO.
LD-063-10



Aerial view of Project Site

EXHIBIT NO. 5
APPLICATION NO.
CD-063-10

← North

Bridge Parcel

Haswell Parcel

Bartley Parcel

Trailer Park

Highway 101

EXHIBIT NO. 6
APPLICATION NO.
CD-063-10

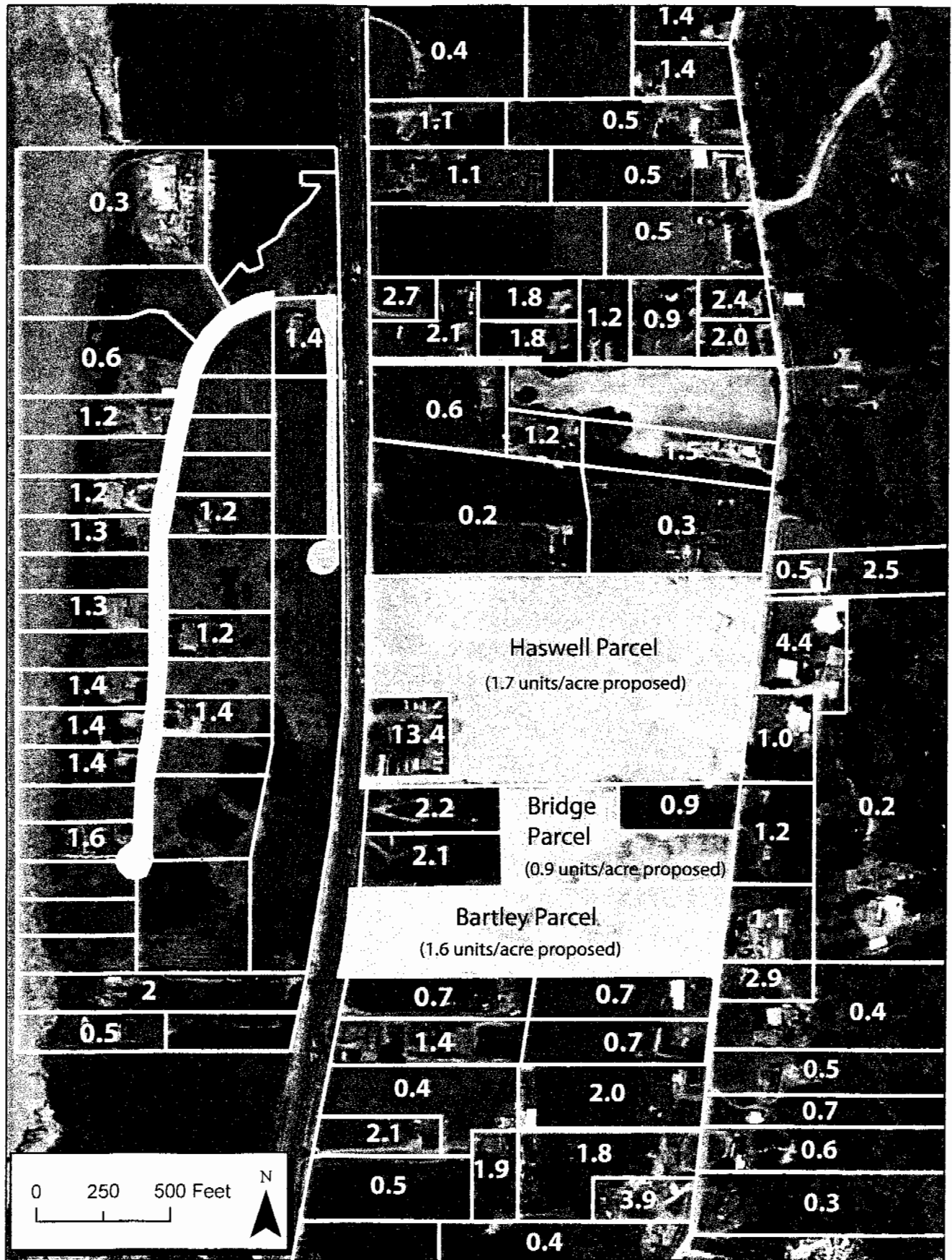
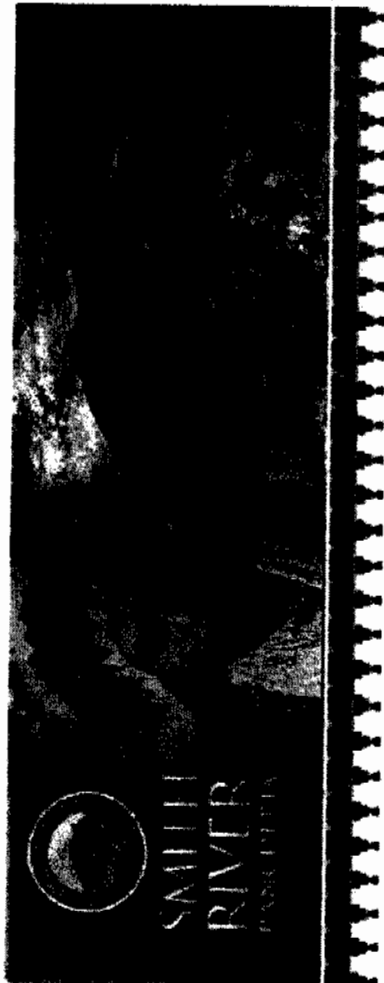


Figure 1. Housing Density in the Vicinity Varies from 0.2 to 13.4 units/acre

EXHIBIT NO. 7
APPLICATION NO.
CD-063-10



5 Year Strategic Plan



Smith River Rancheria
 140 Rowley Creek, Siskiyou River, California, May 23, 2008

Project Description

“What do we want to do?”
 The Tribal Council set the following projects as priorities over the next five years. These projects are not in order of priority rather the majority of the Projects are co-dependent upon completion of adequate wastewater infrastructure.

- Car Wash 2-3 yrs
- Lube Shop 2-3 yrs
- Sewer Infrastructure --Phase 2 1-2 yrs
- Casino Remodel//Addition Phase 1-3 yrs
- Hotel Development 3-4 yrs
- New Community Ctr./Gym 3-5 yrs
- Interpretive Center 3-5 yrs
- Administration Bldg Expansion 2-4 yrs
- Senior Housing Phase 1 1 yr
- Senior Housing Phase 2 3-5 yrs
- RV Park Phase 1 2-3 yrs
- Alternate Utility Development 1-5 yrs
- Affordable Single Family Housing Dev. 1-5 yrs
- Business Acquisition and Development 1-5 yrs
- Beach Access 1-2 yrs
- Yontocket Stewardship 1-2 yrs
- Fish Camp Access Expansion 1-2 yrs
- Alternate Water Source Development 1-2 yrs
- New Wellness Center 3-5 yrs
- Economic Development Board 1 yr

EXHIBIT NO. 8
APPLICATION NO.
CD-063-10



SOUTH BANK PROPERTY

BUILDING LEGEND:

- 1 Community Center
- 2 Existing Health Clinic
- 3 Ceremonial Dance House (6,000 SF)
- 4 Interpretive Center (10,000 SF)
- 5 Fish Camp, Boat Access
- 6 Event Center
- 7
- 8
- 9
- 10
- 11 Senior Housing - Access to Main Road
- 12 Senior Housing - Independent Living
- 13 Retail Stores
- 14 New Restaurant / Lounge
- 15 Adult Day Care Offices
- 16
- 17
- 18
- 19
- 20 New Health Clinic
- 21 Possible Safe House
- 22 Apartment Housing
- 23 Single Family Housing Development
- 24 Leach Field
- 25 Tribal Land - No Immediate Development
- 26 Ceremonial Sites
- 27 Future Residential Development



S.R.R. - MASTER PLAN
10 - Year Plan

ARCHITECTS VAN LOM GRC
2500 VAN LOM AVENUE
VAN LOM, CA 95558
TEL: 530-335-2100

SMITH RIVER RANCHERIA

EXHIBIT NO. 9
APPLICATION NO.
CD-063-10



SOUTH BAY FACILITY

ARCHITECTS VAN LOM GROUP
 11000 THUNDERBOLT AVENUE
 SUITE 100
 SAN JOSE, CALIFORNIA 95131
 TEL: (415) 731-1800
 WWW.VANLOM.COM

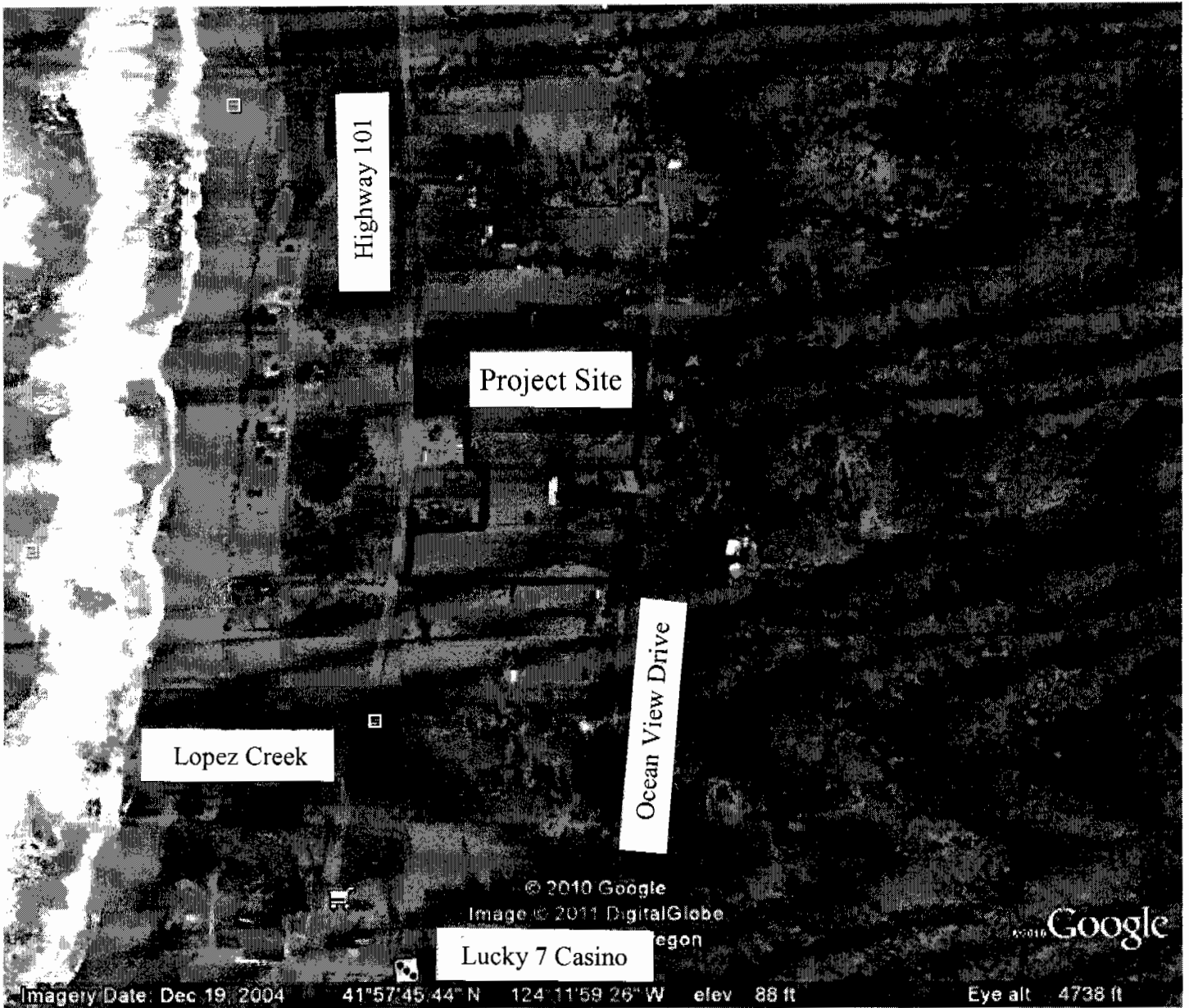
SMITH RIVER RANCHERIA
SMITH RIVER, CALIFORNIA

S.R.R. - MASTER PLAN
 ZONING

SCALE: 1" = 200'
 November 21, 2008

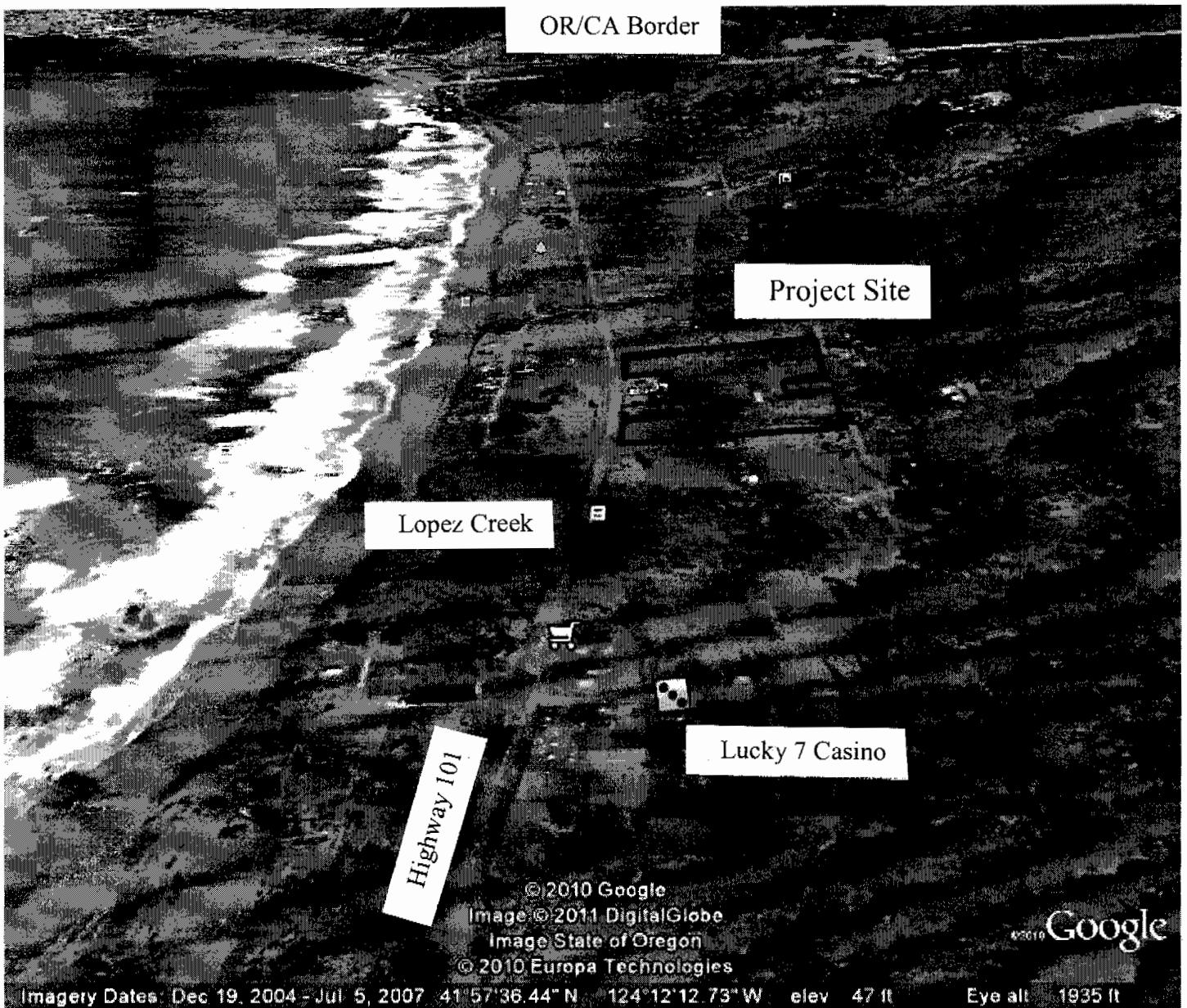


EXHIBIT NO. 10
APPLICATION NO.
CD-063-10



Aerial view from Lucky 7 Casino north past Project Site

EXHIBIT NO. 11
APPLICATION NO.
CD-063-10



Oblique aerial view from Lucky 7 Casino north past Project Site
to the Oregon/California border

EXHIBIT NO. 812
APPLICATION NO.
CD-063-10

Larry Simon

From:
Sent: Sunday, April 03, 2011 3:26 PM
To: Larry Simon
Subject: Consistency Determination #CD-063-10

Dear Mr. Simon,

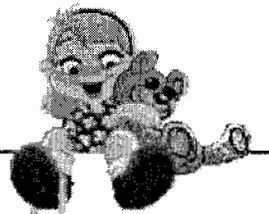
When my husband and I purchased our property here in 1987, we had searched throughout the corridor from Eureka to the Oregon border for a home site that was as different as possible from the city and commercial atmosphere of Washington D.C., where we had lived the previous ten years. When we drove up 101 from the little town of Smith River, we were enchanted by the peaceful pastures and lily fields, uncluttered views of the pacific coast, and the rugged but beautiful backdrop of the forest and hills. In the twenty five years we have lived here we have enjoyed the peace and solitude of our home, as well as the delightful sight of the elk, fox, and other wildlife and felt secure that this area would remain a low density residential pastoral community.

Although we know that change is inevitable we have always believed that growth would develop slowly while under the control of the county and within the environmental protection of the coastal commission. I am therefore in support of the modifications recommended by the coastal commission concerning this project.

Sincerely,

Barbara Neal

Smith River, California 95567



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[Click Here!](#)

EXHIBIT NO. 13

APPLICATION NO.

CD-063-10

Larry Simon

From: ron hibler
Sent: Monday, February 07, 2011 12:02 PM
To: Larry Simon
Subject: CD-063-10
Attachments: Picture 033.jpg; Picture 037.jpg; Picture 509.jpg; Picture 511.jpg; Picture 240.jpg; Picture 219.jpg; Camera 245.jpg

As per our conversation via telephone on 2/7/2011, I am sending the attached photos of a herd of Roosevelt Elk which frequents the Bartley and Bridge lots which are involved in the matter before the Coastal Commission known as CD-063-10. The lots are identifiable by the structures included in the photos. The elk herd uses the lots for resting and feeding and as a corridor to lots further north and south. It is my recollection that I have observed the elk on these lots nearly every month of the year during one year or another, throughout the last eight years.

I do not take photos every time I see the elk on the lots, but I have attached multiple photos taken on different dates over the last eight years as proof that the elk are using the lots regularly for feeding and mating. The herd strength varies each year from about 44 to 67 in number. As demonstrated in the photos, houses built on lots in conformance with current zoning designations appear to have no negative effects on the elk herd and their migrations. I have observed that tourists and/or visitors who are driving, walking or riding bicycles, often stop to enjoy viewing the herd. I have also observed that the herd is sensitive to vehicles or people who get too close to the herd.

It is my opinion that allowing increased housing structures or businesses in excess of the current zoning designations will have an extremely negative effect on the native Roosevelt elk herd.

The attached photos are identified as:

- Photo #245 was taken by me on 12/5/2003
- Photo #219 was taken by me on 11/21/2006
- Photo #240 was taken by me on 11/28/2006
- Photo #511 was taken by me on 11/17/2009
- Photo #509 was taken by me on 11/17/2009
- Photo #037 was taken by me on 2/5/2011
- Photo #033 was taken by me on 2/5/2011

If you have any questions or need further input, contact me at

Ronald Hibler

Smith River, CA 95567

EXHIBIT NO. 13
APPLICATION NO.
CD-063-10

Larry Simon

From: ron hibler
Sent: Wednesday, February 23, 2011 3:08 PM
To: Larry Simon
Subject: RE: CD-063-10
Attachments: Picture 061.jpg; Picture 063.jpg; Picture 064.jpg; Picture 066.jpg

Sorry for the omission. I hope the photos came through this time.

I have been wanting to relate to you an event that took place about 10 years ago when the tribe bought the parcels in question. There was a hearing with the Del Norte County Planning Commission where the tribe wanted to rezone the lots. They would not tell anyone what they had planned for the lots and we were afraid that they were wanting to construct an above ground waste water treatment facility or build business construction in the residential neighborhood. All of the interested landowners showed up at the hearing out of concern and to get answers. The board members asked the tribe's lawyer to speak first and outline the plans of the tribe for clarification. The lawyer refused to speak and said she would only speak after everyone else spoke. The board agreed and we were forced to go first. We didn't know what to say because we had no idea what was proposed by the tribe and so we spoke about our concern that the tribe might do anything it wanted with the land if the rezoning was approved. After we all spoke, the lawyer got up and told the board and us that the tribe didn't have to tell us anything and they could do whatever they wanted. Period. She then sat down and the meeting was adjourned.

I noted that in your current report, the Coastal Commission raised the concern that if the properties were placed in trust, the tribe could then go against the Commission's wishes due to the trust status. According to the event I described above, that is a very true concern and I appreciate the Commission's recommendation to retain a say in the use of the land even if it does go into trust. As I mentioned before, I think the Commission has done a good job in asking the right questions and I appreciate your concerns for the people of Smith River and California.

Ron Hibler

Subject: RE: CD-063-10
Date: Wed, 23 Feb 2011 11:20:17 -0800
From: lsimon@coastal.ca.gov
To:

Your email did not include the photo attachments or links.

Larry Simon
 Federal Consistency Coordinator
 Energy, Ocean Resources and Federal Consistency Division
 California Coastal Commission
 45 Fremont St., Suite 2000
 San Francisco, CA 94105
 (415) 904-5288
lsimon@coastal.ca.gov
www.coastal.ca.gov

From: ron hibler

EX. 13

3/22/2011

Sent: Sunday, February 20, 2011 5:03 PM
To: Larry Simon
Subject: CD-063-10

I don't know if you wanted these or not, but I took some more photos of elk while they were bedded down on the Haswell Parcel today, 2/20/2011. The street sign in photos 61, 63 and 64 is TA-KWIS-CHU. Photo 66 is self evident of its location and direction. The elk are laid down at the water level of the photo all across the shot. 19 houses on that property would pretty much choke the elk out. Good luck.

If you have any questions or need further input, contact me at

Ronald Hibler

Smith River, CA 95567

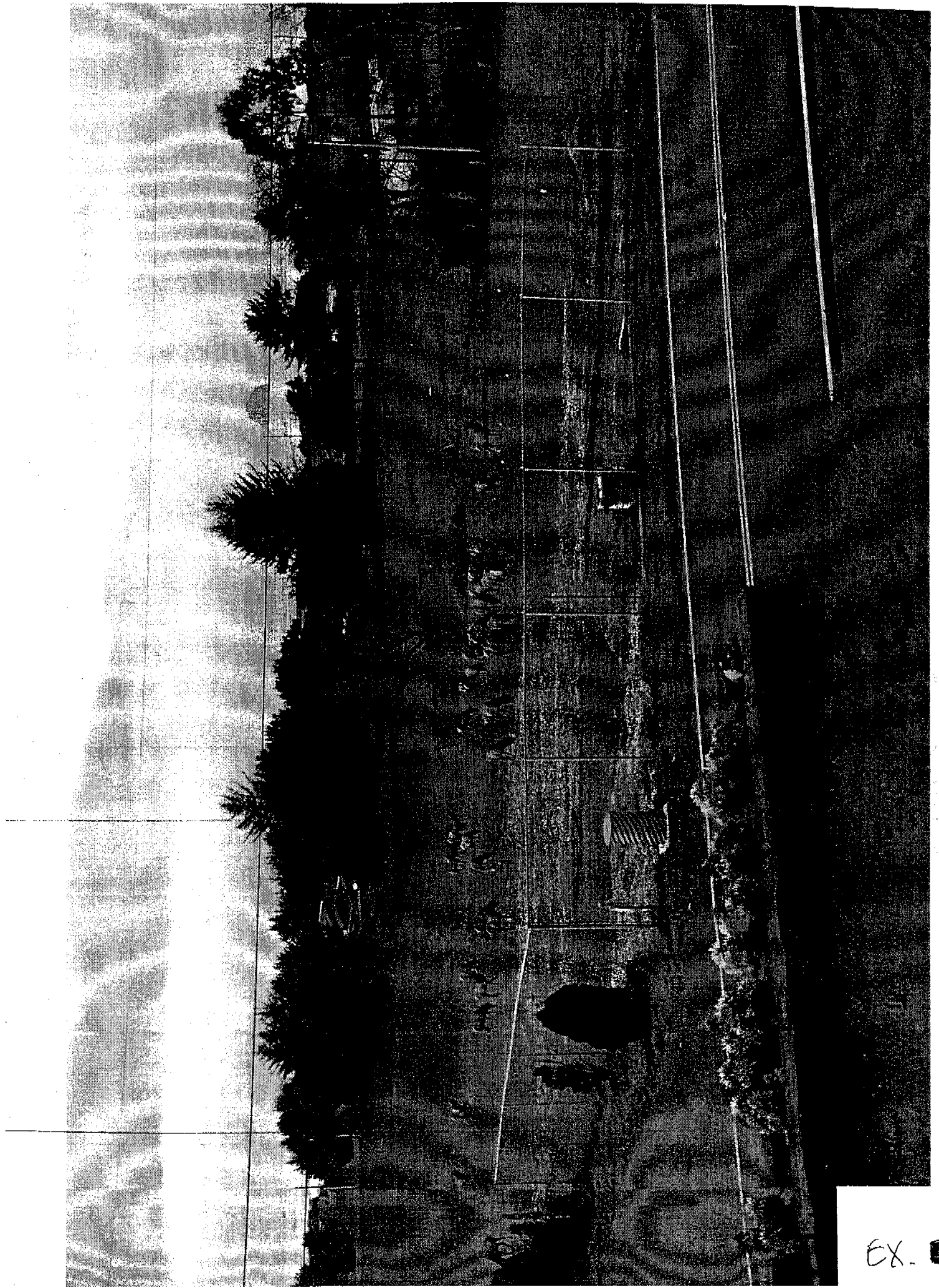


Photo #037, taken 2/5/2011

View to the northwest from near the southeast corner of the project area.

EX. 13

Larry Simon

From:

Sent: Sunday, April 03, 2011 3:00 PM

To: Larry Simon

Subject: Proposed Smith River Project

Dear Sir,

I am writing to you as a resident of Smith River living next to the proposed Bridgeport project. This proposal seems to be against everything the coastal commission was put in place to monitor. Our northern coast should not be cluttered with business and other buildings on this piece of land.

As a working artist I have enjoyed elk, hawks and herons to name a few of the wild life I see on a daily basis. I feel blessed to live in such a place of beauty. The buildings they are proposing to construct will put an end to nature as we know it now. I have many visitors from around the country that come to enjoy, photograph and paint. Giving permission to continue this plan gives question to what rules you adhere to. If they are allowed to continue with this plan it will change the visual composition of this area forever.

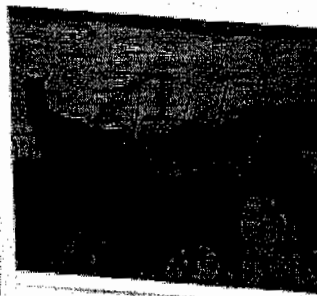
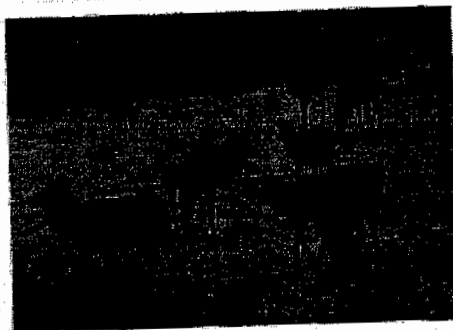
I realize that change is inevitable but it is my hope that you will take these things into consideration and adhere to guidelines that are now in place in this county.

Sincerely,

Nan Marie Wineinger

Smith River, California 95567

These are pictures of my neighbors in my yard and next door.



Agenda Number Th6a
Application Number CD-063-10

Bommelyn Construction

Crescent City Ca. 95531

My Position: In Favor of the Project

April 8, 2011

California Coastal Commission
Attn: Larry Simon
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RECEIVED

APR 11 2011

CALIFORNIA
COASTAL COMMISSION

RE: Comment Letter on the Bartley, Bridge, Haswell Parcels Fee-to-Trust Project for the California Coastal Commission Hearing on Consistency Determination

Greetings Commissioners,

This is a comment letter in support of the Bartley, Bridge, Haswell Parcels Fee-to-Trust Project.

My construction company is 100% Indian owned and operated as well as all of the partners are members of the Smith River Rancheria. With the local economy in the shape it is in it is very difficult for a small company to stay in business. We feel very fortunate to be able to continue to be productive. As tribal members we feel it is very important that these projects continue to move forward, not only would it provide tribal members jobs to help stimulate the economy, it would also provide much needed housing opportunities for our people. I have listed below a few points of interest that will also be affected.

- Smith River Rancheria must provide housing for hundreds of its members.
- Del Norte County has 9% unemployment rate. This project will create jobs.
- The Project will enhance coastal tourism. The proposed retail space includes visitor-serving facilities (e.g. visitor center, restaurant, convenience store).
- Construction of Project buildings will have a positive effect on aesthetics; Tribal architecture defines the region.
- The Tribe has policies and laws in place to promote orderly and responsible development

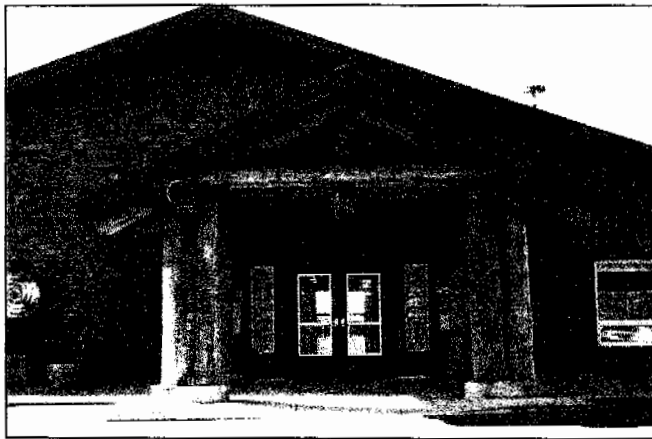
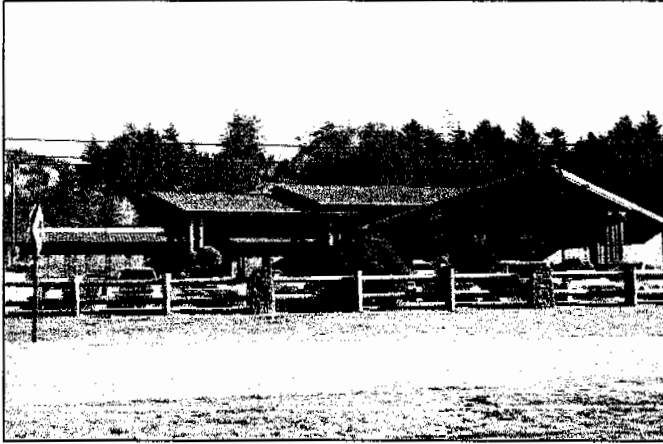
Sincerely,

William Bommelyn

EXHIBIT NO. 14
APPLICATION NO.
CD-063-10

THE PROJECT WILL HAVE A POSITIVE EFFECT ON AESTHETICS OF THE REGION

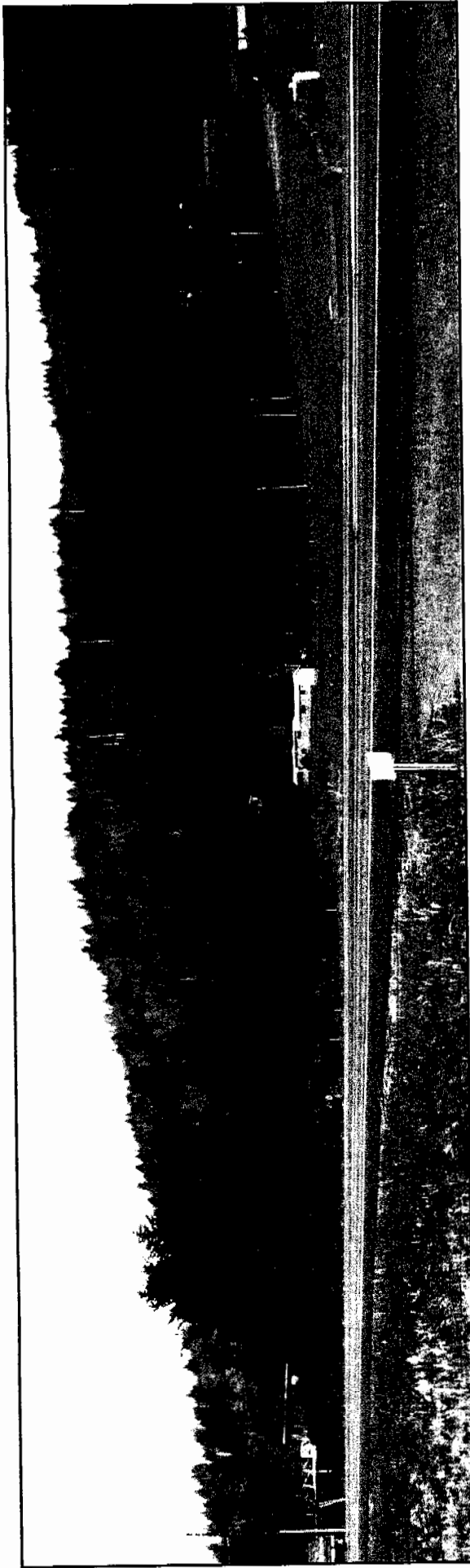
TRIBAL ARCHITECTURE DEFINES THE REGION



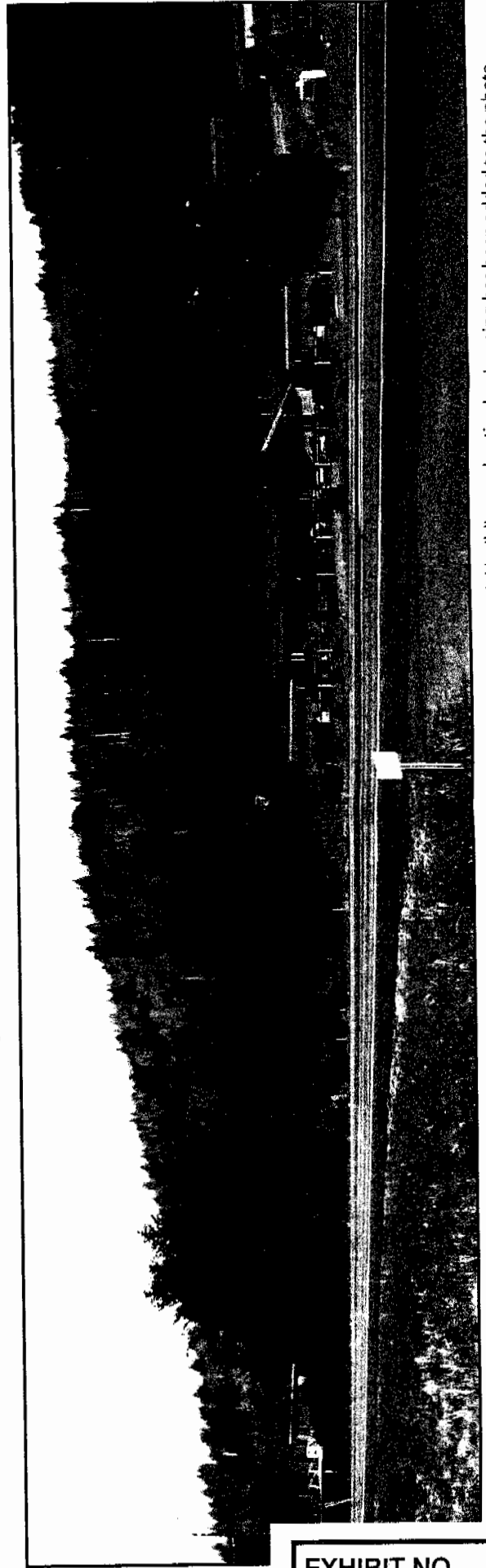
Examples of Tribal Architecture: "Lost Coast Lodge" Architectural Style

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong*

EXHIBIT NO. 15
APPLICATION NO.
CD-063-10



View looking northeast of Highway 101 corridor, then the Bartley Parcel, and the hills beyond.



View looking northeast of the same photo of the Bartley Parcel. An architectural rendering of the retail / commercial building and native landscaping has been added to the photo.

Figure 2.

EXHIBIT NO. 16

APPLICATION NO.

CD-063-10

DRAFT
SMITH RIVER RANCHERIA
BARTLEY/BRIDGE/HASWELL PROPERTIES
SPECIFIC LAND USE DESIGNATION ORDINANCE

The Smith River Rancheria ("Tribe") is a federally recognized Indian tribe eligible for all rights and privileges afforded to recognized Tribes. The Constitution of the Smith River Rancheria, as approved by the Bureau of Indian Affairs, establishes that the Smith River Rancheria Tribal Council ("Tribal Council") is the governing body of the Smith River Rancheria. The Tribal Council is empowered under the Constitution of the Smith River Rancheria, Article IV, Section 1, subsection (a) to represent the Tribe and act in all matters that concern the general welfare of the Tribe.

The Tribal Council is further empowered under the Constitution of the Smith River Rancheria, Article IV, section 1 subsections (f), (l) and (r) to protect and preserve the wildlife and natural resources of the Tribe's ancestral territory, to regulate hunting, fishing and trapping within the Tribe's ancestral territory, to manage and control land held by the Tribe and to exercise powers as needed to carry out these duties. Article IV, section 1, subsections (a), (o), and (p) vests the Tribal Council with both judicial authority and the authority to prescribe the rules and process for exercise of said authority; and the Tribe's Constitution, as approved of by the Bureau of Indian Affairs, further provides that the authority and jurisdiction of the Tribe shall extend to all land within the Tribe's ancestral territory.

Pursuant to the Tribe's Constitution and inherent sovereign powers, the Tribal Council hereby enacts this Ordinance which shall hereinafter be cited as the "Smith River Rancheria Bartley/Bridge/Haswell Specific Land Use Designation Ordinance" ("Ordinance").

§1. Findings and Purpose

The Smith River Rancheria finds and declares that: –

Section 1.1 Throughout the years, the Tribal Council has acquired lands within its ancestral territory to address the significant housing needs of its members. Once acquired, the Tribal Council commenced the trust application process to place the lands into trust, to be held by the federal government, for the benefit of the Tribe. The trust application for these parcels was submitted to the Bureau of Indian Affairs ("BIA") in 2009.

EXHIBIT NO. 17
APPLICATION NO.
CD-063-10

Section 1.2 The BIA submitted the Tribe's application to the California Coastal Commission ("Commission") for a consistency determination in accordance with the fee-to-trust application process requirements. Based upon comments received from the Commission, the BIA and Tribe modified the project description and related site plan to be consistent with the Coastal Act.

Section 1.3 Pursuant to its governmental authority, the Tribal Council adopts this Ordinance to control land use within the subject parcels, as described below, on the Smith River Rancheria for the protection of the health, safety and welfare of the people who live within the Rancheria. Its aim is to encourage the most appropriate use of the land, to protect the Rancheria's economic and social stability, promotion of orderly and responsible development on the Rancheria and to preserve the natural resources of the Tribe.

Section 1.4 This ordinance sets out the proposed land use agreed upon by the Tribe, as submitted to the California Coastal Commission, on three parcels of land (all located in Del Norte County, California) as identified below:

Bartley Property 6.0 acres	APN 101-110-09
Bridge Property (a.k.a. Scott) 3.41 acres	APN 101-110-06
Haswell Property 13.18 acres	APN 101-110-27

§2: Land Use Designation Map

Section 2.1 The Land Use Designation Map, as modified and accepted by the Tribal Council on May 10, 2011 designates specific land uses within each parcel as agreed to upon by the Tribe, as submitted to the California Coastal Commission, attached and incorporated into this Ordinance, and identified as Exhibit A.

Section 2.2 The Land Use Designation Map designates exactly what portions of the parcels are to be used for Residential and Commercial purposes.

Section 2.3 The Land Use Designation Map designates specifically the following uses for said such land as depicted on the attached plan:

Bartley: Development on the Bartley Parcel will be restricted to residential housing, except for a 1.7 acre subdivision of the parcel that fronts onto Highway 101. The maximum floor space of the commercial development will be 15,000

square feet. The Bartley Parcel will contain no more than 7 single-family homes. No multi-family housing is allowed. No other uses are allowed.

Bridge: Development on the Bridge Parcel will be restricted to residential housing. The Bridge Parcel will contain no more than 3 single-family homes. No multi-family housing is allowed. No commercial development is allowed. No other uses are allowed.

Haswell: Development on the Haswell Parcel will be restricted to residential housing. The Haswell Parcel will contain no more than 19 single-family homes. No multi-family housing is allowed. No commercial development is allowed. No other uses are allowed.

Section 2.4 Public Examination. The Land Use Designation Map shall be available for examination by any member of the public at all reasonable times.

Section 2.5 Process for Amending the Land Use Designation Map. The Land Use Designation Map may only be amended by the Tribal Council at a duly convened Tribal Council meeting wherein a quorum of the Tribal Council is present after it has been subject to comment by membership of the Tribe.

1. Any amendments to the Land Use Designation Map that are not consistent with the uses as outlined in Section 2.3 will be presented to the California Coastal Commission for comment within thirty (30) calendar days prior to Tribal Council adopting the proposed amendments.
2. The Commission may submit written comments to the Tribal Council for consideration when considering amendments to the Plan, and Commission may request to be placed on the agenda at the Tribal Council meeting when Plan amendments are being considered. The Tribal shall make a good faith effort to take into consideration any concerns the Commission may have with respect to the Plan amendments.
3. Nothing in this Ordinance shall grant to the State or the California Coastal Commission any jurisdiction over the Tribe.

§3 Violations of this Ordinance

Section 3.1 If Tribal Council finds that any provision of this Ordinance or Land Use Designation Map is being violated, they shall send a written notice to the person/business responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Failure to cure the violation will be addressed in the Tribal Court of the Smith River Rancheria.

§4 Sovereign Immunity

Section 4.1 Nothing in this Ordinance shall be deemed to waive sovereign immunity of the Tribe or any of its enterprises, officers, agents, or employees.

CERTIFICATION

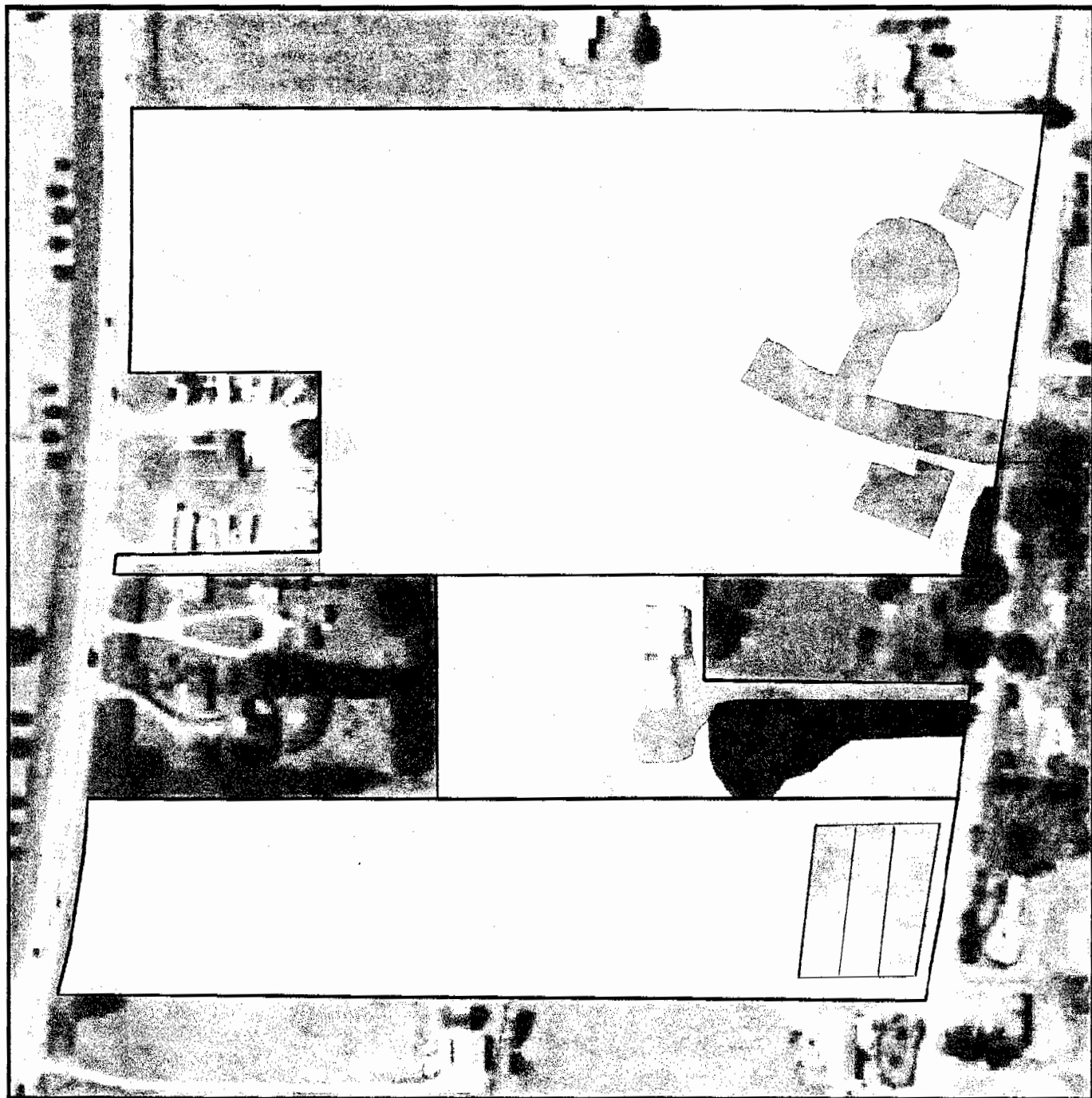
As the Chairperson of the Tribal Council for the Smith River Rancheria, I hereby certify that the Tribal Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of _____ for, with _____ against, with _____ abstaining, with _____ absent, on this _____ day of _____, _____.

Kara Brundin Miller, Tribal Chairperson





Sharyne R. Harper, Tribal
Secretary



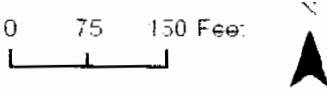
Exhibit A. Land Use Designation Map



Habitat Types

 Annual Grass and / Pasture	 Urban Forest
 Historic Drain Field	 Urbanized

0 75 150 Feet



Aerial Photo: USGS, 2005

Figure 3-5. Vegetation Communities / Wildlife Habitats within the Project Area

EXHIBIT NO. 18
APPLICATION NO.
CD-063-10

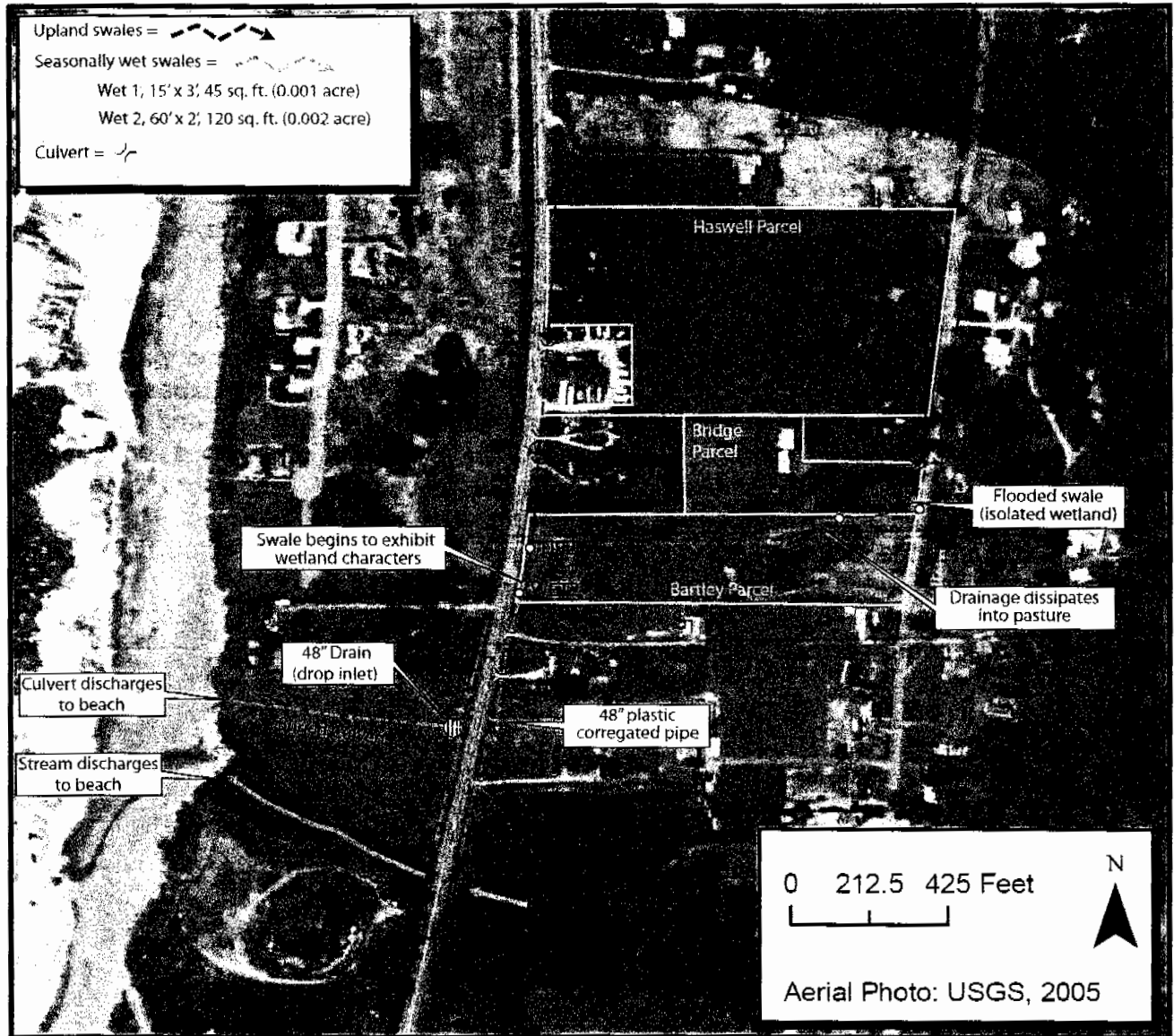


Figure 3-6. Delineation Map of Potentially Jurisdictional Waters

EXHIBIT NO. 19
APPLICATION NO.
LD-063-10